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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 56 and 70

[Docket No. PY–02–002]

RIN 0581–AC10

Increase in Fees and Charges for Egg, Poultry, and Rabbit Grading

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is increasing the fees and charges for Federal voluntary egg, poultry, and rabbit grading. These fees and charges are increased to cover the increase in salaries of Federal employees, salary increases of State employees cooperatively utilized in administering the programs, and other increased Agency costs.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: David Bowden, Jr., Chief, Standardization Branch, (202) 720–3506.

SUPPLEMENTARY INFORMATION:

Background

The Agricultural Marketing Act (AMA) of 1946 (7 U.S.C. 1621 *et seq.*) authorizes official voluntary grading and certification on a user-fee basis of eggs, poultry, and rabbits. The AMA provides that reasonable fees be collected from users of the program services to cover, as nearly as practicable, the costs of services rendered.

The AMS regularly reviews these programs to determine if fees are adequate and if costs are reasonable. This rule will amend the schedule for fees and charges for grading services rendered to the egg, poultry, and rabbit industries to reflect the costs currently associated with them.

A recent review of the current fee schedule, effective January 1, 2002, revealed that anticipated revenue would not adequately cover increasing program costs. Costs in FY 2003 are projected at $27.2 million. Without a fee increase, FY 2003 revenues are projected at $26.0 million and trust fund balances would be $15.2 million. With a fee increase, FY 2003 revenues are projected at $27.2 million and trust fund balances would remain at $16.4 million.

Employee salaries and benefits account for approximately 82 percent of the total operating budget. The last general and locality salary increase for Federal employees became effective on January 1, 2002 and it materially affected program costs. Projected cost estimates for that increase were based on a salary increase of 3.6 percent, however, the increase was actually 4.52 to 5.42 percent, depending on locality. Another general and locality salary increase estimated at 2.6 percent is expected in January 2003. Also, from October 2001 through September 2003, salaries and fringe benefits of federally-licensed State employees will have increased by about 6 percent.

The impact of these cost increases was determined for resident, nonresident, and fee services. To offset projected cost increases, the hourly resident and nonresident rate will be increased by approximately 5.8 percent and the fee rate will be increased by approximately 6 percent. The hourly rate for resident and nonresident service covers graders' salaries and benefits. The hourly rate for fee service covers graders' salaries and benefits, plus the cost of travel and supervision.

Administrative charges that cover the cost of supervision for resident poultry and shell egg grading will also be increased as shown in the table below. Administrative charges for resident rabbit grading and nonresident services will not be changed.

The following table compares current fees and charges with proposed fees and charges for egg, poultry, and rabbit grading as found in 7 CFR parts 56 and 70:

Service	Current	Proposed
Resident Service (egg, poultry, rabbit grading)		
Inauguration of service	$310	$310
Hourly charges: Regular hours	31.52	33.36
Administrative charges—Poultry grading:		
Per pound of poultry	.00036	.00037
Minimum per month	250	260
Maximum per month	2,650	2,675
Administrative charges—Shell egg grading:		
Per 30-dozen case of shell eggs	.046	.048
Minimum per month	250	260
Maximum per month	2,650	2,675
Administrative charges—Rabbit grading: Based on 25 % of grader's salary, minimum per month	260	260
Nonresident Service (egg, poultry grading)		
Hourly charges: Regular hours	31.52	33.36
Administrative charges: Based on 25 % of grader's salary, minimum per month	260	260
Fee and Appeal Service (egg, poultry, rabbit grading)		
Hourly charges:		

Service	Current	Proposed
Regular hours	54.40	57.68
Weekend and holiday hours	62.76	66.64

Comments

Based on the analysis of costs to provide these services, a proposed rule to increase the fees for these services was published in the **Federal Register** (67 FR 48816) on July 26, 2002. Comments on the proposed rule were solicited from interested parties until August 26. No comments were received. The Agency will implement these increases, as proposed, to ensure the financial stability of its grading programs.

Executive Order 12866

This action has been determined to be not significant for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA)(5 U.S.C. 601 *et seq.*), the AMS has considered the economic impact of this action on small entities. It is determined that its provisions will not have a significant economic impact on a substantial number of small entities.

There are about 400 users of Poultry Programs' grading services. These official plants can pack eggs, poultry, and rabbits in packages bearing the USDA grade shield when AMS graders are present to certify that the products meet the grade requirements as labeled. Many of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.201). These entities are under no obligation to use grading services as authorized under the Agricultural Marketing Act of 1946.

The AMS regularly reviews its user fee financed programs to determine if fees are adequate and if costs are reasonable. A recent review determined that the existing fee schedule, effective January 1, 2002, will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance in FY 2003. Costs in FY 2003 are projected at $27.2 million. Without a fee increase, FY 2003 revenues are projected at $26.0 million and trust fund balances would be $15.2 million. With a fee increase, FY 2003 revenues are projected at $27.2 million and trust fund balances would remain at $16.4 million.

This action will raise the fees charged to users of grading services. The AMS estimates that overall, this rule would yield an additional $1.2 million during FY 2003. The hourly rate for resident and nonresident service will increase by approximately 5.8 percent and the fee rate will increase by approximately 6 percent. The impact of these rate changes in a poultry plant will range from less than 0.007 to 0.037 cents per pound of poultry handled. In a shell egg plant, the range will be less than 0.021 to 0.036 cents per dozen eggs handled.

Civil Justice Reform

This action has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Paperwork Reduction

The information collection requirements that appear in the sections to be amended by this action have been previously approved by OMB and assigned OMB Control Numbers under the Paperwork Reduction Act (44 U.S.C. Chapter 35) as follows: § 56.52(a)(4)—No. 0581–0128; and § 70.77(a)(4)—No. 0581–0127.

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. The revised fees need to be implemented on an expedite basis in order to avoid further financial losses in the grading program. The effective date of the fee increase will be set to coincide with the billing cycle that begins on the first day of the first month after date of publication in the **Federal Register**.

List of Subjects

7 CFR Part 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

7 CFR Part 70

Food grades and standards, Food labeling, Poultry and poultry products, Rabbits and rabbit products, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, Title 7, Code of Federal Regulations, parts 56 and 70 are amended as follows:

PART 56—GRADING OF SHELL EGGS

1. The authority citation for part 56 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. Section 56.46 is revised to read as follows:

§ 56.46 On a fee basis.

(a) Unless otherwise provided in this part, the fees to be charged and collected for any service performed, in accordance with this part, on a fee basis shall be based on the applicable rates specified in this section.

(b) Fees for grading services will be based on the time required to perform the services. The hourly charge shall be $57.68 and shall include the time actually required to perform the grading, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $66.64 per hour. Information on legal holidays is available from the Supervisor.

3. In § 56.52, paragraph (a)(4) is revised to read as follows:

§ 56.52 Continuous grading performed on resident basis.

* * * * *

(a) * * *

(4) An administrative service charge based upon the aggregate number of 30-dozen cases of all shell eggs handled in the plant per billing period multiplied by $0.048, except that the minimum charge per billing period shall be $260 and the maximum charge shall be $2,675. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS

4. The authority citation for part 70 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

5. Section 70.71 is revised to read as follows:

§ 70.71 On a fee basis.

(a) Unless otherwise provided in this part, the fees to be charged and collected for any service performed, in accordance with this part, on a fee basis shall be based on the applicable rates specified in this section.

(b) Fees for grading services will be based on the time required to perform such services for class, quality, quantity (weight test), or condition, whether ready-to-cook poultry, ready-to-cook rabbits, or specified poultry food products are involved. The hourly charge shall be $57.68 and shall include the time actually required to perform the work, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $66.64 per hour. Information on legal holidays is available from the Supervisor.

6. In § 70.77, paragraph (a)(4) is revised to read as follows:

§ 70.77 Charges for continuous poultry or rabbit grading performed on a resident basis.

* * * * *

(a) * * *

(4) For poultry grading: An administrative service charge based upon the aggregate weight of the total volume of all live and ready-to-cook poultry handled in the plant per billing period computed in accordance with the following: Total pounds per billing period multiplied by $0.00037, except that the minimum charge per billing period shall be $260 and the maximum charge shall be $2,675. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

Dated: December 19, 2002.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–32504 Filed 12–24–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103 and 245

[INS No. 2124–01; AG Order No. 2642–2002]

RIN 1115–AG14

Adjustment of Status for Certain Aliens from Vietnam, Cambodia, and Laos in the United States

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule finalizes the Department of Justice regulations implementing section 586 of Public Law 106–429, which provides for the adjustment of status for certain aliens from Vietnam, Cambodia, and Laos. Eligible applicants must have been physically present in the United States both prior to and on October 1, 1997, and inspected and paroled into the United States before October 1, 1997, either from Vietnam under the Orderly Departure Program, from a refugee camp in East Asia, or from a displaced persons camp administered by the United Nations in Thailand. This rule establishes eligibility, evidence, and application and adjudication procedures. Starting January 27, 2003, aliens who believe they are eligible may apply for permanent residence under section 586. This rule also adds a new section in the regulations that lists the types of evidence an alien may use to demonstrate his or her physical presence in the United States on a specific date.

DATES: This final rule is effective January 27, 2003.

FOR FURTHER INFORMATION CONTACT: Michael Valverde, Residence and Status Branch, Immigration and Naturalization Service, 425 I Street, NW, Room 3214, Washington, DC 20536, Telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Is Section 568 of Public Law 106–429?

On November 6, 2000, the President signed Public Law 106–429, the Foreign Operations Appropriations Act of 2001. Section 586 of Public Law 106–429, 8 U.S.C. 1255 note, provides for adjustment of status to that of lawful permanent resident for 5,000 eligible natives or citizens of Vietnam, Cambodia, and Laos.

Who Is Eligible for Adjustment of Status to That of Lawful Permanent Resident Under Section 586 of Public Law 106–429?

This final rule establishes the eligibility requirements for adjustment of status under section 586 of Public Law 106–429. To be eligible, an alien must demonstrate that he or she:

(1) Is a citizen or native of Vietnam, Cambodia, or Laos;

(2) Was inspected and paroled into the United States before October 1, 1997;

(3) Was physically present in the United States prior to and on October 1, 1997;

(4) Was paroled into the United States:

(a) From Vietnam under the auspices of the Orderly Departure Program;

(b) From a refugee camp in East Asia; or

(c) From a displaced persons camp administered by the United Nations High Commissioner for Refugees in Thailand;

(5) Applied for adjustment of status under section 586 of Public Law 106–429 during the period beginning on January 27, 2003 and ending on January 25, 2006, and paid all appropriate fees; and

(6) Is otherwise eligible to receive an immigrant visa and otherwise admissible to the United States for permanent residence except for those grounds of inadmissibility that do not apply or that are waived.

What Does This Final Rule Do?

The preamble to this final rule discusses issues raised in the public comment letters submitted regarding the proposed regulation, published at 67 FR 45402 (July 9, 2002). This rule makes several changes to the regulation in response to those comments, as discussed below. Finally, this rule provides instructions for aliens seeking to apply for adjustment of status under section 586 and marks the start and end dates for the three-year application period.

Public Comment

The proposed regulation set forth a 60-day period, from July 9, 2002, until September 9, 2002, for any interested member of the public to submit comments on the proposed regulation. The Department of Justice (''Department'') received seven letters, raising a total of 23 distinct issues. These comments are discussed below and are generally divided into three sections: comments concerning eligibility and evidence for adjustment

of status under section 586, comments regarding the physical presence section, and comments regarding standards for granting a waiver under section 212(h) of the Immigration and Nationality Act (''Act'') (8 U.S.C. 1182(h)).

Comments Regarding the Regulations Pertaining to Section 586 of Public Law 106–429

The 5,000 Limit on Adjustments of Status Under Section 586

Commenters raised two issues about the 5,000 limit on adjustments under section 586. First, two commenters requested that the Department acknowledge the stated intention of Congress to consider raising the total number of adjustments provided for in section 586. Second, one commenter went further to state that the Department should retain applications received after the 5,000-adjustment limit has been reached, pending the Congressional action to raise the limit.

In response to the first issue, the Department acknowledges that the legislative history contains references to Congress's intention to consider expanding the 5,000-adjustment cap, if necessary, to accommodate otherwise eligible aliens, through future legislation. *See* H.R. Conf. Rep. 106–997, at 106 (2000). Indeed, throughout the legislative process and subsequent rulemaking process, non-governmental organizations involved with the potentially eligible groups have stated that the total number of aliens who would be eligible for adjustment of status under section 586 far exceeds 5,000.

Notwithstanding the possibility that Congress might change the law in the future, however, the Department is responsible for implementing the law as currently written. This means the Department will track the total number of adjustments and stop adjudicating applications after the 5,000 limit has been reached. At that time, the Department will also notify Congress and the public that the limit has been reached. If the limit is raised or removed through future legislation, the Department will process applications accordingly.

In response to the second issue, the Department does not plan to keep those applications submitted after the 5,000 limit has been reached. The expense of submitting an application to adjust status under this provision is significant, currently $305, including fingerprint fees. If employment authorization and advance parole applications are also submitted, that figure grows to $535. The Department believes that it is not in the applicants' interests for the Department to retain such large sums of their money for an indefinite period of time based on the possibility of future legislation. Rather, it is better to return such applications and the accompanying fees and allow the same applicants the opportunity to apply again if the limit is expanded.

However, for purposes of processing applications if the 5,000 limit is expanded or eliminated, the Department will keep chronological records of those applicants who submitted timely applications but did not obtain a space within the 5,000 limit. In addition to keeping such records, the Department will issue a dated notice to the applicant along with the returned application. Aliens are encouraged to retain their application package and this notice in case in the 5,000 limit is expanded or eliminated.

Nevertheless, if at the time the 5,000 limit is reached it appears that Congress is about to pass legislation to expand or eliminate the cap, the Department will use its discretion to decide whether or not to keep such applications and the related fees. This final rule adds a new 8 CFR 245.21(m)(4) to reflect this policy.

The Processing Prioritization of Applicants Who Do Not Need A Waiver of Criminal Grounds of Inadmissibility Under Section 212(h) of the Act

The Department received three comments that the processing scheme set forth in the proposed rule should be changed. The commenters stated that applicants who have applied for a waiver of a criminal ground of inadmissibility should be given the same processing priority as those who do not require such a waiver.

The Department does not agree with these comments. These regulations provide some priority to those applicants who do not require a waiver of the criminal, fraud, immigration violator, citizenship ineligibility, or illegal voting grounds of inadmissibility, over those who do. *See* 8 CFR 245.21(m)(3). For purposes of receiving a number in the queue, applications for waivers on other grounds of inadmissibility will be considered as if they were applications for adjustment not requiring waivers. For instance, applicants for a waiver of a ground of inadmissibility on health-related grounds (section 212(a)(1) of the Act, 8 U.S.C. 1182(a)(1)) will receive a number in the queue as if they were not applying for a waiver. Essentially, the first group—those applicants who do not require a waiver of the criminal, fraud, immigration violator, citizenship ineligibility, or illegal voting grounds of inadmissibility—will be assigned a number chronologically by date of application relative to the 5,000 limit. The second group will be assigned a number chronologically by date of the waiver approval.

The Department anticipates that an adjudication involving the waiver will take longer than an adjudication not involving a waiver, and therefore, the Department does not want to slow down the adjudication process by giving out numbers to aliens who are not yet eligible to receive adjustment of status. It is correct that those applicants requiring a waiver will face a disadvantage. In the proposed rule, the Department stated that in setting forth this processing hierarchy the Department was of the view that those aliens who have not engaged in the aforementioned activities, and thereby rendered themselves inadmissible, should be treated more favorably than those who have engaged in such behavior. The Department continues to be of this view, and as such, will not be amending the regulations to reflect these three comments.

Eligibility of Persons Who Are Currently in Immigration Proceedings

The Department received two comments stating that immigration judges should have the authority to consider applications for adjustment of status under section 586 during immigration proceedings.

The Department believes that the adjudication of applications for adjustment of status under section 586 is best administered by the Immigration and Naturalization Service (''Service'') in one central location. Moreover, maintaining control of the 5,000 limit on adjustments is most efficiently accomplished by centralizing filing and adjudication. Because verification of an applicant's claim to eligibility under section 586 will most likely require significant research by the Service, the Department believes that centralizing the application and adjudication at one Service office will provide the most efficient service to applicants. As such, the Department will not amend the regulations to reflect these comments.

Additionally, one commenter objected to the requirement that the Service concur before an immigration judge or the Board of Immigration Appeals (''BIA'') administratively closes the proceedings. The commenter argued that an eligible alien could be prevented from obtaining benefits under section 586 if the Service failed to join in the motion. The commenter stated that eliminating the Service consent requirement is necessary to ensure that

meritorious cases will not be denied consideration where the Service does not concur with the motions to close cases. The Department disagrees with these comments. Administrative closure of a case is used to remove temporarily a case from an immigration judge's calendar or from the BIA's docket. As a general matter, ''[a] case may not be administratively closed if opposed by either of the parties.'' *Matter of Gutierrez-Lopez,* 21 I. & N. Dec. 479, 480 (BIA 1996). Efficiency of the immigration court system is increased by requiring parties to agree to close a case administratively. The Service, which will adjudicate applications for adjustment of status under this regulation, will likely concur in administrative closure if it believes the alien is eligible for the relief sought. If the alien has other issues to resolve before an immigration judge, having the case go forward allows those issues to be resolved at the same time the Service adjudicates the alien's application to adjust status under section 586. Completing concurrently as many processes as possible adds to efficiency of the immigration court system.

The Department does not believe that the regulations will prevent any alien's application for adjustment of status under section 586 from being considered. The regulations provide that an alien in immigration proceedings may apply directly to the Service for adjustment of status independent of his or her proceedings. The Service may adjudicate such an application without resolution of the proceedings. Moreover, the Department points to the distinction between the administrative proceedings resulting in an order of removal of an alien and the actual removal of the alien. In the unlikely scenario where the Service does not concur with the alien's motion for administrative closure, even though the alien appears eligible for adjustment under section 586, and where the alien is ultimately issued a removal order, the Service has discretion to withhold the removal of the alien until the adjustment application is resolved. The alien would have to make such a request to the district director after the order is issued. The Department notes that the granting of adjustment under section 586 is tantamount to reopening and vacating any order of removal issued. This final regulation will not be amended in response to these comments.

Eligibility of Persons Who Are Derivative Family Members

One commenter requested that the final rule be amended to allow for the adjustment of derivative family members.

The Department cannot accommodate the commenter's request. The proposed regulations do not include a provision for the adjustment of derivative family members of eligible aliens because the statutory language of section 586 does not include such a provision. Rather, every alien has to be eligible on his or her own behalf. The Department notes that the Act does provide a process, albeit a lengthier one, for dependent family members of lawful permanent residents to obtain permanent resident status. Once his or her adjustment of status application is approved, the new lawful permanent resident can submit Form I–130, Petition for Alien Relative, for a dependent spouse and unmarried children.

Eligibility of Persons Who Traveled After October 1, 1997

The Department received two comments requesting that the final rule be clarified regarding travel by eligible aliens that took place after October 1, 1997. In short, the commenters requested that the final rule state that otherwise eligible aliens who left the United States after initially entering prior to October 1, 1997, via one of the three qualifying programs, are not rendered ineligible by virtue of that subsequent travel.

The Department agrees with the commenters that travel subsequent to October 1, 1997, does not render an alien ineligible for adjustment of status under section 586. The commenters expressed the concern that, because such aliens will have a Form I–94, Arrival/Departure Document, that is dated after October 1, 1997, the adjustment application will be denied because they will not have proof of entry prior to October 1, 1997. The Department understands that such aliens could have traveled and re-entered the United States via parole or another lawful manner of entry. In these instances, although the alien may no longer possess the documentation of the original entry, evidence of the initial entry may be available in Department records, and therefore could be verified during adjudication. This final rule, at 8 CFR 245.21(g)(3), provides for such an alien to submit an affidavit, in lieu of the initial Form I–94, establishing that he or she entered prior to October 1, 1997, via one of the three qualifying programs.

Eligibility of Persons Who Entered the United States via Humanitarian Parole

The Department received one comment requesting that the final rule clarify that aliens who entered the United States via humanitarian parole (rather than public interest parole) are eligible for adjustment of status under section 586.

The Department agrees with the commenter. Section 586 requires only that the applicant be paroled into the United States via one of the three qualifying programs. While the Department believes the vast majority of the potential beneficiaries of section 586 were granted public interest parole, some potential beneficiaries were granted humanitarian parole. Such aliens, if otherwise qualified, are eligible for adjustment of status under section 586. This statement is consistent with the proposed regulations at 8 CFR 245.21(a)(2). Therefore, the Department has not amended the final regulations.

The Medical Examination Requirement

One commenter requested that the Department remove the medical examination requirement for adjustment under section 586 in the final regulations. The commenter stated that the examinations are expensive and unnecessary because the aliens have resided in the United States for a long period of time.

The Department believes that the medical examination requirement is not an unusual or unduly burdensome requirement and has decided to retain the examination requirement in the final regulations. Medical examinations are necessary for the applicant to demonstrate that he or she is not inadmissible under section 212(a)(1) of the Act (8 U.S.C. 1182(a)(1)). The fact that aliens have been living in the United States for a long period of time does not change this requirement. Department regulations require the vast majority of adjustment applicants to undergo a medical examination, regardless of the number of years they have spent in the United States. For example, all applicants adjusting status under section 245(a) of the Act (8 U.S.C. 1255(a)) must undergo a medical examination despite the fact that many such applicants have been residing in the United States in nonimmigrant status for several years.

Making Available the List of Persons Who Entered the United States via Auspices of the Orderly Departure Program (''ODP'')

The Department received one comment requesting that a list of all persons who entered the United States under the auspices of the ODP be made public.

While the Department understands the potential utility of this request, the

Department does not disclose such lists of individuals who are potentially eligible for immigration benefits. Although The Privacy Act of 1974, as amended, does not cover non-resident aliens (under 5 U.S.C. 552a(a)(2), the term ''individual'' means a citizen of the United States or an alien lawfully admitted for permanent residence), Department policy generally forbids the release of personal information regarding groups of individuals. Individuals who wish to obtain proof that they entered the United States via the ODP may so state as part of their application for adjustment of status under section 586, or make a request for the information via the Freedom of Information Act (FOIA). As stated in the proposed rule, the Department likely can verify an alien's assertion that he or she entered via the ODP.

The Use of the IV Tracking Number To Demonstrate Eligibility

The Department received one comment regarding the use of an alien's IV tracking number to demonstrate that he or she was processed through the ODP. The commenter stated that in some cases, the alien will not have a unique identifying IV number, but rather a V number, or an alien registration number.

Aliens processed through the ODP were assigned both IV and V numbers. The IV number was assigned to an alien, and any accompanying family members, at his or her initial registration with the United States Government. Later, a V number was assigned to the alien, and accompanying family members, if he or she was scheduled to depart the program and enter the United States. Finally, some of those aliens granted humanitarian parole in place of public interest parole received alien registration numbers as well. The Department regulations require only that the applicant demonstrate that he or she was processed via the ODP or one of the other two programs. As stated previously, subject to verification by the Department, those aliens who were processed via the ODP who no longer have any paperwork from the ODP may submit an affidavit to the Department in lieu of the actual documentation. *See* 8 CFR 245.21(g)(3).

The Question Concerning the Public Charge Ground of Inadmissibility on Form I–485, Application To Register for Permanent Resident or Adjust Status

The Department received one comment stating that the final rule should indicate that applicants for adjustment of status under section 586 are not required to answer question number two on part three of Form I–485, regarding an applicant's use of public assistance. The commenter stated that applicants for adjustment of status under section 586 are exempt from the public charge ground of inadmissibility at section 212(a)(4) of the Act (8 U.S.C. 1182(a)(4)), and so the question is unnecessary.

The Department agrees with this comment and has stated in the proposed rule and will state in policy memoranda that applicants for adjustment of status under section 586 are exempt from section 212(a)(4) of the Act. As such, the commenter is correct in that an answer of ''yes'' to the specified question cannot result in the denial of the application because the alien is inadmissible under section 212(a)(4) of the Act. However, there are some scenarios where the answer to this question may indirectly affect the adjudication in ways other than inadmissibility under section 212(a)(4) of the Act, such as when certain types of immigration benefit fraud are suspected. Therefore, full and complete answers to each question on Form I–485, including this question, are required. Another reason for retaining the question on the form is that the Form I–485 remains the same for all adjustment programs. The Department does not create a new form each time Congress creates a new adjustment program. As such, the Department does not want to issue separate instructions for adjustment under section 586. The Department has retained this question on the form.

Employment Authorization Documents

One commenter requested that the Department provide all applicants with employment authorization documents at no charge at the time they submit their applications for adjustment. The commenter also stated that the final regulations should make it clear that the applicants who do not desire employment authorization do not need to submit the application for employment authorization along with the application for adjustment of status.

Although as the commenter has stated, many eligible aliens already have employment authorization issued under other provisions of law and thus do not need employment authorization, the proposed regulation provides a means for an alien who desires employment authorization to obtain it. If an alien believes he or she cannot pay the application fee (currently $120), he or she can request a fee waiver when submitting the application. Thus, the Department has retained in the final rule the requirement that those aliens desiring employment authorization file an application for employment authorization and submit the accompanying fee. Another commenter requested that the Department regulations make the adjudication of an application for employment authorization based upon a section 586 adjustment application subject to the 90-day adjudication provision of 8 CFR 274a.13(d). Under these regulations, that is currently the case. With certain exceptions, any application for employment authorization based upon an adjustment application filed under 8 CFR part 245—including 8 CFR 245.21 pertaining to adjustment for certain aliens from Vietnam, Cambodia, and Laos—is subject to the 90-day provision of 8 CFR 274a.13(d) per the regulations. *See* 8 CFR 274a.12(c)(9); 8 CFR 274a.13(d). The current regulations do require that a section 586-based application for employment authorization be adjudicated within 90 days or interim employment authorization must be issued.

Advance Parole Eligibility Requirements

Three commenters raised the issue of advance parole. They requested that the final rule state that the eligibility criteria for obtaining advance parole based on a pending application for adjustment filed under section 586 is the same as the advance parole criteria for adjustment applicants under section 245(a) of the Act (8 U.S.C. 1255). Section 245(a) applicants are generally granted advance parole, in the discretion of the Service, if they have demonstrated ''any bona fide business or personal reason.'' *See* instructions to Form I–131, Application for Travel Document. Without such a standard, one commenter suggests that the different Service offices will apply varying eligibility standards. The Department does not believe that it needs to articulate such a standard in the regulation. The standard for obtaining advance parole is the same for those obtaining it in connection with an adjustment application filed under section 586 as for those obtaining advance parole in connection with other adjustment programs; the Form I–131 is the same for each program.

The Department's proposed regulations provided the alien with the ability to obtain advance parole, in the discretion of the Service, based on a pending adjustment application under section 586. *See* section 245.21(i) of the proposed regulations. When these final regulations are effective, the Department will issue guidance to its field officers covering all aspects of this adjustment program, including advance parole. The

Department believes this will ensure consistent treatment of applications for advance parole based upon a proper filing for adjustment under section 586.

For those with final orders of removal or more than 180 days of unlawful presence in the United States, the ground of inadmissibility under section 212(a)(9) of the Act (8 U.S.C. 1182(a)(9)) would not bar adjustment under this rule. However, applicants should keep in mind that, should their section 586 application be denied, departure from the United States may amount to a self-deportation, in which case, absent a waiver, they would be inadmissible under section 212(a)(9) of the Act for either three or 10 years. In addition, in the case of an applicant over 18 years of age who has accrued more than 180 days of unlawful presence in the United States, such departure would render the alien inadmissible under section 212(a)(9)(B) of the Act (8 U.S.C. 1182(a)(9)(B)).

Outreach to Potentially Eligible Aliens

One commenter requested that the Department conduct an outreach program in the native languages of the potential beneficiaries to ensure that those potential beneficiaries with limited English proficiency are aware of the opportunity to adjust status under section 586.

The Department agrees that it is important that all potentially eligible aliens understand the benefits provided under section 586 as well as the eligibility criteria set forth by this provision. Normally, when the Department announces the beginning of such an adjustment program, the Department develops materials explaining the program, the eligibility criteria, the application procedures, and other pertinent issues. This material is distributed to local, national, and other interested media outlets, and also to non-governmental and community-based organizations. By their very nature, these groups are best suited to provide news and information to specific communities. The section 586 adjustment program will be no exception to this general practice.

Comments Regarding the Regulations Pertaining to the Demonstration of Physical Presence in the United States on a Specific Date

The Department received one comment that the creation of a single section in the regulations regarding the demonstration of physical presence for adjustment applicants who need to demonstrate physical presence in the United States on a specific date should be accomplished via a separate rulemaking.

The Department disagrees with the comment that a separate rule is necessary to create a single section in the regulations regarding the demonstration of physical presence on a specific date. As stated in the proposed rule, Department regulations already contain several similar sections for various adjustment of status provisions containing more or less the same physical presence standards. Rather than continue to create redundant regulations, the Department believes that it is appropriate at this time to bring the provisions together into one single section of the regulations. Because the applicants for section 586 need to demonstrate that they were physically present in the United States on October 1, 1997, and because the physical presence part of the rulemaking is largely non-substantive and re-organizational in nature, it is an appropriate part of this larger rulemaking.

Comments Regarding Waivers of Criminal Grounds of Inadmissibility

The Final Regulations Regarding the Section 586 Rule Should Be Promulgated Separately Than the Waiver Provisions of Section 212(h) of the Act

The proposed regulations contained a separate section regarding the waiver provisions of section 212(h) of the Act (8 U.S.C. 1182(h)). The Department received one comment that the proposed regulations regarding the waiver provisions of section 212(h) of the Act (8 U.S.C. 1182(h)) should be promulgated in a rule separate from the section 586 rule. The Department agrees with this comment and is publishing two separate rules instead of one. An interim final rule regarding waivers under section 212(h) of the Act is published elsewhere in this issue of the **Federal Register**.

May Section 586 Applicants Apply for Waivers of the Criminal Grounds of Inadmissibility?

Yes. Applicants must demonstrate that they are admissible as an immigrant to obtain benefits under section 586, just as they would have to do under other adjustment programs. Although section 586(c) provides that four grounds of inadmissibility do not apply, and provides special rules for waivers of several other grounds, section 586 does not mention the availability of waivers for criminal aliens. Even so, the Department has determined that criminal aliens who are inadmissible under section 212(a)(2) of the Act may apply for a waiver under section 212(h) of the Act. The Department is aware that many aliens who might otherwise be eligible under section 586 are inadmissible on criminal grounds. The Attorney General has determined to exercise the discretion accorded to him under section 212(h) in connection with applicants under section 586. Because section 212(h) is a general provision applicable to waivers for immigrants, it is appropriate to adopt standards for the exercise of discretion in all cases under section 212(h), rather than creating a new standard applicable only to the Indochinese population covered by section 586. Accordingly, the Department is publishing a separate interim rule (published elsewhere in this issue of the **Federal Register**) with regard to the Attorney General's authority under section 212(h) of the Act to grant waivers of inadmissibility to criminal aliens.

Application for Adjustment of Status Under Section 586

What Is the Application Period for Adjustment of Status Under Section 586?

The three-year period for submitting applications for adjustment of status under section 586 begins January 27, 2003 and ends January 25, 2006. *See* 8 CFR 245.21(b)(1). As stated previously, if the 5,000-adjustment limit is reached prior to the end of the application period, the Department will notify Congress and the public of that fact. If the limit is not reached by the end of the three-year application period, only those applications received by the Department on or prior to, or containing a postmark dated on or prior to January 25, 2006 will be accepted for processing.

Where Can I File an Application for Adjustment of Status Under Section 586?

Applications for adjustment of status under section 586 should be sent to the following address: INS Nebraska Service Center, P.O. Box 87485, Lincoln, NE 68501–7485.

What Must an Application for Adjustment of Status Under Section 586 Contain?

The regulations at 8 CFR 245.21(b)(2) state what constitutes a proper application under section 586. An alien must be physically present in the United States to apply for adjustment of status under section 586. An applicant must submit Form I–485, Application to Register Permanent Residence or Adjust Status, along with the appropriate

application fee contained in 8 CFR 103.7(b)(1). Applicants who are 14 through 79 years of age must also submit the fingerprinting service fee provided for in 8 CFR 103.7(b)(1). Each application filed must be accompanied by evidence establishing eligibility as provided in 8 CFR 245.21(g); two photographs as described in the Form I–485 instructions; a completed Biographic Information Sheet (Form G–325A) if the applicant is between 14 and 79 years of age; a report of medical examination (Form I–693 and vaccination supplement) specified in 8 CFR 245.5; and, if needed, an application for waiver of inadmissibility. Under Part 2, question h of Form I–485, applicants must write ''INDOCHINESE PAROLEE P.L. 106–429''.

The regulations at 8 CFR 245.21(c), (d), and (e), discuss the additional filing procedures for aliens in removal proceedings, aliens with final orders of removal, and aliens needing waivers of grounds of inadmissibility, respectively.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect certain individuals from Vietnam, Cambodia, and Laos by implementing the adjustment of status provisions of section 586 of Public Law 106–429. This rule will have no effect on small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget for review.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

The information collection requirement (Form I–485) contained in this rule was previously approved for use by the Office of Management and Budget (OMB). The OMB control number for this information collection is 1115–0053. This final rule permits certain aliens from Vietnam, Cambodia, and Laos to adjust status. In addition to the evidence required by Form I–485, this rule at 8 CFR 245.21(g)(2) requires applicants to demonstrate that they were physically present in the United States on October 1, 1997, by supplying the evidence outlined in 8 CFR 245.22. This additional documentation is considered an information collection. Written comments are encouraged and will be accepted until February 24, 2003.

Accordingly, the Service has submitted an information collection request to the Office of Management and Budget (OMB) for emergency review and clearance in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). If granted, emergency approval is valid for 180 days.

All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument, shall be directed to the Immigration and Naturalization Service, Regulations and Forms Services Division, 425 I Street, NW, Room 4034, Washington, DC 20536; Attention: Richard A. Sloan, Director, (202) 514–3291.

Your comments should address one or more of the following four points:

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

(2) Evaluating the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimizing the burden of the collection of the information on those who are to respond, including through the use of any and all appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* New.

(2) *Title of Form/Collection:* Application requirements for the adjustment of status under section 586 of Public Law 106–429.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No form number (File No. OMB–27), Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals. Section 586 of Public Law 106–429 allows certain aliens from Vietnam, Cambodia, and Laos to adjust status to lawful permanent resident. The information collection is necessary in order for the Service to make a determination that the eligibility requirements and conditions are met regarding the alien.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 5,000 respondents at 30 minutes per response.

(6) *An estimate of the total of public burden (in hours) associated with the collection:* Approximately 2,500 burden hours.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations

(Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, parts 103 and 245 of chapter I of title 8 of the Code of Federal Regulations are amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; E.O. 12356; 47 FR 14874, 15557, 3 CFR, 1982 Comp., p 166; 8 CFR part 2.

2. Section 103.1(f)(3)(iii)(C) is revised to read as follows:

103.1 Delegations of authority.

* * * * *

(f) * * *

(3) * * *

(iii) * * *

(C) Indochinese refugee applications for adjustment of status under section 103 of the Act of October 28, 1977, or section 586 of Public Law 106–429;

* * * * *

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

3. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; sec. 202, Pub. L. 105–100, 111 Stat. 2160, 2193; sec. 902, Pub. L. 105–277, 112 Stat. 2681; 8 CFR part 2.

4. Section 245.15(i) is revised to read as follows:

§ 245.15 Adjustment of status of certain Haitian nationals under the Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA).

* * * * *

(i) *Evidence of presence in the United States on December 31, 1995.* An alien seeking HRIFA benefits as a principal applicant must provide with the application evidence establishing the alien's presence in the United States on December 31, 1995. Such evidence may consist of the evidence listed in § 245.22.

* * * * *

5. Section 245.21 is added to read as follows:

§ 245.21 Adjustment of status of certain nationals of Vietnam, Cambodia, and Laos (section 586 of Public Law 106–429).

(a) *Eligibility.* The Service may adjust the status to that of a lawful permanent resident, a native or citizen of Vietnam, Cambodia, or Laos who:

(1) Was inspected and paroled into the United States before October 1, 1997;

(2) Was paroled into the United States from Vietnam under the auspices of the Orderly Departure Program (ODP), a refugee camp in East Asia, or a displaced person camp administered by the United Nations High Commissioner for Refugees (UNHCR) in Thailand;

(3) Was physically present in the United States prior to and on October 1, 1997;

(4) Files an application for adjustment of status in accordance with paragraph (b) of this section during the 3-year application period; and

(5) Is otherwise eligible to receive an immigrant visa and is otherwise admissible as an immigrant to the United States except as provided in paragraphs (e) and (f) of this section.

(b) *Applying for benefits under section 586 of Public Law 106–429.* (1) *Application period.* The application period lasts from January 27, 2003 until January 25, 2006. The Service will accept applications received after the end of the application period, but only if the 5,000 limit on adjustments has not been reached prior to the end of the three-year application period, and the application bears an official postmark dated on or before the final day of the application period. Postmarks will be evaluated in the following manner:

(i) If the postmark is illegible or missing, the Service will consider the application to be timely filed if it is received on or before 3 business days after the end of the application period.

(ii) In all instances, the burden of proof is on the applicant to establish timely filing of an application.

(2) *Application.* An alien must be physically present in the United States to apply for adjustment of status under section 586 of Public Law 106–429. An applicant must submit Form I–485, Application to Register Permanent Residence or Adjust Status, along with the appropriate application fee contained in § 103.7(b)(1) of this chapter. Applicants who are 14 through 79 years of age must also submit the fingerprinting service fee provided for in § 103.7(b)(1) of this chapter. Each application filed must be accompanied by evidence establishing eligibility as provided in paragraph (g) of this section; two photographs as described in the Form I–485 instructions; a completed Biographic Information Sheet (Form G–325A) if the applicant is between 14 and 79 years of age; a report of medical examination (Form I–693 and vaccination supplement) specified in § 245.5; and, if needed, an application for waiver of inadmissibility. Under Part 2, question h of Form I–485, applicants must write ''INDOCHINESE PAROLEE P.L. 106–429''. Applications must be sent to: INS Nebraska Service Center, P.O. Box 87485, Lincoln NE 68501–7485.

(c) *Applications from aliens in immigration proceedings.* An alien in pending immigration proceedings who believes he or she is eligible for adjustment of status under section 586 of Public Law 106–429 must apply directly to the Service in accordance with paragraph (b) of this section. An immigration judge or the Board of Immigration Appeals may not adjudicate applications for adjustment of status under this section. An alien who is currently in immigration proceedings who alleges eligibility for adjustment of status under section 586 of Public Law 106–429 may contact Service counsel after filing an application to request the consent of the Service to the filing of a joint motion for administrative closure. Unless the Service consents to such a motion, the immigration judge or the Board may not defer or dismiss the proceeding in connection with section 586 of Public Law 106–429.

(d) *Applications from aliens with final orders of removal, deportation, or exclusion.* An alien with a final order of removal, deportation, or exclusion who believes he or she is eligible for adjustment of status under section 586 of Public Law 106–429 must apply directly to the Service in accordance with paragraph (b) of this section.

(1) An application under this section does not automatically stay the order of removal, deportation, or exclusion. An alien who is eligible for adjustment of status under section 586 of Public Law 106–429 may request that the district director with jurisdiction over the alien grant a stay of removal during the pendency of the application. The regulations governing such a request are found at 8 CFR 241.6.

(2) The Service in general will exercise its discretion not to grant a stay of removal, deportation, or exclusion with respect to an alien who is inadmissible on any of the grounds specified in paragraph (m)(3) of this section, unless there is substantial reason to believe that the Service will grant the necessary waivers of inadmissibility.

(3) An immigration judge or the Board may not grant a motion to re-open or stay in connection with an application under this section.

(4) If the Service approves the application, the approval will constitute the automatic re-opening of the alien's immigration proceedings, vacating of the final order of removal, deportation, or exclusion, and termination of the reopened proceedings.

(e) *Grounds of inadmissibility that do not apply.* In making a determination of whether an applicant is otherwise eligible for admission to the United States for lawful permanent residence under the provisions of section 586 of Public Law 106–429, the grounds of inadmissibility under sections 212(a)(4), (a)(5), (a)(7)(A), and (a)(9) of the Act shall not apply.

(f) *Waiver of grounds of inadmissibility.* In connection with an application for adjustment of status under this section, the alien may apply for a waiver of the grounds of inadmissibility under sections 212(a)(1), (a)(6)(B), (a)(6)(C), (a)(6)(F), (a)(8)(A), (a)(10)(B), and (a)(10)(D) of the Act as provided in section 586(c) of Public Law 106–429, if the alien demonstrates that a waiver is necessary to prevent extreme hardship to the alien, or to the alien's spouse, parent, son or daughter who is a U.S. citizen or an alien lawfully admitted for permanent residence. In addition, the alien may apply for any other waiver of inadmissibility under section 212 of the Act, if eligible. In order to obtain a waiver for any of these grounds, an applicant must submit Form I–601, Application for Waiver of Grounds of Excludability, with the application for adjustment.

(g) *Evidence.* Applicants must submit evidence that demonstrates they are eligible for adjustment of status under section 586 of Public Law 106–429. Such evidence shall include the following:

(1) A birth certificate or other record of birth;

(2) Documentation to establish that the applicant was physically present in the United States on October 1, 1997, under the standards set forth in § 245.22 of this chapter.

(3) A copy of the applicant's Arrival-Departure Record (Form I–94) or other evidence that the alien was inspected or paroled into the United States prior to October 1, 1997, from one of the three programs listed in paragraph (a)(2) of this section. Subject to verification, documentation pertaining to paragraph (a)(2) of this section is already contained in Service files and the applicant may submit an affidavit to that effect in lieu of actual documentation.

(h) *Employment authorization.* Applicants who want to obtain employment authorization based on a pending application for adjustment of status under this section may submit Form I–765, Application for Employment Authorization, along with the application fee listed in 8 CFR 103.7(b)(1). If the Service approves the application for employment authorization, the applicant will be issued an employment authorization document.

(i) *Travel while an application to adjust status is pending.* An alien may travel abroad while an application to adjust status is pending. Applicants must obtain advance parole in order to avoid the abandonment of their application to adjust status. An applicant may obtain advance parole by filing Form I–131, Application for a Travel Document, along with the application fee listed in 8 CFR 103.7(b)(1). If the Service approves Form I–131, the alien will be issued Form I–512, Authorization for the Parole of an Alien into the United States. Aliens granted advance parole will still be subject to inspection at a port-of-entry.

(j) *Approval and date of admission as a lawful permanent resident.* When the Service approves an application to adjust status to that of lawful permanent resident based on section 586 of Public Law 106–429, the applicant will be notified in writing of the Service's decision. In addition, the record of the alien's admission as a lawful permanent resident will be recorded as of the date of the alien's inspection and parole into the United States, as described in paragraph (a)(1) of this section.

(k) *Notice of denial.* When the Service denies an application to adjust status to that of lawful permanent resident based on section 586 of Public Law 106–429, the applicant will be notified of the decision in writing.

(l) *Administrative review.* An alien whose application for adjustment of status under section 586 of Public Law 106–429 is denied by the Service may appeal the decision to the Administrative Appeals Office in accordance with 8 CFR 103.3(a)(2).

(m) *Number of adjustments permitted under this section.* (1) *Limit.* No more than 5,000 aliens may have their status adjusted to that of a lawful permanent resident under section 586 of Public Law 106–429.

(2) *Counting procedures.* Each alien granted adjustment of status under this section will count towards the 5,000 limit. The Service will assign a tracking number, ascending chronologically by filing date, to all applications properly filed in accordance with paragraphs (b) and (g) of this section. Except as described in paragraph (m)(3) of this section, the Service will adjudicate applications in that order until it reaches 5,000 approvals under this part. Applications initially denied but pending on administrative appeal will retain their place in the queue by virtue of their tracking number, pending the Service's adjudication of the appeal.

(3) *Applications submitted with a request for the waiver of a ground of inadmissibility.* In the discretion of the Service, applications that do not require adjudication of a waiver of inadmissibility under section 212(a)(2), (a)(6)(B), (a)(6)(F), (a)(8)(A), or (a)(10)(D) of the Act may be approved and assigned numbers within the 5,000 limit before those applications that do require a waiver of inadmissibility under any of those provisions. Applications requiring a waiver of any of those provisions will be assigned a tracking number chronologically by the date of approval of the necessary waivers rather than the date of filing of the application.

(4) *Procedures when the 5,000 limit is reached.* The Service will track the total number of adjustments and stop processing applications after the 5,000 limit has been reached. When the limit is reached, the Service will return any additional applications to applicants with a dated notice encouraging applicants to retain their application package and the notice in the event the 5,000 limit is expanded or eliminated and the alien wishes to apply again. The Service will keep an identifying chronological record of the application for purposes of processing applications under this section if the 5,000 limit subsequently is expanded or eliminated. If at the time the 5,000 limit is reached, it appears that Congress is about to pass legislation to expand or eliminate the cap, the Service retains the discretion to retain such applications and the related fees.

6. Section 245.22 is added to read as follows:

§ 245.22 Evidence to demonstrate an alien's physical presence in the United States on a specific date.

(a) *Evidence.* Generally, an alien who is required to demonstrate his or her physical presence in the United States on a specific date in connection with an application to adjust status to that of an alien lawfully admitted for permanent residence should submit evidence according to this section. In cases where a more specific regulation relating to a particular adjustment of status provision has been issued in the 8 CFR, such

regulation is controlling to the extent that it conflicts with this section.

(b) *The number of documents.* If no one document establishes the alien's physical presence on the required date, he or she may submit several documents establishing his or her physical presence in the United States prior to and after that date.

(c) *Service-issued documentation.* To demonstrate physical presence on a specific date, the alien may submit Service-issued documentation. Examples of acceptable Service documentation include, but are not limited to, photocopies of:

(1) Form I–94, Arrival-Departure Record, issued upon the alien's arrival in the United States;

(2) Form I–862, Notice to Appear, issued by the Service on or before the required date;

(3) Form I–122, Notice to Applicant for Admission Detained for Hearing before Immigration Judge, issued by the Service on or prior to the required date, placing the applicant in exclusion proceedings under section 236 of the Act (as in effect prior to April 1, 1997);

(4) Form I–221, Order to Show Cause, issued by the Service on or prior to the required date, placing the applicant in deportation proceedings under section 242 or 242A (redesignated as section 238) of the Act (as in effect prior to April 1, 1997); or

(5) Any application or petition for a benefit under the Act filed by or on behalf of the applicant on or prior to the required date that establishes his or her presence in the United States, or a fee receipt issued by the Service for such application or petition.

(d) *Government-issued documentation.* To demonstrate physical presence on the required date, the alien may submit other government documentation. Other government documentation issued by a Federal, State, or local authority must bear the signature, seal, or other authenticating instrument of such authority (if the document normally bears such instrument), be dated at the time of issuance, and bear a date of issuance not later than the required date. For this purpose, the term Federal, State, or local authority includes any governmental, educational, or administrative function operated by Federal, State, county, or municipal officials. Examples of such other documentation include, but are not limited to:

(1) A state driver's license;

(2) A state identification card;

(3) A county or municipal hospital record;

(4) A public college or public school transcript;

(5) Income tax records;

(6) A certified copy of a Federal, State, or local governmental record that was created on or prior to the required date, shows that the applicant was present in the United States at the time, and establishes that the applicant sought in his or her own behalf, or some other party sought in the applicant's behalf, a benefit from the Federal, State, or local governmental agency keeping such record;

(7) A certified copy of a Federal, State, or local governmental record that was created on or prior to the required date, that shows that the applicant was present in the United States at the time, and establishes that the applicant submitted an income tax return, property tax payment, or similar submission or payment to the Federal, State, or local governmental agency keeping such record; or

(8) A transcript from a private or religious school that is registered with, or approved or licensed by, appropriate State or local authorities, accredited by the State or regional accrediting body, or by the appropriate private school association, or maintains enrollment records in accordance with State or local requirements or standards. Such evidence will only be accepted to document the physical presence of an alien who was in attendance and under the age of 21 on the specific date that physical presence in the United States is required.

(e) *Copies of records.* It shall be the responsibility of the applicant to obtain and submit copies of the records of any other government agency that the applicant desires to be considered in support of his or her application. If the alien is not in possession of such a document or documents, but believes that a copy is already contained in the Service file relating to him or her, he or she may submit a statement as to the name and location of the issuing Federal, State, or local government agency, the type of document and the date on which it was issued.

(f) *Other relevant document(s) and evaluation of evidence.* The adjudicator will consider any other relevant document(s) as well as evaluate all evidence submitted, on a case-by-case basis. The Service may require an interview when necessary.

(g) *Accuracy of documentation.* In all cases, any doubts as to the existence, authenticity, veracity, or accuracy of the documentation shall be resolved by the official government record, with records of the Service having precedence over the records of other agencies. Furthermore, determinations as to the weight to be given any particular document or item of evidence shall be solely within the discretion of the adjudicating authority.

Dated: December 19, 2002.

John Ashcroft,

Attorney General.

[FR Doc. 02–32607 Filed 12–24–02; 8:45 am]

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 212

[INS No. 2249–02; AG Order No. 2641–2002]

RIN 1115–AG90

Waiver of Criminal Grounds of Inadmissibility for Immigrants

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: On July 9, 2002, the Department of Justice published a proposed rule to implement a law authorizing the adjustment of status for certain aliens from Cambodia, Vietnam, and Laos, and to codify the Attorney General's approach to granting waivers under section 212(h) of the Immigration and Nationality Act of the criminal grounds of inadmissibility. This rule amends the Department of Justice regulations concerning the standards for waivers of the criminal grounds of inadmissibility for immigrants and responds to public comments on the notice of proposed rulemaking published on July 9, 2002. In order to allow the public an additional opportunity for public comment on this change in the regulations, this rule is being published as an interim final rule with a further 30-day comment period.

DATES: *Effective date:* This rule is effective January 27, 2003.

Comment date: Written comments must be submitted on or before January 27, 2003.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS Number 2249–02 on the correspondence. Comments may also be submitted electronically at *insregs@usdoj.gov.* When submitting comments electronically, include INS No. 2249–02 in the subject box so that the comments can be properly routed to

the appropriate office. Comments are available for public inspection at the above address by calling (202) 514–3291 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Michael Valverde, Residence and Status Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, Telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION: On July 9, 2002, the Department of Justice published a proposed rule in the **Federal Register** at 67 FR 45402 to implement section 586 of Pub. L. 106–429, 8 U.S.C. 1255 note, and to amend the regulations concerning waivers of the criminal grounds of inadmissibility for immigrants, with a 60-day period for public comment. Section 586 provides for adjustment of status to that of lawful permanent resident for 5,000 eligible natives or citizens of Vietnam, Cambodia, and Laos who were paroled into the United States before October 1, 1997, and otherwise meet the standards of the law.

Many provisions of the proposed rule dealt with the process for eligible aliens to apply for adjustment of status under section 586, including the means for applicants to demonstrate that they were physically present in the United States on October 1, 1997. The Department is finalizing those provisions of that proposed rule in a separate rule published elsewhere in this issue of the **Federal Register**.

The procedures for implementing section 586 was not the only issue addressed in the proposed rule. In addition, the proposed rule addressed at some length the related issue of the standards for granting waivers of the criminal grounds of inadmissibility for immigrants under section 212(h) of the Immigration and Nationality Act (''Act'') (8 U.S.C. 1182(h)). *See* 67 FR at 45404, 45407.

Although section 586(c) provides that four grounds of inadmissibility do not apply, and provides special rules for waivers of several other grounds, section 586 does not mention the availability of waivers for criminal aliens. Even so, the Department has determined that criminal aliens who are inadmissible under section 212(a)(2) of the Act (8 U.S.C. 1182(a)(2)) may apply for a waiver under section 212(h) of the Act. The Department is aware that many aliens who might otherwise be eligible under section 586 are inadmissible on criminal grounds.

The Attorney General has determined to exercise the discretion accorded to him under section 212(h) of the Act in connection with applicants under section 586. Because section 212(h) of the Act is a general provision applicable to waivers for immigrants, it is appropriate to adopt standards for the exercise of discretion in all cases under section 212(h) of the Act, rather than creating a new standard applicable only to the Indochinese population covered by section 586. As was made clear in the title of the July 2002 proposed rule, and in the supplementary information for that rule as well as the proposed regulatory text, the proposed amendment to § 212.7(d), regarding the exercise of discretion under section 212(h) of the Act, was applicable to all aliens seeking waivers under the latter provision.

In response to the July 9, 2002, proposed rule, one commenter urged that the Department address the amendment to § 212.7(d) in a separate rule, because that regulatory change is applicable to all immigrants seeking a waiver of the criminal grounds of inadmissibility. The Department believes that this issue is linked to the implementation of the adjustment provisions in section 586 and that both changes need to be made at the same time. However, in addressing the two sets of issues, the Department has agreed to promulgate the amendment to § 212.7(d) in a separate, companion rulemaking. Although for administrative purposes this interim final rule has been assigned a different tracking number (RIN) than the July 9, 2002, proposed rule, this interim final rule is adopting in final form the proposed amendment to § 212.7(d) that was set forth in the July 2002 proposed rule. This rule will take effect 30 days after publication in the **Federal Register**. It is being issued as an interim rule for the purpose of soliciting additional public comment. After consideration of these additional public comments, the Department will publish a final rule.

In the final rule implementing section 586 (published elsewhere in this issue of the **Federal Register**), the Department has responded to many of the public comments regarding the availability of waivers of inadmissibility to eligible Indochinese applicants for adjustment of status under section 586. The following discussion responds to the public comments that related specifically to the amendment to § 212.7(d) with respect to the Attorney General's exercise of discretion under section 212(h) of the Act to waive the criminal grounds of inadmissibility for any alien applying or reapplying for a visa, seeking admission to the United States, or seeking adjustment of status to that of an alien admitted for permanent residence.

Comments Regarding the Exercise of Discretion Under Section 212(h) of the Act

The Proposed Regulations Are Outside of the Authority of the Department

Several commenters argued that the Attorney General does not have the authority to adopt the standard at 8 CFR 212.7(d) regarding waivers of the criminal grounds of inadmissibility under section 212(h) of the Act.

To the contrary, the Attorney General does have the authority to establish, by regulation, standards for the exercise of discretion under section 212(h) of the Act. Section 212(h)(1) of the Act requires a waiver applicant to establish, to the satisfaction of the Attorney General, one of the eligibility criteria set forth in that provision. Once the applicant has established his or her threshold eligibility, the Attorney General must then determine, under section 212(h)(2) of the Act, whether to grant the waiver. This determination is in the sole discretion of the Attorney General. Moreover, the Attorney General has the authority to decide when and how this discretion will be exercised. Section 212(h)(2) of the Act provides that the Attorney General may grant a waiver if he, ''in his discretion, and pursuant to such terms, conditions and procedures as he may *by regulations* prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.'' 8 U.S.C. 1182(h)(2) (emphasis added).

This interim rule, at 8 CFR 212.7(d), sets forth a general rule for when the Attorney General will exercise his discretion pursuant to his authority under section 212(h)(2) of the Act. Except in extraordinary circumstances, the Attorney General will not exercise discretion in favor of an applicant where the application involves a violent or dangerous crime. Extraordinary circumstances include situations where the alien has established exceptional and extremely unusual hardship, or situations where there are overriding national security or foreign policy considerations. Moreover, depending on the nature and severity of the underlying offense that renders the applicant inadmissible, the Attorney General retains the discretion to determine that the mere existence of extraordinary circumstances is insufficient to warrant the grant of a waiver. This standard was set forth in *Matter of Jean,* 23 I. & N. Dec. 373 (A.G. 2002), in the context of a discretionary waiver under section 209(c) of the Act (8 U.S.C. 1159(c)) pertaining to refugees,

and for applicants for asylum under section 208 of the Act (8 U.S.C. 1158).

With this interim rule, the Department is now codifying these same principles in connection with other aliens who seek discretionary relief under section 212(h) of the Act from the criminal grounds of inadmissibility. This interim rule extends the standard the Attorney General articulated in *Matter of Jean* and makes it applicable to criminal aliens applying or reapplying for a visa, seeking admission to the United States, or seeking adjustment of status. This action is in accord with the provisions of section 212(h)(2) of the Act, which provides that the Attorney General has authority by regulation to set standards for discretion for aliens seeking waivers for the criminal grounds of inadmissibility.

One of the threshold bases for establishing eligibility for a waiver under section 212(h) of the Act is to demonstrate ''to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien.'' Section 212(h)(1)(B) (8 U.S.C. 1182(h)(1)(B)). Some commenters suggested that the language of the proposed rule in § 212.7(d) conflicts with the statutory standard of ''extreme hardship'' in section 212(h)(1)(B) of the Act.

The Department disagrees with this contention. The standard in 8 CFR 212.7(d) for the exercise of the Attorney General's discretion does *not* relate to the threshold eligibility requirement of ''extreme hardship'' in section 212(h)(1)(B) of the Act. Satisfying one of the statutory standards for determining an alien's threshold eligibility for seeking a waiver is only the first part of the waiver process. Even after the waiver applicant has met the required showing of ''extreme hardship,'' or one of the other threshold standards, the law also provides, in section 212(h)(2) of the Act, that the Attorney General has the discretion whether to grant affirmatively the requested relief to each alien. The regulation at 8 CFR 212.7(d) governs only the exercise of discretion under section 212(h)(2) of the Act, *after* the alien has met the threshold requirements of section 212(h)(1) of the Act.

Moreover, simply because an alien has established ''extreme hardship'' under section 212(h)(1)(B) of the Act, such a determination does not bind the Attorney General in exercising his discretion under section 212(h)(2) of the Act. *See INS* v. *Yueh-Shaio Yang,* 519 U.S. 26, 30–31 (1996) (in determining whether to waive deportation of aliens deportable for entry fraud, Attorney General could decide not to grant waiver because of the fraud, even though committing entry fraud made alien eligible for waiver; Attorney General could take such conduct into account when deciding whether or not to grant waiver because the statute ''establishes only the alien's *eligibility* for the waiver. Such eligibility in no way limits the considerations that may guide the Attorney General in exercising her discretion to determine who, among those eligible, will be accorded grace.'') (emphasis in original).

The standard in 8 CFR 212.7(d) is also grounded in cases interpreting the Act. As discussed in the proposed rule, in assessing whether an applicant has met the burden that a waiver is warranted in the exercise of discretion, the adjudicator must balance adverse factors evidencing inadmissibility as a lawful permanent resident with the social and humane considerations presented to determine if the grant of relief appears to be in the best interests of the United States. *Matter of Mendez-Moralez,* 21 I. & N. Dec. 296 (BIA 1996) (involving a waiver under section 212(h)(1)(B) of the Act). Establishment of extreme hardship and eligibility for a waiver requiring a showing of such hardship does not create an entitlement to the relief sought. *Id.; Matter of Cervantes-Gonzalez,* 22 I. & N. Dec. 560 (BIA 1999). Extreme hardship, once established, is but one favorable discretionary factor to be considered. *Id.; Matter of Mendez-Moralez,* 21 I. & N. Dec. 296 (BIA 1996).

In view of these considerations, this rule will codify the regulations proposed at 8 CFR 212.7(d), with one technical amendment to conform the language more closely to the text of section 212(h)(2) of the Act.

Other Issues Relating to the Discretion of the Attorney General to Grant Waivers

The Department received three comments raising other issues relating to the Attorney General's discretion to grant waivers of criminal grounds of inadmissibility.

One commenter suggested that the final regulations clarify that the waiver referred to in the proposed rule 8 CFR 212.7(d) is available only to aliens who are applying to adjust status under section 209 of the Act (8 U.S.C. 1159). The commenter stated that clarification of this point is necessary in order to prevent adjustment applicants who are not refugees from erroneously concluding that there is a broad waiver of certain criminal grounds of inadmissibility available to them, when in fact the statute expressly restricts the Attorney General's authority to grant such waivers to inadmissible aliens in accordance to section 212(h) of the Act (8 U.S.C. 1182(h)) except in very narrow circumstances.

The Department agrees with the commenter that the statutory language authorizing a waiver of the criminal grounds of inadmissibility found in section 212(a)(2) of the Act (8 U.S.C. 1182(a)(2)) in connection with an application for adjustment of status under section 209 of the Act is broader than that found in section 212(h) of the Act, which authorizes waivers of criminal grounds of inadmissibility in connection with applicants for adjustment of status under other provisions of the immigration law. The Attorney General's decision in *Matter of Jean* already governs the standards under which a criminal ground of inadmissibility waiver may be granted as a matter of discretion in a section 209 adjustment case. However, the amendments contained in this interim rule harmonize the exercise of discretion to grant criminal waivers among applicants for adjustment of status by extending the *Matter of Jean* standards to those applications for the waiver of criminal grounds of inadmissibility made under section 212(h)(2) of the Act, including, but not limited to, adjustment of status under section 586 of Pub. L. 106–429 or section 245(a) of the Act (8 U.S.C. 1255(a)).

Similarly, one commenter requested that the final rule be amended to clarify that the Attorney General is not compelled to grant any available waiver of a ground of inadmissibility. Rather, stated the commenter, all such grants fall within the discretion of the Attorney General. Moreover, the commenter contended that the regulations should be amended to state that the Attorney General will not grant waivers of criminal grounds of inadmissibility to adjustment applicants under section 209 of the Act who are convicted of aggravated felonies.

The Department agrees with the commenter that the Attorney General has complete discretion to grant a waiver under section 209(c) of the Act and section 212(h) of the Act. The Department also agrees that, in general, individuals convicted of aggravated felonies would not warrant the Attorney General's use of this discretion. In fact, the proposed regulations stated that even if the applicant can meet the ''exceptional and extremely unusual hardship'' standard for the exercise of discretion, depending upon the severity of the offense, this might ''still be

insufficient'' to obtain the waiver. *See* 67 FR at 45407. That language would substantially limit the circumstances under which an individual convicted of an aggravated felony would be granted a waiver as a matter of discretion. Therefore, the Department believes that this language achieves the goal of the commenter while not unduly constraining the Attorney General's discretion to render waiver decisions on a case-by-case basis.

Finally, one commenter stated that the final rule should clarify that only the Immigration and Naturalization Service (''Service'') has the discretionary authority to grant waivers under section 209(c) of the Act, and not the Board of Immigration Appeals or Executive Office for Immigration Review (EOIR). This is a matter outside the scope of this rulemaking action because the proposed amendment to 8 CFR 212.7(d) does not relate to the granting of waivers under section 209(c) of the Act with regard to refugees. Nevertheless, the Department notes that it does not agree with this comment. The Act and the Department's regulations both provide the alien with the opportunity to renew his or her application for adjustment in removal proceedings. *See* 8 CFR 209.1(e). Because the alien is renewing his or her case before the immigration judge, the alien may seek the same waivers of grounds of inadmissibility made available to him or her by the section of law under which the application for adjustment of status was filed. *See Matter of H–N–,* 22 I. & N. Dec. 1039 (BIA 1999).

The commenter is correct in that the Act does require the alien to demonstrate that he or she is not inadmissible under section 212 of the Act. *See* section 240(c)(2) of the Act (8 U.S.C. 1229a(c)(2)). However, the waiver available at section 209(c) of the Act (8 U.S.C. 1159(c)) provides a means for eligible aliens, in the discretion of the Attorney General, to obtain a waiver of certain grounds of inadmissibility. *See* section 209(c) of the Act. As such, these waivers are available to an alien seeking to demonstrate that he or she is not inadmissible before the Service and in immigration proceedings.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule only affects aliens who are subject to inadmissibility on criminal grounds by amending Department of Justice standards for waivers of the criminal grounds for inadmissibility for immigrants under section 212(h) of the Act. This rule will have no effect on small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget for review.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Pub. L. 104–17, all departments are required to submit to the Office of Management and Budget, for review and approval, any reporting requirements inherent in a final rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects in 8 CFR Part 212

Administrative practice and procedure, Aliens, Passports and visas, Immigration, Reporting and recordkeeping requirements.

Accordingly, part 212 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227; 8 CFR part 2.

2. Section 212.7(d) is added, to read as follows:

§ 212.7 Waiver of certain grounds of inadmissibility.

* * * * *

(d) *Criminal grounds of inadmissibility involving violent or dangerous crimes.* The Attorney General, in general, will not favorably exercise discretion under section 212(h)(2) of the Act (8 U.S.C. 1182(h)(2)) to consent to an application or reapplication for a visa, or admission to the United States, or adjustment of status, with respect to immigrant aliens who are inadmissible under section 212(a)(2) of the Act in cases involving violent or dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of the application for adjustment of status or an immigrant visa or admission as an immigrant would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien's underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act.

Dated: December 19, 2002.

John Ashcroft,

Attorney General.

[FR Doc. 02–32606 Filed 12–24–02; 8:45 am]

BILLING CODE 4410–10–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 101, 102, 104, 106, 110, 113, 114, 116, 300, 9002, 9003, 9004, 9034, and 9035

[Notice 2002–29]

BCRA Technical Amendments

AGENCY: Federal Election Commission.

ACTION: Final rule; technical amendments.

SUMMARY: The Commission recently reorganized the sections defining ''contributions'' and ''expenditures,'' and also redesignated other sections. These technical amendments correct cites in title 11 of the *Code of Federal Regulations* to bring the regulations into conformity with the designation. Additionally, the final rules correct typographical mistakes made in the recently promulgated Bipartisan Campaign Reform Act rulemakings. Further information is provided in the supplementary information that follows.

EFFECTIVE DATE: December 26, 2002.

FOR FURTHER INFORMATION CONTACT: Mai T. Dinh, Acting Assistant General Counsel, 999 E Street, NW., Washington, DC, 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002 (''BCRA''), Pub. L. 107–155, 116 Stat. 81 (March 27, 2002), contains extensive amendments to the Federal Election Campaign Act of 1971 (''FECA'' or ''the Act''), as amended, 2 U.S.C. 431 *et seq.* This final rule is part of a continuing series of rulemakings the Commission has published over the last several months in order to meet the rulemaking deadlines set out in BCRA. In the Final Rule on Reorganization of the Definitions of ''Contribution'' and ''Expenditure,'' 67 FR 50582 (August 5, 2002), the Commission moved these definitions from former 11 CFR 100.7 and 100.8 to new 11 CFR part 100, subparts B, C, D and E. Additionally, the Commission notes that in the various final rules that the Commission promulgated this year, it moved the following sections and paragraphs: 109.2, 109.3, 110.1(i)(2), 110.4(a), 110.7, 110.9(b), 110.9(c), and 110.9(d). Consequently, current regulations that include cross references to these former sections and paragraphs need to be updated to reflect the new citations.[1] Therefore, the Commission is publishing this final rule to make necessary technical and conforming amendments to its regulations to reflect the current citations, as well as to correct typographical errors that are in the various final rules.

Because the final rules published herein are merely technical and non-substantive, they are not a substantive rule requiring notice and comment under the Administrative Procedure Act, 5 U.S.C. 553. Under the ''good cause'' exception to the notice and comment requirements, 5 U.S.C. 553(b)(B) and 553(d)(3), the final rules are effective upon publication. Thus, the final rules are effective on December 26, 2002.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

This final rule does not have a significant economic impact on a substantial number of small entities. The amendments in this final rule are all technical and nonsubstantive in nature and do not have any economic impact on any entity subject to the underlying regulations.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 101

Political candidates, Reporting and recordkeeping requirements.

11 CFR Part 102

Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 106

Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 110

Campaign funds, Political committees and parties.

11 CFR Part 113

Campaign funds.

11 CFR Part 114

Business and industry, Elections, Labor.

11 CFR Part 116

Administrative practice and procedure, Business and industry, Credit, Elections, Political candidates, Political committees and parties.

11 CFR Part 300

Campaign funds, Nonprofit organizations, Political committees and parties, Political candidates, Reporting and recordkeeping requirements.

11 CFR Part 9002

Campaign funds.

11 CFR Part 9003

Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 9004

Political candidates, Reporting and recordkeeping requirements.

11 CFR Part 9034

Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 9035

Campaign funds, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, subchapters A, E and F of chapter 1 of title 11 of the *Code of Federal Regulations* are amended as follows:

PART 100–SCOPE AND DEFINITIONS (2 U.S.C. 431)

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

Authority: 2 U.S.C. 431, 434, and 438(a)(8).

§§ 100.5, 100.52, 100.82, 100.87, 100.89, 100.91, 100.142, 100.147, 100.149 and 100.159 [Amended]

2. In the table below, for each section indicated in the left column, remove the citation indicated in the middle column, and replace it with the citation indicated in the right column:

Section	Remove	Add
100.5(c)	100.7(b)(9), (15) and (17)	100.80, 100.87, and 100.89.
100.5(c)	100.8(b)(10), (16) and (18)	100.140, 100.147 and 100.149.

[1] *See* the following rulemakings: Final Rules on Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 FR 49064 (July 29, 2002); Final Rules on Reorganization of Regulations on Contributions and Expenditures, 67 FR 50582 (August 5, 2002); Final Rules on Coordinated and Independent Expenditures, 67 FR (forthcoming December, 2002); Final Rules on Electioneering Communications, 67 FR 65212 (October 23, 2002); Final Rules on Contribution Limitations and Prohibitions, 67 FR 69928 (November 19, 2002).

Section	Remove	Add
100.52(b)(5)	110.4(a)	110.20.
100.82(e)(1)(ii)	110.4	110.4, 110.20.
100.87(g)	110.7	109.32.
100.89(g)	110.7	109.32.
100.91	110.4(a)	110.20.
100.142(e)(1)(ii)	110.4	110.4, 110.20.
100.147(g)	110.7	109.32.
100.149(g)	110.7	109.32.
100.151	110.4(a)	110.20.

PART 101—CANDIDATE STATUS AND DESIGNATIONS (2 U.S.C. 432(e))

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

Authority: 2 U.S.C. 432(e), 434(a)(11), and 438(a)(8).

§§ 101.2 and 101.3 [Amended]

4. In the table below, for each section indicated in the left column, remove the citation indicated in the middle column, and replace it with the citation indicated in the right column:

Section	Remove	Add
101.2(a)	100.7	part 100, subparts B and C.
101.3	100.7(b)(1)	100.72(a).
101.3	100.8(b)(1)	100.131(a).

PART 102–REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

5. The authority citation for part 102 continues to read as follows:

Authority: 2 U.S.C. 432, 433, 434(a)(11), 438(a)(8), 441d.

§§ 102.5, 102.7, 102.13 and 102.14 [Amended]

6. In the table below, for each section indicated in the left column, remove the citation indicated in the middle column, and replace it with the citation indicated in the right column:

Section	Remove	Add
102.5(b)(1)	100.7(b)(9), (15) and (17)	100.80, 100.87 and 100.89.
102.5(b)(1)	100.8(b)(10), (16) and (18)	100.140, 100.147 and 100.149.
102.7(d)	100.7	part 100, subparts B and D.
102.13(b)	110.7	part 109, subpart D.
102.13(c)(2)	11 CFR part 110	11 CFR part 109, subpart D and 11 CFR part 110.
102.14(c)	109.3	109.11.

PART 104–REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

7. The authority citation for part 104 continues to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b), and 439a.

§§ 104.3 and 104.6 [Amended]

8. In the table below, for each section indicated in the left column, remove the citation indicated in the middle column, and replace it with the citation indicated in the right column:

Section	Remove	Add
104.3(a)(3)(iii)	110.7	part 109, subpart D.
104.3(b)(1)(viii)	110.7	part 109, subpart D.
104.3(b)(3)(viii)	110.7	part 109, subpart D.
104.3(d)(1)	100.7(b)(11)	100.82(a) through (d).
104.3(d)(1)	100.8(b)(12)	100.142(a) through (d).
104.3(d)(1)(iv)	100.7(b)(11)(i)(A) and (B)	100.82(e)(1) and (2).
104.3(d)(1)(iv)	100.8(b)(12)(i)(A) and (B)	100.142(e)(1) and (2).
104.3(d)(1)(v)	100.7(b)(11)	100.82(a) through (d).
104.3(d)(1)(v)	100.8(b)(12)	100.142(a) through (d).
104.3(g)	100.7(b)(12)	100.84.
104.3(h)	100.7(b)(13) and (14)	100.85 and 100.86.
104.6(a)	100.8(b)(4)	100.134(a).

PART 106–ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

9. The authority citation for part 106 continues to read as follows:

Authority: 2 U.S.C. 438(a)(8), 441a(b), 441a(g).

§§ 106.1, 106.2, 106.4, and 106.7 [Amended]

10. In the table below, for each section indicated in the left column, remove the citation indicated in the middle column, and replace it with the citation indicated in the right column:

Section	Remove	Add
106.1(b)	110.7	109.32 or 109.33.
106.1(c)(3)	100.7(b)(17)	100.89.
106.1(c)(3)	100.8(b)(18)	100.149.
106.2(a)(2)	100.7(b)(1)	100.72(a).
106.2(a)(2)	100.8(b)(1)	100.131(a).
106.4(a)	100.8(b)(1)	100.131(a).
106.4(b)	100.7(b)(1)	100.72(a).
106.7(c)(3)	100.7(b)(9), (15) or (17)	100.80, 100.87 or 100.89.
106.7(c)(3)	100.7(b)(10), (16) or (18)	100.140, 100.147 or 100.149.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

11. The authority citation for part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d, 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h and 441k.

§§ 110.13 and 110.19 [Amended]

12. In the table below, for each section indicated in the left column, remove the citation or phrase indicated in the middle column, and replace it with the citation or phrase indicated in the right column:

Section	Remove	Add
110.13(a)(2)	100.7	part 100, subparts B and C.
110.13(a)(2)	100.8	part 100, subparts D and E.
110.19(e) paragraph heading	maintain, finance	finance, maintain.
110.19(e)	maintain, finance	finance, maintain.

PART 113—EXCESS CAMPAIGN FUNDS AND FUNDS DONATED TO SUPPORT FEDERAL OFFICE-HOLDER ACTIVITIES (2 U.S.C. 439a)

13. The authority citation for part 113 continues to read as follows:

Authority: 2 U.S.C. 432(h), 438(a)(8), 439a, 441a.

§ 113.1 [Amended]

14. In the table below, for each section indicated in the left column, remove the citation indicated in the middle column, and replace it with the citation indicated in the right column:

Section	Remove	Add
113.1(g)(5)	100.8	part 100, subparts D and E.
113.1(g)(6)	100.7	part 100, subparts B and C.

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

15. The authority citation for part 114 continues to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 434, 437d(a)(8), 438(a)(8), 441b.

§§ 114.1, 114.2, 114.3, 114.4, 114.5, 114.9, and 114.10 [Amended]

16. In the table below, for each section indicated in the left column, remove the citation indicated in the middle column, and replace it with the citation indicated in the right column:

Section	Remove	Add
114.1(a)(1)	100.7(b)(11)	100.82(a) through (d).
114.2(b)(1)	100.7(a)	part 100, subpart B.
114.2(b)(2)(i)	100.8(a)	part 100, subpart. D
114.2(c)	109.1	100.16.
114.2(f)(1)	100.7	part 100, subparts B and C.
114.2(f)(1)	100.8	part 100, subparts D and E.
114.3(a)(1)	109.1	100.16.
114.3(b)	100.8(b)(4)	100.134(a).
114.4(a)	109.1	100.16.
114.5(e)(2)(i)	100.8(b)(4)	100.134(a).
114.9(a)(2)	100.7(a)(1)(iii)(B)	100.52(d)(2).

Section	Remove	Add
114.9(b)(2)	100.7(a)(1)(iii)(B)	100.52(d)(2).
114.9(d)	100.7(a)(1)(iii)(B)	100.52(d)(2).
114.10(e)(2)	109.2	109.10.

PART 116—DEBTS OWED BY CANDIDATES AND POLITICAL COMMITTEES

17. The authority citation for part 116 continues to read as follows:

Authority: 2 U.S.C. 433(d), 434(b)(8), 438(a)(8), 441a, 441b, and 451.

§§ 116.4, 116.5 and 116.6 [Amended]

18. In the table below, for each section indicated in the left column, remove the citation indicated in the middle column, and replace it with the citation indicated in the right column:

Section	Remove	Add
116.4(a)(1)	100.7(b)	part 100, subpart C.
116.4(b)(1)	100.7(b)	part 100, subpart C.
116.4(c)(1)	100.7(b)	part 100, subpart C.
116.5(b)	100.7(b)(8)	100.79.
116.6(a)	100.7	part 100, subparts B and C.
116.6(a)	100.7(b)(3)	100.74.

PART 300—NON-FEDERAL FUNDS

19. The authority citation for part 300 is revised to read as follows:

Authority: 2 U.S.C. 434(e), 438(a)(8), 441a(a), 441i, 453.

§§ 300.2 and 300.36 [Amended]

20. In the table below, for each section indicated in the left column, remove the citation or phrase indicated in the middle column, and replace it with the citation or phrase indicated in the right column:

Section	Remove	Add
300.2(c) paragraph heading	maintain, finance	finance, maintain.
300.36(a)(2)	100.8(b)(10), (16), or (18)	100.140, 100.147, or 100.149.
300.36(c)(2)	100.7	part 100, subpart B.
300.36(c)(2)	100.8	part 100, subpart D.

PART 9002—DEFINITIONS

21. The authority citation for part 9002 continues to read as follows:

Authority: 26 U.S.C. 9002 and 9009(b).

§§ 9002.11 and 9002.13 [Amended]

22. In the table below, for each section indicated in the left column, remove the citation indicated in the middle column, and replace it with the citation indicated in the right column:

Section	Remove	Add
9002.11(b)(5)	100.7(b)(14)	100.86.
9002.11(b)(5)	100.8(b)(15)	100.146.
9002.13	100.7	part 100, subparts B and C.

PART 9003—ELIGIBILITY FOR PAYMENTS

23. The authority citation for part 9003 continues to read as follows:

Authority: 26 U.S.C. 9003 and 9009(b).

§§ 9003.3 and 9003.4 [Amended]

24. In the table below, for each section indicated in the left column, remove the citation indicated in the middle column, and replace it with the citation indicated in the right column:

Section	Remove	Add
9003.3(a)(2)(iii)	100.8(b)(15)	100.146.
9003.4(b)(1)	100.7(b)(11)	100.82.

PART 9004–ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS; USE OF PAYMENTS

25. The authority citation for part 9004 continues to read as follows:

Authority: 26 U.S.C. 9004 and 9009(b).

§§ 9004.1 and 9004.4 [Amended]

26. In the table below, for each section indicated in the left column, remove the citation indicated in the middle column, and replace it with the citation indicated in the right column:

Section	Remove	Add
9004.1	110.9(c)	110.17(a).
9004.4(a)(2)	100.7(a)(1) or (b)(11)	100.52(b) or 100.82.

PART 9008—FEDERAL FINANCING OF PRESIDENTIAL NOMINATING CONVENTIONS

27. The authority citation for part 9008 continues to read as follows:

Authority: 2 U.S.C. 437, 438(a)(8); 26 U.S.C. 9008, 9009(b).

§ 9008.7 [Amended]

28. In the table below, for each section indicated in the left column, remove the citation indicated in the middle column, and replace it with the citation indicated in the right column:

Section	Remove	Add
9008.7(b)(3)	110.4	110.4, 110.19(b)(2), and 110.20.

PART 9032—DEFINITIONS

29. The authority citation for part 9032 continues to read as follows:

Authority: 26 U.S.C. 9032 and 9039(b).

§ 9032.4 [Amended]

30. In the table below, for each section indicated in the left column, remove the citation indicated in the middle column, and replace it with the citation indicated in the right column:

Section	Remove	Add
9032.4	100.7	part 100, subparts B and C.

PART 9034—ENTITLEMENTS

31. The authority citation for part 9034 continues to read as follows:

Authority: 26 U.S.C. 9034 and 9039(b).

§§ 9034.2 and 9034.4 [Amended]

32. In the table below, for each section indicated in the left column, remove the citation indicated in the middle column, and replace it with the citation indicated in the right column:

Section	Remove	Add
9034.2(a)(4)	100.7(b)(1)	100.72(a).
9034.2(a)(4)	100.8(b)(1)	100.131(a).
9034.4(a)(2)	100.8(b)(1)	100.131(a).
9034.4(e)(1)	110.9(c)	110.17(a).

PART 9035—EXPENDITURE LIMITATIONS

33. The authority for part 9035 continues to read as follows:

Authority: 26 U.S.C. 9035 and 9039(b).

§ 9035.1 [Amended]

34. In the table below, for each section indicated in the left column, remove the citation indicated in the middle column, and replace it with the citation indicated in the right column:

Section	Remove	Add
9035.1(c)(1)	100.8(b)(15)	100.146.
9035.1(c)(2)	100.8(b)(21)(iii)	100.152(c).

Dated: December 19, 2002.

David M. Mason,

Chairman, Federal Election Commission.

[FR Doc. 02–32452 Filed 12–24–02; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

Oral Dosage Form New Animal Drugs; Clindamycin Liquid; Change of Sponsor's Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Delmarva Laboratories, Inc., and a change of this sponsor's address. The ANADA provides for oral use of clindamycin hydrochloride liquid in dogs and cats for the treatment of various bacterial infections.

DATES: This rule is effective December 26, 2002.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: lluther@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Delmarva Laboratories, Inc., 2200 Wadebridge Rd., P.O. Box 525, Midlothian, VA 23113, filed ANADA 200–291 for CLINSOL (clindamycin hydrochloride) Liquid. The application provides for oral use of clindamycin hydrochloride liquid in dogs and cats for the treatment of various bacterial infections. Delmarva Laboratories' CLINSOL Liquid is approved as a generic copy of Pharmacia & Upjohn's ANTIROBE Aquadrops Liquid, approved under NADA 135–940. ANADA 200–291 is approved as of August 26, 2002, and the regulations are amended in 21 CFR 520.447 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, Delmarva Laboratories, Inc., has informed FDA of a change of address to 1500 Huguenot Rd., suite 106, Midlothian, VA 23113. Accordingly, the agency is amending the regulations in 21 CFR 510.600 to reflect the change of sponsor address.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by revising the entry for ''Delmarva Laboratories, Inc.'' and in the table in paragraph (c)(2) by revising the entry for ''059079'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * *	* *
Delmarva Laboratories, Inc., 1500 Huguenot Rd., suite 106, Midlothian, VA 23113	059079
* * *	* *

(2) * * *

Drug labeler code	Firm name and address
* *	* * *
059079	Delmarva Laboratories, Inc., 1500 Huguenot Rd., suite 106, Midlothian, VA 23113
* *	* * *

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.447 [Amended]

4. Section 520.447 *Clindamycin liquid* is amended in paragraph (b)(2) by removing ''No.'' and by adding in its place ''Nos. 059079 and''.

Dated: December 17, 2002.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 02–32440 Filed 12–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Imidacloprid and Ivermectin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Bayer Corp., Agriculture Division, Animal Health. The NADA provides for veterinary prescription use in dogs of an imidacloprid and ivermectin topical solution for the prevention of heartworm disease caused by *Dirofilaria immitis* and treatment of flea infestations (*Ctenocephalides felis*).

DATES: This rule is effective December 26, 2002.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl.,

Rockville, MD 20855, 301–827–7543, e-mail: mberson@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Bayer Corp., Agriculture Division, Animal Health, P.O. Box 390, Shawnee Mission, KS 66201, filed NADA 141–208 that provides for veterinary prescription use in dogs of ADVANTAGE DUO (imidacloprid and ivermectin) Topical Solution for the prevention of heartworm disease caused by *D. immitis* and treatment of flea infestations (*C. felis*). The NADA is approved as of September 27, 2002, and the regulations are amended by adding 21 CFR 524.1140 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning September 27, 2002.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 524.1140 is added to read as follows:

§ 524.1140 Imidacloprid and ivermectin.

(a) *Specifications*. The product is available in unit applicator tubes containing 0.4, 1.0, 2.5, or 4.0 milliliters (mL). Each mL of solution contains 100 milligrams (mg) imidacloprid and 800 micrograms (µg) ivermectin.

(b) *Sponsor*. See No. 000859 in § 510.600(c) of this chapter.

(c) *Conditions of Use in Dogs*—(1) *Amount*. The recommended minimum dosage is 4.5 mg/pound (lb) (10 mg/kilogram (kg)) of imidacloprid and 36.4 µg/lb (80 µg/kg) of ivermectin, topically once a month.

(2) *Indications for Use*. For the prevention of heartworm disease caused by *Dirofilaria immitis*; kills adult fleas and is indicated for the treatment of flea infestations (*Ctenocephalides felis*).

(3) *Limitations*. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: December 17, 2002.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 02–32442 Filed 12–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF STATE

22 CFR Part 126

[Public Notice 4236]

RIN 1400–AB61

Bureau of Political-Military Affairs; Amendments to the International Traffic in Arms Regulation: Canadian Exemption

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule clarifies the Canadian Exemption at the International Traffic in Arms Regulations (ITAR) as to how the Department of State will identify Canadian Crown Corporations as authorized end-users.

EFFECTIVE DATE: December 26, 2002.

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

SUPPLEMENTARY INFORMATION: On February 16, 2001, the Department of State published a final rule amending the Canadian Exemption (22 CFR 126.5) of the ITAR (66 FR 10575). Authorized end-users included Canadian Federal or Provincial governmental authorities acting in an official capacity or a ''Canadian-registered person.'' The term ''Canadian-registered person'' encompassed any Canadian national (including Canadian business entities organized under the laws of Canada), dual national, and permanent resident registered in Canada in accordance with the Canadian Defence Production Act, and such other Canadian Crown Corporations as may be identified by the Department of State. This final rule amends section 126.5(b) of the ITAR by adding ''Canadian Crown Corporations identified by the Department of State in a list of such persons publicly available through the Internet Website of the Office of Defense Trade Controls and by other means.''

This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures required by 5 U.S.C. 553 and 554. It is exempt from review under Executive Order 12866 but has been reviewed internally by the Department to ensure consistency with the purposes thereof. This rule does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act. It has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Act of 1966. It will not have substantial direct effects on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant application of Executive Orders 12372 and 13123. However, interested parties are invited to submit written comments to the Department of State, Office of Defense Trade Controls, ATTN: Regulatory Change, Canadian Exemption, 12th Floor, SA–1, Washington, D.C. 20522–0112. Such persons must be so registered with the Department of State's Office of Defense Trade Controls (DTC) pursuant to the registration requirements of section 38 of the Arms Export Control Act.

List of Subjects in 22 CFR Part 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, Part 126, is being amended as follows:

PART 126—GENERAL POLICIES AND PROVISIONS

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

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778,

2780, 2791, and 2797); 22 U.S.C. 2778; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p.79; 22 U.S.C. 2658; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205, 3 CFR 1994 Comp., p 899.

2. Section 126.5(b) introductory text is revised to read as follows:

§ 126.5 Canadian exemptions.

(a) * * *

(b) *Permanent and temporary export of defense articles.* Except for the defense articles and related technical data, and defense services identified in paragraphs (b)(1) through (b)(20) of this section, for exports that transit third countries, and provided the requirements of this subchapter are met, (to include 22 CFR 120.1 (c) and (d), parts 122 and 123 (except insofar as exemption from licensing requirements is herein authorized) and § 126.1, and the requirement to obtain non-transfer and use assurances for all significant military equipment), District Director of Customs and postmasters shall permit, when for end-use in Canada by Canadian Federal or Provincial governmental authorities acting in an official capacity or by a Canadian-registered person or return to the United States, the permanent and temporary export to Canada without a license of defense articles and related technical data identified in 22 CFR 121.1, except as described in paragraphs (b)(1) through (20) of this section, and the defense services and technical data described in paragraph (c) of this section. For purposes of this section, ''Canadian-registered person'' is any Canadian national (including Canadian business entities organized under the laws of Canada), dual national, and permanent resident registered in Canada in accordance with the Canadian Defense Production Act, and such other Canadian Crown Corporations identified by the Department of State in a list of such persons publicly available through the Internet Website of the Office of Defense Trade Controls and by other means. The defense articles, related technical data, and defense services identified in 22 CFR 121.1 continuing to require a license are:

* * * * *

Dated: October 28, 2002.

John R. Bolton,

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

[FR Doc. 02–32424 Filed 12–24–02; 8:45 am]

BILLING CODE 4710–25–U

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 200

Employee Responsibilities and Conduct

AGENCY: Agency for International Development (USAID).

ACTION: Final rule.

SUMMARY: USAID is amending its regulations governing the responsibilities and conduct of USAID employees.

DATES: This rule becomes effective December 26, 2002.

FOR FURTHER INFORMATION CONTACT: Dennis Diamond, Attorney, Office of General Counsel, Ethics and Administration, USAID, telephone 202–712–4456; telefax (202) 216–3055; email *ddiamond@usaid.gov.*

SUPPLEMENTARY INFORMATION:

A. Explanation of Changes

The regulations governing the responsibilities and conduct of employees previously codified as part 10 of this title prescribed jointly by the Department of State, the Agency for International Development, and the U.S. Information Agency have been repealed.

The Agency for International Development is amending Part 200 to delete the reference to part 10 of this title and to reference the Office of Government Ethics' government-wide Standards of Ethical Conduct of the Executive Branch, 5 CFR part 2635.

B. Regulatory Analysis

1. *Executive Order 12866.* USAID has determined that this regulation is not a significant regulatory action as defined in Executive Order 12866 and, accordingly, this regulation has not been reviewed by the Office of Management and Budget.

2. *Regulatory Flexibility Act.* It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

3. *Executive Order 13132.* This regulation will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

4. *Unfunded Mandates Reform Act of 1995.* This regulation will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

5. *Small Business Regulatory Enforcement Fairness Act of 1996.* This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic or export markets.

7. *Executive Order 12988—Civil Justice Reform.* USAID has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, this rule meets the applicable standards in section 3 to mitigate litigation, eliminate ambiguity and reduce burden.

8. *Paperwork Reduction Act.* This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Accordingly, 22 CFR part 200 is revised to read as follows:

PART 200—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Cross-References: The regulations governing the responsibilities and conduct of employees of the Agency for International Development are codified as part 2635 of title 5, prescribed by the Office of Government Ethics.

Dated: December 18, 2002.

Arnold Haiman,

Designated Agency Ethics Official, Office of General Counsel.

[FR Doc. 02–32423 Filed 12–24–02; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9034]

RIN 1545–AW65

Education Tax Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the Hope Scholarship Credit and the Lifetime Learning Credit under section 25A of the Internal Revenue Code. The final regulations reflect changes made to the law by the Taxpayer Relief Act of 1997. These regulations provide guidance to individuals who may claim the Hope Scholarship Credit or the Lifetime Learning Credit for the payment of certain postsecondary educational expenses.

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

Applicability Dates: For dates of applicability, *see* § 1.25A–3(f) and § 1.25A–4(d).

FOR FURTHER INFORMATION CONTACT: Marilyn E. Brookens, (202) 622–4920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545–1630. Responses to this collection of information are mandatory.

The collection of information is in § 1.25A–1(d) and (f). Taxpayers must elect to claim an education credit by attaching form 8863, ''Education Credits (Hope and Lifetime Learning Credits),'' to a Federal income tax return for the taxable year in which a credit is claimed. This collection of information is required in order for a taxpayer to elect to claim an education credit. This information will be used to carry out the internal revenue laws. The likely respondents are individuals.

The reporting burden contained in § 1.25A–1(d) and (f) is reflected in the burden of form 8863, ''Education Credits (Hope and Lifetime Learning Credits),'' and form 1040, ''U.S. Individual Income Tax Return.''

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

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) regarding the Hope Scholarship Credit and the Lifetime Learning Credit (education tax credit) under section 25A of the Internal Revenue Code. The Taxpayer Relief Act of 1997 (Public Law 105–34 (111 Stat. 788) (TRA '97)) added section 25A to provide the education tax credit. In general, the education tax credit allows taxpayers to claim a nonrefundable credit against their Federal income tax for the payment of certain postsecondary educational expenses. The Economic Growth and Tax Relief Reconciliation Act of 2001 (Public Law 107–16 (115 Stat. 38)) added section 222 of the Internal Revenue Code to provide an above-the-line deduction for certain postsecondary education expenses paid in taxable years beginning after December 31, 2001, and before January 1, 2006. Section 222 is an alternative to section 25A, and taxpayers cannot claim a section 222 deduction and a section 25A education tax credit in the same year with respect to the same student.

On November 17, 1997, the IRS published Notice 97–60 (1997–2 C.B. 310) to provide general guidance on the higher education tax incentives enacted by TRA '97, including the education tax credit. A notice of proposed rulemaking (REG–106388–98) was published in the **Federal Register** (64 FR 794) on January 6, 1999. One request for a public hearing was received. However, the request was withdrawn, and no public hearing was held. The IRS received written and electronic comments responding to the notice of proposed rulemaking. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision. The revisions are discussed below.

Explanation of Provisions and Summary of Comments

1. Reporting Requirements Under Section 6050S for Eligible Educational Institutions

Many commentators requested clarification of the information reporting requirements under section 6050S for eligible educational institutions (institutions) that receive payments of qualified tuition and related expenses (qualified expenses). These comments are outside the scope of section 25A, which relates solely to the education tax credit allowable to taxpayers for payments of qualified expenses. However, these comments were considered by the IRS and the Treasury Department in drafting the proposed regulations under section 6050S that were published in the **Federal Register** (67 FR 20923) on April 29, 2002.

2. Calculation of Education Tax Credit and General Eligibility Requirements

Several commentators recommended changes to the rules for calculating the amount of any allowable education tax credit. One commentator recommended that the calculation of the Hope Scholarship Credit be simplified so that the credit is allowable for the first $1,500 of qualified expenses, rather than 100 percent of the first $1,000 of qualified expenses, and 50 percent of the next $1,000 of qualified expenses as provided in section 25A(b)(1). This commentator also recommended that the calculation of the Lifetime Learning Credit be simplified so that the credit is allowable for the first $1,000 of qualified expenses, rather than 20 percent of the first $5,000 of qualified expenses as provided in section 25A(c)(1). Another commentator recommended that, for purposes of the income limitations in section 25A(d), income realized on the conversion of a traditional Individual Retirement Account (IRA) to a Roth IRA should be excluded from the definition of modified adjusted gross income. The rules in the proposed regulations regarding calculation of the amount of the education tax credit and the definition of modified adjusted gross income derive from the statutory provisions of section 25A. Therefore, the final regulations do not adopt these recommendations.

Commentators requested clarification of the rules for claiming the education tax credit in the case of a dependent. Consistent with the legislative history to section 25A, § 1.25A–1(g) of the proposed regulations provides that if a student is a claimed dependent of a taxpayer, only that taxpayer may claim the education tax credit for the student's qualified expenses; however, if the taxpayer is eligible to, but does not claim the student as a dependent, only the student may claim the education tax credit for the student's qualified expenses. The final regulations retain this rule.

Commentators asked how the student's personal exemption deduction amount under section 151 is calculated if a parent does not claim the student as a dependent on the parent's income tax return in order that the student may claim the education tax credit on the student's income tax return. Section 151(d)(2) provides a special rule for calculating the exemption deduction amount in the case of an individual (for example, a student) for whom a dependency exemption deduction is allowable to another taxpayer (for example, a parent). Under this rule, a student's personal exemption deduction amount is zero on the student's income tax return if a parent is eligible to claim the student as a dependent even if the parent does not in fact claim a dependency exemption deduction for the student. The result is the same if the amount of the dependency exemption deduction allowable to the parent is reduced or eliminated under the phase-out rule in section 151(d)(3).

Consistent with section 25A(g)(7), the proposed regulations provide that a nonresident alien individual is not eligible to claim an education tax credit, unless the individual is treated as a resident alien of the United States by reason of an election under section 6013(g) or (h). One commentator suggested that *Examples 7* and *8* in § 1.25A–3(d)(2) of the proposed regulations should be revised to avoid any confusion about the eligibility of a nonresident alien student to claim an education tax credit. The final regulations modify these examples to avoid any implication that a nonresident alien student may claim an education tax credit, in the absence of an election under section 6013(g) or (h).

Another commentator requested clarification as to whether a nonresident alien individual who elects to be treated as a resident alien may claim an education tax credit. A limited number of income tax treaties allow certain individuals to elect to be treated as residents of the United States. Because such an election is intended to apply for all tax purposes, an individual for whom a valid election under a treaty is in effect is treated as a resident for purposes of section 25A.

3. Definitions

Several commentators requested clarification of the definition of *academic period*. The proposed regulations provide that academic period means a quarter, semester, trimester, or other period of study (such as a summer school session) as reasonably determined by the eligible educational institution. As stated in the preamble of the proposed regulations, this definition is intended to include institutions that use traditional academic terms and institutions that do not use academic terms, but for example use clock hours or credit hours. The IRS and the Treasury Department invited comments on the proposed definition. One commentator suggested that the final regulations provide that, in the case of institutions that use clock hours or credit hours, but do not use traditional academic terms, the term academic period may include a *payment period* as defined by the Department of Education in 34 CFR 668.4. The final regulations adopt this recommendation.

Several commentators requested clarification of the definition of *qualified tuition and related expenses*. The proposed regulations define qualified tuition and related expenses to mean tuition and fees required for the enrollment or attendance of a student for courses of instruction at an eligible educational institution. The proposed regulations provide that, in general, the test for determining whether a fee is a qualified expense is whether the fee is required to be paid to the institution as a condition of the student's enrollment or attendance at the institution. However, the proposed regulations also provide that qualified expenses do not include the costs of room and board, insurance, medical expenses, transportation, and similar personal, living, or family expenses, regardless of whether the payment of such fees is required for the student's enrollment or attendance. The final regulations retain these rules.

One commentator requested clarification as to whether an education tax credit is allowable for amounts paid in one year for an independent study course which the student has up to two years to complete. The proposed regulations provide that qualified expenses paid in one taxable year may qualify for an education tax credit in the year of the payment if the expenses relate to education furnished during an academic period beginning in the year of payment or within the first three months of the next taxable year. The final regulations retain this rule. Therefore, an education tax credit is allowable for qualified expenses paid in one taxable year for independent study during an academic period that begins in the taxable year of payment or within the first three months of the next taxable year.

One commentator requested clarification as to when amounts paid for books are qualified expenses. The proposed regulations provide that, in general, an education tax credit is not available for expenses incurred to purchase books. The final regulations continue to provide that qualified expenses include fees for books, supplies, and equipment used in a course of study only if the fees must be paid to the institution for the enrollment or attendance of the student at the institution. In this situation, the amount paid for books is a required fee.

Other commentators requested clarification as to whether a required student health service fee and a required transportation fee are qualified expenses. Consistent with the legislative history to section 25A, the final regulations continue to provide that qualified expenses do not include fees for room and board, insurance, medical expenses, transportation, and similar personal, living, or family expenses, regardless of whether the fee must be paid to the institution as a condition of the student's enrollment or attendance. Therefore, a required student health fee and a required transportation fee are not qualified expenses. The final regulations clarify that, as stated in the preamble to the proposed regulations, medical expenses include student health fees.

Several commentators requested clarification of how a required general fee (referred to as a *bundled fee*) should be treated in calculating the amount of qualified expenses. These commentators explained that often institutions will charge a bundled fee that includes charges for both qualified expenses and personal expenses. These commentators note that, unlike a comprehensive fee, a bundled fee normally does not include tuition charges.

Section 1.25A–2(d)(4) of the proposed regulations describes the treatment of a comprehensive fee, which typically includes charges for tuition, fees, and personal expenses. The proposed regulations provide that the portion of the comprehensive fee that is allocable to personal expenses is not a qualified expense, and require institutions to make a reasonable allocation between qualified expenses and personal expenses. One commentator recommended that the final regulations provide a similar allocation rule for bundled fees. Another commentator recommended that institutions should not be required to allocate a bundled fee that includes an insubstantial amount of personal expenses. Because personal expenses do not qualify for the education tax credit, the final regulations clarify that the allocation rule in § 1.25A–2(d)(4) applies to any required fee that combines charges for both qualified expenses and personal expenses (such as comprehensive fees and bundled fees).

One commentator noted that, under the definition of a *hobby course* in § 1.25A–2(d)(5) of the proposed regulations, one student may be enrolled in a course to receive academic credit toward a degree, another student may be enrolled in the same course on a noncredit basis to acquire or improve job skills, while a third student may be enrolled in the same course as a hobby. Under the proposed regulations, the first and second students may be eligible to claim an education tax credit, but the third student is not. Consistent with sections 25A(c)(2) and 25A(f)(1)(B), the final regulations continue to provide that expenses paid for courses that involve sports, games, or hobbies, or any noncredit course, are not qualified expenses, unless the course is part of the individual's degree program, or, in the case of the Lifetime Learning Credit, the student takes the course to acquire or improve job skills.

4. Hope Scholarship Credit

Several commentators requested clarification of the definition of an *eligible student* for purposes of the Hope Scholarship Credit. One commentator recommended that the *year of study requirement* in the regulations should be eliminated and that the credit should be allowed for any two years of undergraduate study. The year of study requirement derives from the statutory requirements in section 25A. Therefore, the final regulations do not adopt this recommendation.

Another commentator requested clarification as to whether a student who completes a one-year postsecondary certificate program and in a later year completes another one-year postsecondary certificate program (or enrolls in a postsecondary degree program) may claim a Hope Scholarship Credit for both years. The final regulations include a new example in § 1.25A–3(d)(2) that illustrates that the Hope Scholarship Credit is allowable for the first two years of postsecondary education, which may include two one-year certificate programs.

Commentators requested clarification of *Example 3* in § 1.25A–3(d)(2). The commentators asked if an otherwise eligible student who has not completed the first two years of undergraduate study as of the beginning of the taxable year may include qualified expenses paid during the entire taxable year in calculating the Hope Scholarship Credit, even if the student completes the first two years of undergraduate study during the year. The example has been revised to clarify that, if a student has not completed the first two years of undergraduate study as of the beginning of the taxable year, the qualified expenses paid during the entire taxable year may be taken into account in calculating the Hope Scholarship Credit. However, in no event may a Hope Scholarship Credit be claimed for more than two taxable years with respect to the same student.

5. Special Rules Relating to Characterization and Timing of Payments

Several commentators requested clarification of the rules for payments of qualified expenses by a third party. One commentator asked how the third party payment rule in § 1.25A–5 of the proposed regulations applies in the case of a taxpayer who, although not divorced, is not treated as married within the meaning of section 7703. The proposed regulations provide that if a third party (someone other than the taxpayer, the taxpayer's spouse, or a claimed dependent) pays qualified expenses on behalf of a student directly to an institution, the student is treated as receiving the payment from the third party and, in turn, paying the qualified expenses to the institution. The final regulations clarify that, for purposes of § 1.25A–5(b), a third party includes the spouse of a taxpayer who is not treated as married under section 7703. Thus, for example, if the taxpayer is a custodial parent who is not treated as married under section 7703, then (assuming that the taxpayer claims the student as a dependent) the taxpayer may claim an education tax credit for qualified expenses paid by the noncustodial parent on behalf of the student.

One commentator requested clarification as to whether an education tax credit is allowable for the amount of any tuition reduction provided by an eligible educational institution to its employees, or their spouses or dependent children. The final regulations provide in § 1.25A–5(b)(2) that an education tax credit is allowable for the amount of any reduction in tuition only if the amount of the tuition reduction is included in the employee's gross income.

Several commentators requested clarification of the rules in § 1.25A–5(c) of the proposed regulations for reducing the amount of qualified expenses paid during the taxable year by the amount of certain tax-free educational assistance (including any qualified scholarship that is excludable from gross income under section 117) received during the taxable year. The proposed regulations provide a rule for allocating scholarships between qualified expenses and expenses that do not qualify for an education tax credit under section 25A (nonqualified expenses). The proposed regulations provide that a scholarship will be treated as allocated to qualified expenses, and thus as a qualified scholarship that reduces qualified expenses, unless the student includes the scholarship in income or the terms of the scholarship require that it be applied to nonqualified expenses.

Several commentators asked whether a student may choose to include in income a restricted scholarship that, by its terms, must be used to pay qualified expenses and claim an education tax credit for qualified expenses covered by the scholarship. The test for purposes of section 25A is whether the scholarship is excludable from gross income under section 117, and not whether the student elects to include the scholarship in income. The legislative history to section 25A states that qualified expenses do not include expenses covered by ''education assistance that is not required to be included in the gross income of either the student or the taxpayer claiming the credit.'' See H.R. Conf. Rep. No. 220, 105th Cong., 1st Sess., at 343 (1997). Section 117 provides, in general, that gross income shall not include a scholarship that, consistent with the terms of the scholarship, is used to pay certain qualified expenses. A restricted scholarship that must be used to pay qualified expenses is a qualified scholarship excludable under section 117. Therefore, for purposes of section 25A, a restricted scholarship that must be used to pay qualified expenses reduces the amount of qualified expenses that may be taken into account in calculating the education tax credit.

An unrestricted scholarship that may be used to pay any of the student's costs of attendance (such as room and board and any other incidental expenses) is excludable from gross income only if used to pay qualified expenses. To the extent that an unrestricted scholarship, or a portion thereof, is used to pay nonqualified expenses and such use is consistent with the terms of the scholarship, the scholarship is not a qualified scholarship excludable under section 117. In this situation, the scholarship is included in gross income and will not reduce the amount of qualified expenses that may be taken into account in calculating the education tax credit. The final regulations clarify that, for purposes of section 25A, a scholarship or fellowship grant is treated as a qualified scholarship excludable under section 117 (thereby reducing the amount of qualified expenses) except to the extent: (1) The scholarship may be applied, by its terms, to expenses other than

qualified expenses (such as room and board) and the student reports the scholarship as income; or (2) the scholarship must be applied, by its terms, to expenses other than qualified expenses (such as room and board) and the student reports the scholarship as income.

One commentator recommended that the final regulations provide that loans are not excludable educational assistance within the meaning of § 1.25A–5(c), and do not reduce the amount of qualified expenses. Section 1.25A–5(e)(3) of the proposed regulations specifically provides that amounts paid with loan proceeds may qualify for the education tax credit. In addition, an example in § 1.25A–5(c)(4) of the proposed regulations provides that a loan is not tax-free educational assistance within the meaning of § 1.25A–5(c). The final regulations retain these specific provisions on loans.

The proposed regulations provide that expenses paid with loan proceeds disbursed directly to an institution are, in general, treated as paid on the date of the disbursement of the proceeds. Several commentators recommended that, in accordance with the Department of Education regulations in 34 CFR 668.164(a), the date of disbursement should be the date the institution credits the student's account with the loan proceeds and not the date the lender disburses the loan proceeds to the institution. In general, 34 CFR 668.164 regulates the disbursement of Federal student loans under title IV of the Higher Education Act of 1965 (including the Federal Perkins Loan, Federal Family Education Loan, and William D. Ford Direct Loan Program). These rules require an institution to verify that a student is enrolled and is otherwise eligible to receive the loan proceeds before crediting the student's account or releasing the funds to the student. Consistent with these Department of Education rules, the final regulations clarify that the qualified expenses paid with loan proceeds disbursed directly to an institution are treated as paid at the time the loan proceeds are actually credited to the student's account. In the case of title IV loan programs, Department of Education rules require the institution to notify the borrower of the date and the amount of the disbursement at the time the institution credits the student's account. *See* 34 CFR 668.165(a)(2). However, the final regulations provide that if the taxpayer does not know the date the institution credits the student's account, the taxpayer must treat the expenses as paid on the last date for payment prescribed by the institution.

Several commentators requested clarification as to when a taxpayer may claim an education tax credit for qualified expenses paid through a third party installment payment plan. One commentator explained that institutions and taxpayers may contract with a third party installment payment company to provide an installment payment plan for the institution's students. The commentator explained that, in general, the company agrees to collect tuition payments over a period of time (usually 10 months) and remit the payments to the institution on a predetermined schedule. The commentator asked whether a taxpayer is treated as paying the qualified expenses when the taxpayer pays the third party installment payment company, or when the third party disburses the funds to the institution. The final regulations clarify that when the expenses are treated as paid for purposes of section 25A depends on whether, under the terms of the installment payment agreement, the third party is acting as an agent of the taxpayer or as an agent of the institution.

One commentator requested clarification as to whether an education tax credit is allowable for any amounts paid for qualified expenses that are retained by the institution, under the institution's refund policy, when the student withdraws. Section 1.25A–5(f)(1) of the proposed regulations provides that the amount of qualified expenses is calculated by adding all the qualified expenses paid for the year, and subtracting any refund received from the institution during the same year. The final regulations retain this rule. Therefore, amounts required to be paid for enrollment or attendance are qualified expenses to the extent that such amounts are not refunded when the student withdraws. The final regulations add a new paragraph § 1.25A–5(f)(4) to clarify that, with respect to qualified expenses paid with the proceeds of a loan, any refund of loan proceeds by the institution back to the lender on behalf of the borrower is treated as a refund of qualified expenses.

The proposed regulations provide that if a taxpayer receives a refund of qualified expenses paid in a prior taxable year before the taxpayer files a Federal income tax return for the prior year, the amount of qualified expenses for the prior taxable year is reduced by the amount of the refund. One commentator suggested that the taxpayer should have the option of claiming the credit for the full amount of qualified expenses paid in the prior taxable year and then recapturing the credit on the return filed for the taxable year in which the refund was received. The rule in the proposed regulations is intended to simplify the calculation of the education tax credit by avoiding the need to recompute the allowable education tax credit in a later year and report any resulting increase in tax. Therefore, the final regulations do not adopt the recommendation.

The final regulations clarify that, in the case of a payment of qualified expenses in one taxable year and a refund of qualified expenses in a subsequent taxable year, the recapture amount for the refund year is the difference in tax liability for the prior taxable year (taking into account any redetermination of such tax liability by audit or amended return) that results when the tax liability for the prior year is calculated using the taxpayer's redetermined credit.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the 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 the regulations is Donna Welch, Office of Associate Chief Counsel (Procedure & Administration), Administrative Provisions & Judicial Practice Division. However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

List of Subjects

26 CFR Part 1

Income tax, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.25A–1 also issued under section 26 U.S.C. 25A(i).

Section 1.25A–2 also issued under section 26 U.S.C. 25A(i).

Section 1.25A–3 also issued under section 26 U.S.C. 25A(i).

Section 1.25A–4 also issued under section 26 U.S.C. 25A(i).

Section 1.25A–5 also issued under section 26 U.S.C. 25A(i). * * *

Par. 2. Sections 1.25A–0 through 1.25A–5 are added to read as follows:

§ 1.25A–0 Table of contents.

This section lists captions contained in §§ 1.25A–1, 1.25A–2, 1.25A–3, 1.25A–4, and 1.25A–5.

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(b) Coordination of Hope Scholarship Credit and Lifetime Learning Credit.
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(2) Hope Scholarship Credit.
(3) Lifetime Learning Credit.
(4) Examples.
(c) Limitation based on modified adjusted gross income.
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§ 1.25A–1 Calculation of Education Tax Credit and General Eligibility Requirements

(a) *Amount of education tax credit.* An individual taxpayer is allowed a nonrefundable education tax credit against income tax imposed by chapter 1 of the Internal Revenue Code for the taxable year. The amount of the education tax credit is the total of the Hope Scholarship Credit (as described in § 1.25A–3) plus the Lifetime Learning Credit (as described in § 1.25A–4). For limitations on the credits allowed by subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code, *see* section 26.

(b) *Coordination of Hope Scholarship Credit and Lifetime Learning Credit*—(1) *In general.* In the same taxable year, a taxpayer may claim a Hope Scholarship Credit for each eligible student's qualified tuition and related expenses (as defined in § 1.25A–2(d)) and a Lifetime Learning Credit for one or more other students' qualified tuition and related expenses. However, a taxpayer may not claim both a Hope Scholarship Credit and a Lifetime Learning Credit with respect to the same student in the same taxable year.

(2) *Hope Scholarship Credit.* Subject to certain limitations, a Hope Scholarship Credit may be claimed for the qualified tuition and related expenses paid during a taxable year with respect to each eligible student (as defined in § 1.25A–3(d)). Qualified tuition and related expenses paid during a taxable year with respect to one student may not be taken into account in computing the amount of the Hope Scholarship Credit with respect to any other student. In addition, qualified tuition and related expenses paid during a taxable year with respect to any student for whom a Hope Scholarship Credit is claimed may not be taken into account in computing the amount of the Lifetime Learning Credit.

(3) *Lifetime Learning Credit.* Subject to certain limitations, a Lifetime Learning Credit may be claimed for the aggregate amount of qualified tuition and related expenses paid during a taxable year with respect to students for whom no Hope Scholarship Credit is claimed.

(4) *Examples.* The following examples illustrate the rules of this paragraph (b):

Example 1. In 1999, Taxpayer A pays qualified tuition and related expenses for his

dependent, B, to attend College Y during 1999. Assuming all other relevant requirements are met, Taxpayer A may claim either a Hope Scholarship Credit or a Lifetime Learning Credit with respect to dependent B, but not both. *See* § 1.25A–3(a) and § 1.25A–4(a).

Example 2. In 1999, Taxpayer C pays $2,000 in qualified tuition and related expenses for her dependent, D, to attend College Z during 1999. In 1999, Taxpayer C also pays $500 in qualified tuition and related expenses to attend a computer course during 1999 to improve Taxpayer C's job skills. Assuming all other relevant requirements are met, Taxpayer C may claim a Hope Scholarship Credit for the $2,000 of qualified tuition and related expenses attributable to dependent D (*see* § 1.25A–3(a)) and a Lifetime Learning Credit (*see* § 1.25A–4(a)) for the $500 of qualified tuition and related expenses incurred to improve her job skills.

Example 3. The facts are the same as in *Example 2,* except that Taxpayer C pays $3,000 in qualified tuition and related expenses for her dependent, D, to attend College Z during 1999. Although a Hope Scholarship Credit is available only with respect to the first $2,000 of qualified tuition and related expenses paid with respect to D (*see* § 1.25A–3(a)), Taxpayer C may not add the $1,000 of excess expenses to her $500 of qualified tuition and related expenses in computing the amount of the Lifetime Learning Credit.

(c) *Limitation based on modified adjusted gross income*—(1) *In general.* The education tax credit that a taxpayer may otherwise claim is phased out ratably for taxpayers with modified adjusted gross income between $40,000 and $50,000 ($80,000 and $100,000 for married individuals who file a joint return). Thus, taxpayers with modified adjusted gross income above $50,000 (or $100,000 for joint filers) may not claim an education tax credit.

(2) *Modified adjusted gross income defined.* The term *modified adjusted gross income* means the adjusted gross income (as defined in section 62) of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933 (relating to income earned abroad or from certain U.S. possessions or Puerto Rico).

(3) *Inflation adjustment.* For taxable years beginning after 2001, the amounts in paragraph (c)(1) of this section will be increased for inflation occurring after 2000 in accordance with section 1(f)(3). If any amount adjusted under this paragraph (c)(3) is not a multiple of $1,000, the amount will be rounded to the next lowest multiple of $1,000.

(d) *Election.* No education tax credit is allowed unless a taxpayer elects to claim the credit on the taxpayer's Federal income tax return for the taxable year in which the credit is claimed. The election is made by attaching form 8863, ''Education Credits (Hope and Lifetime Learning Credits),'' to the Federal income tax return.

(e) *Identification requirement.* No education tax credit is allowed unless a taxpayer includes on the Federal income tax return claiming the credit the name and the taxpayer identification number of the student for whom the credit is claimed. For rules relating to assessment for an omission of a correct taxpayer identification number, *see* section 6213(b) and (g)(2)(J).

(f) *Claiming the credit in the case of a dependent*—(1) *In general.* If a student is a claimed dependent of another taxpayer, only that taxpayer may claim the education tax credit for the student's qualified tuition and related expenses. However, if another taxpayer is eligible to, but does not, claim the student as a dependent, only the student may claim the education tax credit for the student's qualified tuition and related expenses.

(2) *Examples.* The following examples illustrate the rules of this paragraph (f):

Example 1. In 1999, Taxpayer A pays qualified tuition and related expenses for his dependent, B, to attend University Y during 1999. Taxpayer A claims B as a dependent on his Federal income tax return. Therefore, assuming all other relevant requirements are met, Taxpayer A is allowed an education tax credit on his Federal income tax return, and B is not allowed an education tax credit on B's Federal income tax return. The result would be the same if B paid the qualified tuition and related expenses. *See* § 1.25A–5(a).

Example 2. In 1999, Taxpayer C has one dependent, D. In 1999, D pays qualified tuition and related expenses to attend University Z during 1999. Although Taxpayer C is eligible to claim D as a dependent on her Federal income tax return, she does not do so. Therefore, assuming all other relevant requirements are met, D is allowed an education tax credit on D's Federal income tax return, and Taxpayer C is not allowed an education tax credit on her Federal income tax return, with respect to D's education expenses. The result would be the same if C paid the qualified tuition and related expenses on behalf of D. *See* § 1.25A–5(b).

(g) *Married taxpayers.* If a taxpayer is married (within the meaning of section 7703), no education tax credit is allowed to the taxpayer unless the taxpayer and the taxpayer's spouse file a joint Federal income tax return for the taxable year.

(h) *Nonresident alien taxpayers and dependents.* If a taxpayer or the taxpayer's spouse is a nonresident alien for any portion of the taxable year, no education tax credit is allowed unless the nonresident alien is treated as a resident alien by reason of an election under section 6013(g) or (h). In addition, if a student is a nonresident alien, a taxpayer may not claim an education tax credit with respect to the qualified tuition and related expenses of the student unless the student is a claimed dependent (as defined in § 1.25A–2(a)).

§ 1.25A–2 Definitions.

(a) *Claimed dependent.* A *claimed dependent* means a dependent (as defined in section 152) for whom a deduction under section 151 is allowed on a taxpayer's Federal income tax return for the taxable year. Among other requirements under section 152, a nonresident alien student must be a resident of a country contiguous to the United States in order to be treated as a dependent.

(b) *Eligible educational institution*—(1) *In general.* In general, an *eligible educational institution* means a college, university, vocational school, or other postsecondary educational institution that is—

(i) Described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088) as in effect on August 5, 1997 (generally all accredited public, nonprofit, and proprietary postsecondary institutions); and

(ii) Participating in a Federal financial aid program under title IV of the Higher Education Act of 1965 or is certified by the Department of Education as eligible to participate in such a program but chooses not to participate.

(2) *Rules on Federal financial aid programs.* For rules governing an educational institution's eligibility to participate in Federal financial aid programs, *see* 20 U.S.C. 1070; 20 U.S.C. 1094; and 34 CFR 600 and 668.

(c) *Academic period. Academic period* means a quarter, semester, trimester, or other period of study as reasonably determined by an eligible educational institution. In the case of an eligible educational institution that uses credit hours or clock hours, and does not have academic terms, each payment period (as defined in 34 CFR 668.4, revised as of July 1, 2002) may be treated as an academic period.

(d) *Qualified tuition and related expenses*—(1) *In general. Qualified tuition and related expenses* means tuition and fees required for the enrollment or attendance of a student for courses of instruction at an eligible educational institution.

(2) *Required fees*—(i) *In general.* Except as provided in paragraph (d)(3) of this section, the test for determining whether any fee is a qualified tuition and related expense is whether the fee is required to be paid to the eligible educational institution as a condition of the student's enrollment or attendance at the institution.

(ii) *Books, supplies, and equipment.* Qualified tuition and related expenses include fees for books, supplies, and equipment used in a course of study only if the fees must be paid to the eligible educational institution for the enrollment or attendance of the student at the institution.

(iii) *Nonacademic fees.* Except as provided in paragraph (d)(3) of this section, qualified tuition and related expenses include fees charged by an eligible educational institution that are not used directly for, or allocated to, an academic course of instruction only if the fee must be paid to the eligible educational institution for the enrollment or attendance of the student at the institution.

(3) *Personal expenses.* Qualified tuition and related expenses do not include the costs of room and board, insurance, medical expenses (including student health fees), transportation, and similar personal, living, or family expenses, regardless of whether the fee must be paid to the eligible educational institution for the enrollment or attendance of the student at the institution.

(4) *Treatment of a comprehensive or bundled fee.* If a student is required to pay a fee (such as a comprehensive fee or a bundled fee) to an eligible educational institution that combines charges for qualified tuition and related expenses with charges for personal expenses described in paragraph (d)(3) of this section, the portion of the fee that is allocable to personal expenses is not included in qualified tuition and related expenses. The determination of what portion of the fee relates to qualified tuition and related expenses and what portion relates to personal expenses must be made by the institution using a reasonable method of allocation.

(5) *Hobby courses.* Qualified tuition and related expenses do not include expenses that relate to any course of instruction or other education that involves sports, games, or hobbies, or any noncredit course, unless the course or other education is part of the student's degree program, or in the case of the Lifetime Learning Credit, the student takes the course to acquire or improve job skills.

(6) *Examples.* The following examples illustrate the rules of this paragraph (d). In each example, assume that the institution is an eligible educational institution and that all other relevant requirements to claim an education tax credit are met. The examples are as follows:

Example 1. University V offers a degree program in dentistry. In addition to tuition, all students enrolled in the program are required to pay a fee to University V for the rental of dental equipment. Because the equipment rental fee must be paid to University V for enrollment and attendance, the tuition and the equipment rental fee are qualified tuition and related expenses.

Example 2. First-year students at College W are required to obtain books and other reading materials used in its mandatory first-year curriculum. The books and other reading materials are not required to be purchased from College W and may be borrowed from other students or purchased from off-campus bookstores, as well as from College W's bookstore. College W bills students for any books and materials purchased from College W's bookstore. The fee that College W charges for the first-year books and materials purchased at its bookstore is not a qualified tuition and related expense because the books and materials are not required to be purchased from College W for enrollment or attendance at the institution.

Example 3. All students who attend College X are required to pay a separate student activity fee in addition to their tuition. The student activity fee is used solely to fund on-campus organizations and activities run by students, such as the student newspaper and the student government (no portion of the fee covers personal expenses). Although labeled as a student activity fee, the fee is required for enrollment or attendance at College X. Therefore, the fee is a qualified tuition and related expense.

Example 4. The facts are the same as in *Example 3*, except that College X offers an optional athletic fee that students may pay to receive discounted tickets to sports events. The athletic fee is not required for enrollment or attendance at College X. Therefore, the fee is not a qualified tuition and related expense.

Example 5. College Y requires all students to live on campus. It charges a single comprehensive fee to cover tuition, required fees, and room and board. Based on College Y's reasonable allocation, sixty percent of the comprehensive fee is allocable to tuition and other required fees not allocable to personal expenses, and the remaining forty percent of the comprehensive fee is allocable to charges for room and board and other personal expenses. Therefore, only sixty percent of College Y's comprehensive fee is a qualified tuition and related expense.

Example 6. As a degree student at College Z, Student A is required to take a certain number of courses outside of her chosen major in Economics. To fulfill this requirement, Student A enrolls in a square dancing class offered by the Physical Education Department. Because Student A receives credit toward her degree program for the square dancing class, the tuition for the square dancing class is included in qualified tuition and related expenses.

§ 1.25A–3 Hope Scholarship Credit.

(a) *Amount of the credit*—(1) *In general.* Subject to the phaseout of the education tax credit described in § 1.25A–1(c), the Hope Scholarship Credit amount is the total of—

(i) 100 percent of the first $1,000 of qualified tuition and related expenses paid during the taxable year for education furnished to an eligible student (as defined in paragraph (d) of this section) who is the taxpayer, the taxpayer's spouse, or any claimed dependent during any academic period beginning in the taxable year (or treated as beginning in the taxable year, *see* § 1.25A–5(e)(2)); plus

(ii) 50 percent of the next $1,000 of such expenses paid with respect to that student.

(2) *Maximum credit.* For taxable years beginning before 2002, the maximum Hope Scholarship Credit allowed for each eligible student is $1,500. For taxable years beginning after 2001, the amounts used in paragraph (a)(1) of this section to determine the maximum credit will be increased for inflation occurring after 2000 in accordance with section 1(f)(3). If any amount adjusted under this paragraph (a)(2) is not a multiple of $100, the amount will be rounded to the next lowest multiple of $100.

(b) *Per student credit*—(1) *In general.* A Hope Scholarship Credit may be claimed for the qualified tuition and related expenses of each eligible student (as defined in paragraph (d) of this section).

(2) *Example.* The following example illustrates the rule of this paragraph (b). In the example, assume that all the requirements to claim an education tax credit are met. The example is as follows:

Example. In 1999, Taxpayer A has two dependents, B and C, both of whom are eligible students. Taxpayer A pays $1,600 in qualified tuition and related expenses for dependent B to attend a community college. Taxpayer A pays $5,000 in qualified tuition and related expenses for dependent C to attend University X. Taxpayer A may claim a Hope Scholarship Credit of $1,300 ($1,000 + (.50 × $600)) for dependent B, and the maximum $1,500 Hope Scholarship Credit for dependent C, for a total Hope Scholarship Credit of $2,800.

(c) *Credit allowed for only two taxable years.* For each eligible student, the Hope Scholarship Credit may be claimed for no more than two taxable years.

(d) *Eligible student*—(1) *Eligible student defined.* For purposes of the Hope Scholarship Credit, the term *eligible student* means a student who satisfies all of the following requirements—

(i) *Degree requirement.* For at least one academic period that begins during the taxable year, the student enrolls at an eligible educational institution in a program leading toward a postsecondary

degree, certificate, or other recognized postsecondary educational credential;

(ii) *Work load requirement.* For at least one academic period that begins during the taxable year, the student enrolls for at least one-half of the normal full-time work load for the course of study the student is pursuing. The standard for what is half of the normal full-time work load is determined by each eligible educational institution. However, the standard for half-time may not be lower than the applicable standard for half-time established by the Department of Education under the Higher Education Act of 1965 and set forth in 34 CFR 674.2(b) (revised as of July 1, 2002) for a half-time undergraduate student;

(iii) *Year of study requirement.* As of the beginning of the taxable year, the student has not completed the first two years of postsecondary education at an eligible educational institution. Whether a student has completed the first two years of postsecondary education at an eligible educational institution as of the beginning of a taxable year is determined based on whether the institution in which the student is enrolled in a degree program (as described in paragraph (d)(1)(i) of this section) awards the student two years of academic credit at that institution for postsecondary course work completed by the student prior to the beginning of the taxable year. Any academic credit awarded by the eligible educational institution solely on the basis of the student's performance on proficiency examinations is disregarded in determining whether the student has completed two years of postsecondary education; and

(iv) *No felony drug conviction.* The student has not been convicted of a Federal or State felony offense for possession or distribution of a controlled substance as of the end of the taxable year for which the credit is claimed.

(2) *Examples.* The following examples illustrate the rules of this paragraph (d). In each example, assume that the student has not been convicted of a felony drug offense, that the institution is an eligible educational institution unless otherwise stated, that the qualified tuition and related expenses are paid during the same taxable year that the academic period begins, and that a Hope Scholarship Credit has not previously been claimed for the student (*see* paragraph (c) of this section). The examples are as follows:

Example 1. Student A graduates from high school in June 1998 and is enrolled in an undergraduate degree program at College U for the 1998 Fall semester on a full-time basis. For the 1999 Spring semester, Student A again is enrolled at College U on a full-time basis. For the 1999 Fall semester, Student A is enrolled in less than half the normal full-time course work for her degree program. Because Student A is enrolled in an undergraduate degree program on at least a half-time basis for at least one academic period that begins during 1998 and at least one academic period that begins during 1999, Student A is an eligible student for taxable years 1998 and 1999 (including the 1999 Fall semester when Student A enrolls at College U on less than a half-time basis).

Example 2. Prior to 1998, Student B attended college for several years on a full-time basis. Student B transfers to College V for the 1998 Spring semester. College V awards Student B credit for some (but not all) of the courses he previously completed, and College V classifies Student B as a first-semester sophomore. During both the Spring and Fall semesters of 1998, Student B is enrolled in at least one-half the normal full-time work load for his degree program at College V. Because College V does not classify Student B as having completed the first two years of postsecondary education as of the beginning of 1998, Student B is an eligible student for taxable year 1998.

Example 3. The facts are the same as in *Example 2.* After taking classes on a half-time basis for the 1998 Spring and Fall semesters, Student B is enrolled at College V for the 1999 Spring semester on a full-time basis. College V classifies Student B as a second-semester sophomore for the 1999 Spring semester and as a first-semester junior for the 1999 Fall semester. Because College V does not classify Student B as having completed the first two years of postsecondary education as of the beginning of 1999, Student B is an eligible student for taxable year 1999. Therefore, the qualified expenses and required fees paid for the 1999 Spring semester and the 1999 Fall semester are taken into account in calculating any Hope Scholarship Credit.

Example 4. Prior to 1998, Student was not enrolled at another eligible educational institution. At the time that Student C enrolls in a degree program at College W for the 1998 Fall semester, Student C takes examinations to demonstrate her proficiency in several subjects. On the basis of Student C's performance on these examinations, College W classifies Student C as a second-semester sophomore as of the beginning of the 1998 Fall semester. Student C is enrolled at College W during the 1998 Fall semester and during the 1999 Spring and Fall semesters on a full-time basis and is classified as a first-semester junior as of the beginning of the 1999 Spring semester. Because Student C was not enrolled in a college or other eligible educational institution prior to 1998 (but rather was awarded three semesters of academic credit solely because of proficiency examinations), Student C is not treated as having completed the first two years of postsecondary education at an eligible educational institution as of the beginning of 1998 or as of the beginning of 1999. Therefore, Student C is an eligible student for both taxable years 1998 and 1999.

Example 5. During the 1998 Fall semester, Student D is a high school student who takes classes on a half-time basis at College X. Student D is not enrolled as part of a degree program at College X because College X does not admit students to a degree program unless the student has a high school diploma or equivalent. Because Student D is not enrolled in a degree program at College X during 1998, Student D is not an eligible student for taxable year 1998.

Example 6. The facts are the same as in *Example 5.* In addition, during the 1999 Spring semester, Student D again attends College X but not as part of a degree program. Student D graduates from high school in June 1999. For the 1999 Fall semester, Student D enrolls in College X as part of a degree program, and College X awards Student D credit for her prior course work at College X. During the 1999 Fall semester, Student D is enrolled in more than one-half the normal full-time work load of courses for her degree program at College X. Because Student D is enrolled in a degree program at College X for the 1999 Fall term on at least a half-time basis, Student D is an eligible student for all of taxable year 1999. Therefore, the qualified tuition and required fees paid for classes taken at College X during both the 1999 Spring semester (during which Student D was not enrolled in a degree program) and the 1999 Fall semester are taken into account in computing any Hope Scholarship Credit.

Example 7. Student E completed two years of undergraduate study at College S. College S is not an eligible educational institution for purposes of the education tax credit. At the end of 1998, Student E enrolls in an undergraduate degree program at College Z, an eligible educational institution, for the 1999 Spring semester on a full-time basis. College Z awards Student E two years of academic credit for his previous course work at College S and classifies Student E as a first-semester junior for the 1999 Spring semester. Student E is treated as having completed the first two years of postsecondary education at an eligible educational institution as of the beginning of 1999. Therefore, Student E is not an eligible student for taxable year 1999.

Example 8. Student F received a degree in 1998 from College R. College R is not an eligible educational institution for purposes of the education tax credit. During 1999, Student F is enrolled in a graduate-degree program at College Y, an eligible educational institution, for the 1999 Fall semester on a full-time basis. By admitting Student F to its graduate degree program, College Y treats Student F as having completed the first two years of postsecondary education as of the beginning of 1999. Therefore, Student F is not an eligible student for taxable year 1999.

Example 9. Student G graduates from high school in June 2001. In January 2002, Student G is enrolled in a one-year postsecondary certificate program on a full-time basis to obtain a certificate as a travel agent. Student G completes the program in December 2002 and is awarded a certificate. In January 2003, Student G enrolls in a one-year postsecondary certificate program on a full-time basis to obtain a certificate as a computer programer. Student G meets the degree requirement, the work load requirement, and the year of study

requirement for the taxable years 2002 and 2003. Therefore, Student G is an eligible student for both taxable years 2002 and 2003.

(e) *Academic period for prepayments*—(1) *In general.* For purposes of determining whether a student meets the requirements in paragraph (d) of this section for a taxable year, if qualified tuition and related expenses are paid during one taxable year for an academic period that begins during January, February or March of the next taxable year (for taxpayers on a fiscal taxable year, use the first three months of the next taxable year), the academic period is treated as beginning during the taxable year in which the payment is made.

(2) *Example.* The following example illustrates the rule of this paragraph (e). In the example, assume that all the requirements to claim a Hope Scholarship Credit are met. The example is as follows:

Example. Student G graduates from high school in June 1998. After graduation, Student G works full-time for several months to earn money for college. Student G is enrolled on a full-time basis in an undergraduate degree program at University W, an eligible educational institution, for the 1999 Spring semester, which begins in January 1999. Student G pays tuition to University W for the 1999 Spring semester in December 1998. Because the tuition paid by Student G in 1998 relates to an academic period that begins during the first three months of 1999, Student G's eligibility to claim a Hope Scholarship Credit in 1998 is determined as if the 1999 Spring semester began in 1998. Thus, assuming Student G has not been convicted of a felony drug offense as of December 31, 1998, Student G is an eligible student for 1998.

(f) *Effective date.* The Hope Scholarship Credit is applicable for qualified tuition and related expenses paid after December 31, 1997, for education furnished in academic periods beginning after December 31, 1997.

§ 1.25A–4 Lifetime Learning Credit.

(a) *Amount of the credit*—(1) *Taxable years beginning before January 1, 2003.* Subject to the phaseout of the education tax credit described in § 1.25A–1(c), for taxable years beginning before 2003, the Lifetime Learning Credit amount is 20 percent of up to $5,000 of qualified tuition and related expenses paid during the taxable year for education furnished to the taxpayer, the taxpayer's spouse, and any claimed dependent during any academic period beginning in the taxable year (or treated as beginning in the taxable year, see § 1.25A–5(e)(2)).

(2) *Taxable years beginning after December 31, 2002.* Subject to the phaseout of the education tax credit described in § 1.25A–1(c), for taxable years beginning after 2002, the Lifetime Learning Credit amount is 20 percent of up to $10,000 of qualified tuition and related expenses paid during the taxable year for education furnished to the taxpayer, the taxpayer's spouse, and any claimed dependent during any academic period beginning in the taxable year (or treated as beginning in the taxable year, see § 1.25A–5(e)(2)).

(3) *Coordination with the Hope Scholarship Credit.* Expenses paid with respect to a student for whom the Hope Scholarship Credit is claimed are not eligible for the Lifetime Learning Credit.

(4) *Examples.* The following examples illustrate the rules of this paragraph (a). In each example, assume that all the requirements to claim a Lifetime Learning Credit or a Hope Scholarship Credit, as applicable, are met. The examples are as follows:

Example 1. In 1999, Taxpayer A pays qualified tuition and related expenses of $3,000 for dependent B to attend an eligible educational institution, and Taxpayer A pays qualified tuition and related expenses of $4,000 for dependent C to attend an eligible educational institution. Taxpayer A does not claim a Hope Scholarship Credit with respect to either B or C. Although Taxpayer A paid $7,000 of qualified tuition and related expenses during the taxable year, Taxpayer A may claim the Lifetime Learning Credit with respect to only $5,000 of such expenses. Therefore, the maximum Lifetime Learning Credit Taxpayer A may claim for 1999 is $1,000 (.20 × $5,000).

Example 2. In 1999, Taxpayer D pays $6,000 of qualified tuition and related expenses for dependent E, and $2,000 of qualified tuition and related expenses for dependent F, to attend eligible educational institutions. Dependent F has already completed the first two years of postsecondary education. For 1999, Taxpayer D claims the maximum $1,500 Hope Scholarship Credit with respect to dependent E. In computing the amount of the Lifetime Learning Credit, Taxpayer D may not include any of the $6,000 of qualified tuition and related expenses paid on behalf of dependent E but may include the $2,000 of qualified tuition and related expenses of dependent F.

(b) *Credit allowed for unlimited number of taxable years.* There is no limit to the number of taxable years that a taxpayer may claim a Lifetime Learning Credit with respect to any student.

(c) *Both degree and nondegree courses are eligible for the credit*—(1) *In general.* For purposes of the Lifetime Learning Credit, amounts paid for a course at an eligible educational institution are qualified tuition and related expenses if the course is either part of a postsecondary degree program or is not part of a postsecondary degree program but is taken by the student to acquire or improve job skills.

(2) *Examples.* The following examples illustrate the rule of this paragraph (c). In each example, assume that all the requirements to claim a Lifetime Learning Credit are met. The examples are as follows:

Example 1. Taxpayer A, a professional photographer, enrolls in an advanced photography course at a local community college. Although the course is not part of a degree program, Taxpayer A enrolls in the course to improve her job skills. The course fee paid by Taxpayer A is a qualified tuition and related expense for purposes of the Lifetime Learning Credit.

Example 2. Taxpayer B, a stockbroker, plans to travel abroad on a ''photo-safari'' for his next vacation. In preparation for the trip, Taxpayer B enrolls in a noncredit photography class at a local community college. Because Taxpayer B is not taking the photography course as part of a degree program or to acquire or improve his job skills, amounts paid by Taxpayer B for the course are not qualified tuition and related expenses for purposes of the Lifetime Learning Credit.

(d) *Effective date.* The Lifetime Learning Credit is applicable for qualified tuition and related expenses paid after June 30, 1998, for education furnished in academic periods beginning after June 30, 1998.

§ 1.25A–5 Special rules relating to characterization and timing of payments.

(a) *Educational expenses paid by claimed dependent.* For any taxable year for which the student is a claimed dependent of another taxpayer, qualified tuition and related expenses paid by the student are treated as paid by the taxpayer to whom the deduction under section 151 is allowed.

(b) *Educational expenses paid by a third party*—(1) *In general.* Solely for purposes of section 25A, if a third party (someone other than the taxpayer, the taxpayer's spouse if the taxpayer is treated as married within the meaning of section 7703, or a claimed dependent) makes a payment directly to an eligible educational institution to pay for a student's qualified tuition and related expenses, the student is treated as receiving the payment from the third party and, in turn, paying the qualified tuition and related expenses to the institution.

(2) *Special rule for tuition reduction included in gross income of employee.* Solely for purposes of section 25A, if an eligible educational institution provides a reduction in tuition to an employee of the institution (or to the spouse or dependent child of an employee, as described in section 132(h)(2)) and the amount of the tuition reduction is

included in the employee's gross income, the employee is treated as receiving payment of an amount equal to the tuition reduction and, in turn, paying such amount to the institution.

(3) *Examples.* The following examples illustrate the rules of this paragraph (b). In each example, assume that all the requirements to claim an education tax credit are met. The examples are as follows:

Example 1. Grandparent D makes a direct payment to an eligible educational institution for Student E's qualified tuition and related expenses. Student E is not a claimed dependent in 1999. For purposes of claiming an education tax credit, Student E is treated as receiving the money from her grandparent and, in turn, paying her qualified tuition and related expenses.

Example 2. Under a court-approved divorce decree, Parent A is required to pay Student C's college tuition. Parent A makes a direct payment to an eligible educational institution for Student C's 1999 tuition. Under paragraph (b)(1) of this section, Student C is treated as receiving the money from Parent A and, in turn, paying the qualified tuition and related expenses. Under the divorce decree, Parent B has custody of Student C for 1999. Parent B properly claims Student C as a dependent on Parent B's 1999 Federal income tax return. Under paragraph (a) of this section, expenses paid by Student C are treated as paid by Parent B. Thus, Parent B may claim an education tax credit for the qualified tuition and related expenses paid directly to the institution by Parent A.

Example 3. University A, an eligible educational institution, offers reduced tuition charges to its employees and their dependent children. F is an employee of University A. F's dependent child, G, enrolls in a graduate-level course at University A. Section 117(d) does not apply, because it is limited to tuition reductions provided for education below the graduate level. Therefore, the amount of the tuition reduction received by G is treated as additional compensation from University A to F and is included in F's gross income. For purposes of claiming a Lifetime Learning Credit, F is treated as receiving payment of an amount equal to the tuition reduction from University A and, in turn, paying such amount to University A on behalf of F's child, G.

(c) *Adjustment to qualified tuition and related expenses for certain excludable educational assistance*—(1) *In general.* In determining the amount of an education tax credit, qualified tuition and related expenses for any academic period must be reduced by the amount of any tax-free educational assistance allocable to such period. For this purpose, *tax-free educational assistance* means—

(i) A qualified scholarship that is excludable from income under section 117;

(ii) A veterans' or member of the armed forces' educational assistance allowance under chapter 30, 31, 32, 34 or 35 of title 38, United States Code, or under chapter 1606 of title 10, United States Code;

(iii) Employer-provided educational assistance that is excludable from income under section 127; or

(iv) Any other educational assistance that is excludable from gross income (other than as a gift, bequest, devise, or inheritance within the meaning of section 102(a)).

(2) *No adjustment for excludable educational assistance attributable to expenses paid in a prior year.* A reduction is not required under paragraph (c)(1) of this section if the amount of excludable educational assistance received during the taxable year is treated as a refund of qualified tuition and related expenses paid in a prior taxable year. *See* paragraph (f)(5) of this section.

(3) *Scholarships and fellowship grants.* For purposes of paragraph (c)(1)(i) of this section, a scholarship or fellowship grant is treated as a qualified scholarship excludable under section 117 except to the extent—

(i) The scholarship or fellowship grant (or any portion thereof) may be applied, by its terms, to expenses other than qualified tuition and related expenses within the meaning of section 117(b)(2) (such as room and board) and the student reports the grant (or the appropriate portion thereof) as income on the student's Federal income tax return if the student is required to file a return; or

(ii) The scholarship or fellowship grant (or any portion thereof) must be applied, by its terms, to expenses other than qualified tuition and related expenses within the meaning of section 117(b)(2) (such as room and board) and the student reports the grant (or the appropriate portion thereof) as income on the student's Federal income tax return if the student is required to file a return.

(4) *Examples.* The following examples illustrate the rules of this paragraph (c). In each example, assume that all the requirements to claim an education tax credit are met. The examples are as follows:

Example 1. University X charges Student A, who lives on X's campus, $3,000 for tuition and $5,000 for room and board. University X awards Student A a $2,000 scholarship. The terms of the scholarship permit it to be used to pay any of a student's costs of attendance at University X, including tuition, room and board, and other incidental expenses. University X applies the $2,000 scholarship against Student A's $8,000 total bill, and Student A pays the $6,000 balance of her bill from University X with a combination of savings and amounts she earns from a summer job. University X does not require A to pay any additional fees beyond the $3,000 in tuition in order to enroll in or attend classes. Student A does not report any portion of the scholarship as income on her Federal income tax return. Since Student A does not report the scholarship as income, the scholarship is treated under paragraph (c)(3) of this section as a qualified scholarship that is excludable under section 117. Therefore, for purposes of calculating an education tax credit, Student A is treated as having paid only $1,000 ($3,000 tuition − $2,000 scholarship) in qualified tuition and related expenses to University X.

Example 2. The facts are the same as in *Example 1*, except that Student A reports the entire scholarship as income on the student's Federal income tax return. Since the full amount of the scholarship may be applied to expenses other than qualified expenses (room and board) and Student A reports the scholarship as income, the exception in paragraph (c)(3) of this section applies and the scholarship is not treated as a qualified scholarship excludable under section 117. Therefore, for purposes of calculating an education tax credit, Student A is treated as having paid $3,000 of qualified tuition and related expenses to University X.

Example 3. The facts are the same as in *Example 1*, except that the terms of the scholarship require it to be used to pay tuition. Under paragraph (c)(3) of this section, the scholarship is treated as a qualified scholarship excludable under section 117. Therefore, for purposes of calculating an education tax credit, Student A is treated as having paid only $1,000 ($3,000 tuition − $2,000 scholarship) in qualified tuition and related expenses to University X.

Example 4. The facts are the same as in *Example 1*, except that the terms of the scholarship require it to be used to pay tuition or room and board charged by University X, and the scholarship amount is $6,000. Under the terms of the scholarship, Student A may allocate the scholarship between tuition and room and board in any manner. However, because room and board totals $5,000, that is the maximum amount that can be applied under the terms of the scholarship to expenses other than qualified expenses and at least $1,000 of the scholarship must be applied to tuition. Therefore, the maximum amount of the exception under paragraph (c)(3) of this section is $5,000 and at least $1,000 is treated as a qualified scholarship excludable under section 117 ($6,000 scholarship − $5,000 room and board). If Student A reports $5,000 of the scholarship as income on the student's Federal income tax return, then Student A will be treated as having paid $2,000 ($3,000 tuition − $1,000 qualified scholarship excludable under section 117) in qualified tuition and related expenses to University X.

Example 5. The facts are the same as in *Example 1*, except that in addition to the scholarship that University X awards to Student A, University X also provides Student A with an education loan and pays Student A for working in a work/study job

in the campus dining hall. The loan is not excludable educational assistance within the meaning of paragraph (c) of this section. In addition, wages paid to a student who is performing services for the payor are neither a qualified scholarship nor otherwise excludable from gross income. Therefore, Student A is not required to reduce her qualified tuition and related expenses by the amounts she receives from the student loan or as wages from her work/study job.

Example 6. In 1999, Student B pays University Y $1,000 in tuition for the 1999 Spring semester. University Y does not require Student B to pay any additional fees beyond the $1,000 in tuition in order to enroll in classes. Student B is an employee of Company Z. At the end of the academic period and during the same taxable year that Student B paid tuition to University Y, Student B provides Company Z with proof that he has satisfactorily completed his courses at University Y. Pursuant to an educational assistance program described in section 127(b), Company Z reimburses Student B for all of the tuition paid to University Y. Because the reimbursement from Company Z is employer-provided educational assistance that is excludable from Student B's gross income under section 127, the reimbursement reduces Student B's qualified tuition and related expenses. Therefore, for purposes of calculating an education tax credit, Student B is treated as having paid no qualified tuition and related expenses to University Y during 1999.

Example 7. The facts are the same as in *Example 6* except that the reimbursement from Company Z is not pursuant to an educational assistance program described in section 127(b), is not otherwise excludable from Student B's gross income, and is taxed as additional compensation to Student B. Because the reimbursement is not excludable educational assistance within the meaning of paragraph (c)(1) of this section, Student B is not required to reduce his qualified tuition and related expenses by the $1,000 reimbursement he received from his employer. Therefore, for purposes of calculating an education tax credit, Student B is treated as paying $1,000 in qualified tuition and related expenses to University Y during 1999.

(d) *No double benefit.* Qualified tuition and related expenses do not include any expense for which a deduction is allowed under section 162, section 222, or any other provision of chapter 1 of the Internal Revenue Code.

(e) *Timing rules*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, an education tax credit is allowed only for payments of qualified tuition and related expenses for an academic period beginning in the same taxable year as the year the payment is made. Except for certain individuals who do not use the cash receipts and disbursements method of accounting, qualified tuition and related expenses are treated as paid in the year in which the expenses are actually paid. See § 1.461–1(a)(1).

(2) *Prepayment rule*—(i) *In general.* If qualified tuition and related expenses are paid during one taxable year for an academic period that begins during the first three months of the taxpayer's next taxable year (*i.e.*, in January, February, or March of the next taxable year for calendar year taxpayers), an education tax credit is allowed with respect to the qualified tuition and related expenses only in the taxable year in which the expenses are paid.

(ii) *Example.* The following example illustrates the rule of this paragraph (e)(2). In the example, assume that all the requirements to claim an education tax credit are met. The example is as follows:

Example. In December 1998, Taxpayer A, a calendar year taxpayer, pays College Z $1,000 in qualified tuition and related expenses to attend classes during the 1999 Spring semester, which begins in January 1999. Taxpayer A may claim an education tax credit only in 1998 for payments made in 1998 for the 1999 Spring semester.

(3) *Expenses paid with loan proceeds.* An education tax credit may be claimed for qualified tuition and related expenses paid with the proceeds of a loan only in the taxable year in which the expenses are paid, and may not be claimed in the taxable year in which the loan is repaid. Loan proceeds disbursed directly to an eligible educational institution will be treated as paid on the date the institution credits the proceeds to the student's account. For example, in the case of any loan issued or guaranteed as part of a Federal student loan program under title IV of the Higher Education Act of 1965, loan proceeds will be treated as paid on the date of disbursement (as defined in 34 CFR 668.164(a), revised as of July 1, 2002) by the eligible educational institution. If a taxpayer does not know the date the institution credits the student's account, the taxpayer must treat the qualified tuition and related expenses as paid on the last date for payment prescribed by the institution.

(4) *Expenses paid through third party installment payment plans*—(i) *In general.* A taxpayer, an eligible educational institution, and a third party installment payment company may enter into an agreement in which the company agrees to collect installment payments of qualified tuition and related expenses from the taxpayer and to remit the installment payments to the institution. If the third party installment payment company is the taxpayer's agent for purposes of paying qualified tuition and related expenses to the eligible educational institution, the taxpayer is treated as paying the qualified expenses on the date the company pays the institution. However, if the third party installment payment company is the eligible educational institution's agent for purposes of collecting payments of qualified tuition and related expenses from the taxpayer, the taxpayer is treated as paying the qualified expenses on the date the taxpayer pays the company.

(ii) *Example.* The following example illustrates the rule of this paragraph (e)(4). The example is as follows:

Example. Student A, Company B, and College C enter into a written agreement in which Student A agrees to pay the tuition required to attend College C in 10 equal monthly installments to Company B. Under the written agreement, Student A is not relieved of her obligation to pay College C until Company B remits the payments to College C. Under the written agreement, Company B agrees to disburse the monthly installment payments to College C within 30 days of receipt. Because Company B acts as Student A's agent for purposes of paying qualified expenses to College C, Student A is treated as paying qualified expenses on the date Company B disburses payments to College C.

(f) *Refund of qualified tuition and related expenses—(1) Payment and refund of qualified tuition and related expenses in the same taxable year.* With respect to any student, the amount of qualified tuition and related expenses for a taxable year is calculated by adding all qualified tuition and related expenses paid for the taxable year, and subtracting any refund of such expenses received from the eligible educational institution during the same taxable year (including refunds of loan proceeds described in paragraph (f)(4) of this section).

(2) *Payment of qualified tuition and related expenses in one taxable year and refund in subsequent taxable year before return filed for prior taxable year.* If, in a taxable year, a taxpayer or someone other than the taxpayer receives a refund (including refunds of loan proceeds described in paragraph (f)(4) of this section) of qualified tuition and related expenses paid on behalf of a student in a prior taxable year and the refund is received before the taxpayer files a Federal income tax return for the prior taxable year, the amount of the qualified tuition and related expenses for the prior taxable year is reduced by the amount of the refund.

(3) *Payment of qualified tuition and related expenses in one taxable year and refund in subsequent taxable year*—(i) *In general.* If, in a taxable year (refund year), a taxpayer or someone other than the taxpayer receives a refund (including refunds of loan proceeds described in paragraph (f)(4) of

this section) of qualified tuition and related expenses paid on behalf of a student for which the taxpayer claimed an education tax credit in a prior taxable year, the tax imposed by chapter 1 of the Internal Revenue Code for the refund year is increased by the recapture amount.

(ii) *Recapture amount.* The recapture amount is the difference in tax liability for the prior taxable year (taking into account any redetermination of such tax liability by audit or amended return) that results when the tax liability for the prior year is calculated using the taxpayer's redetermined credit. The redetermined credit is computed by reducing the amount of the qualified tuition and related expenses taken into account in determining any credit claimed in the prior taxable year by the amount of the refund of the qualified tuition and related expenses (redetermined qualified expenses), and computing the allowable credit using the redetermined qualified expenses and the relevant facts and circumstances of the prior taxable year, such as modified adjusted gross income (redetermined credit).

(4) *Refund of loan proceeds treated as refund of qualified tuition and related expenses.* If loan proceeds used to pay qualified tuition and related expenses (as described in paragraph (e)(3) of this section) during a taxable year are refunded by an eligible educational institution to a lender on behalf of the borrower, the refund is treated as a refund of qualified tuition and related expenses for purposes of paragraphs (f)(1), (2), and (3) of this section.

(5) *Excludable educational assistance received in a subsequent taxable year treated as a refund.* If, in a taxable year, a taxpayer or someone other than the taxpayer receives any excludable educational assistance (described in paragraph (c)(1) of this section) for the qualified tuition and related expenses paid on behalf of a student during a prior taxable year (or attributable to enrollment at an eligible educational institution during a prior taxable year), the educational assistance is treated as a refund of qualified tuition and related expenses for purposes of paragraphs (f)(2) and (3) of this section. If the excludable educational assistance is received before the taxpayer files a Federal income tax return for the prior taxable year, the amount of the qualified tuition and related expenses for the prior taxable year is reduced by the amount of the excludable educational assistance as provided in paragraph (f)(2) of this section. If the excludable educational assistance is received after the taxpayer has filed a Federal income tax return for the prior taxable year, any education tax credit claimed for the prior taxable year is subject to recapture as provided in paragraph (f)(3) of this section.

(6) *Examples.* The following examples illustrate the rules of this paragraph (f). In each example, assume that all the requirements to claim an education tax credit are met. The examples are as follows:

Example 1. In January 1998, Student A, a full-time freshman at University X, pays $2,000 for qualified tuition and related expenses for a 16-hour work load for the 1998 Spring semester. Prior to beginning classes, Student A withdraws from 6 course hours. On February 15, 1998, Student A receives a $750 refund from University X. In September 1998, Student A pays University X $1,000 to enroll half-time for the 1998 Fall semester. Prior to beginning classes, Student A withdraws from a 2-hour course, and she receives a $250 refund in October 1998. Student A computes the amount of qualified tuition and related expenses she may claim for 1998 by:

(i) Adding all qualified expenses paid during the taxable year ($2,000 + 1,000 = $3,000);

(ii) Adding all refunds of qualified tuition and related expenses received during the taxable year ($750 + $250 = $1,000); and, then

(iii) Subtracting paragraph (ii) of this *Example 1* from paragraph (i) of this *Example 1* ($3,000 − $1,000 = $2,000). Therefore, Student A's qualified tuition and related expenses for 1998 are $2,000.

Example 2. (i) In December 1998, Student B, a senior at College Y, pays $2,000 for qualified tuition and related expenses for a 16-hour work load for the 1999 Spring semester. Prior to beginning classes, Student B withdraws from a 4-hour course. On January 15, 1999, Student B files her 1998 income tax return and claims a $400 Lifetime Learning Credit for the $2,000 qualified expenses paid in 1998, which reduces her tax liability for 1998 by $400. On February 15, 1999, Student B receives a $500 refund from College Y.

(ii) Student B calculates the increase in tax for 1999 by—

(A) Calculating the redetermined qualified expenses for 1998 ($2,000 − $500 = $1,500);

(B) Calculating the redetermined credit for the redetermined qualified expenses ($1,500 × .20 = $300); and

(C) Calculating the difference in tax liability for 1998 resulting from the redetermined credit. Because Student B's tax liability for 1998 was reduced by the full amount of the $400 education tax credit claimed on her 1998 income tax return, the difference in tax liability can be determined by subtracting the redetermined credit from the credit claimed in 1998 ($400 − $300 = $100).

(iii) Therefore, Student B must increase the tax on her 1999 Federal income tax return by $100.

Example 3. In September 1998, Student C pays College Z $1,200 in qualified tuition and related expenses to attend evening classes during the 1998 Fall semester. Student C is an employee of Company R. On January 15, 1999, Student C files a Federal income tax return for 1998 claiming a Lifetime Learning Credit of $240 (.20 x $1,200), which reduces Student C's tax liability for 1998 by $240. Pursuant to an educational assistance program described in section 127(b), Company R reimburses Student C in February 1999 for the $1,200 of qualified tuition and related expenses paid by Student C in 1998. The $240 education tax credit claimed by Student C for 1998 is subject to recapture. Because Student C paid no net qualified tuition and related expenses for 1998, the redetermined credit for 1998 is zero. Student C must increase the amount of Student C's 1999 tax by the recapture amount, which is $240 (the difference in tax liability for 1998 resulting from the redetermined credit for 1998 ($0)). Because the $1,200 reimbursement relates to expenses for which the taxpayer claimed an education tax credit in a prior year, the reimbursement does not reduce the amount of any qualified tuition and related expenses that Student C paid in 1999.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. In section 602.101, paragraph (b) is revised by adding the following entry in numerical order to the table:

§ 602.101 OMB Control numbers.

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(b) * * *

CFR part or section where identified and described	Current OMB control No.
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1.25A–1	1545–1630
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Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: December 13, 2002.

Pamela F. Olson,

Assistant Secretary of the Treasury.

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DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 97

[OAG 100F; AG Order No. 2640–2002]

RIN 1105–AA77

Establishment of Minimum Safety and Security Standards for Private Companies That Transport Violent Prisoners

AGENCY: Office of the Attorney General, Department of Justice.

ACTION: Final rule.

SUMMARY: In the Interstate Transportation of Dangerous Criminals Act of 2000 (''the Act''), Congress instructed the Department of Justice (''the Department'') to promulgate regulations providing minimum safety and security standards for private companies that transport violent prisoners on behalf of State and local jurisdictions. The Act provides that the regulations shall not impose stricter standards with respect to private prisoner transport companies than are applicable to certain Department agencies that transport violent prisoners under comparable circumstances. This rule establishes minimum standards in only those areas that Congress identified in the Act by finalizing a proposed rule the Department published on this subject on December 17, 2001, at 66 FR 64934.

DATES: This final rule is effective January 27, 2003.

FOR FURTHER INFORMATION CONTACT: Lizette Benedi, Office of Legal Policy, U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530, telephone (202) 353–9164.

SUPPLEMENTARY INFORMATION:

A. Background

What Does This Rule Establish?

This rule establishes a limited number of minimum safety and security standards for private companies that engage in the business of transporting violent prisoners on behalf of State and local jurisdictions. The final rule requires private prisoner transport companies to establish measures designed to improve public safety by preventing escapes of violent prisoners and establishing appropriate safeguards and procedures in the event of the escape of a violent prisoner. In addition, the rule establishes minimum standards to ensure the safety of violent prisoners during transportation.

Why Is This Rule Needed?

In enacting the Interstate Transportation of Dangerous Criminals Act of 2000, Public Law 106–560 (114 Stat. 2784) (December 21, 2000) (''the Act''), Congress found that State and local jurisdictions are increasingly turning to private companies to transport their violent prisoners, and that escapes have occurred. Congress determined that minimum regulations for the private prisoner transport industry were necessary to provide protection against risks to the public that are inherent in the transportation of violent prisoners and to assure the safety of those being transported.

Does Compliance With These Regulations Mean That Private Prisoner Transport Companies Have Met All of Their Legal Obligations?

No. These regulations implement the Act and do not pre-empt any applicable Federal, State, or local law that may impose additional obligations on private prisoner transport companies or otherwise regulate the transportation of violent prisoners. For example, all Federal laws and regulations governing interstate commerce (*e.g.*, Federal laws regulating the possession of weapons and Federal Aviation Administration or Transportation Security Administration rules and regulations governing travel on commercial aircraft) will continue to apply to private prisoner transport companies. Because these regulations implement the Act, they affect only limited aspects of a private prisoner transport company's operations. Therefore, these regulations are not intended to be model guidelines or a complete set of standards for the private prisoner transport industry. Private prisoner transport companies should be aware that compliance with these regulations will mean only that they will not be subject to the sanctions established in the Act. The regulations are not meant to prevent or discourage private prisoner transport companies from adopting additional or more stringent standards relating to the transportation of prisoners. Similarly, these regulations do not limit the authority of Federal, State, or local governments to impose additional safety requirements or impose a higher standard of care upon private companies that transport violent prisoners. The purpose of these regulations is to enhance public security and the safety of both prisoners and guards during transportation. The regulations are not intended to create a defense to any civil action, whether initiated by a unit of government or any other party. Thus, for example, compliance with these regulations is not intended to and does not establish a defense against an allegation of negligence or breach of contract. Regardless of whether a contractual agreement establishes minimum precautions, the companies affected by these regulations will remain subject to the standard of care that is imposed by statute and common law upon their activities (or other activities of a similarly hazardous nature).

Overview of the Standards That This Rule Proposes

This final rule (1) requires that private prisoner transport companies comply with minimum standards for fingerprint-based criminal background checks and preemployment drug testing for potential employees; (2) provides minimum standards for the length and type of employee training; and (3) establishes restrictions on the number of hours that transportation employees may be on duty during a given time period. This rule also establishes the minimum standards that private prisoner transport companies must comply with for the use of restraints while transporting violent prisoners, and it establishes categories of violent offenders required to wear identifying clothing. Further, the rule establishes a minimum guard-to-prisoner ratio that must be observed while transporting violent prisoners, and requires that private prisoner transport companies comply with standards regarding employee uniforms and employee identification. In addition, the rule requires private prisoner transport companies to notify local law enforcement officials 24 hours in advance of any scheduled stops in their jurisdiction when transporting violent prisoners. In the event of the escape of a violent offender, the rule requires that the private prisoner transport company personnel immediately notify appropriate law enforcement officials in the jurisdiction where the escape occurs, as well as the governmental entity or privately run incarceration facility that contracted with the private prisoner transport company for the transport of the escaped violent prisoner. Finally, the rule requires that private prisoner transport companies adopt certain minimum standards to protect the safety of violent prisoners in accordance with applicable Federal and State law. Pursuant to section 4(c) of the Act, except for the standards regarding the categories of violent prisoners required to wear brightly colored clothing, these standards are not stricter than the standards applicable to the

United States Marshals Service (USMS), Immigration and Naturalization Service (INS), and the Federal Bureau of Prisons (BOP) when transporting violent prisoners under comparable circumstances.

Who Is Covered By This Final Rule?

This final rule only covers ''private prisoner transport companies,'' which are defined in section 3 of the Act as ''any entity, other than the United States, a State, or an inferior political subdivision of a State, which engages in the business of the transporting for compensation, individuals committed to the custody of any State or of an inferior political subdivision of a State, or any attempt thereof.'' Section 3 of the Act defines a ''violent prisoner'' as ''any individual in the custody of a State or an inferior political subdivision of a State who has previously been convicted of or is currently charged with a crime of violence or any similar statute of a State or the inferior political subdivisions of a State, or any attempt thereof.'' The term ''crime of violence'' has the same meaning as in subsection 924(c)(3) of title 18, United States Code. Pursuant to this subsection, a crime of violence is an offense that is a felony and (1) has as an element the use, attempted use, or threatened use of physical force against the person or property of another; or (2) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

Certain regulations of the Department of Transportation (DOT) only apply to persons or entities operating vehicles capable of transporting a particular minimum number of passengers. In order to assist private prisoner transport companies to comply with these regulations and so as not to have one Federal agency imposing requirements that differ from the requirements of another agency, the Department refers to appropriate DOT regulations or incorporates them by reference as the Department's standards for implementing various provisions of the Act. This rule implementing Jeanna's Act covers private prisoner transport companies regardless of the number of passengers that their transport vehicle or vehicles are designed to accommodate.

Does This Rule Affect Companies That Only Transport Violent Prisoners Within the Boundaries of One State, Only Those Companies That Transport Prisoners Across State Lines, or All Private Prisoner Transport Companies?

If a company meets the definition of ''private prisoner transport company'' as defined in section 3(2) of the Act, the company must comply with this rule even if it does not transport prisoners across state lines. Congress passed the Act in order to impose regulations upon a previously federally unregulated industry that operates across the United States and engages in a potentially dangerous activity. In section 2 of the Act, Congress found that, ''when a government entity opts to use a private prisoner transport company to move violent prisoners, then the company should be subject to regulation in order to enhance public safety.'' This finding by Congress indicates that the threat that it intended to remedy was that posed by an unregulated industry engaging in business that could potentially affect the safety of citizens in all states. Although the Act is officially titled the ''Interstate Transportation of Dangerous Criminals Act of 2000,'' it is the Department's view that limiting the Act's provisions to only those companies that cross state borders would create the unacceptable result of leaving unregulated certain members of the industry that Congress clearly intended to regulate. In addition, the definition that Congress provided for ''private prisoner transport company'' does not require that the company engage in the interstate transportation of violent prisoners in order to be covered by the Act's provisions. The statutory direction of Congress to the Department was clear on this point. Section 4(a) of the Act states that the Department ''shall promulgate regulations relating to the transportation of violent prisoners in or affecting interstate commerce.'' A company that only operates intrastate can affect interstate commerce in several ways (*e.g.*, by using interstate highways, by utilizing communications systems that rely on interstate modes of communications or satellites, by transporting prisoners who generally seek to cross state lines during escapes, by relying on the law enforcement agencies of nearby states in the event of an escape, etc.). Therefore, it is the Department's view that Congress clearly contemplated that, viewed either singly or in the aggregate, private companies that engage in the commercial activity of transporting violent prisoners within a state sufficiently affect interstate commerce to be covered by the requirements of this final rule.

What Are the Penalties for Noncompliance With the Regulations?

Section 5 of the Act states that violators shall be fined up to $10,000 per violation and the costs of prosecution. Violators also will be responsible for making restitution to any public entity that expends funds for the purpose of apprehending any violent prisoner who escaped, in whole or in part, because of a violation of the Act. As discussed above, conduct constituting a violation of these regulations may also result in unrelated penalties as a result of criminal, administrative, or civil process pursuant to local, State, or other Federal laws.

Additional Considerations

There is considerable variation in the classification of prisoners that the Department transports and the circumstances under which those prisoners are transported. For example, unlike private prisoner transport companies, INS at times transports entire family groups (of both sexes and of different ages) who have been apprehended after illegally entering the United States. Under other circumstances, INS (along with BOP and USMS) transports offenders who have committed very violent crimes and are considered to be a high security risk. Accordingly, the Department's components that transport prisoners have developed differing standards for prisoner transport that are appropriately tailored to their roles and missions. By requiring the Department to promulgate regulations in this area, Congress appears to have at least two goals in mind. First, uniform standards for transporting prisoners serve to improve public security and the safety of the prisoners and guards during transportation. Second, by providing that the Department's regulations for the private sector not be stricter than those governing the Department's own components, Congress appears to have been concerned that the regulations not be unduly burdensome. The Department shares Congress' concerns that any regulations that the Department issues should not unduly burden private industry, especially small entities, while still addressing the problems that motivated the passage of this Act. However, regulations that fully reflect the considerable variation of the Department's own prisoner transport activities might be so complex as to be burdensome on the affected entities and, nonetheless, still not fully comply with congressional intent in certain areas.

Therefore, consistent with section 4(c) of the Act, for some of the specific requirements of the Act (*e.g.*, that prisoners ordinarily be required to wear brightly colored clothing) the rule establishes standards somewhat more stringent than the standard the Department uses for the transport of prisoners, under certain circumstances. Moreover, for certain requirements that Congress imposed on private entities, the Department may have greater flexibility in its comparable internal procedures because the functions of Departmental agencies differ significantly from those of private prisoner transport companies, and therefore the circumstances are not comparable. For other requirements of the Act (*e.g.*, the guard-to-prisoner ratio), the Department is establishing a one-guard-to-six-violent-prisoner ratio. In the proposed rule, the Department specifically invited comments from private prisoner transport companies, from State and local law enforcement entities, and from the general public concerning what ratio the Department should adopt in the final rule. The Department also sought comment on the potential impacts that these regulations may have on the ability of sheriffs' departments and other operators of local jails to arrange safe and efficient violent prisoner transport in response to writs or other requirements. The responses that the Department received on the proposed rule are discussed in the ''Comments Received'' section of this final rule.

How Does the Rule Affect the Transportation of Juveniles?

It is the Department's view that the provisions of the Act do not apply to the transportation of juveniles unless the juvenile has been charged or convicted as an adult for a crime of violence as defined in 18 U.S.C. § 924(c)(3). The Act defines a violent prisoner as one ''who has previously been convicted of or is currently charged with a crime of violence.'' The Act gives the term ''crime of violence'' the same meaning as that term has in 18 U.S.C. § 924(c)(3). Section 924(c)(3) includes in its definition of ''crime of violence'' the requirement that it be ''an offense that is a felony.'' This should be understood as referring to adults convicted of or facing felony criminal charges and to juveniles who previously have been convicted of or who are being prosecuted as adults for violent felony offenses. Unless juvenile offenders have been or are being tried as adults under federal law, they generally are not considered to have been ''convicted'' or ''charged'' with a ''crime of violence'' as defined in 18 U.S.C. § 924(c)(3). Instead, they are considered to have been adjudicated delinquent or found guilty (or found ''involved'') in a juvenile delinquency proceeding, rather than convicted of a crime. *E.g., United States* v. *Frasquillo-Zomosa*, 626 F.2d 99, 101 (9th Cir. 1980) (''A successful prosecution under the [Federal Juvenile Delinquency] Act results not in a conviction of a crime but rather in adjudication of a status''). Although some provisions under federal law create an exception to this general understanding by explicitly providing that a ''conviction'' includes certain juvenile adjudications, *e.g.*, 18 U.S.C. § 924(e)(2)(B) (''violent felony'' includes ''any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for [a term exceeding one year] if committed by an adult''), neither 18 U.S.C.§ 924(c)(3) nor the Act itself contain any language that would support interpreting the Act as including within its scope the transportation of juvenile offenders who have been adjudicated or who are to be tried as juveniles.

Who Was Consulted During the Development of This Rule?

In accordance with the Act, Department of Justice officials met with several representatives of the private prisoner transport industry, the American Correctional Association (ACA), and law enforcement groups, including the National Sheriffs' Association, American Jail Association, National Association of Police Organizations, and the National Association of Government Employees International Brotherhood of Police Officers.

B. Detailed Discussion of the Requirements Covering Private Prisoner Transport

1. Background Checks and Drug Testing Standards for Potential Employees

Under the final rule, potential employees of private prisoner transport companies will have to pass a preliminary fingerprint-based criminal background check prior to being hired. This background check will disqualify from employment those applicants convicted of a misdemeanor crime of domestic violence or any felony conviction. The fingerprint-based criminal background check will be performed by providing the applicant's fingerprints to the governmental agency that is contracting with the private prisoner transport company, for submission through the state history record repository to the FBI. In the event that the private prisoner transport company is contracting with a privately run incarceration facility, and not directly with a governmental entity, the private prisoner transport company will have to make arrangements through the private incarceration facility to have the checks completed by the governmental entity ultimately requesting the transport. The background check also must include a credit report check, a physical examination, and a personal interview. Also, potential employees of private prisoner transport companies must undergo testing to detect the prior or current use of controlled substances as a condition of employment. The pre-employment drug testing must be done in accordance with applicable State law. In the event that there is no applicable State law, private prisoner transport companies must comply with the pre-employment drug testing requirements that apply to commercial drivers (*See*, 49 CFR 382.301).

2. Length and Type of Employee Training

The Act states that the Department may require that employees of private prisoner transport companies participate in up to 100 hours of preservice training relating to the transportation of prisoners. This training must be in the following areas: use of restraints, searches, use of force (including use of appropriate weapons and firearms), CPR, map reading, and defensive driving. This rule requires private prisoner transport companies to provide their employees with 100 hours of preservice training in those areas. The training of Department personnel who transport violent prisoners is notably more rigorous in length and in type than the 100-hour maximum that Congress established in the Act for private prisoner transport companies. For instance, the BOP requires any employee who assists with prisoner bus transport to have successfully completed, at a minimum, one ''probationary'' year of service and attended 80 hours of Institutional Familiarization, 120 hours of Introduction to Correctional Techniques, 24 hours of Basic Prisoner Transport, and 80 hours of Bus Operations Training. In addition, a BOP employee must undergo 40 hours of refresher training annually and must possess a commercial drivers license. Similarly, INS employees who transport prisoners must undergo a minimum of 196 hours of training, including 20 hours of driving-related training, 16 hours of first-aid training and CPR, 6

hours of training on conducting searches, 48 hours of training on the use of firearms, and 88 hours of training on the proper use of force. The USMS also requires that its employees who transport prisoners undergo rigorous training, including follow-up courses. As part of its required training regimen, the USMS requires over 100 hours of training in the areas of prisoner handling, prisoner searches, proper application and removal of restraints, tactical training in dealing with combative subjects, the proper escalation and de-escalation of force, vehicle operation, and firearms safety. The final rule does not address the minimum quality standards required for training programs, the need for in-service training, or instructor qualifications, although these are critical factors that enable Department agencies to transport prisoners safely.

3. Number of Hours an Employee May Be on Duty During a Given Time Period

This final rule sets requirements to ensure that drivers of private prisoner transport companies comply with Federal standards that limit the amount of time a commercial driver may be on duty during a given time period. Pursuant to 49 CFR 395.3, no driver of a commercial vehicle may drive more than 10 hours following 8 consecutive hours off duty. A commercial driver will be barred from driving if the driver has been on duty (regardless of whether the employee drove) for 15 hours following 8 consecutive hours off duty. If the motor vehicle carrier operates commercial vehicles every day of the week, a driver will be barred from driving if the driver has been on duty for 70 hours in any period of 8 consecutive days. If the motor vehicle carrier does not operate commercial vehicles every day of the week, a driver will be barred from driving if the driver has been on duty for 60 hours in any period of 7 consecutive days.

4. The Number of Personnel That Must Supervise Violent Prisoners

The Act directs the Department to develop minimum standards for the number of private prisoner transport personnel that must supervise violent prisoners. The Act states that these minimum standards shall not exceed a requirement of one agent for every six violent prisoners. In addition, the Act states that the Department must not impose stricter standards on private prisoner transport companies than are applicable, without exception, to the USMS, BOP, and INS. As a minimum standard, the Department believes that a one-agent-to-six-violent-prisoner ratio is the most appropriate standard to protect the public from the threat of violent prisoner escapes. Although the Act states that the Department should establish a minimum guard-to-prisoner ratio, the Act also permits the Department to give private prisoner transport companies ''appropriate discretion'' in this area. The Department sought comment from law enforcement entities, private prisoner transport industry members, and the public as to the proper level of discretion that private prisoner transport companies should have in relation to the one-guard-to-six-violent-prisoner ratio established by this regulation. The responses that the Department received on the proposed rule are discussed in the ''Comments Received'' section of this preamble.

Department Practices and Procedures

When Department of Justice components transport high-risk, maximum custody, or violent offenders, the guard-to-prisoner ratios are often significantly stricter than one guard for every six prisoners. For instance, when BOP personnel transport their maximum custody inmates on escorted trips (for medical treatment or other purposes), the BOP policy guidelines require that for each such inmate, there must be three BOP staff escorts, one of whom must be a Lieutenant. The guidelines also require that additional BOP staff ride along for the duration of the trip in a follow vehicle. Because BOP policy guidelines recommend that two BOP staff ride in the follow vehicle, the guard-to-prisoner ratio in this case is five guards to one prisoner. BOP policy guidelines require that this guard-to-prisoner ratio be maintained regardless of the number of prisoners being transported. When BOP transports prisoners who do not pose the highest security risk (regardless of the purpose of the trip), the BOP still requires that two employees ride in the van or car in which the prisoners are being transported, but without a requirement for a follow vehicle. Similarly, when USMS transports prisoners in a sedan (with a maximum capacity of three prisoners), USMS guidelines require a minimum of two armed deputies, for a minimum ratio of two guards to three prisoners. If only two prisoners are being transported by the USMS in a sedan, the two-deputy requirement still applies, yielding a ratio of one guard to one prisoner. If, for any reason, a sedan or van with a safety screen is not available, USMS guidelines require a minimum of a one-guard-to-one-prisoner ratio. Similar to the BOP policy, when the USMS transports prisoners in a van, USMS guidelines require that a minimum of two armed deputies accompany the prisoner. The resulting ratio will be at least two armed USMS deputies for 12 prisoners, yielding a ratio of one guard for six prisoners. INS guidelines require that if an INS detainee is being transported in an unsecured sedan, van, or utility vehicle by one INS officer, there is a minimum guard-to-detainee ratio of one guard for every two INS detainees. If there are more than two INS detainees being transported, there must be another INS guard present. The maximum capacity of an unsecured INS van is six detainees, resulting in a minimum possible guard-to-detainee ratio of one guard to three detainees for travel in an unsecured INS van. For secured sedans, vans, and utility vehicles, there is a minimum requirement of one officer unless the trip is over a long distance or requires stops for food or fuel. In that case, another officer would normally be required. There are instances where Department personnel must transport prisoners in buses, and in these cases, the guard-to-prisoner ratio typically diminishes. At times, this ratio may decrease to less than one guard for every six prisoners. The BOP guidelines require that three BOP staff accompany bus movements (not including the transportation of high risk offenders described above). Similarly, USMS policy mandates that a minimum of two armed deputies and a driver be used during bus transportation. Regulations of the INS require a minimum of two INS agents on each bus; however, the regulations also state that the minimum number of agents should be increased, or an escort vehicle added, if INS agents determine that the risk level of detainees warrants it. Despite any decrease in the guard-to-prisoner ratio, there are numerous Department operating procedures that are not required of private prisoner transport companies that ensure the security of the Department vehicles, officers, and prisoners. For instance, there are Department operating procedures that require buses and other vehicles to have the rear cage door locked while inmates are aboard, to be equipped with security screens that separate the driver from the prisoners, to have steel mesh over the windows and doors, to have inside door handles removed, and to be searched for contraband before and after each prisoner movement. There are extensive Department guidelines that govern the movement of prisoners to and from buses, and also govern prisoner seating arrangements once on the bus. There are additional policies and procedures for

monitoring and controlling prisoner conduct while on the bus and during stops. In addition, Department personnel have extensive training and knowledge of proven safety techniques (*e.g.*, rules that handcuff keys are to be carried on separate key rings from vehicle ignition keys). This rule will not require that any of these measures be adopted by private prisoner transport companies.

Simplified Guard-to-Prisoner Ratio for Industry

As discussed in the preceding paragraphs, the Department's guard-to-prisoner ratio varies depending upon the nature and security classification of the offender, the escape risk, and other factors. This ratio is often significantly stricter than the maximum ratio the Act permits the Department to require for private companies. The Department's ratio is also sometimes less strict than the one-to-six ratio referred to in the Act. The Department's own excellent record in transporting prisoners safely and securely with ratios lower than one guard to six prisoners is due in large measure to the extensive training that custodial and transport personnel receive (training that greatly exceeds the maximum training that the Department is permitted to require by regulation), to the carefully designed physical configuration of the transport vehicles, and to the elaborate procedures set forth in the Department's guidelines. It should be noted that this final rule does not require that private transport companies adhere to all of the Department's own guidelines regarding prisoner transport. Compliance with such guidelines would likely be very expensive for private companies. Further, a multi-tiered approach that the Department follows for conducting its own transport of prisoners would be administratively burdensome for private companies and require them to obtain information about each prisoner (such as their escape risk or security classification) that they are not at present likely to receive from the committing authority. But in the absence of mandated compliance with all of these safeguards, private prisoner transport does not involve ''comparable circumstances'' that would permit use of ratios more lenient than one to six. In an effort to comply both with the statutory requirement that the guard-to-prisoner ratio not exceed one to six and the statutory requirement that the Department not impose on private companies stricter requirements than it adheres to without exception, the Department requires that private companies transporting offenders not exceed a ratio of one agent to six violent prisoners. The Department believes that this ratio provides a security level consistent with congressional intent but without imposing an elaborate set of multi-tiered ratios, compliance with which would be complex for private entities lacking the Department's resources. The Department further believes that the circumstances under which it transports prisoners with a ratio less stringent than one to six are fully justified by the additional security precautions that the Department takes that will not be imposed upon private companies. The Department recognizes that the private prisoner transport industry may experience significant variations in the carrying capacity of vehicles used, the number of prisoners transported per trip, and the security levels of the prisoners being transported. The variation among these factors may complicate the construction of a workable guard-to-violent-offender ratio. In the proposed rule, the Department sought input from industry, law enforcement, and the public as to the factors that should guide the development of a minimum guard-to-violent-prisoner ratio. The responses that the Department received on the proposed rule are discussed in the ''Comments Received'' section of this final rule.

5. Employee Uniforms and Identification

The rule requires that private prisoner transport companies comply with certain minimum requirements for employee uniforms and identification. These standards require the wearing of a uniform with a badge or insignia that identifies to the prisoners and others that the employee is a transportation officer. While engaged in the transportation of violent prisoners, private prisoner transport company employees must wear a uniform that clearly identifies them as such. The uniforms should be readily distinguishable in color and style from uniforms worn by Department of Justice personnel who transport violent prisoners. The rule also directs that private prisoner transport companies require their employees to have identification credentials on their uniform that are visible at all times while they are engaged in the transportation of violent prisoners. The identification credentials must have a photograph of the employee that is at least one inch square, and a printed personal description of the employee, including the employee's name, the signature of the employee, and date of issuance. This standard is in accordance with Department regulations that require Department employees to carry proper identification (and a badge under certain circumstances). While Department regulations require its employees to possess proper identification at all times, under the final rule, private prisoner transport company employees will only be required to possess and display proper identification while transporting violent prisoners.

6. Uniforms for Violent Prisoners

The Act directs the Department to create standards establishing categories of violent prisoners required to wear brightly colored clothing clearly identifying them as prisoners. Congress has observed that a number of violent prisoners have escaped from private prisoner transport companies while wearing civilian clothing. An escaped violent prisoner wearing civilian clothing presents a much more serious risk to the public than an escaped prisoner who is clearly identified as a prisoner. The absence of any requirement for transported prisoners to wear distinctive and brightly colored clothing has unnecessarily hindered law enforcement officers in their search for escaped prisoners. After consulting with representatives of the law enforcement community, the private prisoner transport industry, and the ACA, the Department has determined that the category of prisoners required to wear distinctive prisoner uniforms should consist of all violent prisoners covered by the Act. Therefore, this rule requires all violent prisoners transported by private prisoner transport companies to wear distinctive clothing that clearly identifies them as prisoners. As currently defined, this category is sufficiently broad to encompass those prisoners who may constitute a threat to public safety without requiring private companies to conduct intensive individualized risk assessments for each prisoner transported. This rule will not prohibit or in any way impede the ability of private prisoner transport companies to require the wearing of uniforms by some or all other prisoners. In the proposed rule, the Department specifically requested comments from interested parties as to whether it would be beneficial to broaden or narrow the category of prisoners required to wear such clothing. The Department recognizes that there are circumstances when it may be inappropriate or impractical to transport violent prisoners in distinctive brightly colored clothing (*e.g.*, traveling on commercial aircraft, to a court appearance, or in the case of a particular physical disability).

In keeping with the intent of the Act, any exceptions to the prisoner clothing requirement will be narrow. The Department sought comment from the public, law enforcement, and industry as to what types of security or other specific considerations may warrant exceptions to the prisoner clothing requirement. Nothing in this final rule will supersede any applicable Federal Aviation Administration or Transportation Security Administration rules or regulations concerning the transportation of prisoners on commercial aircraft. The responses that the Department received on the proposed rule are discussed in the ''Comments Received'' section of this final rule.

7. Restraints To Be Used While Transporting Prisoners

The Department agencies that transport violent prisoners have similar policies governing the type of restraints that must be used on violent prisoners during transportation. Violent prisoners, and those defined by the BOP to be ''Maximum Custody'' prisoners, are to be transported in handcuffs, leg irons, and waist chains. This final rule applies this standard to private prisoner transport companies. Violent prisoners are to be transported in handcuffs, leg irons, and waist chains unless the use of all three restraints would create a serious health risk to the prisoner, or unless extenuating circumstances make the use of all three restraints impracticable. Examples of such exceptions would include the pregnancy or physical disability of a violent prisoner. In the proposed rule, the Department sought comment on additional restraint requirements. The responses received are discussed in the ''Comments Received'' section of this final rule.

8. Notification of Local Law Enforcement Prior to Stops Within Their Jurisdiction

When a prisoner transport vehicle is stopped, the risk of escape is greatest because prisoners may be boarding or exiting the vehicle and guards may be distracted while getting food, fueling the vehicle, or attending to medical or other emergencies. In the Act, Congress found that the private prisoner transport process can last for weeks as violent prisoners are dropped off and picked up at a network of hubs nationwide. Because each stop involves a potentially high security risk, Congress has imposed a requirement that when transporting violent prisoners, private prisoner transport companies are to notify local law enforcement officials 24 hours prior to a scheduled stop in their jurisdiction. For the purposes of this rule, a ''scheduled stop'' is defined as a predetermined stop at a State, local, or private correctional facility for the purpose of loading or unloading prisoners or using such facilities for overnight, meal, or restroom breaks. Scheduled stops do not include routine fuel stops or emergency stops. Notice is to be given to law enforcement officials prior to these scheduled stops to ensure that the risk of a prisoner escaping is as small as possible. There is no comparable requirement for Department agencies to provide advance notice of scheduled stops because the transporting agency is a law enforcement entity. Any emergency or other disturbance may be instantaneously reported to other law enforcement entities through the Emergency Alert System that links all BOP buses with the central office. There is no need for BOP buses to relate their location to local law enforcement because the BOP central office is able to locate the bus via the Global Positioning System that is installed on each BOP bus. The rule does not require that the use of specific technological equipment be required of private prisoner transport companies, such as the installation of a satellite tracking system that is linked to law enforcement. However, the rule requires that notice of scheduled stops be given to local law enforcement 24 hours prior to the stop.

9. Immediate Notification of Law Enforcement in the Event of an Escape

In the event of the escape of a violent prisoner, the private prisoner transport company must immediately notify appropriate law enforcement officials in the jurisdiction where the escape occurred, and also contact the governmental entity or the privately run incarceration facility that contracted with the transport company. Private prisoner transport companies should be sufficiently equipped to provide immediate notification to law enforcement in the event of a prisoner escape. Law enforcement officials must receive notification no later than 15 minutes after an escape is detected unless the company can demonstrate that extenuating circumstances necessitated a longer delay. Congress imposed this requirement because there was at least one occasion when a violent prisoner's escape from a private transport company was not reported to law enforcement until hours after the escape was detected. Such a delay placed the public at risk and irreparably harmed the ability of law enforcement to secure the area, establish roadblocks, conduct intensive searches in the vicinity, notify the public about the possibility of danger, and identify relevant witnesses who could have aided in the capture of the prisoner. All Department agencies that transport violent offenders have guidelines that require providing notice to other law enforcement agencies in the event of a prisoner escape during transit. The USMS regulations require that prisoner escapes and attempted escapes immediately be reported to the United States Marshals Communications Center and the U.S. Marshal, Chief Deputy U.S. Marshal, or Supervisory Deputy U.S. Marshal. The United States Marshals Communications Center then notifies the Investigative Services Division and the Prisoner Services Division of the USMS. Similarly, in the event of a prisoner escape from a BOP vehicle, the BOP is required to contact the USMS and the nearest BOP institution, which then begin notifications up the chain of command as necessary. State and local law enforcement will also typically be contacted. Department agencies have adopted a uniform rule in the event of a prisoner escape that the first priority is to secure the remaining prisoners and transport them to their final destination. Under no circumstances will the supervision of the other inmates be relaxed in order to pursue an escaping inmate.

10. Safety of Violent Prisoners

Congress has determined that private prisoner transport companies must provide standards of safety for violent prisoners in accordance with applicable Federal and State law. Department agencies have implemented extensive requirements to ensure the safety of violent prisoners who are transported. In addition to the protections provided by existing State and Federal laws, the Department requires that private prisoner transport companies adopt some of the safety measures that Department agencies have adopted including: requiring safety equipment on buses (including first-aid kits); inspection and maintenance of vehicles; requirements for communications systems on vehicles; prohibitions on any form of tobacco use in vehicles; and requirements that prisoners be searched and restrained in a professional, systematic, methodical, and consistent manner. Similarly, Department agencies engaged in prisoner transport have procedures to conduct searches of vehicles and prisoners as needed to ensure that no contraband or weapons are brought onto the vehicle. To protect the safety of prisoners, Department personnel are rigorously trained in the

proper use of firearms and the appropriate use of force. Also, to protect prisoners, appropriate forms and records must be filed prior to the use of specialized restraints on a prisoner and after a strip search that occurs for reasons other than receipt of a new prisoner (this report documents the identity of the prisoner searched, date, place, time, and duration of the search, reason for the search, names of those present, and a description of any weapons, evidence, or contraband found).

B. Discussion of Various Comments Received in Response to the Proposed Requirements Covering Private Prisoner Transport

1. Background Checks and Drug Testing for Potential Employees

Several transport companies suggested that since they already conduct National Crime Information Center (NCIC) background checks on employees, it is unreasonable to require each company to conduct additional background checks to comply with the Act. They also requested that the rule allow for a discretionary period pending the background check so that employers may begin hiring and training potential employees.

The Department recognizes the need for transport companies to hire and train employees in a timely manner. However, the Act requires potential employees to pass a preliminary fingerprint-based criminal background check *prior* to employment, and these regulations conform to the Act. Therefore, it would be premature and unnecessary for companies to proceed with hiring and training employees prior to knowing the results of the background check. Further, the fact that at least one commenting private company already conducts NCIC background checks does not relieve that company or other transport companies from the responsibility to conduct the background checks required by the Act.

One commenter suggested that language be included in the final rule to address situations where a private prisoner transport company contracts directly with a privately run incarceration facility rather than a governmental entity. The Department has adopted this comment and clarified the final rule on this point.

2. Length and Type of Employee Training

There was large support in favor of a rule requiring 100 hours of pre-service training. Additionally, there were some requests to require that companies (1) obtain commercial drivers licenses for uniformed employees, and (2) complete an advanced first aid course for uniformed employees.

The Department has no objection to private companies requiring that their drivers have commercial drivers licenses. However, the Act does not require commercial licenses and the Department does not believe it is necessary to achieving the purposes of the Act to impose a driving qualification requirement beyond that which was specified in the Act (*i.e.*, that defensive driving be included in the 100 hours of pre-service training).

A commenter asked for an exception from the pre-service requirements for employees who have graduated from a recognized law enforcement academy.

The Department understands that law enforcement academies provide much of the basic training for most law enforcement officers, and this training is similar in nature to the training required under the 100 hours of pre-service training requirement. However, the Act does not make any exception from its training requirement for individuals who may have been trained at law enforcement academies as law enforcement officers. The focus of the pre-service training prescribed by the Act is on the transportation of prisoners; a focus which might be different from that of law enforcement academies. Therefore, it is necessary to require that uniformed officers undergo 100 hours of pre-service training before they begin transporting prisoners.

3. Number of Hours an Employee May Be on Duty During a Given Time Period

One commenter requested that the Department adjust the 10-hour driving limitation to 12 hours. Further, some companies disagreed with the hours-on-duty requirement asserting that most delays occur while waiting to pick up prisoners at the detention facilities.

Pursuant to regulations of the Department of Transportation (DOT), Federal Motor Carrier Safety Administration at 49 CFR 395.3, no driver may continue to drive more than 10 hours following 8 consecutive hours off duty. The Act requires that the implementing rules shall not be more stringent than the current applicable rules and regulations concerning hours-on-duty. In promulgating this rule, the Department defers to the expertise of DOT regarding the maximum amount of time that drivers should continue to drive. Accordingly, the 10 hours following 8 consecutive hours off duty requirement set forth in DOT's regulations is being used in this rule. In addition, DOT's regulations already take into account waiting periods, such as those referenced by some commenters, by distinguishing between driving time and waiting time. Should a delay occur in picking up a prisoner, the time the private transport company employee waits will count toward the 15 hour on-duty limitation, not the 10 hour driving limitation. The Department does not believe there is sufficient justification for deviating from DOT's regulations.

4. The Number of Personnel That Must Supervise Violent Prisoners

One commenter claimed that the guard-to-prisoner ratio is inadequate at one to six and took issue with the Department's hesitancy to impose multi-tiered ratios because ''compliance * * * would be complex for private entities lacking the Department's resources.'' (66 FR 64938). Specifically, the commenter believed that the Act did not prohibit establishing a ratio of one to six, with an additional provision that there should never be less than two guards on duty at one time. The Department declines to adopt the commenter's suggestion that these regulations require a minimum of two guards because section 4(b)(4) of the Act requires that the ratio ''shall not exceed a requirement of 1 agent for every 6 violent prisoners'' and requiring a minimum of two guards would, under some circumstances, exceed the statutory maximum ratio. Another commenter requested that the ratio requirement be changed when transporting prisoners by bus to a 1 to 8 ratio. Another commenter also pointed out that federal law enforcement agencies' ratios are less strict for violent prisoner transport and that private industry standards should be the same as federal law enforcement agencies. As discussed more fully in the **SUPPLEMENTARY INFORMATION** portion of the proposed rule, the Department considered a range of options regarding the guard-to-prisoner ratio. Compliance with such guidelines would likely be burdensome and require stricter standards than the Department adheres to without exception. Although, sometimes, the Department's ratio is less strict than the one-to-six ratio referred to in the Act, the Department's own excellent record in transporting prisoners safely and securely with ratios lower than one guard to six prisoners is due in large measure to the extensive training that custodial and transport personnel receive (training that greatly exceeds the maximum training that the Department is permitted to require by regulation), to the carefully designed physical configuration of the transport vehicles, and to the elaborate

procedures set forth in the Department's guidelines.

Further, the Department continues to be of the opinion that a multi-tiered approach that the Department follows for conducting its own transport of prisoners would be administratively burdensome for private companies and require them to obtain information about each prisoner (such as their escape risk or security classification) that they are not at present likely to receive from the committing authority.

5. Employee Uniforms and Identification

One commenter pointed out that since there have been many impersonations of officers in illegitimate uniforms, uniforms should clearly state the name of the transport company, and not imply they are ''sworn peace officers.''

The rule requires that the uniforms of private prisoner transport company employees be readily distinguishable in color and style from uniforms worn by Department of Justice personnel who transport violent prisoners. Many State and local jurisdictions have parallel requirements that prohibit private security services and others from wearing uniforms too similar to those worn by State and local law enforcement officers. The Department does not believe that changes to the final rule that would impose additional requirements on private prisoner transport companies regarding the uniforms their employees wear are warranted.

Another commenter disagreed with the requirement to display personal information (name badges) on uniforms since prisoners then have access to the personal information of the employees. Employees already carry identification cards and can show their credentials to the appropriate personnel during transportation.

The rule only requires that the identification cards display a one inch square employee photograph, the employee's name, signature, description, and date of issuance. No personal information such as the employee's address, phone number, or social security number appear on the identification. Inclusion of the name on the front of the identification provides a simple means for prisoners and the general public who come in contact with the employees to identify them without providing excessive personal information.

6. Uniforms for Violent Prisoners

Several commenters pointed out that climate was a large factor during transportation and that uniforms should adapt to the climate encountered during transportation (*e.g.*, temperature, snow, rain, wind chill, etc.).

There is no reason why transporting companies cannot provide prisoners with appropriate clothing for varying climates as long as the clothing provided is consistent with the Act (brightly colored and clearly identifying them as prisoners).

One commenter requested that the uniform requirement be waived during neighboring county transportation, since changing in and out of identifiable uniforms may take longer than the actual transportation.

Since the intent of the Act requires exceptions to the clothing requirement to remain relatively narrow, the Department believes it would be contrary to the intent of the Act to waive the requirement that uniforms be worn during short distance or county-to-county transfers.

Another commenter requested that law enforcement agencies determine who violent prisoners are for private transportation companies since they may be unable to adequately determine this on their own.

The Act and regulations define violent prisoners and the Department knows of no basis for the proposition that the companies cannot apply the definition to their charges.

Another commenter disagreed with the requirement that prisoners be required to wear identifying clothing since most law enforcement agencies do not require this until after prisoners are processed and charged formally in a jurisdiction following transportation or extradition.

Again, the intent of the Act requires exceptions to the clothing requirement to remain relatively narrow, and accordingly the Department declines to modify the final rule on this point. The purpose of the Act is clearly furthered by requiring all violent prisoners to wear such clothing.

Another commenter noted that most companies already own uniforms for prisoners, and disagrees with the regulation requiring identical identifiable uniforms.

The Department has adopted this suggestion and is not including a requirement for a standardized uniform. This change allows private transport companies more flexibility to develop their own prisoner uniforms. The private companies must still follow, however, the standard of ''brightly colored clothing clearly identifying them as prisoners.''

Finally, one commenter noted that prisoners on commercial airlines should be transported in civilian clothing so as not to attract undue attention from passengers.

The Department notes that the rule already recognizes that prisoner transportation via commercial aircraft is one of the narrow exceptions to the uniform requirements.

7. Restraints To Be Used While Transporting Prisoners

Several commenters noted that prisoner restraints during transportation are uncomfortable and cause health problems. One commenter suggested removing the waist-chain during transport.

The Department believes this determination should be placed in the hands of the prisoner transport employee, in the context of a particular prisoner and the transportation circumstances, to determine whether the waist-chain is posing a health risk and could be safely removed while still providing an appropriate level of security.

One commenter requested that prisoner restraints be removed during sleeping arrangements and for eight hours every 48 hours.

The Act contains no language or requirements concerning prisoner restraint removal, and the Department believes that to require such a policy, absent specific congressional direction, might place an undue burden on private transport companies. The Department notes, however, that private transport companies must ensure the *safety* of the prisoners they transport.

8. Notification of Local Law Enforcement Prior to Stops Within Their Jurisdiction

One commenter noted that most local law enforcement agencies do not provide companies a means of housing prisoners overnight during transportation and that this problem should be addressed in the new rule.

The Act does not impose any requirements on local law enforcement to provide overnight accommodations for prisoners being transported. Accordingly, this rule imposes no such requirement.

One commenter noted that schedules change during the course of transportation and the 24-hour notice requirement is too rigid.

The Department has no discretion to adopt a different notification policy than is explicitly required by the Act, and therefore the final rule makes no change from the proposed rule on this point. The Department emphasizes that the 24-hour notification requirement was designed to protect public safety

and should not be an excessive burden on private transportation companies.

One commenter noted that ''predetermined'' stops are too general and can be manipulated. The commenter suggests that notification should be required if a ''non-predetermined'' stop exceeds five hours.

A ''scheduled stop'' is defined as a predetermined stop at a State, local, or private correctional facility for the purpose of loading or unloading prisoners or using such facilities for overnight, meal, or restroom breaks. Scheduled stops do not include routine fuel stops or emergency stops. Notice is to be given to law enforcement officials prior to these stops to ensure that the risk of a prisoner escaping is as small as possible. The Department believes this definition is sufficiently clear while allowing necessary flexibility for transport companies. However, without imposing a rigid requirement, the Department recognizes the concerns of the commenter and encourages transport companies to provide notice to law enforcement officials for non-scheduled stops that exceed a reasonable time under the circumstances.

9. Immediate Notification of Law Enforcement in the Event of an Escape

Commenters indicated a general level of support regarding immediate notification in the event of an escape.

10. Safety of Violent Prisoners

One commenter suggested that it should be mandated that all new prisoner transport vehicles be equipped with satellite tracking systems.

The Department considered this requirement during the preparation of the proposed rule. However, such a requirement was not established by the Act and the Department declined to include such a requirement because the cost associated with such a requirement outweighed the potential benefit.

Another commenter requested that: (1) Vehicles should comply with General Services Administration (GSA) fleet maintenance requirements; (2) any incident involving the use of force by an employee should be documented in a standard format and submitted to the Department; (3) in the event that any prisoner develops a serious medical condition during transportation that threatens life or limb he or she must be immediately transported to the nearest hospital or health facility; and (4) stops during transport should be made every five hours to allow prisoners to eat and use restroom facilities.

There is no language in the Act mandating that private transportation company vehicles comply with GSA standards for maintenance. Currently, State, local, and Federal protections against the use of force, as well as State and local safety and maintenance requirements, apply to private prisoner transport companies and their employees and should be adequate in order to provide for the safety of the prisoners being transported. A mandatory stop requirement every five hours is not enumerated in the Act and the Department declines to adopt such a policy. However, while not imposing a rigid requirement for periodic stops, the Department is amending this final rule to make clear the responsibility for private transport companies to take reasonable measures to insure the well being of prisoners in their custody.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is designed to have the lowest possible impact on businesses that transport violent prisoners while still protecting the safety of the public. This final rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 804, and it will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Unfunded Mandates Reform Act of 1995

By this rule, the Department is implementing the requirements of the Act, which impose minimum security and safety standards upon private companies transporting violent offenders. The Act's requirements, as implemented by these regulations, may increase the operating costs of some of these private companies. While State and local governments are the primary entities that contract with private prisoner transport companies, this final rule does not impose any direct requirements upon State or local governments or upon their law enforcement offices. The Act requires potential private company employees to undergo a background check. Federal law does not permit dissemination of criminal history records to private employers for screening unless statutorily authorized. Because current statutory law does not grant private entities the authority to request Federal criminal history records, the private prisoner transport companies must arrange to do so with the contracting State or local government. Therefore, to effectuate Congress' intent, this rule suggests private prisoner transport companies arrange with the State or local law enforcement agency with which they are contracting to obtain a fingerprint-based background check of their employees or potential employees. Local law enforcement agencies routinely provide fingerprinting services for various public purposes (*e.g.*, teacher applicants and bar examinations). If a governmental agency wishes to contract its prisoner transport obligations out to a private company, it will need to make arrangements for submitting the applicant's fingerprints to the FBI to conduct a criminal history background check on the applicant. The governmental agency submitting the fingerprints would incur the initial financial responsibility associated with these applications. The cost of the background check is determined by individual State procedure, not Federal procedure, and thus will vary from State to State. The Department has been informed that such application fees range from $14 to $95. However, even assuming the highest fee, the Department does not anticipate that this requirement will have a significant financial affect on State or local entities. Because of Federal limitations upon dissemination of background information, the Department does not believe that there are other viable options that would allow private companies to meet the background investigation requirement. The Department has no evidence to indicate how much of any possible cost increases upon private businesses—from mandatory background checks or any other requirements imposed by this rule—will be passed along as price increases to the State and local jurisdictions contracting with them. However, because of the relatively small number of private prisoner transport companies and the number of people employed by these companies, the Department believes that this rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments.

Executive Order 12866

The Department has reviewed this rule in light of Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this rule is a ''significant regulatory action'' under Executive Order 12866,

section 3(f), Regulatory Planning and Review, and, accordingly, this rule has been reviewed by the Office of Management and Budget.

In particular, the Department has assessed both the costs and benefits of this rule as required by Executive Order 12866, section 1(b)(6), and has made a reasoned determination that the benefits of this regulation justify its costs. Briefly, that assessment is as follows:

The costs that the Department considered included the costs of the various tangible items required by the Act relative to the transport of violent prisoners (*e.g.*, handcuffs, waist chains, prisoner and guard uniforms, etc.) and the various non-tangible items (*e.g.*, the pre-employment physical required by section 97.11.) Further, provisions of the Act and of these regulations impose what might be collectively described as business practices requirements. Examples are the provisions at section 97.11 (requiring a pre-employment interview), at section 97.13 (establishing maximum driving time), and at section 97.14 (establishing a guard-to-prisoner ratio).

The overriding purpose of the Act and of these regulations is to protect the public safety and welfare by preventing the escape of violent prisoners being transported by private companies or, in the event of an escape, to make a prompt re-capture more likely. Escaped violent prisoners can pose a serious danger to the lives and physical well being of individuals and of law enforcement officers and can be a risk to property (such as automobiles) stolen by them to facilitate their escape. Balanced against the costs to the public of death, personal injury, or property damage likely to result from escaped violent prisoners and the resources expended by State and local law enforcement in the re-capture of such prisoners, the burdens imposed by these regulations appear to the Department to be justified by the benefits.

Executive Order 13132

The rule only covers the business practices of private companies. This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b) of Executive Order 12988, Civil Justice Reform.

Paperwork Reduction Act

This rule imposes no new information collection requirements.

Final Regulatory Flexibility Act Analysis

The Department drafted this rule in a way to minimize its impact on small businesses while meeting its intended objectives. At several places in the proposed rule, the Department specifically requested information from affected entities. This information was requested, in part, to assist the Department in determining the nature and extent of the impact the final rule will have on affected entities. Although the Department received some comments, the information it received was not sufficiently detailed to allow it to state with certainty that this rule, if promulgated, will not have the effect on small businesses of the type described in 5 U.S.C.§ 605. Accordingly, the Department has prepared the following final Regulatory Flexibility Act analysis in accordance with 5 U.S.C. § 603.

A. Need For and Objectives of This Final Rule

This final rule will implement the Act, which requires the Attorney General to establish regulations imposing minimum safety and security standards on private companies engaged in transporting violent prisoners for State and local jurisdictions. The Act reflects Congress' concerns about the growing number of State and local jurisdictions that are utilizing the services of private companies as an alternative to sworn law enforcement officers when transporting violent prisoners. Congress found that violent prisoners have escaped from private transport companies and that these escapes have led to further crimes committed by the escaped prisoners as well as significant expenditures by law enforcement units attempting to capture the escapees. As a result of these findings, Congress determined that it was necessary to regulate the private prisoner transport industry in order to enhance public safety. Congress required that the Department consult with the ACA and the private prisoner transport industry in promulgating these regulations. Details concerning these consultations are set forth in the proposed rule. 66 FR 64934, 64941.

B. Description and Estimates of the Number of Small Entities Affected by This Final Rule

A ''small business'' is defined by the Regulatory Flexibility Act (RFA) to be the same as a ''small business concern'' under the Small Business Act (''SBA''), 15 U.S.C. § 32. Under the SBA, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA [1]. As the demand for transporting prisoners increases, local and State governments find themselves unable to handle all their transportation needs. Therefore, these governmental entities enter into contracts with private companies to provide for the transportation of their violent prisoners.

Based upon the information available to the Department at present, there appear to be two distinct groups of businesses in the private prisoner transport industry: larger companies that contract with various jurisdictions nationwide, and smaller entities often made up of a few individuals who provide transportation for law enforcement departments on an as-needed basis. Both groups of private transport companies would be regulated by this rule and both fall under the definition of a ''small business'' pursuant to the RFA. The discussion in this section will first focus on the larger companies involved in transporting violent prisoners and then examine issues specific to the smaller companies.

1. Larger Private Prisoner Transport Companies

In passing the Act, Congress specifically called upon the Attorney General to consult with the ACA and the private prisoner transport industry. During these consultations, the Department learned that there are approximately 10 to 12 larger private prisoner transport companies currently operating in the United States. However, there is no public or private entity that monitors when a private prisoner transport business enters or exits the industry. Therefore, it is difficult to accurately estimate the number of industry participants. The Department has drafted this rule to have the minimum possible impact on these businesses while still complying with the intent of the Act. During the Department's consultations, it was informed that many of the minimum standards contained in this rule are

[1] See 5 U.S.C. § 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. § 632).

already followed by the larger companies. In some instances, the larger industry participants have actually adopted more stringent internal standards than those that would be imposed by the rule. Where the rule requires companies to implement a practice not currently followed, industry opinion was taken into consideration so as to impose no greater burden than necessary.

2. Smaller Entities Engaged in the Transport of Violent Prisoners

In addition to the larger private companies that transport prisoners, the Department believes that there is a large number of smaller entities that contract with State and local authorities to transport prisoners. Although the Department does not have an exact number of smaller companies, the ACA and industry leaders estimated that 500 such entities may exist. The Department was informed that these entities are often composed of merely one or two people who enter into contracts with sheriffs' offices on an as-needed basis. It is therefore difficult to address the impact that the regulation would have on the smaller participants in the industry without knowing approximately how many of these smaller entities transport violent prisoners (and therefore would be regulated) or what their current safety and security practices are. However, the Department is concerned that these smaller companies will experience the greatest impact as a result of these regulations. For example, a minimum standard that imposes a ratio of at least one guard for every six violent prisoners might be a greater burden to a smaller entity that lacks the personnel resources of a larger company. Similarly, the need to possess a sufficient amount of specialized equipment, as required by these regulations, could create a greater economic burden on smaller entities.

3. Impact of These Regulations on Small Governmental Entities

In section 3(2) of the Act, Congress specifically exempted from the minimum standards any Federal, State, or local governmental entity engaged in the transport of violent prisoners. The rule does not regulate these entities. However, the Department is cognizant of the possibility that these regulations may place a burden on small governmental entities that contract with private prisoner transport companies. The Department therefore consulted with the National Sheriffs' Association and the American Jail Association, as well as representatives from local police departments, to gain a better understanding of the impact this rule will have on their operations. In addition, the Department requested comments from these entities in the proposed rule and received a comment from the National Sheriffs' Association, which indicated its full support for the regulations as proposed.

C. Specific Requirements Imposed That Would Impact Private Companies

1. Standards Requiring the Use of Specialized Equipment

Some of the minimum standards established by this rule might require private companies to purchase various pieces of equipment, thereby causing an increase in expenditures. The standards regarding mandatory restraints, uniforms for agents, identification credentials for agents, and uniforms for violent prisoners fall into this category. By imposing these standards, companies that are not already in possession of these items, or not in possession of a sufficient quantity, would have to purchase them in order to satisfy the requirements of the regulations. However, after consulting with representatives from the industry, the Department believes that the rule will not have a significant economic impact on the larger entities in the private prisoner transport industry. With the exception of prisoner uniforms, all companies consulted indicated that they currently require the use of all equipment specified in this rule. The companies currently use hand-cuffs, leg chains, and waist chains, and all agents are issued uniforms and possess credentials. Therefore, this rule will not propose any new standards that require extra expenditures. Indeed, the private companies consulted by the Department indicated that, in many instances, they require more equipment than the rule requires. For example, many of the companies require ''black boxes'' on their restraints in order to prevent a prisoner from picking the lock. In addition, many of the companies require their agents to have Global Positioning Systems in their transport vehicles, a feature that goes well beyond the standards required by this rule. The larger companies in the industry do not currently require prisoner uniforms for all violent prisoners. This rule implements a mandatory provision of the Act that requires violent prisoners to be transported in brightly colored clothing that clearly identifies the wearer as a violent prisoner. Because there is no current policy on prisoner attire, this standard would require companies to invest in a sufficient number of prisoner uniforms. Since the Department received no responses to its request in the proposed rule for comments on the advantages of a standardized uniform, the Department does not establish a standardized uniform in this final rule.

2. Training

This rule requires private companies to train their employees in six enumerated areas for a minimum of 100 total hours of training before the employee may transport violent prisoners. This standard might require private companies to incur the cost of training where their current practices fail to meet the standard. Companies would need to engage qualified instructors with the ability to properly train personnel. However, all of the companies consulted by the Department currently have training procedures in place, many of which are more extensive than those required by the proposed rule. Most of the companies indicated that they require firearms training equivalent to the training received by law enforcement officers. In addition, all of the companies consulted require their personnel to undergo follow-up training during the course of employment. It is therefore unlikely that the new training standards will have a significant impact on the larger industry participants.

3. Personnel

The rule requires a minimum ratio of one guard for every six violent prisoners during transport. It is possible that this standard would require companies to increase their personnel in order to meet the mandated ratio. However, most of the larger companies from which the Department received comments and other information indicated that they already impose minimum guard-to-prisoner ratios, all of which are more stringent than the one established in this rule.

4. Other Standards Imposed on Companies

Many of the minimum standards in this rule will place affirmative duties on private prisoner transport companies. The standards dealing with pre-employment background checks and drug testing, notification of local law enforcement 24 hours before scheduled stops, and immediate notification of law enforcement should an escape occur all fall into this category. Of these, only the first standard regarding conducting background checks and drug testing carries with it the possibility of significantly increased expenditures. While the notification requirements in this rule do place an affirmative duty on

the companies, they do not impose any significant economic burden on the companies. For example, § 97.20(b) requires that vehicles be equipped with a communications system capable of immediately notifying officials of an escape. This requirement could be met by something as simple as a cellular telephone. However, the Department acknowledges that not all areas have cell phone service, and therefore companies may be forced to use a more expensive alternative in those areas.

5. Impact on Smaller Entities

The Department does not have any specific information about how much of an economic impact this rule might have on the smaller industry participants in the foregoing areas: specialized equipment, training, personnel, background checking, and drug testing. However, it is reasonable to assume some aspects of this rule may have a proportionately larger economic impact upon small entities. For example, this may be the case with respect to equipment purchases where, typically, the larger the quantity purchased, the lower the per unit cost becomes. Given the inexpensive nature of handcuffs, leg irons, and waist chains, however, the additional cost burden should not be significant, especially because private prisoner transport companies are likely already to possess this equipment. With respect to the training requirements, there may be a greater impact on a small prisoner transport entity that might have only one or two employees. Such an entity might temporarily have to suspend operations while its agents undergo training. On the other hand, a larger entity with more employees might be able to continue operations while its employees rotate through training. Similarly, it might be easier for larger entities to meet the minimum guard-to-prisoner ratio than it would be for smaller entities. It should be stressed, however, that in promulgating these regulations, the Department is merely implementing the requirements of the Act and that it has attempted to do so with the least economic impact upon any entity, large or small.

D. Reporting and Recordkeeping Requirements

This rule does not impose any additional reporting or recordkeeping requirements on private prisoner transport companies or on the State and local entities that contract with them.

E. Issues Raised and Alternatives Suggested

1. Issues Raised

While consulting with representatives of the larger companies, the Department was apprised of an issue concerning the impact that this rule would have on sheriffs' departments that employ private companies to transport violent prisoners. According to information provided to the Department, many of the local law enforcement offices across the nation employ smaller entities to transport prisoners, not the major companies, when the need arises. The Department, however, cannot exempt these smaller entities from the standards because they clearly fall into the definition of ''private prisoner transport company'' provided by Congress in the Act. It is important to note that this rule does not impose any minimum standards on governmental entities nor on their employees engaged in official conduct. However, the Department acknowledges the possibility that these entities may be indirectly affected in contracting with private companies.

2. Alternatives Suggested

An alternative suggestion was made during a consultation meeting between the Department and industry representatives concerning whether the Department should provide more guidance as to the quality of training required by this proposed rule. It was suggested that an association, such as the ACA, should develop an accredited training program and that any final rule should require private companies to receive accreditation from such a specified program. However, under constitutional delegation principles, the Department would need to approve the standards recommended by the private entity and such standards would be subject to notice and comment. Therefore, while the Department believes that this suggestion is worth further consideration, the Department declines at this time to impose any requirements regarding the quality of training. A second alternative that was suggested pertained to the requirement that private companies notify local law enforcement when traveling through a jurisdiction. Initially, the Department intended to require 24-hour advance notification to local law enforcement of any scheduled stop within a jurisdiction, with ''scheduled stop'' broadly defined. However, it was suggested during the Department's consultations with law enforcement and industry leaders that the definition of ''scheduled stop'' should be more narrowly defined. Law enforcement groups and industry leaders agreed that if a transport company had to provide notification for any stop, including for such things as refueling, eating, and bathroom trips, the notification requirement could pose a security threat. Therefore, the Department has construed more narrowly the definition of ''scheduled stop'' so that the regulations apply only to predetermined stops at State, local, or private correctional facilities for the purpose of loading or unloading prisoners, or using such facilities for overnight, meal, or restroom breaks. The Department believes such a definition is consistent with Congress' intent in using that phrase and its meaning under the Act. A third alternative was suggested that would have delayed the implementation and enforcement of these provisions to allow smaller entities a longer period in which to comply with the new regulations. The Act provides no authority for delayed implementation or delayed enforcement of the new regulations. It is the Department's view that public safety would be most effectively protected if these minimum safety and security standards are applied to all private prisoner transportation companies equally, without regard to the size of the company.

F. Conclusion

The Department believes that, given the mandatory nature of the Act, this rule meets its stated objectives while reducing as much as possible the burden imposed on private companies engaged in the private transport of violent prisoners. As statutorily required, the Department consulted with industry leaders and the ACA in developing this rule. The Department took into account their concerns, as well as the concerns of law enforcement representatives, in drafting the rule. The Department intends to maintain an on-going dialogue with the affected industry and law enforcement entities.

List of Subjects in 28 CFR Part 97

Business and industry, Penalties, Prisoners, Transportation.

Accordingly, for the reasons set forth in the preamble, part 97 of chapter I of Title 28 of the Code of Federal Regulations is added to read as follows:

PART 97—STANDARDS FOR PRIVATE ENTITIES PROVIDING PRISONER OR DETAINEE SERVICES

Sec.
97.1 Purpose.
97.2 Definitions.
97.11 Pre-employment screening.
97.12 Employee training.

97.13 Maximum driving time.
97.14 Guard-to-prisoner ratio.
97.15 Employee uniforms and identification.
97.16 Clothing requirements for transported violent prisoners.
97.17 Mandatory restraints to be used while transporting violent prisoners.
97.18 Notification of local law enforcement prior to scheduled stops.
97.19 Immediate notification of local law enforcement in the event of an escape.
97.20 Standards to ensure the safety of violent prisoners during transport.
97.22 No pre-emption of federal, State, or local laws or regulations.
97.24 No civil defense created.
97.30 Enforcement.

Authority: Pub. L. 106–560, 114 Stat. 2784 (42 U.S.C. 13726b).

§ 97.1 Purpose.

This part implements the provisions of The Interstate Transportation of Dangerous Criminals Act of 2000, Public Law 106–560, 114 Stat. 2784 (42 U.S.C. 13726b) (enacted December 21, 2000) (''the Act''), to provide minimum security and safety standards for private companies that transport violent prisoners on behalf of State and local jurisdictions.

§ 97.2 Definitions.

(a) *Crime of violence.* The term ''crime of violence'' has the same meaning as in section 924(c)(3) of title 18, United States Code. Section 924(c)(3) states that the term crime of violence means an offense that is a felony and has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(b) *Private prisoner transport company.* The term ''private prisoner transport company'' (''company'') means any entity, other than the United States, a State, or an inferior political subdivision of a State, that engages in the business of transporting for compensation individuals committed to the custody of any State or of an inferior political subdivision of a State, or any attempt thereof.

(c) *Violent prisoner.* The term ''violent prisoner'' means any individual in the custody of a State or an inferior political subdivision of a State who has previously been convicted of or is currently charged with a crime of violence or any similar statute of a State or the inferior political subdivisions of a State, or any attempt thereof.

§ 97.11 Pre-employment screening.

Private prisoner transport companies must adopt pre-employment screening measures for all potential employees. The pre-employment screening measures must include a background check and a test for use of controlled substances. The failure of a potential employee to pass either screening measure will act as a bar to employment.

(a) *Background checks must include:*

(1) A fingerprint-based criminal background check that disqualifies persons with either a prior felony conviction or a State or Federal conviction for a misdemeanor crime of domestic violence as defined in 18 U.S.C. 921;

(2) A Credit Report check;

(3) A physical examination; and

(4) A personal interview.

(b) *Testing for controlled substances.* (1) Pre-employment testing for controlled substances must be in accordance with applicable State law.

(2) In the event that there is no applicable State law, pre-employment testing for controlled substances must be in accordance with the provisions of Department of Transportation regulations at 49 CFR 382.301 which will apply regardless of whether a private prisoner transport company is covered by Department of Transportation regulations.

(c) The criminal background check references in paragraph (a)(1) of this section may not be submitted directly to the FBI or any other Federal agency. The private prisoner transport companies must arrange the procedures for accomplishing the criminal background checks with their contracting governmental agencies. In the event that the private prisoner transport company is contracting with a privately run incarceration facility, and not directly with a governmental entity, the private prisoner transport company will have to make arrangements through the private incarceration facility to have the checks completed by the governmental entity ultimately requesting the transport.

§ 97.12 Employee training.

Private prisoner transport companies must require the completion of a minimum of 100 hours of employee training before an employee may transport violent prisoners. Training must include instruction in each of these six areas:

(a) Use of restraints;

(b) Searches of prisoners;

(c) Use of force, including use of appropriate weapons and firearms;

(d) Cardiopulmonary resuscitation (CPR);

(e) Map reading; and

(f) Defensive driving.

§ 97.13 Maximum driving time.

Companies covered under this part must adhere to the maximum driving time provisions applicable to commercial motor vehicle operators, as set forth in Department of Transportation regulations at 49 CFR 395.3 which will apply regardless of whether a private prisoner transport company is covered by Department of Transportation regulations.

§ 97.14 Guard-to-prisoner ratio.

Companies covered under this part must adhere to certain minimum standards with respect to the number of employees required to monitor violent prisoners during transportation. Private prisoner transport companies must ensure that at least one guard be on duty for every six violent prisoners transported. This requirement does not preclude a contracting entity from establishing more stringent guard-to-prisoner ratios.

§ 97.15 Employee uniforms and identification.

(a) *Employee uniforms.* Uniforms used by private prisoner transport companies must meet the following requirements:

(1) Uniforms must be readily distinguishable in style and color from official uniforms worn by United States Department of Justice employees who transport violent offenders;

(2) Uniforms must prominently feature a badge or insignia that identifies the employee as a prisoner transportation employee; and

(3) Uniforms must be worn at all times while the employee is engaged in the transportation of violent prisoners.

(b) *Employee identification.* Identification utilized by private prisoner transport companies must meet the following requirements:

(1) The identification credentials must clearly identify the employee as a transportation employee. The credentials must have a photograph of the employee that is at least one inch square, a printed personal description of the employee including the employee's name, the signature of the employee, and date of issuance; and

(2) The employee must display proper identification credentials on his or her uniform and ensure that the identification is visible at all times during the transportation of violent prisoners.

§ 97.16 Clothing requirements for transported violent prisoners.

Companies covered under this part must ensure that all violent prisoners they transport are clothed in brightly colored clothing that clearly identifies them as violent prisoners, unless security or other specific considerations make such a requirement inappropriate.

§ 97.17 Mandatory restraints to be used while transporting violent prisoners.

Companies covered under this part must, at a minimum, require that violent prisoners be transported wearing handcuffs, leg irons, and waist chains unless the use of all three restraints would create a serious health risk to the prisoner, or extenuating circumstances (such as pregnancy or physical disability) make the use of all three restraints impracticable.

§ 97.18 Notification of local law enforcement prior to scheduled stops.

When transporting violent prisoners, private prisoner transport companies are required to notify local law enforcement officials 24 hours in advance of any scheduled stops in their jurisdiction. For the purposes of this part, a scheduled stop is defined as a predetermined stop at a State, local, or private correctional facility for the purpose of loading or unloading prisoners or using such facilities for overnight, meal, or restroom breaks. Scheduled stops do not include routine fuel stops or emergency stops.

§ 97.19 Immediate notification of local law enforcement in the event of an escape.

Private prisoner transport companies must be sufficiently equipped to provide immediate notification to law enforcement in the event of a prisoner escape. Law enforcement officials must receive notification no later than 15 minutes after an escape is detected unless the company can demonstrate that extenuating circumstances necessitated a longer delay. In the event of the escape of a violent prisoner, a private prisoner transport company must:

(a) Ensure the safety and security of the remaining prisoners;

(b) Provide notification within 15 minutes to the appropriate State and local law enforcement officials;

(c) Provide notification as soon as practicable to the governmental entity or the privately run incarceration facility that contracted with the transport company; and

(d) Provide complete descriptions of the escapee and the circumstances surrounding the escape to State and local law enforcement officials if needed.

§ 97.20 Standards to ensure the safety of violent prisoners during transport.

Companies covered under this section must comply with applicable State and federal laws that govern the safety of violent prisoners during transport. In addition, companies covered under this section are to ensure that:

(a) Protective measures are in place to ensure that all vehicles are safe and well-maintained;

(b) Vehicles are equipped with efficient communications systems that are capable of immediately notifying State and local law enforcement officials in the event of a prisoner escape;

(c) Policies, practices, and procedures are in effect to ensure the health and physical safety of the prisoners during transport, including a first-aid kit and employees who are qualified to dispense medications and administer CPR and emergency first-aid;

(d) Policies, practices, and procedures are in effect to prohibit the mistreatment of prisoners, including prohibitions against covering a prisoner's mouth with tape, the use of excessive force, and sexual misconduct;

(e) Policies, practices, and procedures are in effect to ensure that juvenile prisoners are separated from adult prisoners during transportation, where practicable;

(f) Policies, practices, and procedures are in effect to ensure that female prisoners are separated from male prisoners during transportation, where practicable;

(g) Policies, practices, and procedures are in effect to ensure that female guards are on duty to supervise the transportation of female violent prisoners, where practicable;

(h) Staff are well trained in the handling and restraint of prisoners, including the proper use of firearms and other restraint devices, and have received specialized training in the area of sexual harassment; and

(i) Private transport companies are responsible for taking reasonable measures to insure the well being of the prisoners in their custody including, but not limited to, necessary stops for restroom use and meals, proper heating and ventilation of the transport vehicle, climate-appropriate uniforms, and prohibitions on the use of tobacco, in any form, in the transport vehicle.

§ 97.22 No pre-emption of federal, State, or local laws or regulations.

The regulations in this part implement the Act and do not pre-empt any applicable federal, State, or local law that may impose additional obligations on private prisoner transport companies or otherwise regulate the transportation of violent prisoners. All federal laws and regulations governing interstate commerce will continue to apply to private prisoner transport companies including, but not limited to: federal laws regulating the possession of weapons, Federal Aviation Administration or Transportation Security Administration rules and regulations governing travel on commercial aircraft, and all applicable federal, State, or local motor carrier regulations. The regulations in this part in no way pre-empt, displace, or affect the authority of States, local governments, or other federal agencies to address these issues.

§ 97.24 No civil defense created.

The regulations in this part on private prisoner transport companies are not intended to create a defense to any civil action, whether initiated by a unit of government or any other party. Compliance with the regulations in this part is not intended to and does not establish a defense against an allegation of negligence or breach of contract. Regardless of whether a contractual agreement establishes minimum precautions, the companies affected by the regulations in this part will remain subject to the standards of care that are imposed by constitutional, statutory, and common law upon their activities (or other activities of a similarly hazardous nature).

§ 97.30 Enforcement.

Any person who is found in violation of the regulations in this part will:

(a) Be liable to the United States for a civil penalty in an amount not to exceed $10,000 for each violation;

(b) Be liable to the United States for the costs of prosecution; and

(c) Make restitution to any entity of the United States, of a State, or of an inferior political subdivision of a State, that expends funds for the purpose of apprehending any violent prisoner who escapes from a prisoner transport company as the result, in whole or in part, of a violation of the regulations in this part promulgated pursuant to the Act.

Dated: December 19, 2002.

John Ashcroft,

Attorney General.

[FR Doc. 02–32608 Filed 12–24–02; 8:45 am]

BILLING CODE 4410–BB–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 48 and 75

RIN 1219–A33

Emergency Temporary Standard; Correction

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Emergency Temporary Standard; correction.

SUMMARY: This document corrects errors that appeared in MSHA's preamble for Emergency Evacuations; Emergency Final Rule.

EFFECTIVE DATE: December 26, 2002.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director, Office of Standards, Regulations, and Variances, MSHA, (202) 693–9440.

SUPPLEMENTARY INFORMATION: On December 12, 2002, we (MSHA) published in the **Federal Register** (67 FR 76658) an Emergency Temporary Standard on Emergency Evacuations. In a separate document, the Office of the Federal Register has corrected a printing error in the regulatory text: On p. 76665, third column, next to last line of the last paragraph, the **Federal Register** has corrected ''(a)(1)'' to read ''(a)(1) through (4)''. The preamble contained errors; therefore, we are correcting the preamble to the rule as follows:

1. On p. 76659, third column, last line, change ''determined'' to ''concluded''.

2. On p. 76660, first column, 17th & 18th lines, correct ''report concluded'' to read ''team also determined''.

3. On p. 76662, first column, 8th line in second full paragraph beginning with ''Because'', correct ''(a)(1) through (3)'' to read ''(a)(1)(i) through (iii)''.

Dated: December 19, 2002.

John R. Caylor,

Deputy Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 02–32583 Filed 12–24–02; 8:45 am]

BILLING CODE 4510–43–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0276; FRL–7284–3]

Urea: Revocation of Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct Final rule.

SUMMARY: EPA is amending 40 CFR part 180 subpart D to revoke four exemptions from the requirement of a tolerance for urea because these tolerance exemptions are no longer necessary. The Agency is acting on its own initiative. This direct final rule is being published today with a companion final rule titled ''Urea: Exemption From The Requirement of A Tolerance.''

DATES: This final rule is effective on March 26, 2003 without further notice, unless EPA receives adverse comment within 30 days after publication in the **Federal Register.** If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

FOR FURTHER INFORMATION CONTACT: Treva C. Alston, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8373; e-mail address: *alston.treva@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

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

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

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

B. How Can I Get 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 OPP–2002–0276. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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/* A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html,* a beta site currently under development.

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 Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Authority

A. What is the Agency's Authority for Taking this Action?

This direct final rule is issued pursuant to section 408(e) of the Federal Food Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Proctection Act (FQPA) (21 U.S.C. 346a(e)). Section 408 of FFDCA authorizes the establishment of tolerances, exemptions from the requirement of a tolerance, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or tolerance exemption, food containing pesticide residues is considered to be unsafe and therefore, ''adulterated'' under section 402(a) of the FFDCA. If food containing

pesticide residues is found to be adulterated, the food may not be distributed in interstate commerce (21 U.S.C. 331(a) and 342 (a)).

B. Why is EPA Issuing this as a Direct Final Rule?

EPA is issuing this action as a direct final rule without prior proposal because the Agency believes that this action is not controversial and is not likely to result in any adverse comments. This action removes four exemptions from the requirement of a tolerance for the pesticide chemical, urea. These tolerance exemptions are not necessary.

III. Background

A. What Action is the Agency Taking?

In a companion final rule published in today's **Federal Register,** the Agency discussed the reasons and rationale for establishing a tolerance exemption for urea in 40 CFR 180.950. Given the establishment of this unlimited tolerance exemption, the tolerance exemptions for urea in 40 CFR 180.1001 (c), (d), and (e) and 180.1117 are no longer needed. Therefore, the Agency is removing these exemptions. No uses are lost through the removal of these tolerance exemptions. All uses are covered under the tolerance exemption established today in 40 CFR 180.950.

B. Which Tolerance Exemptions are Being Removed?

1. In 40 CFR 180.1001 (c) and (e), there are two exemptions from the requirement of a tolerance for urea. These exemptions are restricted to use as a stabilizer and inhibitor.

2. There is an exemption from the requirement of a tolerance for urea in 40 CFR 180.1001 (d). This exemption is for its use as an adjuvant/intensifer for herbicides.

3. Another exemption from the requirement of a tolerance is listed in 40 CFR 180.1117. This tolerance exemption was established for residues of urea when used as a frost protectant in or on the following raw agricultural commodities when used before harvest in the production of: Alfalfa, almonds, apples, apricots, artichokes, asparagus, avocados, beans, bell pepppers, blackberries, blueberries, broccoli, brussels sprouts, boysenberries, craneberries, canola, cantaloupes, carrots, cauliflower, casaba, celery, cherries, chili pepers, chinese cabbage (bok choy, napa), cooking peppers, corn, cotton, crenshaw, cucumbers, figs, grapefruit, grapes, honeydew melon, hops, kiwifruit, kohlrabi, lemons, lentils, lettuce, limes, macadamia nuts, musk melon, nectarines, olives, onions, oranges, peaches, pears, peanuts, peas, persian melon, pistachios, plums, potatoes, pumpkin, prunes, radish, raspberries, rice, safflower, sorghum, spinach, spinach (New Zealand), squash (winter and summer), strawberries, sugar beets, sunflower, sweet pepper, table beets, tangerines, tomatoes, walnuts, watermelon, and zucchini.

IV. Statute and Executive Order Reviews

Under Executive Order 12866, entitled *Planning and Review* (58 FR 51735, October 4, 1993), it has been determined that this direct final rule is not a ''significant regulatory action'' under section 3(f) of the Executive Order, because EPA is removing four tolerance exemptions that are no longer necessary given the publication of the companion final rule that establishes a broader tolerance exemption that will cover these four tolerance exemptions. This direct final rule is not expected to have any adverse impact and does not otherwise impose any new requirements. Since it is not significant under Executive Order 12866, it is not subject to review by the Office of Management and Budget (OMB) under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), or Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001).

This direct final rule directly regulates food processors, food handlers, and food retailers, but does not affect States, local or Tribal governments directly. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). This action will not have substantial direct effects on State or tribal governments, on the relationship between the Federal government and States or Indian tribes, or on the distribution of power and responsibilities between the Federal government and States or Indian tribes. As a result, this action does not require any action under Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), or under Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Nor does it impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

Nor does it require special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

Under section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency hereby certifies that these revocations will not have significant negative economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows. The rationale here is that we are replacing these exemptions with a broader one.

V. 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 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).

List of Subjects in 40 CFR Part 180

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

Dated: December 12, 2002.

Peter Caulkins,

Acting Director, Registration Division Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

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

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

§ 180.1001 [Amended]

2. In subpart D, § 180.1001 is amended by:

i. Removing from the table in paragraph (c) the entry for urea ''use as a stabilizer and inhibitor.''

ii. Removing from the table in paragraph (d) the entry for urea ''use as an adjuvant/intensifier for herbicides.''

iii. Removing from the table in paragraph (e) the entry for urea ''use as a stabilizer and inhibitor.''

§ 180.1117 [Removed]

3. Section 180.1117 is removed.

[FR Doc. 02–32563 Filed 12–24–02; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0277; FRL–7284–2]

Urea; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of urea when used in pesticide formulations. Ecolab, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996, requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of urea. This final rule is being published in today's **Federal Register** with a companion Direct Final Rule entitled ''Urea: Revocation of Tolerance Exemptions''

DATES: This regulation is effective December 26, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0277, must be received on or before February 24, 2003.

ADDRESSES: Written objections and hearing requests submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Treva C. Alston, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8373; e-mail address: *alston.treva@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

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

B. How Can I Get 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 OPP–2002–0277. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development.

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. Background and Statutory Findings

In the **Federal Register** of April 7, 2000 (65 FR 18324) (FRL–6499–7), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170), announcing the filing of a pesticide tolerance petition (PP 9E6028) by Ecolab, Inc., 370 N. Wabasha Street, St. Paul, MN 55102. This notice included a summary of the petition prepared by the petitioner Ecolab. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.1001 be amended by establishing an exemption from the requirement of a tolerance for residues of urea in or on raw agricultural commodities, in processed commodities, and in or on meat and meat by products of cattle, sheep, hogs, goats, horses, poultry, milk, dairy products, eggs, seafood and shellfish, and fruits and vegetables when such residues result from the use of urea as a component of a food contact surface sanitizing solution for use in food handling establishments.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption from tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable

information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *''

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

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by urea are discussed in this unit.

In the **Federal Register** of April 15, 2002 (67 FR 18197) (FRL–6860–6), the Agency published its report of the Tolerance Reassessment Decision for urea. This Report contained the hazard characterization of urea. For a complete description of the use summary, hazard characterization, exposure assessment and risk assessment findings, see the Notice of April 15, 2002. These data are considered by the Agency to be sufficient to assess the potential hazard to humans, including infants and children.

IV. Summary of Risk Assessment Findings

From the available animal studies and other data, EPA has concluded that urea exhibits a low toxicity and exposures to urea used either as an active or inert pesticide ingredient present a reasonable certainty of no harm to human health.

V. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify or revoke a tolerance, the Agency consider available information concerning the cumulative effects of a particular pesticide's residues and other substances that have a common mechanism of toxicity. Urea is a low toxicity chemical. EPA does not have, at this time, available data to determine whether urea has a common mechanism of toxicity with other subtances or how to include these pesticide chemicals in a cumulative risk assessment.

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

Based on the available data, EPA concludes that urea does not pose a dietary risk under reasonable foreseeable circumstances. Accordingly, EPA finds that there is a reasonable certainty that no harm will result to the general population, and to infants and chldren from aggregate exposure to urea. Because of the low toxicity of urea, a safety factor analysis has not been used to assess the risk. For the same reason, the tenfold safety factor for the protection of infants and children is unnecessary.

VII. Other Considerations

A. Endocrine Disruptors

FQPA requires EPA to develop a screening program to determine whether certain substances, including all pesticide chemicals (both inert and active ingredients), may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect. EPA has been working with interested stakeholeders to develop a screening and testing program as well as a priority setting scheme. As the Agency proceeds with implementation of this program, further testing of products containing urea may be required.

B. Analytical Method(s)

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. Existing Tolerances

There are four existing tolerance exemptions for urea. They are as follows: § 180.1001(c), (d), and (e); and § 180.1117. However, in today's **Federal Register**, the Agency, acting on its on initiative, published a direct final rule revoking these four tolerance exemptions as they are no longer necessary. No uses are lost by revoking the above four tolerance exemptions, as the tolerance exemption established in this rule will cover these uses and the use requested by the petitioner.

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for urea nor have any CODEX Maximum Residue Levels been established for any food crops at this time.

E. List 4A Classification

Based on its low toxicity, urea will be classified as a List 4A inert ingredient. List 4A inert ingredients are minimal risk inert ingredients. Minimal risk does not imply no risk under any circumstances. Every substance can present some risk in certain circumstances. Minimal risk is used to indicate a substance for which there is no information to indicate that there is a basis for concern. Thus, the tolerance exemption will be established in 40 CFR 180.950 which holds minimal risk chemicals instead of 40 CFR 180.1001 as requested by the petitioner, Ecolab.

VIII. Conclusions

Based on the information in the record, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues of urea. Accordingly, EPA finds that exempting urea from the requirement of a tolerance will be safe.

IX. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0277 in the subject line on the first page of your submission. All

requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 24, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

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

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov,* or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IX.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2002–0277, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov.* Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

X. Regulatory Assessment Requirements

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

alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XI. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: December 12, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.950 is amended by adding alphabetically the following ingredient to the table in paragraph (e) to read as follows.

§ 180.950 Tolerance exemptions for minimal risk active and inert ingredients.

* * * * *

(e) * * *

Chemical	CAS No.
* * * * *	
Urea	57–13–6

[FR Doc. 02–32564 Filed 12–24–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–7429–3]

RIN 2003–AA00

Regulatory Innovations: Pilot-Specific Rule for Electronic Materials in the EPA Region III Mid-Atlantic States; Hazardous Waste Management System; Modification of the Hazardous Waste Program; Cathode Ray Tubes

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: Many used cathode ray tubes (CRTs) are currently classified as characteristic hazardous wastes under the Resource Conservation and Recovery Act (RCRA). Such CRTs are therefore subject to the hazardous waste regulations of RCRA Subtitle C unless they come from a household or a conditionally exempt small quantity generator. Today EPA is taking direct final action on a revision to its hazardous waste program under RCRA to exclude used CRTs and glass removed from CRTs from the definition of ''solid waste'' in the EPA Region III Mid-Atlantic States (which include the States of Delaware, Maryland, and West Virginia, the Commonwealths of Pennsylvania and Virginia, and the District of Columbia). Additionally, the preamble to this rule clarifies when used CRTs and other used electronic equipment become a ''solid waste.'' This rule will support an ongoing e-Cycling Pilot Project of EPA Region III's Mid-Atlantic States, which is promoting reuse and recycling of electronics. EPA believes that today's direct final rule will encourage increased recycling and better management of these materials in Region III states.

EPA has proposed a similar, albeit broader, conditional exclusion for CRTs and certain other electronic materials that would be effective nationwide (June 12, 2002, 67 FR 40508–40528). EPA is promulgating this regional rule now because it believes that implementing the rule in the Region III states will produce information about the CRT conditional exclusion that will be useful to EPA as it assesses the appropriateness of adopting the RCRA exclusion nationally. EPA expects to withdraw the regional rule if and when a final national rule becomes effective.

DATES: This direct final rule is effective on February 24, 2003 without further notice, unless EPA receives adverse comment by January 27, 2003. If we receive such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments may be submitted by mail or electronically. Commenters must send an original and two copies of their comments referencing docket number III–02–OEI–01 to: Marie Holman (3EI00), U.S. EPA Region III, Office of Environmental Innovation, 1650 Arch Street, Philadelphia, PA 19103–2029 or *holman.marie@epa.gov.* Further

detailed instructions are provided in the Electronic Comment Submission section of the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For general information about the management of solid waste under RCRA, contact the RCRA/Superfund/EPCRA/UST Hotline at (800) 424–9346 (toll free) or TDD (800) 553–7672 (hearing impaired). For more detailed information on specific aspects of this rulemaking, contact Ms. Marie Holman by U.S. mail at U.S. EPA Region III (3EI00), 1650 Arch Street, Philadelphia, Pennsylvania, 19103–2029, by telephoning 215–814–5463, or by electronic mail at: *holman.marie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Does This Direct Final Rule Relate to the Proposed Pilot-Specific Rule for Electronic Materials in the EPA Region III Mid-Atlantic States; Hazardous Waste Management System; Modification of the Hazardous Waste Program; Cathode Ray Tubes?

EPA is promulgating this as a direct final rule (amending RCRA's definition of solid waste) without prior proposal because it views this as a noncontroversial submittal and anticipates no adverse comments. Also, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document entitled ''Proposed Pilot-Specific Rule for Electronic Materials in the EPA Region III Mid-Atlantic States; Hazardous Waste Management System; Modification of the Hazardous Waste Program; Cathode Ray Tubes'' that will serve as a proposed rule if adverse comments are filed. The direct final rule will be effective February 24, 2003 without further notice unless we receive adverse comment by January 27, 2003. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

B. How Can I Get Copies of Related Information?

1. Docket

EPA has established an official public docket for this action under RCRA Docket ID No. III–02-OEI–01. 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 Region III Library, 1650 Arch Street, Philadelphia, PA 19103. This Docket Facility is open from 9 a.m. through 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that you make an appointment by calling Marie Holman at 215–814–5463. You may copy a maximum of 100 pages from any file maintained at the docket at no charge. Additional copies cost $0.15 per page.

2. Access to Information

You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.* You can also review some of the supporting documents for the national proposed rule (June 12, 2002, 67 FR 40508–40528) (which supports the regional rule), in electronic format on the Internet at URL: *http:/www.epa.gov/epa/epaoswer/hazwaste/recycle/electron/crt.htm.*

You may view public comments and the supporting materials for the issues and memoranda discussed below at U.S. EPA Region III Library, 1650 Arch Street, Philadelphia, PA 19103. The library is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the you make an appointment by calling Marie Holman at 215–814–5463.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. 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 I.B.1.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically or by mail. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in I.B.2 and I.D.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *holman.marie@epa.gov,* Attention Docket ID No. III–02–OEI–01. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the

Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

ii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in I.B. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send an original and two copies of you comments referencing docket number III–02–OEI–01 to Marie Holman, Office of Environmental Innovation (3EI00), U.S. EPA, 1650 Arch Street, Philadelphia, PA 19103–2029.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. This information needs to be submitted under separate cover. Send information (original and two copies of CBI) identified as CBI only to the following address: Marie Holman, Office of Environmental Innovation (3EI00), U.S. EPA, 1650 Arch Street, Philadelphia, PA 19103–2029, Attention Docket ID No. III–02–OEI–01. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

F. Compliance Date

This direct final rule is effective on February 24, 2003 without further notice, unless EPA receives adverse comment by January 27, 2003. If we receive such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect. (Under section 3010 of RCRA, rules may take effect in less than six months if the regulated community does not need the six-month period to come into compliance. That is the case here because the rule reduces, rather than increases, the existing requirements for persons handling used CRTs and glass removed from CRTs sent for recycling. EPA believes that 60 days provides adequate time to come into compliance with the new, less burdensome labeling and other requirements contained in the rule.)

Preamble Outline

I. Legal Authority
II. List of Abbreviations and Acronyms
III. State-EPA Region III ECOS e-Cycling Project Background
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B. What is the Relationship of this Rule to the State-EPA Region III e-Cycling Pilot Project?
C. How Does this Rule Differ from the Proposed National CRT Rule?
IV. Cathode Ray Tubes
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B. What Are Cathode Ray Tubes?
C. Why Are Cathode Ray Tubes An Environmental Concern?
D. How Are Used Cathode Ray Tubes Currently Managed?
E. How Do EPA's Current Regulations Apply to CRTs and Other Electronic Materials?
F. What Are The Common Sense Initiative (CSI) Recommendations?
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A. Applicability of Rules in Authorized EPA Region III's States
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C. Interstate Transport
VI. Regulatory Requirements
A. Executive Order 12866
B. Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq.
C. Submission to Congress and the Comptroller General
D. Paperwork Reduction Act
E. Unfunded Mandates
F. Executive Order 13132
G. Executive Order 13175
H. Executive Order 13045
I. Executive Order 13211
J. National Technology Transfer and Advancement Act of 1995
K. Environmental Justice

I. Legal Authority

These regulations are promulgated under the authority of Sections 2002(a), 3001, 3002, 3004, and 3006 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), and as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6912(a), 6921, 6922, 6924, and 6926.

II. List of Abbreviations and Acronyms

CES Computers and Electronics Subcommittee
CESQG Conditionally Exempt Small Quantity Generators
CFR Code of Federal Regulations
CRT Cathode Ray Tube
CSI Common Sense Initiative
ECOS Environmental Council of States
FPD Flat Panel Display
LDR Land Disposal Restrictions
LQG Large Quantity Generator
RCRA Resource Conservation and Recovery Act
SQG Small Quantity Generator
TC Toxicity Characteristic
TCLP Toxicity Characteristic Leaching Procedure
TSDF Treatment, Storage and Disposal Facility
TV Television
WTE Waste-to-Energy

III. State-EPA Region III ECOS e-Cycling Project Background

A. What is the State-EPA Region III e-Cycling Pilot Project?

Over the past several years EPA Region III and its states have been working together to improve the management of end-of-life electronics. Representatives of original equipment manufacturers, retailers, transporters, dismantlers, and government agencies

have met to identify barriers to successful recycling of end-of-life electronics, and to propose possible solutions. Region III and the states then developed the State-EPA Region III e-Cycling Pilot Project to test different regional approaches. The purpose of the Pilot Project is to significantly increase the number of end-of-life electronics that are recycled and to determine whether the approaches being implemented in EPA Region III's states will achieve this goal.

To help achieve the increased recycling objective, the states in the Mid-Atlantic Region of EPA have agreed to work with local governments having jurisdiction over waste collection activities. Assistance to the local governmental agencies will include the development of outreach materials (such as model press releases, public service announcements, brochures, fact sheets and newspaper advertisements) to gain greater participation in the e-Cycling Pilot Project. It is anticipated that these tools and others will facilitate the collection of end-of-life electronic materials from households, small businesses, and other entities. Some states may provide seed money to local governments to assist them in starting up their collection activities. EPA has also provided funding to assist the Region III states in implementing the Pilot Project. These funds will be used to develop public education and outreach materials, collect pertinent data, and provide general support to the e-Cycling Pilot Project.

It is expected that partnerships with electronic equipment retailers, manufacturers, waste transporters and recyclers will be developed to assist in setting up the infrastructure necessary to transport and recycle these end-of-life electronic materials. For example, several retailers and manufactures already have or are planning ''take back'' programs to allow their customers to return end-of-life electronics to the place of purchase.

B. What Is the Relationship of This Rule to the State-EPA Region III e-Cycling Pilot Project?

In 2001, the States of Delaware, Maryland, and West Virginia, the Commonwealths of Pennsylvania and Virginia, and the District of Columbia (EPA Region III's states) submitted to EPA Region III's Regional Administrator a proposal for regulatory innovation entitled, ''Regulatory Exclusion for End-of-Life Electronic Materials that are Dismantled for Recovery of Useful Elements' (hereafter e-Cycling Pilot Project). This project proposal was submitted under the auspices of the 1998 Environmental Council of States (ECOS) Agreement to Pursue Regulatory Innovations, (FR May 5, 1998, 63 FR 24784–24796). EPA accepted the proposal in a Memorandum of Understanding (MOU) executed by EPA and Region III states in October, 2001. The MOU proposes a framework for managing end-of-life electronics in a way that is environmentally sound while encouraging the reuse and recycling of these materials. The MOU also recognizes the need for EPA to clarify its understanding of when these materials are ''discarded'' such that they are solid wastes.

To assist in implementing the pilot project, today EPA is promulgating a conditional exclusion from the definition of solid waste for used cathode ray tubes (CRTs) and glass removed from CRTs sent for recycling within Region III. In today's notice, the Agency is also clarifying the status of other ''end-of-life electronics'' sent for reuse and recycling under RCRA.

C. How Does This Rule Differ From the Proposed National CRT Rule?

As noted above, EPA is currently proposing a similar national rule. EPA has accelerated the regional rule because it believes that the prompt implementation of this rule in the Region III states, building on the existing Region III e-Cycling Project, will produce information about the CRT conditional exclusion that will be useful to EPA as it considers final action on the nationwide rule. EPA expects to withdraw the regional rule if and when a final national rule becomes effective.

The regional rule is narrower in scope. It only includes the conditional exclusion for used CRTs and processed CRT glass. The proposed national rule addresses mercury-containing equipment and export issues; the regional rule does not address these issues. Again, EPA expects to withdraw the regional rule if and when the final national rule becomes effective.

IV. Cathode Ray Tubes

A. What Is The Purpose of EPA's Direct Final Rule?

Technological advances in information management and communication have improved the quality of people's lives in countless ways. However, our growing use of electronic products at home and in the workplace has given us a new environmental challenge: electronics waste. Today's rule is an important step towards meeting the challenge of managing electronics waste in a way that is environmentally sound, while encouraging the reuse and recycling of these materials in EPA Region III's states.

EPA estimates that about 57 million televisions and computers are sold annually to households and businesses in the United States. Purchasers of these and other consumer electronics often do not discard older models when buying newer versions of the same products. Consumers (both business and household) frequently store their retired products. Experts agree that the average household may have between two and three television or computer units in storage. The number of units (mainly computers) stored by businesses is much greater. In total, approximately 20 to 24 million computers and televisions are added to storage each year. Over the next decade, storage is expected to increase at a faster rate because of advances in digital technology for televisions. Just as advances in computer speed and software have made older computers uneconomical to repair, newer digital broadcast standards are likely to reduce the repair and resale value of older televisions.

Recycling glass from computers and televisions is still largely a new industry. However, the number of units available for reuse or recycling is growing rapidly, and state and industry initiatives to promote recycling are increasing. EPA is eager to see this industry grow, in part because reusing and recycling these materials saves valuable natural resources and avoids their disposal in landfills and incinerators. The Agency must, of course, assure that materials under RCRA jurisdiction are managed in a way that protects human health and the environment.

EPA's Common Sense Initiative Council recommended streamlined nationwide requirements for CRT glass that is removed from computers and televisions and processed to make new CRT glass. The conditional exclusion promulgated today for ''glass-to-glass'' processing grows out of these recommendations. The Council included representatives from industry, non-governmental and community organizations, state governments, and academic institutions.

Today, the Agency is promulgating a direct final rule which will revise management requirements for used CRTs and glass removed from CRTs by creating a conditional exclusion from the definition of solid waste for these materials when they are recycled within the EPA Region III states (see 40 CFR 261.4(a)(24)). The purpose of these simplified requirements is to encourage greater reuse, recycling, and better

management of this growing waste stream, a problem particularly acute in the Region III states, while maintaining necessary environmental protection.

B. What Are Cathode Ray Tubes?

CRTs are vacuum tubes, made primarily of glass, which constitute the video display components of televisions and computer monitors. CRT sizes are typically measured from one corner; the diagonal of a CRT display generally ranges from 1 to 38 inches. Other types of CRTs include medical, automotive, oscilloscope, and appliance CRTs, which are typically 12 inches diagonal or smaller, while military and aircraft control tower CRTs may be much larger.

CRTs are built of a specialized glass that often contains lead. They consist of four major parts: a glass panel (faceplate); a shadow mask; a glass funnel; and a glass neck which houses the electron gun. The glass panel is the front of the CRT that the viewer sees when looking at a TV or computer screen. The shadow mask is a thin metal sheet with holes that is located immediately behind the glass panel. Attached to the back of the glass panel is the glass funnel. The panel and funnel are joined with the shadow mask and sealed together with a low-temperature glass frit, consisting of solder glass containing organic binders. The back end of the CRT is the glass neck that holds the electron gun. This gun produces the electrons that strike the glass panel, resulting in viewable images on the display surface. A CRT is assembled into a monitor, a unit that includes several other parts, including a plastic cabinet, electromagnetic shields, circuit boards, connectors, and cabling.

C. Why Are Cathode Ray Tubes An Environmental Concern?

Manufacturers generally use significant quantities of lead to make color cathode ray tubes. Televisions and color computer monitors contain an average of four pounds of lead (the exact amount depends on size and make). Lead is present in the panel glass, funnel, neck, and glass frit of color CRTs, with the highest concentrations usually found in the frit and funnel glass. Although the amount of lead used in some manufacturing processes of CRTs appears to be decreasing, most color CRTs contain quantities of lead sufficient to make the discarded CRT glass a hazardous waste under RCRA. Under Subtitle C of RCRA, a solid waste is a hazardous waste if it exhibits one or more of the characteristics of ignitability, corrosivity, reactivity, or toxicity in 40 CFR Part 261, Subpart C, or if it is a listed hazardous waste in Part 261, Subpart D. Of relevance here is the toxicity characteristic, 40 CFR 261.24, which classifies as a hazardous waste any solid waste containing five (5) milligrams per liter (mg/l) or more of lead when tested with EPA's toxicity characteristic leaching procedure (TCLP).

According to a study of CRTs published by the University of Florida, the average concentration of lead in leachate from colored CRT glass generated through EPA's TCLP was 22.2 mg/l. This level is considerably above the toxicity characteristic regulatory level of 5 mg/l that is used to classify lead-containing wastes as hazardous (40 CFR 261.24(b)). For monochrome CRTs, the average lead leachate concentration was 0.03 mg/l. These data appear to indicate that black and white monitors do not generally fail the TC. The faceplate also does not usually fail the TC.

Other hazardous constituents sometimes present in CRT glass are mercury, cadmium, and arsenic. However, these constituents are found in very low concentrations that are unlikely to exceed the TC concentration limits (see Characterization of Lead Leachability from Cathode Ray Tubes Using the Toxicity Characteristic Leaching Procedure, T.G. Townsend et al., University of Florida, 1999). Flat panel displays (FPDs) have emerged on the electronics market as a replacement for CRTs in certain applications, primarily because FPDs are lighter, smaller, and more portable, and they consume less energy during operation. FPDs generally contain no lead, but may contain encapsulated mercury in small amounts.

D. How Are Used Cathode Ray Tubes Currently Managed?

1. Reuse

Many used computers are resold or donated so that they can be used again, either as is or after minor repairs. Although the Agency has no legal jurisdiction over reused computers per se, we encourage this option as a responsible way to manage these materials, because preventing or delaying the generation of waste often conserves resources. This option extends the lives of valuable products and keeps them out of the waste management system for a longer time. Reuse also allows schools, non-profit organizations, and individual families to use equipment that they otherwise could not afford. Many markets for reuse of computers are located abroad, particularly in countries where few may be able to purchase state-of-the-art new equipment.

Organizations which handle used computers vary from area to area. In some cases, nonprofit organizations such as charities and school districts take donations of used computer equipment. These organizations may test the equipment, and, if necessary, rewire it and replace various parts, including the electron gun, before sending them for reuse. In other cases, the entities that collect the CRTs send them to another organization with more expertise for evaluation and possible repair and reuse. CRTs that cannot be used after such minor repairs may be sent to recycling or disposal. CRTs from televisions are more likely to be repaired by appliance dealers or small repair shops before reuse.

2. Recycling

a. Collection of Used CRTs

If reuse or repair is not a practical option, CRTs can be sent for recycling, which typically consists of disassembly for the purpose of recovering valuable materials from the CRTs, especially glass. A growing number of municipalities are offering to collect computers and electronics for recycling. In addition, public and private organizations have emerged that accept such materials for the same purpose. Examples of such organizations include county recycling drop-off centers, television repair shops, charities, electronics recycling companies, and electronics manufacturers and retailers.

An increasing number of electronics manufacturers are offering to take back computer CRTs for recycling. In some cases, these services are provided free. In other cases, a fee is charged, usually for shipping and handling. Take-back programs have been available for some time to major corporations and large purchasers of electronic equipment. Now, electronics manufacturers are beginning to offer similar services for computer CRTs to small businesses and households.

b. Recycling of Unused CRTs and Unused CRT Glass

Makers of glass for CRTs recycle some of the glass they produce because it does not meet product specifications. EPA estimates that about one or two percent of glass production results in unused, off-specification products. This glass is generally recycled into new CRT glass. The glass may be recycled on-site at a CRT glass manufacturing facility, or it may be sent to a glass processor. Computers and television manufacturers also find that a small percentage of

assembled monitors are ''off-specification.'' They may send these unused devices to a glass processor.

c. Glass Processing and Other Materials Recovery

CRT glass processors that accept used CRTs generally receive them from three sources: the glass manufacturers described above (who supply most of the glass), manufacturers of monitor units who decide not to sell off-specification monitors, and businesses who provide used computers or televisions, which at present are a much smaller source.

The used CRTs are typically stored in a warehouse. When the processing begins, the CRT display unit is dismantled, and the bare CRT is separated from all other parts (usually glass, plastic, or metal). Next, the vacuum is released by drilling through the anode, a small metal button in the funnel. The different glass portions of the CRT (faceplate, funnel, and neck) are then separated and classified according to chemical composition, especially by the amount of lead contained. The same sorting takes place for broken glass received from CRT glass manufacturers, which is separated into leaded and non-leaded glass. All glass is then cleaned and the coatings removed. The sorted and cleaned cullet (*i.e.*, processed glass) is then typically stored in enclosed areas before it is shipped off-site to a CRT glass manufacturer (or sometimes to a smelter or to manufacturers of other kinds of glass). When a CRT glass manufacturing facility receives a shipment of processed CRT glass, it removes the anode button and further crushes the glass, which then enters a furnace to be heated and made into new CRT glass.

Sometimes the processed glass is sent to a lead smelter where it is recycled to reclaim the lead and to provide silica, which acts as a fluxing agent in the smelter. These uses often occur if the glass does not meet the specifications for CRT glass. The cleaning process described above also generates glass fines that are collected and sold to lead smelters to be used as a fluxing agent. In addition, processed CRT glass may be sent to copper smelters, also for use as a flux. Sometimes other types of production facilities use processed CRT glass to make objects such as radiation shielding, acoustical barriers, optical glass beads, or decorative glass and tile products. The market for these recycled glass items is currently limited, but may grow in the future.

3. Disposal

Many consumers do not wish to discard monitors and TVs if they can be recycled. Many or most CRTs therefore remain in storage. Of the CRTs that are disposed of by households, most go to municipal landfills, and others to municipal waste-to-energy (WTE) facilities. Only a small percentage are recycled (see Life Cycle Assessment of the Disposal of Household Electronics, D. McKenna *et. al.*, August 1996, which indicated that only one percent of CRTs from households were recycled). Some CRTs from non-household sources are also placed in municipal landfills. Some states (such as Massachusetts and California) have banned CRTs from all sources from landfills.

E. How Do EPA's Current Regulations Apply to CRTs and Other Electronic Materials?

As described above, CRT glass often exhibits the toxicity characteristic (TC) for lead because this constituent is used to make most CRT glass. Whether a person or facility is currently subject to the RCRA hazardous waste regulations depends on several factors, including whether the CRT will be recycled or disposed and the type of user. RCRA Subtitle C regulations set forth requirements for hazardous waste generators, transporters, and owners and operators of treatment, storage, and disposal facilities (TSDFs). EPA regulations also contain exclusions for certain wastes from the definition of solid waste or hazardous waste (40 CFR 261.4)(a) and (b)). However, EPA has developed streamlined rules for particular wastes, including recyclable wastes (40 CFR part 266) and universal wastes such as batteries, pesticides, thermostats, and lamps that are widely generated by different industries (40 CFR part 273). Following is a brief description of how different entities are currently regulated.

1. Who Is Regulated and Who Is Not?

a. Households

Households that dispose of or recycle CRTs are exempt from hazardous waste management requirements under 40 CFR 261.4(b)(1). Households may therefore send their used computer and television monitors to any facility or collector for recycling or disposal without being subject to RCRA Subtitle C regulation. Other facilities managing household hazardous waste (such as collectors, recyclers, or disposers) continue to be exempt from hazardous waste requirements unless the household waste is mixed with other regulated hazardous waste.

b. Non-Residential Generators

Non-residential generators of less than 100 kilograms (about 220 lbs) of hazardous waste (including CRTs) in a calendar month are known as conditionally exempt small quantity generators (CESQGs) and are not subject to most RCRA Subtitle C hazardous waste management standards. The Agency notes that about seven or eight CRTs would be sufficient to weigh 220 lbs (assuming that each monitor weighed 30 lbs). These CESQGs may choose to send their wastes to a municipal solid waste landfill or other facility approved by the state for the management of industrial or municipal non-hazardous wastes, including recycling facilities (40 CFR 261.5). Generators of more than 100 kilograms (about 220 lbs) and less than 1,000 kilograms (about 2,200 lbs) of hazardous waste (including CRTs) in a calendar month are considered small quantity generators (SQGs) and are subject to the RCRA hazardous waste management standards, but are allowed to comply with certain reduced regulatory requirements (40 CFR 262.34(d)). Generators of more than 1,000 kilograms (about 2,200 lbs) of hazardous waste in a calendar month are considered large quantity generators (LQGs) and are subject to all the applicable hazardous waste regulations for generators (40 CFR 262.34(a)). CRTs that are not considered wastes should not be counted in determining whether a generator is a CESQG, SQG, or LQG.

2. When Do CRTs Become Wastes?

To determine whether a non-residential facility with used CRTs must comply with the RCRA hazardous waste regulations, the user must first determine if its used CRTs are solid wastes. Following is a brief description of how solid waste determinations for CRTs are made under federal law. (However, the Agency notes that all Region III states' regulatory agencies are authorized to implement the hazardous waste program in lieu of the federal program, and state regulations may be more stringent than the federal regulations. Users should, therefore, consult with the appropriate state agency before making their determinations.)

a. Reuse and Repair of Used CRTs

EPA has consistently taken the view that materials used and taken out of service by one person are not wastes if a second person puts them to the same type of use without first ''reclaiming'' them (see 50 FR 624, January 5, 1985). Many CRTs are taken out of service by

both businesses and households not because they can no longer be used, but because users are upgrading their systems to take advantage of the rapid advances that have resulted in better and faster electronics. Businesses and organizations upgrading their computers often replace the entire computer system, including the monitors. A working CRT-containing unit considered obsolete by one user is therefore likely to be capable of reuse as a computer monitor or a television monitor by another user.

Many businesses and organizations that take CRTs out of service do not have the specialized knowledge needed to determine whether the unit can be reused as a computer or television display unit. Moreover, those entities often do not decide whether a particular CRT will, in fact, be reused. Many businesses and other organizations send used computers and televisions to resellers. Resellers often test CRTs or otherwise decide if the CRTs can be reused directly, if they can be reused after minor repairs, or if they must be sent for further processing or disposal. Because the typical original user usually lacks the specialized knowledge needed to decide the future of a CRT, EPA is today clarifying that we do not consider a user sending a CRT to a reseller for potential reuse to be a RCRA generator.

Furthermore, EPA today clarifies that used CRTs undergoing repairs before resale or distribution are not being ''reclaimed,'' and are considered to be products ''in use'' rather than solid wastes. Resellers of used CRTs generally test and identify equipment that can be resold or is economically repairable. Sometimes the equipment is collected and redistributed for reuse with no repairs. If repairs are necessary, they typically consist of rewiring, replacing defective parts, or replacing the electron gun. Under these circumstances, the CRT would still be considered a commercial product rather than a solid waste. EPA believes that these repairs and replacement activities do not constitute waste management.

As discussed below in section III.E.3, EPA also applies these principles to other ''end-of-life'' electronic devices, which also would not be wastes if sent to resellers for potential reuse.

This regulatory interpretation for CRTs and other ''reused'' electronics is not unique to Region III states; it applies nationwide, as EPA stated in the national CRT proposal. See 67 FR. 40508, 40511 (June 12, 2002).

b. Unused CRTs Sent for Recycling

Sometimes manufacturers of computers and televisions send unused CRTs (usually off-specification CRTs) directly to glass processors who break the CRTs and separate out the glass components. Generally, the processor then sends the processed glass to a glass-to-glass recycler or to another recycling facility, such as a lead smelter. Although EPA could consider these activities to constitute reclamation, the Agency does not regulate the reclamation of either listed or characteristic unused commercial chemical products (see 50 FR 14219, April 11, 1985). EPA considers unused CRTs to be unused commercial chemical products. Therefore, these materials are not solid wastes when sent for reclamation.

c. Used CRTs Sent For Recycling

Under the current RCRA regulations, used CRTs sent directly to glass processors or other recyclers could, under some circumstances, be considered spent materials undergoing reclamation, and could therefore be solid wastes. However, as explained elsewhere in this notice, EPA believes that under some circumstances used CRTs sent for recycling do not resemble spent materials. Therefore, the Agency is today promulgating an exclusion from the definition of solid waste for used CRTs being recycled in Region III states if they are managed under certain conditions. Users and resellers sending used CRTs to recyclers should check with their authorized states to see which RCRA Subtitle C requirements, if any, are applicable to their activities.

d. Disposal

If a non-household entity decides to send used or unused CRTs directly to a landfill or an incinerator for disposal, that entity would be considered the generator of a solid waste. The person making the decision must determine if the CRTs exhibit a hazardous waste characteristic under 40 CFR Part 261, Subpart C. He may either test the CRTs or use process knowledge to make this determination. As stated above, many or most CRTs from color computer or television monitors exhibit the toxicity characteristic (TC) for lead. Although EPA's data indicate that most CRTs from black and white monitors do not fail the TC, those that do are subject to all applicable hazardous waste management requirements. When a decision is made to dispose of hazardous waste CRTs, the non-residential user, reseller, or manufacturer must comply with all applicable hazardous waste generator requirements of 40 CFR Part 262, including packaging and labeling, 90-day accumulation requirements, use of the hazardous waste manifest, and recordkeeping and reporting (unless the generator is a CESQG).

Some companies ship their waste CRTs to hazardous waste landfills for disposal. Used CRTs generated by a non-residential facility that fail the TC for lead must meet applicable land disposal restrictions (LDRs), 40 CFR Part 268, before being placed in a land-based unit, such as a landfill. These restrictions do not apply to CRTs generated by households or CESQGs. To meet LDRs, the CRT glass must be treated so that the TCLP lead concentration does not exceed 0.75 mg per liter. This concentration level is generally achieved by crushing and stabilizing the glass through the addition of chemicals which reduce the solubility of lead when contacted by leachate.

3. When Do Non-CRT Electronic Materials Become Wastes?

In 1992, the Agency issued a memorandum to its EPA Regional Waste Management Directors stating that used whole circuit boards are considered to be scrap metal when sent for reclamation, and therefore exempt from regulation under RCRA. The Agency has also addressed printed circuit boards in the Land Disposal Restrictions Phase IV rulemaking (see 62 FR 25998, May 12, 1997). In that rulemaking, the Agency provided an exclusion from the definition of solid waste at 40 CFR 261.4(a)(14) for shredded circuit boards being reclaimed, provided they are stored in containers sufficient to prevent a release to the environment prior to recovery and provided they are free of mercury switches, mercury relays, nickel-cadmium batteries and lithium batteries. Subsequently, on May 26, 1998 (63 FR 28556), the Agency clarified that the scrap metal exemption applies to whole used circuit boards that contain minor battery or mercury switch components and that are sent for continued use, reuse, or recovery. In that notice, EPA stated that it was not the Agency's intent to regulate under RCRA circuit boards containing minimal quantities of mercury and batteries that are protectively packaged to minimize dispersion of metal constituents. Once these materials are removed from the boards, they become a newly generated waste subject to a hazardous waste determination. If they meet the criteria to be classified as a hazardous waste, they must be handled as hazardous waste; otherwise, they must be managed as a solid waste.

The Agency is studying certain non-CRT electronic materials to determine whether they consistently exhibit a

characteristic of hazardous waste. However, we are not currently aware of any non-CRT computer components or electronic products that would generally be hazardous wastes. With respect to these materials, the Agency will use the same line of reasoning that is outlined above for CRTs to determine if the materials are solid wastes. That is, if an original user sends electronic materials to a reseller because he lacks the specialized knowledge needed to determine whether the units can be reused as products, the original user is not a RCRA generator. The materials will not be considered solid wastes until a decision is made to recycle them in other ways or dispose of them.

F. What Are The Common Sense Initiative (CSI) Recommendations?

From 1994 through 1998, EPA's Common Sense Initiative (CSI) explored the environmental regulation of six industry sectors and looked for ways to make environmental regulation ''cleaner, cheaper, and smarter.'' EPA established CSI as an advisory committee (the ''CSI Council'') under the Federal Advisory Committee Act. The CSI Council included representatives from each industry sector, from non-governmental environmental and community organizations, from state governments, and from colleges and universities. EPA also established subcommittees of the Council for each industry sector. The subcommittees included representatives of the various stakeholders represented in the CSI Council. One of the industry sectors selected for this initiative was the computer and electronics industry. The CSI Computers and Electronics Subcommittee (CES) then formed a workgroup to examine regulatory barriers to pollution prevention and recycling. The workgroup (known as the ''Overcoming Barriers Workgroup'') explored the problems of managing mounting volumes of outdated computer and electronics equipment.

One of the concerns investigated by the Overcoming Barriers Workgroup and the CES was the barrier to CRT recycling created by some existing hazardous waste management regulations. The CES urged that removing such barriers was essential to fostering CRT recycling, especially glass-to-glass recycling. The Subcommittee believed that CRT recycling would provide the following benefits: (1) Less lead sent to landfills and combustors; (2) added resource value of specialty glass and lead; (3) lower waste management costs; (4) less regulatory uncertainty about CRT recovery and recycling; (5) less use of raw lead in CRT glass manufacturing; (6) better melting characteristics, improved heat transfer, and lower energy consumption in CRT glass manufacturing furnaces; (7) improved CRT glass quality; and (8) lower emissions of lead from CRT glass manufacturing. The CES Subcommittee indicated that some recycling methods or end products (other than those associated with glass-to-glass recycling) may pose risks to human health and the environment and would require further investigation.

As a result of the findings of the CES Subcommittee, the CSI Council issued a document entitled, ''Recommendation on Cathode Ray Tube (CRT) Glass-to-Glass Recycling.'' In this document, the Council recommended streamlining regulatory requirements for CRTs that would encourage recycling and better management. The recommendations included revised requirements for packaging, labeling, transportation; general performance standards for glass processors; and export provisions. The CSI Council also recommended an exclusion from the definition of solid waste for processed glass that is used to make new CRT glass. In today's notice, EPA creates an exclusion from the definition of solid waste for Region III states which will simplify management requirements for used CRTs. Although the requirements promulgated today differ in some respects from those recommended by the CSI Council, we believe that they will be just as effective in fostering the goals of the Council. EPA has proposed a similar nationwide exclusion and expects to use information gained from this regional pilot in assessing the proposed nationwide rulemaking.

G. Requirements for Used CRTs Undergoing Recycling

1. What Will Not Be Affected By Today's Rule?

All materials discussed above that are not currently regulated under RCRA will remain unaffected by today's rule. Used CRTs from households and CESQGs will retain their current regulatory exemptions. Used CRTs from any source, along with electronic materials that are sent for reuse as is or after minor repairs, are not wastes. Section 261.4(a)(24) will provide better notice of this interpretation of our current regulations. Unused CRTs sent for recycling will still be classified as commercial chemical products which are not solid wastes even if they are reclaimed or speculatively accumulated. Finally, both used and unused CRTs sent for disposal will also remain regulated as before.

2. What Is Covered By Today's Rule and What Are the Management Requirements?

Today's rule principally addresses used CRTs, and glass removed from CRTs, destined for recycling in Region III states. The regulations we are promulgating today do distinguish between intact CRTs, and CRTs that are broken. An intact CRT is a CRT remaining within the monitor whose vacuum has not been released. A broken CRT means glass removed from the monitor after the vacuum has been released. EPA notes that these definitions also cover non-consumer CRTs such as medical, automotive, oscilloscope, and appliance CRTs.

a. Used, Intact CRTs Destined for Recycling Within Region III

Today's rule excludes intact CRTs located within Region III states from the definition of solid waste unless they are disposed. Consequently, these units would not be subject to RCRA Subtitle C regulation, including the speculative accumulation limits of 40 CFR § 261.2(c)(4).

As noted above, unused CRTs are currently considered commercial chemical products which are excluded from the definition of solid waste when recycled, even if they are reclaimed or speculatively accumulated. Intact CRTs are highly unlikely to release lead to the environment because the lead is contained in the plastic housing and the glass matrix. We believe that it would be very difficult to distinguish between used and unused intact CRTs destined for recycling. Moreover, there appears to be no environmental basis for such a distinction. Therefore, EPA is including all intact CRTs in this pilot-specific rule unless they are disposed, whether used or unused.

b. Used, Broken CRTs Destined for Recycling Within Region III

Some users and collectors of CRTs separate the CRT from the monitor and release the vacuum, after which they send the resulting broken glass to a recycler (often a glass processor). This practice saves shipping costs and enables the glass processor to pay more for the broken CRTs received. At other times, the CRTs remain intact until broken by the processor or another recycler. In any event, CRTs whose glass has been broken are non-reusable and non-repairable; and therefore, prior to this rule were solid wastes at the time such breakage occurs.

EPA is today amending 40 CFR part 261 to add a new section 261.40, which will provide that used, broken CRTs

located within Region III states are excluded from the definition of solid waste if they meet specified conditions. Under today's rule, used, broken CRTs sent for recycling would not be solid wastes if they are transported in an appropriate container, and stored in an appropriate container in an enclosed building. An appropriate container (*i.e.*, a package or a vehicle) is one that is constructed, filled, and closed to minimize identifiable releases of CRT glass (including fine solid materials) to the environment. Each container in which the used, broken CRT is contained must be labeled or marked clearly with one of the following phrases: ''Waste cathode ray tube(s)—contains leaded glass,'' or ''Used cathode ray tube(s)—contains leaded glass.'' It must also be labeled or marked: ''Do not mix with other glass materials.'' An enclosed building must include a roof, floor, and walls. Finally, used, broken CRTs destined for recycling in Region III states also would not be allowed to be speculatively accumulated as defined in 40 CFR 261.1.

The Agency believes that if these materials are properly containerized and labeled when stored or shipped prior to recycling, they resemble articles in commerce or commodities more than wastes. Breakage is a first step toward recycling the leaded glass components of the CRT. Also, materials held in conditions that safeguard against loss are more likely to be regarded as valuable commodities destined for legitimate recycling. In addition, the packaging requirements will ensure that the possibility of releases to the environment from the broken CRTs is very low. For these reasons, an exclusion from the definition of solid waste is appropriate if the broken CRTs are handled under the rule being promulgated today.

c. Used, Broken CRTs Undergoing Glass Processing Within EPA Region III

The Agency also promulgates today an exclusion from the definition of solid waste for used CRTs undergoing glass processing within EPA Region III, as long as the processing meets certain conditions. CRT glass processing is defined in 40 CFR 260.10 as receiving intact or broken used CRTs, intentionally breaking them, sorting or otherwise managing glass removed from CRT monitors, and cleaning coatings from the glass. As noted above, CRT users and collectors sometimes break CRTs before sending them to a processor. Therefore, breaking used CRTs would not by itself subject a facility to the CRT glass processing conditions. In order to be classified as a used CRT glass processor, the facility must perform all of the activities listed above.

The provisions of today's rule, set forth in 40 CFR 261.40, state that used, broken CRTs undergoing glass processing would not be considered solid wastes if they are stored in an enclosed building with a roof, floor, and walls. In addition, all glass processing activities must take place within an enclosed building with a roof, floor, and walls, and no activities may be performed that use temperatures high enough to volatilize lead from used, broken CRTs. The exclusion set forth today does not allow used, broken CRTs to be speculatively accumulated, as defined in 40 CFR 261.1.

EPA believes that the packaging and storage conditions being promulgated today will help ensure that the materials in question are more commodity-like than waste-like. Used, broken CRTs that are not stored or packaged in accordance with these requirements tend not to be valuable, product-like materials. The opportunity for loss or releases of the materials indicates that they are wastes. As specifically recommended by the CSI Council, we are also providing that processors will be required to conduct their activities without using temperatures high enough to volatilize lead from broken CRTs. Besides increasing the risk of releases to the environment, such practices suggest waste treatment rather than production.

d. Processed Glass From Used CRTs Sent for Recycling to Glass Manufacturers and Lead Smelters Within Region III

In today's rule, EPA is excluding processed glass (from used CRTs) from the definition of solid waste if it is sent for recycling to a CRT glass manufacturer or to a lead smelter within Region III, as long as the processed glass is neither speculatively accumulated, nor used in a manner constituting disposal. 40 CFR 261.40(d).

EPA believes that processed glass from used CRTs destined for CRT glass manufacturing or to a lead smelting operation, located in Region III states, meets the regulatory criteria in 40 CFR 260.31(c) for a variance from the definition of solid waste. This variance applies to materials that have been reclaimed but must be reclaimed further before recovery is completed, if, after initial reclamation, the resulting material is commodity-like. The following paragraphs discuss the characteristics of processed CRT glass and how they meet the criteria.

i. The degree of processing a material has undergone and the degree of further processing that is required (40 CFR 260.31(c)(1))

Processed CRT glass needs minimal further processing by CRT glass manufacturers or lead smelters. CRT glass cullet is shipped to these facilities already cleaned and sorted. CRT manufacturers and smelters perform processing steps consisting only of magnetic separation of anode buttons and studs and, if necessary, further crushing of the glass. Following these steps, the partially reclaimed CRT glass enters the furnace or smelter, similar to other feedstocks used in glass manufacturing and smelting.

ii. The economic value of the material that has been initially reclaimed (40 CFR 260.31(c)(2))

The initial processing of CRT glass satisfies this criterion. CRT glass is usually purchased by CRT glass manufacturers from processors for at least $170 per ton (approximately three-fourths of the price of virgin glass). In contrast, lead smelters are usually paid at least $150 per ton by processors for CRT glass used as fluxing material and lead feedstock. However, lead smelters only pay an average of about six dollars per ton for industrial sand used as a fluxing material. Broken glass from CRTs resembles industrial sand in composition and can therefore serve as a substitute for this sand in the fluxing process. The sand, however, is not expensive.

CRT glass manufacturers and lead smelters currently obtain processed CRT glass from processors and are working with the processors to increase the supply and quality of processed CRT glass, which may further increase its value. The value of processed CRT glass depends on whether manufacturers' specifications are met, and some glass chemistries require exacting specifications that make the processed glass more valuable if it meets those specifications. CRT glass manufacturers have stricter quality standards than lead smelters about the type of material that they can accept (e.g., cleaned, sized, free of coating and debris).

Further evidence of the economic value of reclaimed CRT glass is demonstrated by the cost savings realized by CRT glass manufacturers and lead smelters when using processed CRT glass. The use of processed CRT glass cullet benefits the manufacturer in several ways, such as improving heat transfer and melting characteristics in the furnaces, lowering energy consumption, and maintaining or

improving the quality of the final product.

iii. The degree to which the reclaimed material is like an analogous raw material (40 CFR 260.31(c)(3))

Under this criterion, the partially reclaimed material must be similar to an analogous raw material or feedstock for which the material may be substituted in a production or reclamation process. Processed CRT glass is similar to off-specification glass and cullet that manufacturers currently use as feedstock. Glass-making furnaces require between approximately 30 and 70 percent cullet. With respect to lead smelters, processed CRT glass is similar to industrial sand that would otherwise be used as feedstock or flux in the smelter.

iv. An end market for the partially reclaimed material is guaranteed (40 CFR 260.31(c)(4))

The Agency believes that there is a strong end market for processed CRT glass. CRT glass manufacturers and lead smelters have developed relationships with CRT glass processors to increase the amount and quality of reclaimed CRT glass cullet available for glass-to-glass recycling and lead reclamation. In addition, CRT glass manufacturers have developed programs in which off-specification CRTs may be delivered directly to CRT processors for initial processing. The processed CRT glass is delivered to CRT glass manufacturers for use as feedstock in glass-to-glass manufacturing, or to lead smelters for recycling.

v. The extent to which the partially reclaimed material is handled to minimize loss (40 CFR 260.31(c)(5))

The Agency believes that current CRT glass industry practices are effective in minimizing losses and preventing releases. Processed CRT glass generally is stored indoors on a cement or asphalt pad. In most cases, the material is shipped in large capacity trucks that are covered with a tarp to minimize loss during transport. When the CRT glass manufacturers or lead smelters receive shipments, the glass is unloaded into a temporary holding area, inspected, and either loaded onto a conveyor belt for further processing or stored under cover. Following these steps, the reclaimed CRT glass enters the furnace feedstock stream or the smelter.

e. Processed Glass From Used CRTs Sent For Other Types of Recycling Within EPA Region III

Under today's rule, processed glass from used CRTs sent for recycling at a facility other than a glass manufacturer or a lead smelter will be excluded from the definition of solid waste only if additional conditions are met. The processed glass will have to be packaged and labeled in accordance with the requirements of 40 CFR 261.40(a). Also, speculative accumulation limits will apply.

As stated previously, processed glass is sometimes sent to copper smelters for recycling. It also may be sent for recycling into objects such as radiation shielding, acoustical barriers, optical glass beads, or decorative glass and tile products. The Agency believes that processed glass sent for such uses resembles a commodity more than a waste if it is packaged and labeled under these conditions. In addition, such packaging ensures that the possibility of releases to the environment is minimal.

f. Processed Glass From Used CRTs Used in a Manner Constituting Disposal Within EPA Region III

If processed glass is sent for any kind of recycling that involves land placement, it would be subject to the requirements of 40 CFR part 266, Subpart C, for recyclable materials used in a manner constituting disposal. The Agency is currently unaware of processed glass being recycled in this manner.

V. State Authority

A. Applicability of Rules in Authorized EPA Region III's States

Under section 3006 of RCRA, EPA may authorize qualified states to administer and enforce the RCRA hazardous waste program within the state. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized states have primary enforcement responsibility. The standards and requirements for state authorization are found at 40 CFR Part 271. Each of Region III's states is authorized to implement the RCRA program.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that state. The federal requirements no longer applied in the authorized state, and EPA could not issue permits for any facilities in that state, since only the state was authorized to issue RCRA permits. When new, more stringent federal requirements were promulgated, the state was obligated to enact equivalent authorities within specified time frames. However, the new federal requirements did not take effect in an authorized state until the state adopted the federal requirements as state law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized states at the same time that they take effect in unauthorized states. EPA is directed by the statute to implement these requirements and prohibitions in authorized states, including the issuance of permits, until the state is granted authorization to do so. While states must still adopt HSWA related provisions as state law to retain final authorization, EPA implements the HSWA provisions in authorized states until the states do so.

Authorized states are required to modify their programs only when EPA enacts federal requirements that are more stringent or broader in scope than existing federal requirements. RCRA section 3009 allows the states to impose standards more stringent than those in the federal program (*see* also 40 CFR 271.1). Therefore, authorized states may, but are not required to, adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous federal regulations.

B. Effect on State Authorization

Today's rule is less stringent than the current federal program. Because states generally are not required to adopt less stringent regulations, the Region III states do not have to adopt these regulations for CRTs. However, because EPA is promulgating this rule to implement the October, 2001 MOU signed by the Region III states and EPA, EPA expects that the Region III states will take all necessary actions to implement this rule. Some Region III states may already be in the process of revising their regulations for these materials.

C. Interstate Transport

Because this rule applies within Region III states only, and some of these states may choose to implement slightly different, more stringent versions of today's rule, there may be cases when used CRTs or processed CRT glass will be transported through Region III or non-Region III states, with different regulations governing these wastes.

First, a waste originating in a Region III state which is implementing today's conditional exclusion from the definition of solid waste may be sent to

or through any other state outside of Region III, where it is subject to the full hazardous waste regulations. In this scenario, for the portion of the trip through the originating state, and any other state where the waste is excluded, neither a hazardous waste transporter with an EPA identification number per 40 CFR 263.11 nor a manifest would be required. However, for the portion of the trip through the receiving state, and any other states that do not consider the waste to be excluded, the transporter must have a manifest, and must move the waste in compliance with 40 CFR part 263. In order for the final transporter and the receiving facility to fulfill the requirements concerning the manifest (40 CFR 263.20, 263.21, 263.22; 264.71, 264.72, 264.76 or 265.71, 265.72, and 265.76), the initiating facility should complete a manifest and forward it to the first transporter to travel in a state where the waste is not excluded. The receiving facility must then sign the manifest and send a copy to the initiating facility. EPA recommends that the initiating facility note in block 15 of the manifest (Special Handling Instructions and Additional Information) that the wastes are covered by an exclusion in the initiating state but not in the receiving facility's state.

Second, a hazardous waste generated in a state which does not provide an exclusion for the waste may be sent to a Region III state where it is conditionally excluded. In this scenario, the waste must be moved by a hazardous waste transporter while the waste is in the generator's state or any other states where it is not excluded. The initiating facility must complete a manifest and give copies to the transporter as required under 40 CFR 262.23(a). Transportation within the receiving state and any other states that exclude the waste need not require a manifest and need not be transported by a hazardous waste transporter. However, it is the initiating facility's responsibility to ensure that the manifest is forwarded to the receiving facility by any non-hazardous waste transporter and sent back to the initiating facility by the receiving facility (*see* 40 CFR 262.23 and 262.42). EPA recommends that the generator note in block 15 of the manifest (Special Handling Instructions and Additional Information) that the waste is excluded in the receiving facility's state but not in the generator's state.

Third, a waste may be transported across a state in which it is subject to the full hazardous waste regulations although other portions of the trip may be from, through, and to states in which it is excluded. Transport through the state must be conducted by a hazardous waste transporter and must be accompanied by a manifest. In order for the transporter to fulfill its requirements concerning the manifest (Subpart B of part 263), the initiating facility must complete a manifest as required under the manifest procedures and forward it to the first transporter to travel in a state where the waste is not excluded. The transporter must deliver the manifest to, and obtain the signature of, either the next transporter or the receiving facility.

VI. Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to formal review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order, which include assessing the costs and benefits anticipated as a result of this regulatory action. The Order defines ''significant regulatory'' action as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations 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.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review. Pursuant to the terms of Executive Order 12866, the Agency determined that the proposed national rule is a significant regulatory action. As such, the proposed national rule was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the national docket.

We note that as part of the national CRT rulemaking, EPA conducted an economic analysis to estimate the cost savings, incremental costs, economic impacts and benefits to affected regulated entities nationally. A copy of the analysis (entitled, ''Economic Analysis of Cathode Ray Tube Management, Notice of Proposed Rulemaking'') has been placed in the RCRA docket for the national rule for public review. No separate analysis has been conducted for this rule since it is considered to be included in the national proposed rule.

B. Regulatory Flexibility Act (RFA), as Amended By the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an Agency is required to publish a notice for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains EPA's determination.

The small entity analysis conducted for the proposed national rule indicates that streamlining requirements for CRTs is expected to result in savings to affected entities compared to baseline requirements. Under the full compliance scenario, the rule is not expected to result in a net cost to any affected entity. Thus, adverse impacts are not anticipated. Costs could increase for entities that are not complying with current regulatory requirements, but even these costs, which are not properly attributable to the current requirements, would not be expected to result in significant impacts on a substantial number of small entities. Based on the foregoing discussion, I hereby certify that this rule will not have a significant adverse economic impact on a substantial number of small entities. Consequently, the Agency has determined that preparation of a formal Regulatory Flexibility Analysis is unnecessary.

C. 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, including 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. 844(2). It will take effect on [insert date—60 days after publication] unless it is otherwise withdrawn.

D. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared (ICR No. 1189.10) and a copy may be obtained by mail from Susan Auby at Collection Strategies Division, U.S. Environmental Protection Agency (Mail Code 2822T), 1200 Pennsylvania Avenue NW., Washington, DC 20460, by email at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the internet at *http://www.epa.gov/icr*. The information collection requirements are not effective until OMB approves them.

The information requirements established for this action, and identified in the Information Collection Request (ICR) supporting today's rule, are largely self-implementing. This process will ensure that: (i) Regulated entities managing CRTs are held accountable to the applicable requirements; and (ii) state inspectors can verify compliance when needed.

EPA will use the collected information to ensure that CRTs are being managed in a protective manner. These data aid the Agency in tracking waste shipments and identifying improper management practices. In addition, information kept in facility records helps handlers, processors, and destination sites to ensure that they and other facilities are managing these wastes properly. Section 3007(b) of RCRA and 40 CFR part 2, subpart B, which define EPA's general policy on the public disclosure of information, contain provisions for confidentiality. However, no questions of a sensitive nature are included in any of the information collection requirements associated with today's action.

EPA has carefully considered the burden imposed upon the regulated community by the regulations. EPA is confident that those activities required of respondents are necessary and, to the extent possible, has attempted to minimize the burden imposed. EPA believes strongly that if the minimum requirements specified under the regulations are not met, neither the facilities nor EPA can ensure that used CRTs are being managed in a manner protective of human health and the environment.

For the requirements applicable to CRTs being proposed nationally, the aggregate annual burden to respondents over the three-year period covered by this ICR is estimated at 10,426 hours, with a cost of approximately $687,000. Average annual burden hours per respondent are estimated to be 7 hours; there are an estimated 2,400 respondents. This represents a reduction in burden to respondents of approximately 18,616 hours. There are no capital or start-up costs, operation or maintenance costs, and no costs for purchases of services. Nor is there any burden to the Agency. The regional burden will therefore be reduced proportionally.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

E. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures by state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The Agency's analysis of compliance with the Unfunded Mandates Reform Act (UMRA) of 1995 found that today's rule imposes no enforceable duty on any state, local or tribal government or the private sector. This rule contains no federal mandates (under the regulatory provisions of title II of the UMRA) for state, local, or tribal governments or the private sector. In addition, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Act generally excludes from the definition of ''federal intergovernmental mandate'' (in sections 202, 203, and 205) duties that arise from participation in a voluntary federal program. Today's rule is voluntary. The UMRA also excludes from the definition of ''federal private sector mandate'' duties that arise from participation in a voluntary federal program. Therefore, we have determined that today's rule is not subject to the requirements of sections 202 and 205 of UMRA.

F. Executive Order 13132

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications. ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.'' This rule

does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

G. Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the federal government and the Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes. This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175.

H. Executive Order 13045

''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that EPA determines (1) ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potential effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866.

I. Executive Order 13211

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Today's rule revises hazardous waste management requirements for used cathode ray tubes. By encouraging reuse and recycling, the rule may save energy costs associated with manufacturing new materials. It will not cause reductions in supply or production of oil, fuel, coal, or electricity. Nor will it result in increased energy prices, increased cost of energy distribution, or an increased dependence on foreign supplies of energy.

J. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA,'' Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, though OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule does not establish technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

K. Environmental Justice

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations' (February 11, 1994) is designed to address the environmental and human health conditions of minority and low-income populations. EPA is committed to addressing environmental justice concerns and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all citizens of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities. In response to Executive Order 12898, EPA's Office of Solid Waste and Emergency Response (OSWER) formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17). To address this goal, EPA conducted a qualitative analysis of the environmental justice issues under the national proposed rule. Potential environmental justice impacts are identified consistent with the EPA's Environmental Justice Strategy and the OSWER Environmental Justice Action Agenda.

Today's rule will revise management requirements for used cathode ray tubes sent for recycling. Facilities that would be affected by today's rule include any facility generating hazardous waste computers and televisions sent for recycling. Also affected would be facilities which recycle these materials. Disposal facilities themselves would not be affected by today's rule.

The wide distribution of affected facilities throughout the United States does not suggest any distributional pattern around communities of concern. Any building in any area could be affected by today's rule. Specific impacts on low income or minority communities, therefore, are undetermined. The Agency believes that emissions during transportation would not be a major contributor to communities of concern through which used CRTs may be transported. Any such material broken during transport would be contained in the required packaging. Overall, no disproportional impacts to minority or low income communities are expected.

List of Subject in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and record keeping requirements, Waste treatment and disposal.

Dated: December 19, 2002.

Christine T. Whitman, Administrator,

United States Environmental Protection Agency.

For the reasons set out in the preamble, title 40, chapter I of the *Code of Federal Regulations,* parts 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

Subpart A—General

2. Section 261.4 is amended by adding and reserving paragraph (a)(23) and adding paragraph (a)(24) to read as follows:

§ 261.4 Exclusions.

(a) * * *

(23) [Reserved]

(24) Used cathode ray tubes (CRTs) (as defined in § 261.40(f)) to be recycled in the District of Columbia; the States of Delaware, Maryland, and West Virginia; and the Commonwealths of Pennsylvania and Virginia,

(i) Used, intact CRTs as defined in § 261.40(f) to be recycled in the District of Columbia; the States of Delaware, Maryland, and West Virginia; and the Commonwealths of Pennsylvania and Virginia are not solid wastes unless disposed.

(ii) Used, broken CRTs as defined in § 261.40(f) to be recycled in the District of Columbia; the States of Delaware, Maryland, and West Virginia; and the Commonwealths of Pennsylvania and Virginia are not solid wastes provided that they meet the requirements of § 261.40 and that the CRTs are not accumulated speculatively as defined in § 261.1(c).

* * * * *

3. Part 261 is amended by adding Subpart E consisting of §§ 261.39 and 261.40, to read as follows:

Subpart E—Exclusions/Exemptions

Sec.
261.39 [Reserved]
261.40 Conditional Exclusion for Used, Broken Cathode Ray Tubes (CRTs) To Be Recycled in the District of Columbia; the States of Delaware, Maryland, and West Virginia; and the Commonwealths of Pennsylvania and Virginia.

Subpart E—Exclusions/Exemptions

§ 261.39 [Reserved]

§ 261.40 Conditional Exclusion for Used, Broken Cathode Ray Tubes (CRTs) To Be Recycled in the District of Columbia; the States of Delaware, Maryland, and West Virginia; and the Commonwealths of Pennsylvania and Virginia.

Used, broken CRTs to be recycled within the Region III States are not solid wastes if they meet the following conditions:

(a) *Prior to processing:* These materials are not solid wastes if they are destined for recycling within a Region III state and if they meet the following requirements:

(1) *Storage.* The broken CRTs must be:

(i) Placed in a container (*i.e.*, a package or a vehicle) that is constructed, filled, and closed to minimize identifiable releases to the environment of CRT glass (including fine solid materials), and

(ii) Stored in an enclosed building with a roof, floor, and walls

(2) *Labeling.* Each container in which the used, broken CRT is contained must be labeled or marked clearly with one of the following phrases: ''Waste cathode ray tube(s)—contains leaded glass,'' or ''Used cathode ray tube(s)—contains leaded glass.'' It must also be labeled: ''Do not mix with other glass materials.''

(3) *Transportation.* These CRTs must be transported in a container meeting the requirements of paragraphs (a)(1)(i) and (2) of this section.

(4) *Speculative accumulation.* These CRTs are subject to the limitations on speculative accumulation as defined in § 261.1.

(b) *Requirements for used CRT processing.* Used, broken CRTs undergoing CRT processing as defined in paragraph (f) of this section are not solid wastes if they meet the following requirements:

(1) *Storage.* Used, broken CRTs undergoing processing are subject to the requirements of paragraphs (a)(1), (2), and (4) of this section.

(2) *Processing.* (i) All CRTs must be processed within an enclosed building with a roof, floor, and walls; and (ii) No activities may be performed that use temperatures high enough to volatilize lead from CRTs.

(c) *Processed CRT glass sent to CRT glass making or lead smelting.* Glass removed from used CRTs that is destined for recycling at a CRT glass manufacturing facility or a lead smelter after processing is not a solid waste unless it is speculatively accumulated as defined in § 261.1.

(d) *Processed CRT glass sent to other types of recycling, except for use constituting disposal.* Glass removed from used CRTs that is destined for other types of recycling after processing (except use constituting disposal) is not a solid waste if it meets the requirements of paragraphs (a)(1) through (4) of this section.

(e) *Use constituting disposal.* Processed glass removed from CRT monitors that is used in a manner constituting disposal must comply with the requirements of paragraphs (a)(1) through (4) of this section and the applicable requirements of 40 CFR Part 266, Subpart C.

(f) *Definitions.* For purposes of this section, the following definitions apply:

Cathode ray tube or CRT means a vacuum tube, composed primarily of glass, which is the video display component of a television or computer monitor. An intact CRT means a CRT remaining within the monitor whose vacuum has not been released. A broken CRT means glass removed from the monitor after the vacuum has been released.

CRT glass manufacturing facility means a facility or part of a facility located within the Region III States that uses a furnace to manufacture CRT glass.

CRT processing means the conducting of all of the following activities at a facility within the EPA Region III's States:

(i) receiving broken or intact CRTs;

(ii) intentionally breaking intact CRTs or further breaking or separating broken CRTs;

(iii) sorting or otherwise managing glass removed from CRT monitors; and

(iv) cleaning coatings off the glass removed from CRTs.

EPA Region III's States means the District of Columbia; the States of Delaware, Maryland, and West Virginia; and the Commonwealths of Pennsylvania and Virginia.

[FR Doc. 02–32547 Filed 12–24–02; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–5

[FPMR Amendment A–59]

RIN 3090–AH37

Federal Property Management Regulations; Centralized Field Reproduction Services

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the Federal Property Management Regulations (FPMR) by removing coverage on centralized field reproduction services.

DATES: *Effective Date:* December 26, 2002.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Theodore Freed, Printing and Forms Division (CAP), at (202) 501–0492. Please cite FPMR Amendment A–59.

SUPPLEMENTARY INFORMATION:

A. Background

In January of 1998, the Director of the Office of Management and Budget signed a determination letter transferring all GSA reproduction facilities to the Defense Automated Printing Service (DAPS), DOD, thereby transferring the GSA mission of providing reproduction services for all agencies. As a result of this transfer and

further review by GSA's Office of Legal Counsel, GSA has concluded that coverage in the Federal Property Management Regulations (FPMR) addressing centralized field duplicating services made available by GSA in Federal buildings should be deleted. Therefore, the contents of FPMR 101–5.2 (41 CFR 101–5.2), Centralized Field Reproduction Services, is being removed and reserved. If, in the future, GSA issues regulations regarding centralized field reproduction services, they will be issued in the Federal Management Regulation (FMR). The FMR replaces the FPMR and is written in plain language to provide agencies with updated regulatory material that is easy to read and understand.

B. Executive Order 12866

GSA has determined that this final rule is not a significant rule for the purposes of Executive Order 12866 dated September 30, 1993.

C. Regulatory Flexibility Act

A Regulatory Flexibility Analysis is not required under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because there is no requirement that this final rule be published in the **Federal Register** for notice and comment.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 101–5

Federal buildings and facilities, Government property management, Health care.

Dated: November 4, 2002.

Stephen A. Perry,

Administrator of General Services.

For the reasons set forth in the preamble, GSA amends 41 CFR part 101–5 as follows:

CHAPTER 101 [AMENDED]

PART 101–5—CENTRALIZED SERVICES IN FEDERAL BUILDINGS AND COMPLEXES

1. The authority citation for 41 CFR part 101–5 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 101–5.2 [Removed and Reserved]

2. Remove and reserve subpart 101–5.2.

[FR Doc. 02–32604 Filed 12–24–02; 8:45 am]

BILLING CODE 6820–23–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–37

[FMR Amendment B–2]

RIN 3090–AH74

Federal Management Regulation; Notification of Allocation of Surplus Personal Property for Donation

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the Federal Management Regulation (FMR) to clarify the period of time GSA normally requires to allocate surplus personal property for donation. This final rule will allow holding agencies to move property to sale if they have not received notification of allocation by day 6 after the surplus release date.

DATES: *Effective Date:* December 26, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Holcombe, Director, Personal Property Management Policy Division (MTP), General Services Administration, at (202) 501–3828. For information pertaining to status or publication schedules, contact the Regulatory Secretariat, Room 4035, GS Building, Washington DC, 20405, (202) 501–4755. Please cite FMR Amendment B–2.

SUPPLEMENTARY INFORMATION:

A. Executive Order 12866

GSA has determined that this final rule is not a significant rule for the purposes of Executive Order 12866 of September 30, 1993.

B. Regulatory Flexibility Act

A Regulatory Flexibility Analysis is not required under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because there is no requirement that this final rule be published in the **Federal Register** for notice and comment.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FMR 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.*

D. Small Business Regulatory Enforcement Fairness Act

This final rule is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 102–37

Government property management, Homeless, Reporting and recordkeeping requirements, Surplus Government property.

Dated: November 4, 2002.

Stephen A. Perry,

Administrator of General Services.

For the reasons set forth in the preamble, GSA amends 41 CFR part 102–37 as follows:

PART 102–37—DONATION OF SURPLUS PERSONAL PROPERTY

1. The authority citation for 41 CFR part 102–37 is revised to read as follows:

Authority: 40 U.S.C. 549 and 121(c).

2. Amend § 102–37.110 by revising paragraph (c) to read as follows:

§ 102–37.110 What are a holding agency's responsibilities in the donation of surplus property?

* * * * *

(c) Set aside or hold surplus property from further disposal upon notification of a pending transfer for donation; (If GSA does not notify you of a pending transfer within 5 calendar days following the surplus release date, you may proceed with the sale or other authorized disposal of the property.)

* * * * *

[FR Doc. 02–32605 Filed 12–24–02; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212306–2306–01; I.D. 110602B]

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Interim 2003 Harvest Specifications for Groundfish

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

ACTION: Interim final rule.

SUMMARY: NMFS issues interim 2003 total allowable catch (TAC) amounts for each category of groundfish, American Fisheries Act (AFA) sideboard amounts, and specifications for prohibited species catch (PSC) amounts for the groundfish fishery of the Gulf of Alaska (GOA). Without interim specifications in effect on January 1, the groundfish fisheries would not be able to open on that date, which would result in unnecessary closures and disruption within the fishery industry. The intended effect is to conserve and manage the groundfish resources in the GOA.

DATES: The interim specifications are effective from 0001 hrs, Alaska local time (A.l.t.), January 1, 2003, until the effective date of the Final 2003 Harvest Specifications for GOA Groundfish, which will be published in the **Federal Register**.

ADDRESSES: Copies of the Environmental Assessment (EA) prepared for this action, the final 2001 Stock Assessment and Fishery Evaluation (SAFE) report, dated November 2001, and the final 2002 SAFE report, dated November 2002, are available from the North Pacific Fishery Management Council, 605 West 4th Avenue, Suite 306, Anchorage, AK 99501–2252, telephone (907–271–2809).

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–481–1780 or *tom.pearson@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Federal regulations at 50 CFR part 679 implementing the Fishery Management Plan (FMP) for Groundfish of the GOA govern the groundfish fisheries in the GOA. The North Pacific Fishery Management Council (Council) prepared the FMP, and NMFS approved it under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). General regulations that also pertain to the U.S. fisheries appear at subpart H of 50 CFR part 600.

The Council met in October 2002 to review scientific information concerning groundfish stocks and recommended proposed 2003 specifications which are available for public review (see **ADDRESSES**). The Council recommended and NMFS proposes a total acceptable biological catch (ABC) of 382,790 mt and a TAC of 233,166 mt for the 2003 fishing year. The proposed TAC amounts for each species were based on the best available biological and socioeconomic information.

Under § 679.20(c)(1)(ii), NMFS published in the **Federal Register** proposed harvest specifications for groundfish and associated management measures in the GOA for the 2003 fishing year (67 FR 76344, December 12, 2002). That document contains a detailed discussion of the proposed 2003 TACs, groundfish reserves, apportionments of TAC, ABC amounts, overfishing levels (OFLs), PSC amounts and apportionments, and associated management measures of the GOA groundfish fishery.

This action provides interim harvest specifications and apportionments thereof for the 2003 fishing year that will become available on January 1, 2003, and remain in effect until superseded by the final 2003 harvest specifications. Background information concerning the 2003 groundfish harvest specification process, upon which this interim action is based, is provided in the above mentioned proposed specification document.

Establishment of Interim TACs

Regulations at § 679.20(c)(2)(i) require that one-fourth of each proposed TAC and apportionment thereof (not including the reserves and the first seasonal allowance of pollock and Pacific cod) and one-fourth of the halibut PSC amounts become effective at 0001 hours, A.l.t., January 1, on an interim basis and remain in effect until superseded by the final harvest specifications. The final rule to implement the Steller sea lion protection measures will make the proposed first seasonal allowances of pollock and Pacific cod effective at 0001 hours, A.l.t., January 1, on an interim basis. They will remain in effect until superseded by the final harvest specifications. As stated in the proposed specifications (67 FR 76344, December 12, 2002), no harvest of groundfish is authorized prior to the effective date of this action implementing the interim specifications.

Regulations at § 679.20(a)(6)(ii) and (iii) allocate 100 percent of the pollock TAC to vessels catching pollock for processing by the inshore component, 90 percent of the Pacific cod TAC to vessels catching Pacific cod for processing by the inshore component, and 10 percent of the Pacific cod TAC to vessels catching Pacific cod for processing by the offshore component.

The reserves for the GOA are 20 percent of the TAC amounts for pollock, Pacific cod, flatfish species, and the ''other species'' category (§ 679.20(b)(2)). The GOA groundfish TAC amounts have been utilized fully since 1987 and NMFS expects this trend to continue in 2003. Therefore, NMFS has proposed reapportioning all the reserves to TAC. The interim TAC amounts contained in Table 1 reflect the proposed reapportionment of reserves back to the TAC.

Interim 2003 GOA Groundfish Harvest Specifications and Apportionments

Table 1 provides interim TAC amounts, the first seasonal allowance of pollock in the combined Western and Central regulatory areas, the first seasonal allowance of Pacific cod in the Western and Central Regulatory Areas, interim TAC allocations of Pacific cod to the inshore and offshore components, and interim sablefish TAC apportionments to hook-and-line and trawl gear. These interim TAC amounts and apportionments become effective at 0001 hours, A.l.t., January 1, 2003.

TABLE 1 - INTERIM 2003 TAC AMOUNTS OF GROUNDFISH FOR THE COMBINED WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA (GOA)1,2. THE FIRST SEASONAL ALLOWANCES OF POLLOCK IN THE COMBINED W/C REGULATORY AREAS, THE FIRST SEASONAL ALLOWANCES OF PACIFIC COD. INTERIM SABLEFISH TAC APPORTIONMENTS TO HOOK-AND-LINE (H/L) AND TRAWL (TRW) GEAR.

Species	Area	Interim TAC (mt)
Pollock[3,4]	W (610)	2,916
	C (620)	8,618
	C (630)	1,222
Subtotal	W/C	12,656
	WYK (640)	291
	SEO (650)	1,615
Total		14,562
Pacific cod[5]		
Inshore	W	7,987
Offshore	W	887
Inshore	C	11,741
Offshore	C	1,302
Inshore	E	512
Offshore	E	57
Total		22,481
Flatfish, Deep-water[6]		
	W	45
	C	555
	WYK	332
	SEO	288
Total		1,220
Rex sole		
	W	320
	C	1,385
	WYK	400
	SEO	262
Total		2,367
Flathead sole		
	W	500
	C	1,250
	WYK	398
	SEO	172
Total		2,320
Flatfish, Shallow-water[7]		
	W	1,125
	C	3,250
	WYK	295
	SEO	435
Total		5,105
Arrowtooth flounder		
	W	2,000
	C	6,250
	WYK	625
	SEO	625
Total		9,500
Sablefish[8,9,10]		
	H/L	N/A (486)
	TRW	122
	H/L	N/A (1,180)
	TRW	295
	TRW	70
	H/L	N/A (458)
	SEO	N/A (872)
Total		3,483
Pacific ocean perch[11]		
	W	658
	C	2,072
	WYK	195
	SEO	400
Total		3,325
Shortraker/rougheye[12]		
	W	555
	C	210
	E	140
Total		405
Rockfish, northern[13]		
	W	190

TABLE 1 - INTERIM 2003 TAC AMOUNTS OF GROUNDFISH FOR THE COMBINED WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA (GOA)1,2. THE FIRST SEASONAL ALLOWANCES OF POLLOCK IN THE COMBINED W/C REGULATORY AREAS, THE FIRST SEASONAL ALLOWANCES OF PACIFIC COD. INTERIM SABLEFISH TAC APPORTIONMENTS TO HOOK-AND-LINE (H/L) AND TRAWL (TRW) GEAR.—Continued

Species	Area	Interim TAC (mt)
	C	985
	E	N/A
Total		1,175
Rockfish, other[14,15]		
	W	22
	C	138
	WYK	38
	SEO	50
Total		248
Rockfish, pelagic shelf[16]		
	W	128
	C	870
	WYK	160
	SEO	215
Total		1,373
Rockfish, demersal shelf SEO[17]		
	SEO	88
Thornyhead rockfish		
	W	90
	C	210
	E	198
Total		498
Atka mackerel		
	GW	150
Other species[18]		2,776,
GOA Total Interim TAC		71,076

(Interim TAC amounts have been rounded to nearest mt)

[1] Reserves have been reapportioned back to each species' TAC and are reflected in the interim TAC amounts. (See § 679.20(a)(2))

[2] See § 679.2 for definitions of regulatory area and statistical area. See Figure 3b to part 679 for a description of regulatory districts.

[3] The first seasonal allowance of pollock TAC in the W/C combined area is set at 25% of the annual TAC for the area which is 12,656 mt. Within the W/C area pollock is apportioned between Statistical Areas 610, 620, and 630 based on the winter distribution of pollock in the area which is 23% in Area 610 (2,916 mt), 68% in Area 620 (8,618 mt), and 9% in Area 630 (1,122 mt). In the Eastern Regulatory Area, pollock is not divided into less than annual allowances, and one-fourth of the TAC is available on an interim basis.

[4] The pollock TAC in all regulatory areas will be allocated 100 percent to vessels catching groundfish for processing by the inshore component after subtraction of amounts that are determined by the Regional Administrator, NMFS, to be necessary to support the bycatch needs of the offshore component in directed fisheries for other groundfish species. At this time, these bycatch amounts are unknown and will be determined during the fishing year. (See § 679.20(a)(6)(ii))

[5] The Pacific cod TAC in all regulatory areas is allocated 90 percent to vessels catching groundfish for processing by the inshore component and 10 percent to vessels catching groundfish for processing by the offshore component (See § 679.20(a)(6)(iii)). The first seasonal apportionment of Pacific cod in the GOA is 60% of the annual TAC.

[6] ''Deep-water flatfish'' means Dover sole, Greenland turbot and deepsea sole.

[7] ''Shallow-water flatfish'' means flatfish not including ''deep-water flatfish'', flathead sole, rex sole, and arrowtooth flounder.

[8] Sablefish TAC amounts for each of the regulatory areas and districts are assigned to hook-and-line and trawl gear. In the Central and Western Regulatory Areas, 80 percent of the TAC is allocated to hook-and-line gear and 20 percent to trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is assigned to hook-and-line gear. Five percent is allocated to trawl gear and may only be used as bycatch to support directed fisheries for other target species. (See § 679.20(a)(4))

[9] The sablefish hook-and-line (H/L) gear fishery is managed under the Individual Fishing Quota (IFQ) program and is subject to regulations contained in subpart D of 50 CFR part 679. Annual IFQ amounts are based on the final TAC amount specified for the sablefish H/L gear fishery as contained in the final specifications for groundfish. Under § 679.7(f)(3), retention of sablefish caught with H/L gear is prohibited unless the harvest is authorized under a valid IFQ permit and IFQ card. In 2003, IFQ permits and IFQ cards will not be valid prior to the effective date of the 2003 final specifications. Thus, fishing for sablefish with H/L gear will not be authorized under these interim specifications. Nonetheless, interim amounts are shown in parentheses to reflect assignments of one-fourth of the proposed TAC amounts among gear categories and regulatory areas in accordance with § 679.20(c)(2)(i). See § 679.40 for guidance on the annual allocation of IFQ.

[10] Sablefish caught in the GOA with gear other than hook-and-line or trawl gear must be treated as prohibited species and may not be retained.

[11] ''Pacific ocean perch'' means *Sebastes alutus.*

[12] ''Shortraker/rougheye rockfish'' means *Sebastes borealis* (shortraker) and *S. aleutianus* (rougheye).

[13] ''Northern rockfish'' means *Sebastes polyspinis.*

14 ''Other rockfish'' in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The category ''other rockfish'' in the Southeast Outside District means slope rockfish.

[15] ''Slope rockfish'' means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegateu* (harlequin), *S. wilsoni* (pygmy), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), *S. babcocki* (redbanded), and *S. reedi* (yellowmouth).

[16] ''Pelagic shelf rockfish'' includes *Sebastes ciliatus* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail). ''Offshore Pelagic shelf rockfish'' includes *S. ciliatus* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail).

[17] ''Demersal shelf rockfish'' means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).

[18] ''Other species'' includes sculpins, sharks, skates, squid, and octopus. The TAC for ''other species'' equals 5 percent of the TAC amounts of target species.

Interim 2003 Halibut PSC Mortality Limits

Under § 679.21(d), annual Pacific halibut PSC mortality limits are established for trawl and hook-and-line gear and may be established for pot gear. The Council recommended and NMFS proposed to reestablish the 2002 halibut mortality limits for 2003 because no new information was available. Consistent with 2002, the Council recommended and NMFS proposed exemptions for pot gear, jig gear and the sablefish hook-and-line fishery from halibut PSC limits for 2003. The fishery specific interim PSC limits for halibut are in effect at 0001 hours, A.l.t., January 1, 2003, and remain in effect until superseded by the final 2003 harvest specifications. The interim halibut PSC limits are: (1) 500 mt to trawl gear, (2) 72.5 mt to hook-and-line gear for fisheries other than demersal shelf rockfish, and (3) 2.5 mt to hook-and-line gear for the demersal shelf rockfish fishery in the Southeast Outside District.

Regulations at § 679.21(d)(3)(iii) authorize apportionments of the trawl halibut PSC limit as bycatch allowances to a deep-water species complex, comprised of rex sole, sablefish, rockfish, deep-water flatfish, and arrowtooth flounder, and a shallow-water species complex, comprised of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and ''other species''. The interim 2003 apportionment for the shallow-water species complex is 409 mt and for the deep-water species complex is 91 mt.

Interim 2003 Non-exempt AFA Catcher Vessel Groundfish Harvest and PSC Limitations

One of the provisions implemented by AFA regulations was to place groundfish harvesting and processing limitations, also called sideboards, on AFA catcher/processors and catcher vessels in the GOA. These limitations are considered necessary for fishermen and processors who have received exclusive harvesting and processing privileges under the AFA to protect the interests of fishermen and processors who have not directly benefitted from the AFA. In the GOA, regulations that will be effective with the final rule to implement major provisions of the AFA prohibit unrestricted AFA catcher/processors from fishing for any species of fish (§ 679.7(k)(1)(ii)) and from processing any groundfish harvested in Statistical Area 630 of the GOA (§ 679.7(k)(1)(iv)). The Council recommended and NMFS proposed that certain AFA catcher vessels in the GOA be exempt from groundfish harvest limitations. Under the final rule to implement major provisions of the AFA at § 679.63(b)(1)(i)(B), exempted AFA catcher vessels in the GOA will be those less than 125 ft (38.1 m) length overall (LOA) whose annual BSAI pollock landings totaled less than 5,100 mt and that made 40 or more GOA groundfish landings from 1995 through 1997.

For non-exempt AFA catcher vessels in the GOA, harvest limitations are based upon their traditional harvest levels of TAC in groundfish fisheries covered by the GOA FMP. Under the final rule to implement major provisions of the AFA at § 679.63(b)(1)(ii)(C), the amounts of groundfish harvest limits in the GOA will be based on the retained catch of non-exempt AFA catcher vessels of each sideboard species from 1995 through 1997 divided by the TAC for that species over the same period. These amounts are listed in Table 2. All harvests of sideboard species made by non-exempt AFA catcher vessels, whether as targeted catch or bycatch, will be deducted from the sideboard limits in Table 2.

TABLE 2 - INTERIM 2003 GOA NON-EXEMPT AFA CATCHER VESSEL (CV) GROUNDFISH HARVEST LIMITATIONS (SIDEBOARDS). (VALUES ARE IN MT)

Species	Apportionments and Allocations by Area/processor/Gear	Ratio of 1995–1997 Non-Exempt AFA CV Catch to 1995–1997 TAC	2003 Interim TAC	2003 Non-Exempt AFA Catcher Vessel Sideboard
Pollock	Shumagin (610)	0.6112	2,916	1,782
	Chirikof (620)	0.1427	8,618	1,230
	Kodiak (630)	0.2438	1,122	274
	WYK (640)	0.3499	291	102
	SEO (650)	0.3499	1,615	565
Pacific cod	W inshore	0.1423	7,979	1,135
	offshore	0.1026	887	91
	C inshore	0.0722	11,741	848
	E inshore	0.0721	1,305	94
	offshore	0.0079	512	4
		0.0078	57	0
Flatfish deep-water		0.000	45	0
	W.	0.0670	555	37
	C	0.0171	620	11
	E			
Rex sole	W	0.0010	320	0
	C	0.0402	1,385	56
	E	0.0153	662	10
Flathead sole	W	0.0036	500	2
	C	0.0261	1,250	33
	E	0.0048	570	3
Flatfish shallow-water	W	0.0156	1,125	18
	C	0.0598	3,250	194
	E	0.0126	730	9
Arrowtooth flounder	W	0.0021	1,125	4
	C	0.0309	3,250	193
	E	0.0020	730	2
Sablefish	W trawl gear	0.0000	122	0
	C trawl gear	0.0720	295	21
	WYK trawl gear	0.0488	70	3

TABLE 2 - INTERIM 2003 GOA NON-EXEMPT AFA CATCHER VESSEL (CV) GROUNDFISH HARVEST LIMITATIONS (SIDEBOARDS). (VALUES ARE IN MT)—Continued

Species	Apportionments and Allocations by Area/processor/Gear	Ratio of 1995–1997 Non-Exempt AFA CV Catch to 1995–1997 TAC	2003 Interim TAC	2003 Non-Exempt AFA Catcher Vessel Sideboard
Pacific Ocean perch	W	0.0623	658	41
	C	0.0866	2,072	179
	E	0.0466	595	28
Shortraker/Rougheye	W	0.0000	55	0
	C	0.0237	210	5
	E	0.0124	140	2
Other rockfish	W	0.0034	22	0
	C	0.2065	138	28
	E	0.0000	88	0
Northern rockfish	W	0.0003	190	0
	C	0.0336	985	33
Pelagic shelf rockfish	W	0.0001	128	0
	C	0.0000	870	0
	E	0.0067	375	3
Thornyhead rockfish	W	0.0308	90	3
	C	0.0308	210	6
	E	0.0308	198	6
Demersal shelf rockfish	SEO	0.0020	88	0
Atka mackerel	Gulfwide	0.0309	150	5
Other species	Gulfwide	0.0090	2,776	25

Under the final rule to implement major provisions of the AFA at § 679.63(b)(1)(iii), PSC bycatch limits for non-exempt AFA catcher vessels in the GOA are based upon the ratio of aggregate retained groundfish catch by non-exempt AFA catcher vessels in each PSC target category from 1995 through 1997 relative to the retained catch of all vessels in that fishery from 1995 through 1997. These amounts are shown in Table 3.

TABLE 3 - INTERIM 2003 NON-EXEMPT AFA CATCHER VESSEL PROHIBITED SPECIES CATCH (PSC) LIMITS FOR THE GOA. (VALUES ARE IN MT)

PSC Species	Fishery	Ratio of 1995–1997 Non-Exempt AFA CV Retained Catch to Total Retained Catch	Interim 2003 PSC Limit	Interim 2003 Non-Exempt AFA Catcher Vessel PSC Limit
Halibut	shallow water complex	0.340	409	139
mortality	deep water complex	0.070	91	6

Directed Fishing Closures

In accordance with § 679.20(d)(1)(i), if the Regional Administrator determines that any allocation or apportionment of a target species or ''other species'' category apportioned to a fishery or, with respect to pollock and Pacific cod, to an inshore or offshore component allocation, will be reached, the Regional Administrator may establish a directed fishing allowance for that species or species group. If the Regional Administrator establishes a directed fishing allowance, and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified GOA regulatory area or district (§ 679.20(d)(1)(iii)).

The Regional Administrator has determined that the following interim TAC amounts (Table 4) are necessary as incidental catch to support other anticipated groundfish fisheries for the 2003 fishing year.

TABLE 4 - INTERIM INCIDENTAL CATCH NEEDED TO SUPPORT OTHER DIRECTED FISHERIES IN THE GOA IN 2003. (AMOUNTS ARE IN MT)

Species	Regulatory Area	Gear/Component	Amount
Atka Mackerel	entire GOA	all	150
Thornyhead Rockfish	entire GOA	all	498
Shortraker Rougheye Rockfish	entire GOA	all	405
Other Rockfish	entire GOA	all	248
Sablefish	entire GOA	trawl	487
Pollock	entire GOA	all/offshore	0

In accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the directed fishing allowances for the species or species groups in Table 4 as zero. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is immediately prohibiting directed fishing for those species, areas, gear types, and components listed in Table 4. These closures will remain in effect until superseded by the final 2003 harvest specifications.

The final rule to implement major provisions of the AFA at § 679.63(b)(iv) will provide for management of AFA catcher vessel groundfish harvest limits and PSC bycatch limits using directed fishing closures and PSC closures according to procedures set out at § 679.20(d)(1)(iv) and § 679.21(d)(8). The Regional Administrator has determined that in addition to the closures listed in this document, many of the non-exempt AFA catcher vessel sideboard amounts listed in Table 2 are necessary as incidental catch to support other anticipated groundfish fisheries for the 2003 fishing year. In accordance with § 679.20(d)(1)(iv), the Regional Administrator establishes these amounts as directed fishing allowances. The Regional Administrator finds that many of these directed fishing allowances will be reached before the end of the year. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing by non-exempt AFA catcher vessels in the GOA for the species and specified areas in Table 5. These closures will remain in effect until superseded by the final 2003 harvest specifications.

TABLE 5 - INTERIM 2003 NON-EXEMPT AFA CATCHER VESSEL SIDEBOARD DIRECTED FISHING CLOSURES IN THE GOA

Species	Regulatory Area/District	Gear
Pacific cod	E GOA	all
Deep-water flatfish	W and E GOA	all
Rex sole	W and E GOA	all
Flathead sole	E GOA	all
Shallow-water flatfish	E GOA	all
Arrowtooth flounder	E GOA	all
Pacific ocean perch	W GOA	all
Northern rockfish	W GOA	all
Pelagic shelf rockfish	entire GOA	all
Demersal shelf rockfish	SEO District	all
Other species	entire GOA	all

Classification

This action is necessary to establish interim harvest limits for the GOA groundfish fisheries for the 2003 fishing year. The groundfish fisheries in the GOA are governed by Federal regulations at 50 CFR part 679 that require NMFS, after consultation with the Council, to publish and solicit public comments on proposed annual TACs and PSC allowances.

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA, finds that the need to establish interim TACs and related management measures for groundfish fisheries in the GOA, effective January 1, 2003, makes it impracticable and contrary to the public interest to provide prior notice and opportunity for public comment on this action. Because this action is a final action by NMFS, analyses and consultations required under the Magnuson-Stevens Act, the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA) must be completed and considered by the agency prior to promulgation of the interim harvest specifications. However, the information on which the EA and the section 7 consultations are based was not available until early December 2002. The Council's GOA and BSAI groundfish Plan Teams met in mid-November 2002 to develop stock assessment reports and to provide recommendations on acceptable biological catch (ABC) levels for the upcoming fishing year. The stock assessment reports and ABC recommendations developed by the Plan Teams in mid-November incorporate scientific and fishery data from the current science, as required by national standard 2 of the Magnuson-Stevens Act. The Plan Teams prepared the final reports during the last two weeks of November. The EA and section 7 consultations were then based on these final reports.

Regulations at 50 CFR 679.20(c)(2) require NMFS to specify interim harvest specifications to be effective January 1 and remain in effect until superseded by the final specifications. Without interim specifications in effect on January 1, the groundfish fisheries would not be able to open, resulting in unnecessary closures and disruption within the fishing industry. Because NMFS cannot publish interim specifications until all analyses and consultations are complete, and those analyses and consultations were not completed until early December 2002, there is not sufficient time to provide the public with an opportunity to comment on the interim specifications before they must be in place on January 1. Additionally, the proposed 2003 GOA groundfish harvest specifications, on which the interim specifications are based, provide the opportunity for public comment. Given these reasons, good cause exists under 5 U.S.C. 553(b)(B) to waive prior notice and opportunity for public comment on this action.

Likewise, the Assistant Administrator for Fisheries, NOAA, finds that the need to establish interim TACs and other management measures in the GOA effective on January 1, 2003, provides good cause to waive the 30–day delay in the effective date of the interim specifications. In order for the GOA groundfish fishing season to begin on January 1, 50 CFR 679.20(c)(2) requires NMFS to establish interim harvest specifications to be effective on January 1 and to remain in effect until superseded by the filing of final harvest specifications with the Office of the **Federal Register**. NMFS interprets regulations at § 679.20(c)(2) as requiring the filing of interim specifications with the Office of the **Federal Register** before any harvest of groundfish is authorized. Without interim specifications in effect on January 1, the groundfish fisheries would not be able to open on that date, resulting in unnecessary closures and disruption within the fishing industry. Based on these reasons, the need to publish these measures in a timely manner constitutes good cause under authority contained in 5 U.S.C. 553(d)(3) to waive the 30–day delay in effective date.

Because these interim specifications are not required to be issued with prior notice and opportunity for public comment, the analytical requirements of the Regulatory Flexibility Act do not apply. Consequently, no regulatory flexibility analysis has been prepared for this action.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

Dated: December 16, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 02–32432 Filed 12–24–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–2307–01; I.D. 110602C]

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Area; Interim 2003 Harvest Specifications for Groundfish

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

ACTION: Interim final rule.

SUMMARY: NMFS issues interim 2003 total allowable catch (TAC) amounts for each category of groundfish, Community Development Quota (CDQ) reserve amounts, American Fisheries Act (AFA) pollock allocations and sideboard amounts, and prohibited species catch (PSC) allowances and prohibited species quota (PSQ) reserves for the groundfish fishery of the Bering Sea and Aleutian Islands management area (BSAI). Without interim specifications in effect on January 1, the groundfish fisheries would not be able to open on that date, which would result in unnecessary closures and disruption within the fishing industry. The intended effect is to conserve and manage the groundfish resources in the BSAI.

EFFECTIVE DATE: The Interim Specifications are effective from 0001 hours, Alaska local time (A.l.t.), January 1, 2003, until the effective date of the Final 2003 Harvest Specifications for BSAI Groundfish, which will be published in the **Federal Register**.

ADDRESSES: Copies of the Environmental Assessment (EA) prepared for this action, the final 2001 Stock Assessment and Fishery Evaluation (SAFE) report, dated November 2001, and the final 2002 SAFE report, dated November 2002, are available from the North Pacific Fishery Management Council, West 4th Avenue, Suite 306, Anchorage, AK 99510–2252 (907–271–2809).

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228, or email *mary.furuness@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Federal regulations at 50 CFR part 679 implementing the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) govern the groundfish fisheries in the BSAI. The North Pacific Fishery Management Council (Council) prepared the FMP, and NMFS approved it under the Magnuson-Stevens Fishery Conservation and Management Act. General regulations that also pertain to the U.S. fisheries appear at subpart H of 50 CFR part 600.

The Council met in October 2002 to review scientific information concerning groundfish stocks and recommended proposed 2003 specifications which are available for public review (see **ADDRESSES**). The Council recommended a proposed total ABC of 3,176,100 mt and a proposed total TAC of 1,998,540 mt for the 2003 fishing year. The proposed TAC amounts for each species were based on the best available biological and socioeconomic information.

Under § 679.20(c)(1), NMFS published in the **Federal Register** proposed harvest specifications for groundfish and associated management measures in the BSAI for the 2003 fishing year (67 FR 76362, December 12, 2002). That document contains a detailed discussion of the proposed 2003 TACs, initial TACs (ITACs) and related apportionments, CDQ reserves, ABC amounts, overfishing levels, PSC allowances, PSQ reserve amounts, and associated management measures of the BSAI groundfish fishery.

This action provides interim harvest specifications and apportionments thereof for the 2003 fishing year that will become available on January 1, 2003, and remain in effect until superseded by the final 2003 harvest specifications. Background information concerning the 2003 groundfish harvest specification process upon which this interim action is based is provided in the above mentioned proposed specification document.

Establishment of Interim TACs

Regulations at § 679.20(b)(1)(i) require that 15 percent of the TAC for each target species or species group, except for pollock and the hook-and-line and pot gear allocation of sablefish, be placed in a non-specified reserve. The AFA supersedes this provision for pollock by requiring that the TAC for this species be fully allocated among the CDQ program, incidental catch allowance (ICA), and inshore, catcher/processor, and mothership directed fishery allowances.

Regulations at § 679.20(b)(1)(iii) require that one-half of each TAC amount placed in the non-specified reserve, with the exception of squid, be allocated to the groundfish CDQ reserve and that 20 percent of the hook-and-line and pot gear allocation of sablefish be allocated to the fixed gear sablefish CDQ reserve. Section 206(a) of the AFA requires that 10 percent of the pollock TAC be allocated to the pollock CDQ reserve. With the exception of the hook-and-line and pot gear sablefish CDQ reserve, the CDQ reserves are not further apportioned by gear. Regulations at § 679.21(e)(1)(i) also require that 7.5 percent of each PSC limit, with the exception of herring, be withheld as a PSQ reserve for the CDQ fisheries. Regulations governing the management of the CDQ and PSQ reserves are set forth at §§ 679.30 and 679.31.

Regulations at § 679.20(c)(2) provide that interim specifications become effective at 0001 hours, A.l.t., January 1, and remain in effect until superseded by the final groundfish harvest specifications. The regulations that will be effective with the final rule to implement the Steller sea lion protection measures further provide that the interim specifications will be established as one-fourth of each proposed ITAC amount and apportionment thereof (not including the first seasonal allowance of pollock, Pacific cod and Atka mackerel), one-fourth of each proposed PSQ reserve and PSC allowance established under § 679.21, and the first proposed seasonal allowance of pollock, Pacific cod and Atka mackerel TAC. As stated in the proposed specifications publication (67 FR 76362, December 12, 2002), no harvest of groundfish is authorized prior to the effective date of this action implementing the interim specifications.

Interim 2003 BSAI Groundfish Harvest Specifications

Table 1 provides interim TAC and CDQ amounts and apportionments thereof. Regulations at § 679.20(c)(2)(ii) do not provide for an interim specification for the non-trawl sablefish CDQ reserve or for sablefish managed under the Individual Fishing Quota program. As a result, fishing for the non-trawl allocation of CDQ sablefish and sablefish harvested with fixed gear is prohibited until the effective date of the Final 2003 Groundfish Specifications.

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TABLE 1.–INTERIM 2003 TAC AMOUNTS FOR GROUNDFISH AND APPORTIONMENTS THEREOF FOR THE BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA[1].

Species and Component (if applicable)		Area and/or Gear (if applicable)	Interim TAC	Interim CDQ
Pollock [2]	AFA Inshore	BS	256,608	
		SCA limit[3]	41,580	
	AFA Catcher Processors[4]	BS	205,286	
	Catch by C/Ps	BS	187,837	
	Catch by CVs[4]	BS	17,449	
	Restricted C/P cap[4]	BS	1,026	
		SCA limit[3]	143,700	
	AFA Mothership	BS	51,322	
		SCA limit[3]	35,925	
	CDQ	BS	.....	59,400
		SCA limit[3]	.....	41,580
	ICA	BS	53,460	
	ICA	AI	900	100
	ICA	Bogoslof District	90	10
	Excessive Share Cap[5]		89,813	
	Total Pollock		567,666	59,510
Pacific Cod [6]		Jig	2,040	
		H/L Catcher Processors	41,376	
		H/L Catcher Vessels	155	
		Pot Vessels	9,465	
		Catcher Vessels <60 H/L,Pot	1,207	
		ICA	500	
		Trawl Catcher Vessels	27,965	
		Trawl Catcher Processors	19,975	
		.....	.....	
				15,000
	Total Pacific cod		102,683	15,000
Sablefish [7,8]		BS-Trawl	205	14
		BS-H/L & Pot	N/A	N/A
		AI-Trawl	135	11
		AI-H/L & Pot	N/A	N/A
	Total Sablefish		340	25
Atka mackerel [9]		Western AI	10,183	1,797
		HLA Limit	6,110	
		Central AI	12,304	2,171
		HLA Limit	7,382	
		Eastern AI/BS	2,872	502
		Jig gear	57	
		Other gear	2,815	
	Total Atka mackerel		25,359	4,470
Yellowfin sole		BSAI	16,150	1,425
Rock sole		BSAI	11,475	1,013
Greenland turbot		BS	1,139	101
		AI	561	50
	Total Greenland turbot		1,700	151
Arrowtooth flounder		BSAI	3,400	300
Flathead sole		BSAI	5,313	469
Other flatfish [10]		BSAI	638	56
Alaska plaice		BSAI	2,550	225
Pacific ocean perch		BS	557	49
		Western AI	1,203	106
		Central AI	650	57
		Eastern AI	735	65
	Total Pacific ocean perch		3,145	277
Northern Rockfish		BS	3	.25
		AI	996	88

Total Northern rockfish		999	88
Shortraker/Rougheye[11]	BS	25	2
	AI	194	17
	AI Trawl	136	
	AI Non-trawl	58	
Total Shortraker/Rougheye		219	19
Other rockfish [12]	BS	77	7
	AI	144	13
Total other rockfish		221	20
Squid	BSAI	419	
Other Species [13]	BSAI	6,550	578
Total interim TAC		748,827	83,626

[1] Amounts are in metric tons. These amounts apply to the entire Bering Sea (BS) and Aleutian Islands (AI) management area unless otherwise specified. With the exception of pollock, and for purposes of these specifications, the BS includes the Bogoslof District.

[2] After subtraction for the CDQ reserve and ICA, the pollock ITAC is allocated as a directed fishing allowance (DFA). Ten percent of the pollock TAC is allocated to the pollock CDQ reserve under paragraph 206(a) of the AFA. Under authority of the AFA, NMFS is allocating 4 percent of the pollock as an ICA (see section 206(b) of the AFA). The first seasonal apportionment of pollock for all sectors is 40 percent of the annual DFA.

[3]The Steller sea lion conservation area (SCA) limits harvest to 28 percent of each sector's annual DFA until April 1. The remaining 1 percent of the annual DFA allocated to the A season may be taken outside of the SCA before April 1 or inside the SCA after April 1. If 28 percent of the annual DFA is not taken inside the SCA before April 1, the remainder is available to be taken inside the SCA after April 1.

[4] Subsection 210(c) of the AFA requires that not less than 8.5 percent of the directed fishing allowance allocated to listed catcher/processors (C/Ps) shall be available for harvest only by eligible catcher vessels (CVs) delivering to listed catcher/processors. The AFA requires that vessels described in section 208(e)(21) be prohibited from exceeding a harvest amount of one-half of one percent of the directed fishing allowance allocated to vessels for processing by AFA catcher/processors.

[5] Paragraph 210(e)(1) of the AFA specifies that "No particular individual, corporation, or other entity may harvest, through a fishery cooperative or otherwise, a total of more than 17.5 percent of the pollock available to be harvested in the directed pollock fishery."

[6] After subtraction of the reserves, the ITAC amount for Pacific cod is allocated 2 percent to vessels using jig gear, 51 percent to H/L or pot gear, and 47 percent to trawl gear. The Pacific cod allocation to trawl gear is split evenly between catcher vessels and catcher/processor vessels (See § 679.20(a)(7)(i)). The Pacific cod allocation to H/L or pot gear is further allocated as an ICA and as the following directed fishing allowances: 80 percent to H/L catcher processors, 0.3 percent to H/L catcher vessels, 18.3 percent to pot gear vessels, 1.4 percent to catcher vessels under 60 feet LOA using H/L or pot gear (See § 679.20(a)(7)(i)(B)). The first seasonal allowance of the ITAC gear apportionments are in effect on January 1 as an interim TAC. The first seasonal allocations are 60 percent of the annual TAC, except for trawl catcher/processers (50 percent) and trawl catcher vessels (70 percent).

[7] Sablefish gear allocations are as follows: In the BS subarea, trawl gear is allocated 50 percent and H/L and pot gear are allocated 50 percent of the TAC. In the AI subarea, trawl gear is allocated 25 percent, and H/L and pot gear are allocated 75 percent of the TAC (See § 679.20(a)(4)(iii) and (iv)). One-fourth of the ITAC amount for trawl gear is in effect January 1 as an interim TAC amount.

[8] The sablefish H/L gear fishery is managed under the Individual Fishing Quota (IFQ) program and subject to regulations contained in subpart D of 50 CFR part 679. Twenty percent of the sablefish H/L and pot gear final TAC amount will be reserved for use by CDQ participants. (See § 679.31(c).) Existing regulations at § 679.20(c)(2)(ii) do not provide for an interim specification for the CDQ nontrawl sablefish reserve or for an interim specification for sablefish managed under the IFQ program. In addition, in accordance with § 679.7(f)(3), retention of sablefish caught with fixed gear is prohibited unless the harvest is authorized under a valid IFQ permit and IFQ card. In 2003, IFQ permits and IFQ cards will not be valid prior to the effective date of the 2003 final specifications. Thus, fishing for sablefish with fixed gear is not authorized under these interim specifications. See subpart D of 50 CFR part 679 and § 679.23(g) for guidance on the annual allocation of IFQ and the sablefish fishing season.

[9] Regulations at § 679.20 (a)(8) require that up to 2 percent of the Eastern Aleutian subarea and the BS subarea ITAC be allocated to the jig gear fleet. The amount of this allocation is 1 percent. The jig gear allocation is not apportioned by season. The harvest limitation area (HLA) limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (§ 679.2). In 2003, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central AI.

[10] "Other flatfish" includes all flatfish species except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, arrowtooth flounder, yellowfin sole and Alaska plaice.

[11] Under § 679.20(a)(9), the ITAC of shortraker rockfish and rougheye rockfish specified for the Aleutian Islands subarea is allocated 30 percent to vessels using non-trawl gear and 70 percent to vessels using trawl gear.

[12] "Other rockfish" includes all Sebastes and Sebastolobus species except for Pacific ocean perch, northern, shortraker, and rougheye rockfish.

[13] "Other species" includes sculpins, sharks, skates, and octopus. Forage fish, as defined at § 679.2, are not included in the "other species" category.

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Interim Allocation of PSC Limits for Crab, Halibut, and Herring

Under § 679.21(e), annual PSC limits are specified for red king crab, *Chionoecetes bairdi* Tanner crab, and *C. opilio* crab in applicable Bycatch Limitation Zones (see § 679.2) of the Bering Sea subarea, and for Pacific halibut and Pacific herring throughout the BSAI. Regulations under § 679.21(e) authorize the apportionment of each PSC limit into PSC allowances for specified fishery categories. Under § 679.21(e)(1)(i), 7.5 percent of each PSC limit specified for halibut, crab, and salmon is reserved as a PSQ reserve for use by the groundfish CDQ program.

Regulations at § 679.20(c)(2)(ii) provide that one-fourth of each proposed PSQ reserve and PSC allowance be made available on an interim basis for harvest at the beginning of the fishing year, until superseded by the final harvest specifications. The PSQ reserves and fishery specific interim PSC allowances for halibut and crab are specified in Table 2 and are in effect at 0001 hours, A.l.t., January 1, 2003.

TABLE 2. INTERIM 2003 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES. PROHIBITED SPECIES AND ZONE

TRAWL FISHERIES	Halibut mortality (mt) BSAI	Herring (mt) BSAI	Red King Crab (animals) Zone 1[1]	C. opilio (animals) COBLZ[2]	C. bairdi (animals)	
					Zone 1[1]	Zone 2[1]
Yellowfin sole	222	35	4,166	694,245	85,211	447,115
Rocksole/oth.flat/flat sole[3]	195	5	14,946	242,283	91,330	149,039
RKCSS[3]	.....	.....	5,231	.....	.....	.....
Turbot/arrowtooth/sablefish[4]	.....	2	.....	10,060	.....	.....
Rockfish						
July 1 - December 31	17	2		10,059		2,747
Pacific cod	359	5	2,916	31,184	45,778	81,044
Midwater trawl pollock		296				
Pollock/Atka/other[5]	58	37	404	18,107	4,306	6,868
TOTAL TRAWL PSC	851	382	22,432	1,005,938	226,625	686,813
NON-TRAWL FISHERIES						
Pacific cod - Total	193					
Other non-trawl - Total	14					
Groundfish pot & jig	exempt					
Sablefish hook & line	exempt					
TOTAL NON-TRAWL PSC	207					
PSQ RESERVE[6]	86		1,818	81,562	18,375	55,687
GRAND TOTAL	1,144	382	24,250	1,087,500	245,000	742,500

[1] Refer to § 679.2 for definitions of areas.
[2] *C. opilio* Bycatch Limitation Zone. Boundaries are defined at § 679.21 (e)(7)(iv)(B).
[3] The Council at its October 2002 meeting proposed limiting red king crab for trawl fisheries within the Red King Crab Savings Subarea (RKCSS) to 35 percent of the total allocation to the rock sole, flathead sole, and other flatfish fishery category (§ 679.21(e)(3)(ii)(B)).
[4] Greenland turbot, arrowtooth flounder, and sablefish fishery category.
[5] Pollock other than pelagic trawl pollock, Atka mackerel, and ''other species'' fishery category.
[6] With the exception of herring, 7.5 percent of each PSC limit is allocated to the multi-species CDQ program as PSQ reserve. The PSQ reserve is not allocated by fishery, gear or season.

Directed Fishing Closures

In accordance with § 679.20(d)(1)(i), if the Regional Administrator determines that any allocation or apportionment of a target species or ''other species'' category has been or will be reached, the Regional Administrator may establish a directed fishing allowance for that species or species group. If the Regional Administrator establishes a directed fishing allowance, and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified subarea or district (§ 697.20(d)(1)(iii)). Similarly, under § 679.21(e), if the Regional Administrator determines that a fishery category's bycatch allowance of halibut, red king crab, or C. bairdi Tanner crab for a specified area has been reached, the Regional Administrator will prohibit directed fishing for each species in that category in the specified area.

The Regional Administrator has determined that the following remaining allocation amounts will be necessary as incidental catch to support other anticipated groundfish fisheries for the 2003 fishing year:

Bogoslof District:	.....
Pollock	90 mt
Aleutian Islands subarea:	
Pollock	900 mt
Northern rockfish	996 mt
Shortraker/rougheye rockfish	194 mt
''Other rockfish''	144 mt
Bering Sea subarea:	
Pacific ocean perch	557 mt
''Other rockfish''	77 mt
Northern rockfish	3 mt
Shortraker/rougheye rockfish	25 mt

Consequently, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the directed fishing allowances for the above species or species groups as zero.

Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is immediately prohibiting directed fishing for these species in the specified areas and these closures will remain in effect from 0001 hrs, A.l.t., January 1, 2003, until superseded by the Final 2003 Harvest Specifications for BSAI Groundfish.

In addition, the BSAI Zone 1 annual red king crab allowance specified for the trawl rockfish fishery (§ 679.21(e)(3)(iv)(D)) is 0 mt and the BSAI first seasonal halibut bycatch allowance specified for the trawl rockfish fishery is 0 mt. The BSAI annual halibut bycatch allowance specified for the trawl Greenland turbot/arrowtooth flounder/sablefish fishery categories is 0 mt (§ 679.21(e)(3)(iv)(C)). Therefore, in accordance with § 679.21(e)(7)(ii) and (v), NMFS is prohibiting directed fishing for rockfish by vessels using trawl gear in Zone 1 of the BSAI and directed fishing for Greenland turbot/arrowtooth flounder/

sablefish by vessels using trawl gear in the BSAI from 0001 hrs., A.l.t., January 1, 2003, until superseded by the final 2003 harvest specifications for BSAI groundfish. NMFS is also prohibiting directed fishing for rockfish outside Zone 1 in the BSAI until 1200 hrs, A.l.t, July 1, 2003.

While these closures are in effect, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a fishing trip. These closures to directed fishing are in addition to closures and prohibitions found in regulations at 50 CFR part 679. Refer to § 679.2 for definitions of areas. In the BSAI, ''Other rockfish'' includes *Sebastes* and *Sebastolobus* species except for Pacific ocean perch, shortraker, rougheye, and northern rockfish.

Bering Sea Subarea Inshore Pollock Allocations

Regulations that will be effective with the final rule to implement major provisions of the AFA at § 679.4 set forth procedures for AFA inshore catcher vessel pollock cooperatives to apply for and receive cooperative fishing permits and inshore pollock allocations. Table 3 lists the interim pollock allocations to the seven inshore catcher vessel pollock cooperatives based on 2002 coop allocations and NMFS' assumption, at this date, that the cooperatives membership will remain unchanged in 2003. Allocations for cooperatives and vessels not participating in cooperatives are not made for the AI subarea because the AI subarea has been closed to directed fishing for pollock. These allocations may be revised in the final 2003 BSAI groundfish harvest specifications pending adjustments to cooperatives membership for the 2003 fishing year.

TABLE 3. INTERIM 2003 BERING SEA SUBAREA INSHORE COOPERATIVE ALLOCATIONS.

Cooperative name and member vessels	Sum of member vessel's official catch histories[1]	Percentage of inshore sector allocation	Interim cooperative allocation
Akutan Catcher Vessel Association	245,527	28.085%	72,068
ALDEBARAN, ARCTIC EXPLORER, ARCTURUS, BLUE FOX, CAPE KIWANDA, COLUMBIA, DOMINATOR, EXODUS, FLYING CLOUD, GOLDEN DAWN, GOLDEN PISCES, HAZEL LORRAINE, INTREPID EXPLORER, LESLIE LEE, LISA MELINDA, MAJESTY, MARCY J, MARGARET LYN, NORDIC EXPLORER, NORTHERN PATRIOT, NORTHWEST EXPLORER, PACIFIC RAM, PACIFIC VIKING, PEGASUS, PEGGY JO, PERSEVERANCE, PREDATOR, RAVEN, ROYAL AMERICAN, SEEKER, SOVEREIGNTY, TRAVELER, VIKING EXPLORER			
Arctic Enterprise Association	36,807	4.210%	10,804
BRISTOL EXPLORER, OCEAN EXPLORER, PACIFIC EXPLORER			
Northern Victor Fleet Cooperative	73,656	8.425%	21,620
ANITA J, COLLIER BROTHERS, COMMODORE, EXCALIBUR II, GOLDRUSH, HALF MOON BAY, MISS BERDIE, NORDIC FURY, PACIFIC FURY, POSEIDON, ROYAL ATLANTIC, SUNSET BAY, STORM PETREL			
Peter Pan Fleet Cooperative	18,693	2.138%	5,487
AMBER DAWN, AMERICAN BEAUTY, ELIZABETH F, MORNING STAR, OCEAN LEADER, OCEANIC, PROVIDIAN, TOPAZ, WALTER N			
Unalaska Cooperative	106,737	12.209%	31,330
ALASKA ROSE, BERING ROSE, DESTINATION, GREAT PACIFIC, MESSIAH, MORNING STAR, MS AMY, PROGRESS, SEA WOLF, VANGUARD, WESTERN DAWN			
UniSea Fleet Cooperative	201,566	23.056%	59,164
ALSEA, AMERICAN EAGLE, ARGOSY, AURIGA, AURORA, DEFENDER, GUN-MAR, NORDIC STAR, PACIFIC MONARCH, SEADAWN, STARFISH, STARLITE			
Westward Fleet Cooperative	189,544	21.681%	55,636
A.J., ALASKAN COMMAND, ALYESKA, ARCTIC WIND, CAITLIN ANN, CHELSEA K, DONA MARTITA, FIERCE ALLEGIANCE, HICKORY WIND, OCEAN HOPE 3, PACIFIC KNIGHT, PACIFIC PRINCE, STARWARD, VIKING, WESTWARD I			
Open access AFA vessels	1,707	0.195%	501
Total inshore allocation	874,238	100%	256,608

[1]According to regulations that will be effective with the final rule to implement major provisions of the AFA at 679.62(e)(1) the individual catch history for each vessel is equal to the vessel's best 2 of 3 years inshore pollock landings from 1995 through 1997 and includes landings to catcher/processors for vessels that made 500 or more mt of landings to catcher/processors from 1995 through 1997.

According to regulations that will be effective with the final rule to implement major provisions of the AFA at § 679.20(a)(5)(i)(A), NMFS must subdivide the inshore allocation into allocations for cooperatives and vessels not fishing in a cooperative (i.e., the open access sector). In addition, under § 679.22(a)(11)(vii), NMFS must establish harvest limits inside the SCA and provide a set-aside so that catcher vessels less than or equal to 99 ft (30.2 m) LOA have the opportunity to operate entirely within the SCA during the A season. Accordingly, Table 4 lists the interim apportionment of the Bering Sea subarea inshore pollock allocation into allocations for vessels fishing in a cooperative and for vessels not participating in a cooperative and establishes a cooperative-sector SCA set-aside for AFA catcher vessels less than or equal to 99 ft (30.2 m) LOA. The SCA set-aside for sector catcher vessels less than or equal to 99 ft (30.2 m) LOA that are not participating in a cooperative will be established inseason based on actual participation levels and is not included in Table 4. These allocations may be revised in the final 2003 BSAI groundfish harvest specifications pending adjustments to cooperatives membership for the 2003 fishing year.

TABLE 4. INTERIM 2003 BERING SEA SUBAREA POLLOCK ALLOCATIONS TO THE COOPERATIVE AND OPEN ACCESS SECTORS OF THE INSHORE POLLOCK FISHERY. AMOUNTS ARE EXPRESSED IN MT.

	A/B season TAC	A season inside SCA[1]
Cooperative sector		
Vessels > 99 ft	n/a	154,025
Vessels ≤ 99 ft	n/a	25,250
Total	256,107	179,275
Open access sector	501	351[2]
Total inshore	256,608	179,626

[1]Steller sea lion conservation area established at § 679.22(a)(11)(vii).

[2] SCA limitations for vessels less than or equal to 99 ft LOA that are not participating in a cooperative will be established on an inseason basis in accordance with § 679.22(a)(11)(vii)(C)(*2*) which specifies that ''the Regional Administrator will prohibit directed fishing for pollock by vessels catching pollock for processing by the inshore component greater than 99 ft (30.2 m) LOA before reaching the inshore SCA harvest limit during the A season to accommodate fishing by vessels less than or equal to 99 ft (30.2 m) inside the SCA for the duration of the inshore seasonal opening.''

Unrestricted AFA Catcher/Processor Sideboards

In 2003, the formula for setting AFA catcher/processor sideboard limits for non-pollock groundfish will change from calculations made for sideboard limits in 2000 through 2002. The basis for these sideboard limits is described in detail in the Proposed Rule for Amendments 61/61/13/8 to Implement Major Provisions of the AFA (66 FR 65028, December 17, 2001). The interim 2003 catcher/processor sideboard limits are set out in Table 5 below.

All non-pollock groundfish that is harvested by unrestricted AFA catcher/processors, whether as targeted catch or incidental catch, will be deducted from the interim sideboard limits in Table 5. However, non-pollock groundfish that is delivered to listed catcher/processors by catcher vessels will not be deducted from the interim 2003 sideboard limits for the listed catcher/processors.

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TABLE 5.–INTERIM 2003 UNRESTRICTED BSAI AFA CATCHER/PROCESSOR GROUNDFISH SIDEBOARDS. AMOUNTS ARE EXPRESSED IN MT.

Target species	Area	1995 - 1997			Interim 2003 TAC available to trawl C/Ps	Interim 2003 C/P sideboard limit
		Retained catch	Available TAC	Ratio		
Pacific cod trawl	BSAI	12,424	51,450	0.241	19,975	4814
Sablefish trawl	BS	8	1,736	0.005	205	1
	AI	0	1,135	0.000	135	0
Atka mackerel	Western AI					
	A season[1]	n/a	n/a	0.200	10,183	2037
	HLA limit[2]				6,110	1222
	Central AI					
	A season[1]	n/a	n/a	0.115	12,304	1415
	HLA limit[2]				7,382	849
Yellowfin sole	BSAI	100,192	527,000	0.190	16,150	3,069
Rock sole	BSAI	6,317	202,107	0.031	11,475	359
Greenland turbot	BS	121	16,911	0.007	1,139	8
	AI	23	6,839	0.003	561	2
Arrowtooth flounder	BSAI	76	36,873	0.002	3,400	7
Flathead sole	BSAI	1,925	87,975	0.022	5,313	117
Alaska plaice	BSAI	3,243		0.035	2,550	89
Other flatfish	BSAI	3,243	92,428	0.035	638	22
Pacific ocean perch	BS	12	5,760	0.002	557	1
	Western AI	54	12,440	0.004	1,203	5
	Central AI	3	6,195	0.000	650	0
	Eastern AI	125	6,265	0.020	735	15
Northern rockfish	BS	8		0.008	3	0
	AI	83	13,254	0.006	996	6
Shortraker/rougheye	BS	8		0.008	25	0
	AI	42	2,827	0.015	136	2
Other rockfish	BS	18	1,026	0.018	77	1
	AI	22	1,924	0.011	144	2
Squid	BSAI	73	3,670	0.020	419	8
Other species	BSAI	553	65,925	0.008	6,550	52

[1] The seasonal apportionment of Atka mackerel in the open access fishery is 50 percent in the A season and 50 percent in the B season. Unrestricted AFA catcher/processors are limited to harvesting no more than zero in the Eastern Aleutian district and Bering Sea subarea, 20 percent of the available TAC in the Western Aleutian district, and 11.5 percent of the available TAC in the Central Aleutian district.

[2] HLA limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (§ 679.2). In 2003, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central Aleutian districts. Pacific cod harvest by trawl gear in the Aleutian Islands HLA, west of 178 degrees W. long. is prohibited during the Atka mackerel HLA directed fisheries.

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Regulations that will be effective with the final rule to implement major provisions of the AFA at § 679.63(a)(2) establish a formula for PSC sideboard limits for unrestricted AFA catcher/processors. These amounts are equivalent to the percentage of prohibited species bycatch limits harvested in the non-pollock groundfish fisheries by the AFA catcher/processors listed in subsection 208(e) and section 209 of the AFA from 1995 through 1997. Prohibited species amounts harvested by these catcher/processors in BSAI non-pollock groundfish fisheries from 1995 through 1997 are shown in Table 6. These data were used to calculate the relative amount of PSC limits harvested by pollock catcher/processors, which were then used to determine the PSC sideboard limits for unrestricted AFA catcher/processors in the 2003 non-pollock groundfish fisheries.

PSC that is caught by unrestricted AFA catcher/processors participating in any non-pollock groundfish fishery listed in Table 6 will accrue against the interim 2003 PSC sideboard limits for the listed catcher/processors. Regulations that will be effective with the final rule to implement major provisions of the AFA at § 679.21(e)(3)(v), provide NMFS authority to close directed fishing for non-pollock groundfish for unrestricted AFA catcher/processors once an interim 2003 PSC limit listed in Table 6 is reached.

Crab or halibut PSC that is caught by unrestricted AFA catcher/processors while fishing for pollock will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/other species fishery categories under § 679.21(e)(3)(iv).

TABLE 6. INTERIM 2003 UNRESTRICTED BSAI AFA CATCHER/PROCESSOR PROHIBITED SPECIES SIDEBOARD LIMITS.[1]

PSC species	1995 - 1997			Interim 2003 PSC available to trawl CPs	Interim 2003 C/P Sideboard limit
	PSC catch	Total PSC	Ratio		
Halibut mortality	955	11,325	0.084	851	71
Red king crab	3,098	473,750	0.007	22,432	157
C. opilio	2,323,731	15,139,178	0.153	1,005,938	153,908
C. bairdi					
Zone 1	385,978	2,750,000	0.140	226,625	31,728
Zone 2	406,860	8,100.000	0.050	686,813	34,341

[1] Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.

AFA Catcher Vessel Sideboards

Regulations that will be effective with the final rule to implement major provisions of the AFA at § 679.63(b) establish a formula for setting AFA catcher vessel groundfish and PSC sideboard limits for the BSAI. The basis for these sideboard limits was recommended by the Council and is described in detail in the Proposed Rule for Amendments 61/61/13/8 to Implement Major Provisions of the AFA (66 FR 65028, December 17, 2001). For 2002, NMFS revised the 2001 ratio of 1995 to 1997 AFA catcher vessel retained catch to the 1995 to 1997 TAC. These revisions are based on Alaska Department of Fish and Game editing of fish tickets and NMFS editing of observer catch data and weekly production reports. The interim 2003 AFA catcher vessel sideboard limits are shown in Tables 7 and 8.

All harvests of groundfish sideboard species made by non-exempt AFA catcher vessels, whether as targeted catch or incidental catch, will be deducted from the interim sideboard limits listed in Table 7.

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TABLE 7.–INTERIM 2003 BSAI AFA CATCHER VESSEL SIDEBOARDS. AMOUNTS ARE EXPRESSED IN MT.

Species	Fishery by Area/Season/ Processor/ Gear	Ratio of 1995-1997 AFA CV catch to 1995-1997 TAC	Interim 2003 TAC	Interim 2003 catcher vessel sideboard limit
Pacific cod	BSAI			
	jig gear	0.0000	2,040	0
	hook-and-line CV			
	Jan 1 - Jun 10	0.0006	155	0
	Pot gear			
	Jan 1 - Jun 10	0.0006	9,465	6
	CV < 60 feet LOA using hook-and-line or pot gear	0.0006	1,207	1
	trawl gear			
	catcher vessel			
	Jan 20 - Apr 1	0.8609	27,965	24,075
Sablefish	BS trawl gear	0.0906	205	19
	AI trawl gear	0.0645	135	9
Atka mackerel	Eastern AI/BS			
	jig gear	0.0031	57	0
	other gear			
	Jan 1 - Apr 15	0.0032	2,815	9
	Central AI			
	Jan 1 - Apr 15	0.0001	12,304	1
	HLA limit	0.0001	7,382	1
	Western AI			
	Jan 1 - Apr 15	0.0000	10,183	0
	HLA limit	0.0000	6,110	0
Yellowfin sole	BSAI	0.0647	16,150	1,045
Rock sole	BSAI	0.0341	11,475	391
Greenland Turbot	BS	0.0645	1,139	73
	AI	0.0205	561	12
Arrowtooth flounder	BSAI	0.0690	3,400	235
Alaska plaice	BSAI	0.0441	2,550	112
Other flatfish	BSAI	0.0441	638	28
POP	BS	0.1000	557	56
	Eastern AI	0.0077	735	6
	Central AI	0.0025	650	2
	Western AI	0.0000	1,203	0
Northern rockfish	BS	0.0280	3	0
	AI	0.0089	996	9
Shortraker/Rougheye	BS	0.0048	25	0
	AI	0.0035	136	0
Other rockfish	BS	0.0048	77	0
	AI	0.0095	144	1
Squid	BSAI	0.3827	419	160
Other species	BSAI	0.0541	6,550	354
Flathead Sole	BS trawl gear	0.0505	5,313	268

Regulations that will be effective with the final rule to implement major provisions of the AFA at § 679.63(b) establish a formula for PSC sideboard limits for AFA catcher vessels. The AFA catcher vessel PSC limit for halibut in the BSAI and GOA, and each crab species in the BSAI for which a trawl bycatch limit has been established, will

be a portion of the PSC limit equal to the ratio of aggregate retained groundfish catch by AFA catcher vessels in each PSC target category from 1995 through 1997 relative to the retained catch of all vessels in that fishery from 1995 through 1997. These interim PSC limits for AFA catcher vessels are listed in Table 8.

Halibut and crab PSC that is caught by AFA catcher vessels participating in any non-pollock groundfish fishery listed in Table 8 will accrue against the interim 2003 PSC limits for AFA catcher vessels. Regulations that will be effective with the final rule to implement major provisions of the AFA at §§ 679.21(d)(8) and (e)(3)(v) provide authority to close directed fishing for non-pollock groundfish for AFA catcher vessels once an interim 2003 PSC limit listed in Table 8 for the BSAI is reached. PSC that is caught by AFA catcher vessels while fishing for pollock in the BSAI will accrue against either the midwater pollock or the pollock/Atka mackerel/other species fishery categories.

TABLE 8.–INTERIM 2003 AFA CATCHER VESSEL PROHIBITED SPECIES CATCH SIDEBOARD AMOUNTS FOR THE BSAI.[1]

PSC species	Target fishery category[2]	Ratio of 1995-1997 AFA CV retained catch to total retained catch	Interim 2003 PSC Limit	Interim 2003 AFA catcher vessel PSC sideboard limit
Halibut	Pacific cod trawl	0.6183	359	222
	Pacific cod hook-and-line or pot	0.0022	193	0
	Yellowfin sole	0.1144	222	25
	Rock sole/flat. sole/other flatfish[5]	0.2841	195	55
	Turbot/Arrowtooth/Sablefish	0.2327	0	0
	Rockfish	0.0245	17	0
	Pollock/Atka mackerel/Other sp.	0.0227	58	1
Red King Crab Zone 1[4]	Pacific cod	0.6183	2,916	1,803
	Yellowfin sole	0.1144	4,166	477
	Rock sole/flat. sole/other flatfish[5]	0.2841	14,946	4,246
	Pollock/Atka mackerel/Other sp.	0.0227	404	9
C. opilio COBLZ[3]	Pacific cod	0.6183	31,184	19,281
	Yellowfin sole	0.1144	694,245	79,422
	Rock sole/flat. sole/other flatfish[5]	0.2841	242,283	68,833
	Pollock/Atka mackerel/Other sp.	0.0227	18,107	411
	Rockfish	0.0245	10,059	246
	Turbot/Arrowtooth/Sablefish	0.2327	10,060	2,341
C. bairdi Zone 1	Pacific cod	0.6183	45,778	28,305
	Yellowfin sole	0.1144	85,211	9,748
	Rock sole/flat. sole/other flatfish[5]	0.2841	91,330	25,947
	Pollock/Atka mackerel/Other sp.	0.0227	4,306	98
C. bairdi Zone 2	Pacific cod	0.6183	81,044	50,110
	Yellowfin sole	0.1144	447,115	51,150
	Rock sole/flat. sole/other flatfish[5]	0.2841	149,039	42,342
	Pollock/Atka mackerel/Other sp.	0.0227	6,868	156
	Rockfish	0.0245	2,747	67

[1] Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.

[2] Target fishery categories are defined in regulation at § 679.21(e)(3)(iv).

[3] C. opilio Bycatch Limitation Zone. Boundaries are defined at Figure 13 of 50 CFR part 679.

[4] The Council at its October 2002 meeting recommended that the red king crab bycatch for trawl fisheries within the Red King Crab Savings Subarea be limited to 35 percent of the total allocation to the rock sole/flathead sole/"other flatfish" fishery category (§ 679.21(e)(3)(ii)(B)).

[5] "Other flatfish" for PSC monitoring includes all flatfish species, except for Pacific halibut (a prohibited species), Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder.

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Sideboard Directed Fishing Closures and AFA Catcher/Processor Sideboard Closures

The Regional Administrator has determined that many of the interim AFA catcher/processor sideboard limits listed in Table 5 are necessary as incidental catch to support other anticipated groundfish fisheries for the 2003 fishing year. In accordance with § 679.20(d)(1)(iv), the Regional Administrator establishes the limits listed in Table 5 as directed fishing allowances. The Regional Administrator finds that many of these directed fishing allowances will be reached before the end of the year. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing by unrestricted AFA catcher/processors for the species in the specified areas set out in Table 9.

TABLE 9. INTERIM AFA UNRESTRICTED CATCHER/PROCESSOR SIDEBOARD DIRECTED FISHING CLOSURES.1 THESE CLOSURES TAKE EFFECT 1200 HRS, A.L.T., JANUARY 20, 2003 AND REMAIN IN EFFECT UNTIL SUPERSEDED BY THE FINAL 2003 HARVEST SPECIFICATIONS FOR GROUNDFISH.

Species	Area	Gear types
Sablefish trawl	BSAI	all
Greenland turbot	BSAI	all
Arrowtooth flounder	BSAI	all
Pacific ocean perch	BSAI	all
Northern rockfish	BSAI	all
Shortraker/Rougheye rockfish	BSAI	all
Other rockfish	BSAI	all
Squid	BSAI	all
Other species	BSAI	all

[1]Maximum retainable percentages may be found in Table 11 to 50 CFR part 679.

AFA Catcher Vessel Sideboard Closures

The Regional Administrator has determined that many of the interim AFA catcher vessel sideboard limits listed in Table 7 are necessary as incidental catch to support other anticipated groundfish fisheries for the 2003 fishing year. In accordance with § 679.20(d)(1)(iv), the Regional Administrator establishes the limits listed in Table 7 as directed fishing allowances. The Regional Administrator finds that many of these directed fishing allowances will be reached before the end of the year. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing by non-exempt AFA catcher vessels for the species in the specified areas set out in Table 10.

TABLE 10. INTERIM AFA CATCHER VESSEL SIDEBOARD DIRECTED FISHING CLOSURES.[1] THESE CLOSURES TAKE EFFECT 1200 HRS, A.L.T., JANUARY 20, 2003 AND REMAIN IN EFFECT UNTIL SUPERSEDED BY THE FINAL 2003 HARVEST SPECIFICATIONS FOR GROUNDFISH.

Species	Area	Gear types
Pacific cod	BSAI	all
Sablefish	BSAI	all
Atka mackerel	BSAI	all
Greenland Turbot	BSAI	all
Arrowtooth flounder	BSAI	all
Pacific ocean perch	BSAI	all
Northern rockfish	BSAI	all
Shortraker/Rougheye rockfish	BSAI	all
Other rockfish	BSAI	all
Squid	BSAI	all
Other species	BSAI	all

[1]Maximum retainable percentages may be found in Table 11 to 50 CFR part 679.

Classification

This action is necessary to establish interim harvest limits for the BSAI groundfish fisheries for the 2003 fishing year. The groundfish fisheries in the BSAI are governed by Federal regulations at 50 CFR 679 that require NMFS, after consultation with the Council, to publish and solicit public comments on proposed annual TACs and PSC allowances.

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA, finds that the need to establish interim TACs and related management measures for groundfish fisheries in the BSAI, effective January 1, 2003, makes it impracticable and contrary to the public interest to provide prior notice and opportunity for public comment on this action. Because this action is a final action by NMFS, analyses and consultations required under the Magnuson-Stevens Act, the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA) must be completed and considered by the agency prior to promulgation of the interim harvest specifications. However, the information on which the EA and the section 7 consultations are based was not available until early December 2002. The Council's BSAI and GOA groundfish Plan Teams met in mid-November 2002 to develop stock assessment reports and to provide recommendations on acceptable biological catch (ABC) levels for the upcoming fishing year. The stock assessment reports and ABC recommendations developed by the Plan Teams in mid-November incorporate scientific and fishery data from the current fishing year and enable NMFS to base this rulemaking on the best available science, as required by national standard 2 of the Magnuson-Stevens Act. The Plan Teams prepared the final reports during the last two weeks of November. The EA and Section 7 consultations were then based on these final reports.

Regulations at 50 CFR 679.20(c)(2) require NMFS to specify interim harvest specifications to be effective January 1 and remain in effect until superseded by the final specifications. Without interim specifications in effect on January 1, the groundfish fisheries would not be able to open, resulting in unnecessary closures and disruption within the fishing industry. Because NMFS cannot publish interim specifications until all analyses and consultations are complete, and those analyses and consultations could not be completed until early December 2002, there is not sufficient time to provide the public with an opportunity to comment on the interim specifications before they must be in place on January 1. Additionally, the proposed 2003 BSAI groundfish harvest specifications, on which the interim specifications are based, provide the opportunity for public comment. Given these reasons, good cause exists under 5 U.S.C. 553(b)(B) to waive prior notice and opportunity for public comment on this action.

Likewise, the Assistant Administrator for Fisheries, NOAA, finds that the need to establish interim TACs and other management measures in the BSAI effective on January 1, 2003, provides good cause to waive the 30–day delay in effective date of the interim specifications. In order for the BSAI groundfish fishing season to begin on January 1, 50 CFR 679.20(c)(2) requires NMFS to establish interim harvest specifications to be effective on January 1 and to remain in effect until superseded by the filing of final harvest specifications with the Office of the **Federal Register**. NMFS interprets regulations at § 679.20(c)(2) as requiring the filing of interim specifications with the Office of the **Federal Register** before any harvest of groundfish is authorized. Without interim specifications in effect on January 1, the groundfish fisheries would not be able to open on that date, resulting in unnecessary closures and

disruption within the fishing industry. Based on these reasons, the need to publish these measures in a timely manner constitutes good cause under authority contained in 5 U.S.C. 553(d)(3) to waive the 30–day delay in effective date.

Because these interim specifications are not required to be issued with prior notice and opportunity for public comment, the analytical requirements of the Regulatory Flexibility Act do not apply. Consequently, no regulatory flexibility analysis has been prepared for this action.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

Dated: December 16, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 02–32433 Filed 12–24–02; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 248
Thursday, December 26, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket No. FV03–959–1 PR]

Onions Grown in South Texas; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the South Texas Onion Committee (Committee) for the 2002–03 and subsequent fiscal periods from $0.05 to $0.085 per 50-pound equivalent of onions handled. The Committee locally administers the marketing order which regulates the handling of onions grown in South Texas. Authorization to assess onion handlers enables the Committee o incur expenses that are reasonable and necessary to administer the program. The fiscal period began August 1 and ends July 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by January 27, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Regional Manager, McAllen Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, Texas 78501; telephone: (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions grown in South Texas, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, South Texas onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable onions beginning on August 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 2002–03 and subsequent fiscal periods from $0.05 to $0.085 per 50-pound equivalent of onions.

The South Texas onion marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of South Texas onions. They are familiar with the Committee's needs and with the costs for goods and services in their local area, and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting, where all persons directly affected have an opportunity to participate and provide input.

For the 2001–02 and subsequent fiscal periods, the Committee recommended and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period, unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on July 11, 2002, and unanimously recommended 2002–03 expenses of $127,002 for personnel, office, compliance, and partial promotion expenses. The assessment rate and specific funding for research and promotion projects were to be recommended at a later Committee meeting.

The Committee subsequently met on October 8, 2002, and recommended 2002–03 expenditures of $463,297 and an assessment rate of $0.085 per 50-pound equivalent of onions. Ten of the 13-committee members present voted in support of the $0.035 per 50-pound equivalent increase and three voted against it. The three committee members voting against the recommendation were

producer handlers who basically did not approve of the research and promotion budgets. In comparison, last year's budgeted expenditures were $449,190. The assessment rate of $0.085 is $0.035 higher than the rate currently in effect. The Committee recommended the increased rate to fund a major market development program to promote the consumption of South Texas onions. Without the increase, the Committee's reserve fund would drop to $16,053. The Committee believes a reserve that low is not adequate for its operations.

The major expenditures recommended by the Committee for the 2002–03 fiscal period include $72,002 for administrative expenses, $35,000 for compliance, $260,500 for promotion, and $95,795 for research projects. Budgeted expenses for these items in 2001–02 were $75,190, $30,000, $254,000, and $90,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas onions. Onion shipments for the fiscal period are estimated at 5.5 million 50-pound equivalents, which should provide $467,500 in assessment income. Income derived from handler assessments would be adequate to cover budgeted expenses. Funds in the reserve (currently $204,350) would be kept within the maximum permitted by the order (approximately two fiscal periods' expenses, § 959.43).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2002–03 budget and those for subsequent fiscal periods would be reviewed, and as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 90 producers of onions in the production area and approximately 35 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Most of the handlers are vertically integrated corporations involved in producing, shipping, and marketing onions. For the 2001–02 fiscal period, the industry's 35 handlers shipped onions produced on 16,148 acres with the average and median volume handled being 152,446 and 136,810 fifty-pound bag equivalents, respectively. In terms of production value, total revenues for the 35 handlers were estimated to be $39.9 million, with average and median revenues being $1.1 million and $1.0 million, respectively.

The South Texas onion industry is characterized by producers and handlers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of onions. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the onion production season is complete. For this reason, typical onion producers and handlers either produce multiple crops or alternate crops within a single year.

Based on the SBA's definition of small entities, the Committee estimates that all of the 35 handlers regulated by the order would be considered small entities if only their spring onion revenues are considered. However, revenues from other productive enterprises would likely push a large number of these handlers above the $5,000,000 annual receipt threshold. All of the 90 producers may be classified as small entities based on the SBA definition if only their revenue from spring onions is considered. When revenues from all sources are considered, a majority of the producers would not be considered small entities because receipts would exceed $750,000.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2002–03 and subsequent fiscal periods from $0.05 to $0.085 per 50-pound equivalent of onions. The Committee recommended 2002–03 expenditures of $463,297 and an assessment rate of $0.085 per 50-pound equivalent. The proposed assessment rate of $0.085 is $0.035 higher than the current rate. The quantity of assessable onions for the 2002–03 fiscal period is estimated at 5.5 million 50-pound equivalents. Thus, the $0.085 rate should provide $467,500 in assessment income. Income derived from handler assessments would be more than adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2002–03 fiscal period include $72,002 for administrative expenses, $35,000 for compliance, $260,500 for promotion, and $95,795 for research projects. Budgeted expenses for these items in 2001–02 were $75,190, $30,000, $254,000, and $90,000, respectively.

The Committee recommended the increased rate to fund a major market development program to promote the consumption of South Texas onions without having to draw a large amount from reserves. Without the increase, the Committee's reserve fund would drop to $16,053. The Committee believes a reserve that low is not adequate for its operations.

The Committee reviewed and recommended 2002–03 expenditures of $463,297, which included increases in research and promotion programs. Prior to arriving at this budget, the Committee considered information from various sources, including the Executive Committee and the Research and Market Development Subcommittees. Numerous alternative expenditure levels were discussed by these groups based upon the relative value of various research and promotion projects to the onion industry. The assessment rate of $0.085 per 50-pound equivalent of assessable onions was then determined by dividing the total recommended budget by the quantity of assessable onions, estimated at 5.5 million 50-pound equivalents for the 2002–03

fiscal period. This is approximately $4,203 above the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2002–03 fiscal period could range between $8.60 and $9.25 per 50-pound equivalent of onions. Therefore, the estimated assessment revenue for the 2002–03 fiscal periods as a percentage of total grower revenue could be about 1 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the South Texas onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the October 8, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large South Texas onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30–day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2002–03 fiscal period began on August 1, 2002, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable onions handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is proposed to be amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 959.237 is revised to read as follows:

§ 959.237 Assessment rate.

On and after August 1, 2002, an assessment rate of $0.085 per 50-pound equivalent is established for South Texas onions.

Dated: December 19, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–32505 Filed 12–24–02; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 110

[Notice 2002–28]

Leadership PACS

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission is seeking comment on proposed rules to address leadership PACs, which are unauthorized committees that are associated with a Federal candidate or officeholder. Please note that the draft rules that follow do not represent a final decision by the Commission on the issues presented by this rulemaking. Further information is provided in the **SUPPLEMENTARY INFORMATION** that follows.

DATES: Comments must be received on or before January 31, 2003. If there are sufficient requests to testify, the Commission may hold a hearing on these proposed rules on February 26, 2003, at 9:30 a.m. Commenters wishing to testify at the hearing must so indicate in their written or electronic comments.

ADDRESSES: All comments should be addressed to Mr. J. Duane Pugh, Jr., Acting Special Assistant General Counsel, and must be submitted in either electronic or written form. Electronic mail comments should be sent to *LeadershipPAC@fec.gov* and must include the full name, electronic mail address, and postal service address of the commenter. Electronic mail comments that do not contain the full name, electronic mail address, and the postal service address of the commenter will not be considered. If the electronic mail comments include an attachment, the attachment must be in the Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to ensure legibility. Written comments and printed copies of faxed comments should be sent to Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. The Commission will make every effort to post public comments on its Web site within ten business days of the close of the comment period. The hearing will be held in the Commission's ninth floor meeting room, 999 E. St. NW., Washington, DC

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Acting Assistant General Counsel, Mr. J. Duane Pugh, Jr., Acting Special Assistant General Counsel, or Mr. Anthony T. Buckley, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002, Pub. L. 107–155, 116 Stat. 81 (March 27, 2002) (''BCRA''), contains extensive and detailed amendments to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* This Notice of Proposed Rulemaking (NPRM) arises primarily from 2 U.S.C. 441i(e)(1), which prohibits Federal candidates and holders of Federal office, their agents, or any entity directly or indirectly established, financed, maintained, controlled by, or acting on behalf of, the candidate or officeholder, from soliciting, receiving, directing, transferring or spending funds that are not subject to the limitations, prohibitions, and reporting requirements of the Act in connection with Federal or non-Federal elections. In determining whether an entity is directly or indirectly established, financed, maintained, or controlled by a candidate or Federal officeholder, the

Commission has stated that it would look to the affiliation factors in 11 CFR 100.5(g). *See* Explanation and Justification for Final Rules on Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 FR 49063, 49084 (July 29, 2002). Thus, this rulemaking principally addresses when and under what circumstances so-called ''leadership PACs'' are affiliated with the authorized committees of Federal candidates or officeholders under BCRA and the ramifications of any such affiliation.

I. Background

Generally speaking, leadership PACs are formed by individuals who are Federal officeholders and/or Federal candidates. The monies these committees receive are given to other Federal candidates to gain support when the officeholder seeks a leadership position in Congress, or are used to subsidize the officeholder's travel when campaigning for other Federal candidates. The monies may also be used to make contributions to party committees, including State party committees in key states, or donated to candidates for State and local office.

FECA does not specifically define ''leadership PAC,'' but does define the terms ''political committee'' (2 U.S.C. 431(4)); ''principal campaign committee'' (2 U.S.C. 431(5)); and ''authorized committee'' (2 U.S.C. 431(6)). Effective January 1, 2003, principal campaign committees and authorized committees may receive contributions of up to $2000 per election from individuals and other persons who are not multicandidate committees. *See* 2 U.S.C. 441a(a)(1)(A); 11 CFR 110.1(b). They may make contributions of up to $1,000 to other Federal candidates under 2 U.S.C. 432(e)(3). Unauthorized committees—that is, political committees whose purpose is to support more than one Federal candidate—may receive up to $5000 per year from individuals, other persons, and multicandidate committees, and once they qualify as multicandidate committees, may contribute up to $5000 per candidate per election. *See* 2 U.S.C. 441a(a)(1)(C) and 441a(a)(2)(A); 11 CFR 110.1(d) and 110.2. Nothing in the Commission's regulations prohibits an unauthorized committee that is not a party committee from establishing a non-Federal account that accepts funds that are not subject to the prohibitions, limitations and reporting requirements of the Act.

In BCRA, Congress addressed organizations ''directly or indirectly established, financed, maintained, or controlled'' by other persons or organizations. The term appears in BCRA in the context of national party committees, (*see* 2 U.S.C. 441i(a)(2)), of State, district, and local political party committees (*see, e.g.*, 2 U.S.C. 441i(b)(2)(B)(iii)), and of Federal candidates and Federal officeholders (*see, e.g.*, 441i(e)(1)). In addressing Federal candidates and officeholders, Congress added the phrase ''acting on behalf of.'' BCRA places limits on the amounts and types of funds that may be solicited, received, directed, transferred, or spent by Federal candidates and officeholders, their agents, and entities directly or indirectly established, financed, maintained, or controlled by, or acting on behalf of, any such candidate(s) or officeholder(s), in connection with either Federal or non-Federal elections, or both. *See* 2 U.S.C. 441i(e)(1); *see also* 11 CFR 300.60, 300.61.

The Commission first addressed ''leadership PACs'' in Advisory Opinion (''AO'') 1978–12. In this AO, the Commission concluded that a ''political action committee'' formed in part by a Congressman was not considered an authorized committee of the Congressman as long as the Congressman did not authorize it in writing. As a result, contributors to the leadership PAC were not regarded as making contributions with respect to the Congressman's campaign. The Commission further noted that, ''[a]ssuming the [c]ommittee is not affiliated with [the Congressman's] principal campaign committee, * * * persons may contribute up to $5000 per calendar year to the Committee although contributions from individuals would be counted against their $25,000 aggregate individual limit * * *.'' Several years after AO 1978–12 was issued, a complaint was filed with the Commission, alleging that the same committee and the same Congressman's principal campaign committee were affiliated, and that as a result of their affiliation they had made and received excessive contributions. The complainant cited several factors to conclude that the two committees were affiliated: (1) The unauthorized committee was identified with the officeholder; (2) some of the candidate's then-Congressional staffers received expense reimbursements for ''travel'' and ''consulting'' from both committees; (3) several persons performed services for both committees; and (4) parallel contributions to candidates were made by both committees on the same day. In that Matter Under Review (MUR 1870), the Commission found no reason to believe that violations stemming from an affiliated relationship had occurred.

In subsequent MURs involving similar issues, the Commission relied on its prior conclusions in AO 1978–12 and MUR 1870 to find certain leadership PACs were not affiliated with certain authorized committees. For example, in MUR 2897 the Commission declined to pursue a complaint that a Federal officeholder's authorized committee was affiliated with a leadership PAC, resulting in excessive contributions being made and received. The complainant argued that affiliation between the authorized committee and a certain leadership PAC should result from several facts: (1) The officeholder's spouse was the leadership PAC's treasurer; (2) one of the leadership PAC's disclosure reports was faxed from the officeholder's Congressional office; and (3) both committees made disbursements to one particular consulting firm. In addition, the officeholder was listed as chairman of the leadership PAC on its stationery, and responded on behalf of the leadership PAC to the complaint. Similarly, in MUR 3740, the Commission declined to pursue a complaint alleging violations as a result of an affiliated relationship. In that matter, the leadership PAC's checks were signed by the Federal officeholder.

In other AOs, the Commission has found two entities associated with an individual to be affiliated where the entities had a similar purpose. For example, in AO 1990–16, the Commission found that a committee organized under State law and devoted to supporting candidates for election to state and local office, that had previously been the campaign committee of the State's then-governor, was affiliated with a Federal political committee that had been organized by the governor and that had as its purpose supporting candidates for Federal office. Further, in AO 1991–12, the Commission found that the authorized committee of a Member of Congress was affiliated with another committee, when that other committee, which had originally been formed to test the waters for a Presidential run by the Member, changed its focus to support the Member's efforts to speak on national issues, and subsequently changed its focus again to support the Member's re-election activities.

In 1986, the Commission began a rulemaking to address affiliation in general, including leadership PACs. *See* Notice of Proposed Rulemaking; Contribution and Expenditure Limitations and Prohibitions, 51 FR 27183 (July 30, 1986). After the hearing

during this rulemaking, the Office of General Counsel drafted final rules that addressed ''affiliation between a candidate's authorized committees and other political committees closely associated with that candidate.'' FEC Agenda Document 88–1, Draft Revisions to the Affiliation and Earmarking Regulations (11 CFR 110.3–110.6) (Dec. 23, 1987), at 3. This document indicated that under the proposed revisions to the Commission rules, ''[p]roposed § 110.3(a)(4)(i) would provide that a candidate's authorized committees are affiliated with any other unauthorized committees established, financed, maintained or controlled by the same person or group of persons, including the candidate.'' *Id.* at 4.

After receiving public comments and holding a hearing, however, the Commission maintained its existing policy: committees formed or used by a candidate or officeholder to further his or her campaign are affiliated; those formed or used for other purposes are not. The Commission explained: ''Although the Commission considered including in the revised regulations language that would focus specifically on affiliation between authorized committees and candidate PACs or leadership committees, the Commission has decided instead to continue to rely on the factors set out at 11 CFR 110.3(a)(3)(ii). After evaluating the comments and testimony on this issue, as well as the situations presented in the previous advisory opinions and compliance matters, the Commission has concluded that this complex area is better addressed on a case-by-case basis. Thus, *in an appropriate case,* the Commission will examine the relationship between the authorized and unauthorized committees to determine whether they are commonly established, financed, maintained or controlled.'' Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions; Final Rule, 54 FR 34101 (Aug. 17, 1989) (emphasis added).

Most recently, in the Explanation and Justification for the new Soft Money regulations, the Commission noted that new 11 CFR 300.61 and 300.62 permit ''Federal candidates and officeholders to solicit, receive, direct, transfer, spend, or disburse funds in connection with Federal and non-Federal elections only from sources permitted under the Act and only when the combined amounts solicited and received from any particular person or entity do not exceed the amounts permitted under the Act's contribution limits and are not from prohibited sources. In other words, a Leadership PAC that comes within the definition of 11 CFR 300.2(c) can raise up to a *total* of $5,000 from any particular person or entity, regardless of whether the funds are contributed to the PAC's Federal account, donated to its non-Federal account, or allocated between the two.'' Explanation and Justification for Final Rules on Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 FR 49063, 49107 (July 29, 2002). The Commission also concluded, in promulgating 11 CFR 300.2(c), that ''the affiliation factors laid out in 11 CFR 100.5(g) properly define 'directly or indirectly established, financed, maintained, or controlled' for purposes of BCRA.'' *Id.* at 49,084. Thus, the Commission has already acknowledged that BCRA's limitations on the sources and amounts of funds that Federal candidates and officeholders can raise applies to leadership PACs. ''Although candidate PACs and leadership PACs are not specifically mentioned, the legislative history indicates that 2 U.S.C. 441i(e)(1) is intended to prohibit Federal officeholders and candidates from soliciting any funds for these committees that do not comply with FECA's source and amount limitations.'' *Id.* at 49,107.

The Commission now seeks comment on whether it needs to clarify its approach and whether BCRA's inclusion of the phrases ''directly or indirectly'' and ''acting on behalf of'' in 2 U.S.C. 441i(e)(1) requires the Commission to consider, or permits the Commission to disregard, the authorized or unauthorized status of political committees in determining whether they are affiliated. *See* 2 U.S.C. 432(e)(1) (candidate shall designate in writing a principal campaign committee and may designate additional authorized committees); 2 U.S.C. 432(e)(3) (no political committee that supports more than one candidate may be an authorized committee); 2 U.S.C. 441a(a)(5) (FECA affiliation provisions). The Commission seeks comment as to whether its current approach regarding leadership PACs, including the limitations imposed by BCRA already implemented by the Commission in other regulations, adequately addresses the real or perceived potential for abuse regarding them, and whether BCRA requires or permits the Commission to change the way it has proceeded in this area. Specifically, the Commission seeks comment on whether there are circumstances in which an unauthorized committee should be considered affiliated *per se* with a candidate's authorized committee. If so, should those committees share a contribution limit, as to both contributions received and made, and should that contribution limit be that of an authorized committee or an unauthorized committee?

Alternatively, the Commission seeks comment on whether there should be a rebuttable presumption that such committees are affiliated under such circumstances, and, if so, what factors could be used to rebut the presumption. The Commission also seeks comment on what criteria should be used in determining affiliation between leadership PACs and authorized committees; the affiliation criteria listed at 11 CFR 100.5(g)(4) and 110.3(a), or some other or additional criteria. The Commission also seeks comment as to how it should treat organizations that do not participate in election campaigns but work closely with authorized committees, federal officeholders or candidates. *See* Advisory Opinion 1977–54 (approving candidate involvement in state-wide petition drive absent express advocacy or solicitation for officeholder's campaign by unauthorized committee sponsoring petition drive).

II. Proposed Rules

1. Definition of ''Leadership PAC''

Although the proposed rules do not include a definition of leadership PAC, the Commission seeks comment on whether a definition of ''leadership PAC'' is appropriate. If so, the Commission welcomes suggestions on appropriate definitions. Additionally, the Commission seeks comment on whether the definition should be an independent definition, or should be tied to affiliation.

2. Affiliation

The proposed rules include three alternative amendments to current 11 CFR 100.5(g) that would specifically address affiliation of leadership PACs. Alternatives A and B focus on the relationships between the committees involved and the candidate or officeholder with whom the committees are closely associated. If the factors establishing a certain close association are met, then a candidate's authorized committees and unauthorized committees (such as leadership PACs) would be affiliated, and would then have to conform themselves to the strictures of affiliated committees.

Alternative C focuses on the actions of the committees involved to determine whether an unauthorized committee is in fact an authorized committee of the Federal candidate or officeholder with whom it is associated. To the extent the

activities of an unauthorized committee mirror or supplement the activities of an authorized committee, *i.e.* to the extent the unauthorized committee undertakes certain activities to assist in the election efforts of the candidate with whom it is associated, the committee would be considered an authorized committee of the candidate. Thus, Alternative C frames the issue in terms of whether a leadership PAC is an authorized committee of the candidate or officeholder rather than whether it is affiliated with that person's authorized committee.

The Commission currently has set out, at 11 CFR 100.5(g)(4), factors to be considered in determining whether certain committees are affiliated. It would be the Commission's intention, under Alternatives A and B, that any proposed rules that it adopts at 11 CFR 100.5(g)(5) would be solely applicable to committees associated with candidates, and that the factors at 11 CFR 100.5(g)(4) would not apply. The Commission seeks comment on whether such an approach is appropriate.

The Commission seeks comment on which alternative, if any, is preferable and on the additional issues described below.

A. Alternative A

Alternative A would set out individual factors in proposed section 100.5(g)(5)(i), the presence of any one of which would result in affiliation. The factors are: (1) The candidate or officeholder, or their agent has signature authority on the unauthorized committee's checks; (2) funds contributed or disbursed by the unauthorized committee are authorized or approved by the candidate or officeholder or their agent; (3) the candidate or officeholder is clearly identified as described in 11 CFR 100.17 on either the stationery or letterhead of the unauthorized committee; (4) the candidate, officeholder or his campaign staff, office staff, or immediate family members, or any other agent, has the authority to approve, alter or veto the unauthorized committee's solicitations, contributions, donations, disbursements or contracts to make disbursements; and (5) the unauthorized committee pays for travel by the candidate, his campaign staff or office staff in excess of $10,000 per calendar year. The second criterion applies whether or not all disbursements are authorized or approved by the officeholder or candidate or agent or whether only some disbursements are so authorized or approved. The Commission also seeks comment on an individual factor not presented in the proposed rules where an unauthorized committee's communications and promotional materials frequently or predominantly identify the candidate or individual holding Federal office, as described in 11 CFR 100.17. Should such a focus by an unauthorized committee on a single candidate have any bearing on its affiliation with the candidate's authorized committee?

Alternative A would also include a transition period provision in proposed section 100.5(g)(5)(ii) to allow unauthorized committees that would otherwise be affiliated to come into compliance with the Commission's new regulations by severing their connection to the candidate or officeholder, by disgorging any funds that would make them affiliated, or by taking any other necessary actions by the proposed date. Section 100.5(g)(5)(iii) would also allow entities to seek an advisory opinion from the Commission regarding their status.

B. Alternative B

Alternative B would provide two separate tests under which affiliation would be found. Under proposed section 100.5(g)(5)(i)(A), affiliation would exist if any one of the following factors are present: (1) The candidate or officeholder has signature authority on the entity's checks; (2) the candidate or officeholder must authorize or approve disbursements over a certain minimum amount; (3) the candidate or officeholder signs solicitation letters and other correspondence on behalf of the entity; (4) the candidate or officeholder has the authority to approve, alter or veto the entity's solicitations; (5) the candidate or officeholder has the authority to approve, alter, or veto the entity's contributions, donations, or disbursements; or (6) the candidate or officeholder has the authority to approve the entity's contracts. Under this alternative, any one of these factors would indicate that the candidate or officeholder has substantial influence and control over the entity, and that the entity should be considered to be established, financed, maintained, or controlled by, or acting on behalf of, the candidate or officeholder.

If none of the above factors are present, affiliation could still be found under proposed section 100.5(g)(5)(i)(B) if any three of the following factors are present: (1) The campaign staff or immediate family members of the candidate or officeholder have the authority to approve, alter or veto the entity's solicitations; (2) the campaign staff or immediate family members of the candidate or officeholder have the authority to approve, alter, or veto the entity's contributions, donations, or disbursements; (3) the campaign staff or immediate family members of the candidate or officeholder have the authority to approve the entity's contracts; (4) the entity and the candidate or officeholder's authorized committees share, exchange, or sell contributor lists, voter lists, or other mailing lists directly to one another, or indirectly through the candidate or officeholder to one another; (5) the entity pays for the candidate or officeholder's travel anywhere except to or from the candidate or officeholder's home State or district; (6) the entity and the candidate or officeholder's authorized committees share office space, staff, a post office box, or equipment; (7) the candidate or officeholder's authorized committee(s) and the entity share common vendors; and (8) the name or nickname of the candidate or the officeholder, or other unambiguous reference to the candidate or officeholder appears on either the entity's stationery or letterhead. Under this approach, these factors, each taken individually, do not provide sufficient evidence of the candidate or officeholder's control and influence over the entity for that entity to be considered to be established, financed, maintained, or controlled by, or acting on behalf of, the candidate or officeholder. However, the existence of three or more of these factors would meet that standard.

The Commission seeks comment on whether any specific factors in section 100.5(g)(4) that are not repeated in some form in the proposed alternatives below, should be repeated in any new leadership PAC affiliation rule, such as current paragraph (g)(4)(ii)(B) (authority or ability to participate in the governance of the organization); current paragraph (g)(4)(ii)(C) (authority or ability to hire or fire officers or decisionmakers); current paragraph (g)(4)(ii)(E) (current common or overlapping officers or employees); current paragraph (g)(4)(ii)(F) (officers or employees who previously worked for the other committee); current paragraph (g)(4)(ii)(G) (provision of funds in a significant amount from one committee to the other); current paragraph (g)(4)(ii)(H) (one committee causing or arranging for the other committee to receive funds in a significant amount); and especially current paragraph (g)(4)(ii)(J) (whether the committees have similar patterns of contributions or contributors).

With respect to the *per se* factor regarding approval or authorization of disbursements (proposed paragraph

110.5(g)(5)(i)(A)(*2*)), the Commission seeks comment as to whether the minimum amount to be approved should be stated in the rule and, if so, what that amount should be. Should the Commission look to other factors, such as the entity's established policy, to determine the amount on a case-by-case basis?

Unlike Alternative A, Alternative B does not include a transition period provision. Rather, if the Commission decides to adopt Alternative B as its final rule, proposed section 100.5(g)(5) would be effective thirty days after the final rules are published in the **Federal Register**. Thus, the Commission would examine the relationship between an authorized committee with a leadership PAC from that day forward in applying the affiliation factors in proposed section 100.5(g)(5).

Alternative B is similar to Alternative A in another respect. Proposed section 100.5(g)(5)(ii) would allow, but not require, committees to seek an advisory opinion to determine whether affiliation exists. *See* proposed section 100.5(g)(5)(iii) in Alternative A.

C. Alternative C

As noted above, Alternative C would largely continue the Commission's current treatment of leadership PACs by not treating a leadership PAC as affiliated with a candidate or officeholder's authorized committees unless the leadership PAC undertook activities that would indicate its primary purpose is to influence the nomination or election of the candidate or officeholder involved. This approach is similar to the approach contemplated by the earlier 1986–1987 rulemaking but the final rules did not include provisions directly addressing leadership PACs. *See* Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions; Final Rule, 54 FR 34101 (Aug. 17, 1989).

At one point during this earlier rulemaking process, the Commission considered a staff draft providing that an unauthorized committee established, financed, maintained or controlled by a candidate would not be deemed affiliated with the candidate's authorized committee if it could demonstrate that: ''(A) A substantial proportion of the unauthorized committee's disbursements are contributions to or expenditures on behalf of other federal candidates; (B) The unauthorized committee has not solicited contributions for the candidate's campaign for Federal office and has not solicited funds that would become contributions under 11 CFR 101.3 once the individual becomes a candidate; and (C) The unauthorized committee has not made expenditures for communications, or engaged in other activities, for the purpose of influencing the candidate's or future candidate's nomination or election to Federal office.'' FEC Agenda Document 88–1, pp. 3, 4 and pp. 5, 6 of draft regulation. In 1989, however, the Commission decided not to adopt specific final rules concerning this issue. See above for discussion of the Commission's statement about leadership PACs in the Explanation to the Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions Final Rule.

At this point, under Alternative C, 11 CFR 100.5(g) would be revised to add new paragraph (g)(5) indicating that an unauthorized committee established, financed, maintained or controlled by, or acting on behalf of, a candidate or officeholder, would be deemed an authorized committee, unless it could meet four conditions. Any committee that could not meet all four conditions would be automatically subject to the contribution limits of 2 U.S.C. 441a(a)(1)(A) and (2)(A).

Paragraph (g)(5)(i) would require the committee to only make outlays to raise funds for party committees or to influence the nomination or election of persons other than the candidate or officeholder involved.

Paragraph (g)(5)(ii) would require that any solicitations, communications or other materials of the unauthorized committee would have to avoid references to the candidacy or potential candidacy of the sponsoring candidate or officeholder.

At paragraph (g)(5)(iii) the Commission would require that at speeches or appearances by the candidate or officeholder no reference be made to such person's candidacy or potential candidacy. The only exception would be a brief reference made in response to a question where there was no pre-planning or control by the candidate or officeholder.

Finally, to address the problems encountered by the Commission in dealing with leadership PACs defraying expenses that appear to be in preparation for a possible presidential run, paragraph (g)(5)(iv) would require that specified expenses would have to be reimbursed by a presidential campaign committee if the candidate or officeholder does become a presidential candidate. This requirement would apply to expenses to assist persons seeking to become delegates in the presidential caucus or convention process and expenses to set up staffed operations in states that hold primaries or caucuses in the first three months of a presidential election year. The reimbursement to the unauthorized committee would have to be made by the 60th day after the expense involved, or by the 60th day after the person becomes a presidential candidate, if later.

Because similar regulatory language regarding affiliation appears at section 110.3 of the regulations, identical text would be placed there at new paragraph 110.3(a)(4).

With respect to Alternative C, the Commission seeks comment on any aspect of the proposed rule that should be considered before its adoption. The Commission particularly would like comment on the policy ramifications of permitting candidates or officeholders to establish, finance, maintain, or control separate committees that do not have to share the same contribution limits that would apply to an authorized committee of such candidate or officeholder. Further, the Commission would like comment on the actual practices of leadership PACs. Are they undertaking activities that the Commission should consider in drawing lines between those that should be treated as authorized committees and those that should not?

Unlike the BCRA provisions at 2 U.S.C. 441i(e) that only deal with entities sponsored by Federal officeholders, the proposed rule in Alternative C would cover leadership PACs created by any officeholder. Is this a proper approach? Is there a need for further explanation of how this would apply?

This proposed rule uses terms of art contained in the current law, such as ''authorized committee'' (defined at 2 U.S.C. 431(6) and 11 CFR 100.5(f)(1)) and ''unauthorized committee'' (defined at 11 CFR 100.5(f)(2)). Since these terms themselves use the term of art ''political committee,'' is there a problem with using them? Is there a need to address in this rulemaking what is meant by the latter term? Note that at one point the Commission had a pending rulemaking regarding the definition of ''political committee,'' but it has been held in abeyance pending completion of other projects. Should the Commission use even broader terms in the area of leadership PACs to try to address ''entities,'' as used in BCRA's language at 2 U.S.C. 441i(e)?

Finally, Alternative C would include a conforming amendment to 11 CFR 110.3(a) to address the issue of contribution limits of leadership PACs

that are deemed to be authorized committees. Under Alternative C, such committees would be subject to the provisions of current 11 CFR 110.3(a)(1)(i) by operation of proposed section 110.3(a)(4) with the factors listed in proposed section 100.5(g)(5) of Alternative C.

D. Additional Issues

In addition to the alternative amendments to 11 CFR 100.5(g), the Commission seeks comment on the following issues. First, should the factors in Alternatives A and B establish a rebuttable presumption of affiliation rather than *per se* affiliation? If so, how should the presumption be rebutted? Secondly, does the Commission's position in the Soft Money Explanation and Justification, as reiterated in the Contribution Prohibitions and Limitations Explanation and Justification, have any bearing on its analysis concerning affiliation between leadership PACs and authorized committees? Assuming that the Commission wishes to address leadership PACs in some fashion, would it be less confusing if the Commission were to create a new section solely addressing issues regarding leadership PACs, rather then amending the affiliation rules? Do the proposed factors at 11 CFR 100.5(g)(5) in Alternatives A and B cover all of the necessary activities that should be considered in an affiliation analysis? If not, what else needs to be addressed? Alternative A references actions by an ''agent'' acting on behalf of a candidate or officeholder to be sufficient for affiliation to be found. The Commission seeks comment as to whether this is appropriate. If so, should the Commission rely on the definition of agent at 11 CFR 300.2(b), or some other definition, or should it create a new definition for this purpose? The Commission welcomes comments on any of the questions listed above.

3. Ramifications of Finding Affiliation

A. Federal Funds (''Hard Money'')

Under the Commission's regulations, committees that are affiliated, that is, committees that are established, financed, maintained, or controlled by the same corporation, labor organization, person or group of persons, *et al.*, share a single limitation on the dollar amount they may receive from any one contributor. *See* 11 CFR 100.5(g)(3). Political committees of all types may participate in joint fundraising efforts, however, which are not intended to be affected by these proposed rules. *See* 2 U.S.C. 432(e)(3)(A)(i) and 441a(a)(5)(A); 11 CFR 102.17 and 9034.8. Under FECA and the Commission's regulations, the Commission has treated leadership PACs as unauthorized political committees, and thus it has not treated them as affiliated with authorized committees, with the result that the unauthorized committee would not share a contribution limit with the authorized committees. *See* 11 CFR 100.5(g), 110.3(a)(1), 110.3(a)(3)(ii). The Commission seeks comment on what limit should apply to leadership PACs and authorized committees that are deemed to be affiliated under Alternatives A and B. Should these committees be required to share a contribution limit just as other affiliated committees, and if so, what should the shared contribution limitation be between an authorized committee and an affiliated leadership PAC? Should that contribution limit be that of an authorized committee or an unauthorized committee? Can the Commission permit authorized and unauthorized committees to operate within separately applicable contribution limits notwithstanding common control by the same candidate? If so, should it? Does the fact of affiliation mean that minors are barred from making contributions to leadership PACs? *See* 2 U.S.C. 441k (which, *inter alia,* prohibits individuals who are 17 years old and younger from making contributions to candidates). The Commission also seeks comment on whether the contribution limits promulgated at 11 CFR 300.62 would need to be harmonized with the proposed rules, if adopted.

The above discussion addresses contributions received by the leadership PAC. Another question the Commission seeks comment on is whether the leadership PAC and the authorized committee share a common limit as to contributions made to other candidates. If so, does this limit have to be the limit at 2 U.S.C. 432(e)?

As noted above, Alternative C would address this issue by finding certain committees to be authorized committees subject to the limitations appropriate to authorized committees.

B. Non-Federal Funds (''Soft Money'')

The final rules promulgated pursuant to BCRA already prohibit Federal candidates and officeholders, their agents, and entities directly or indirectly established, financed, maintained, or controlled by, or acting on behalf of them, from accepting funds in connection with any election, Federal or non-Federal, if such funds do not comply with the limits, prohibitions, and, with respect to funds in connection with any Federal election only, the reporting requirements, of FECA. *See* 2 U.S.C. 441i(e)(1)(A) and (B); *see also* 11 CFR 300.61 and 300.62. Thus, leadership PACs that support Federal and non-Federal candidates would be similarly banned from soliciting, receiving, directing, transferring, or spending funds that do not comply with FECA (*i.e.*, non-Federal funds). Would such a restriction also exist for an organization created to support efforts to discuss national issues, where the organization provides no direct support to Federal candidates or political committees, makes no independent expenditures, and does not engage in what would be Federal election activity if done by a party committee? If so, what would be the legal basis for such a restriction?

C. Transfers

If affiliation is found under Alternative A or B, then pursuant to 2 U.S.C. 441a(a)(5)(C) and 11 CFR 110.3(c)(1) the affiliated leadership PAC would be able to make unlimited transfers to a candidate or officeholder's authorized committees, consistent with the limitations of the Act. *See also* 11 CFR 102.6. The proposed rules do not include any amendments that would change these rules. Is it appropriate for the Commission to continue this policy on transfers?

D. Reporting

Under 11 CFR 104.3(f), affiliated entities are required to consolidate their disclosure reports. Accordingly, should the leadership PAC be required to consolidate disclosure reports with the principal campaign committee of the candidate with whom they are affiliated? Or should reporting be handled in a different manner and, if so, how?

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

These proposed rules if promulgated would not have a significant economic impact on a substantial number of small entities. The basis of this certification is that these rules only limit the sources and amounts of contributions that certain political committees can accept, and that these rules do not impose any additional costs on the contributors or the committees. Further, the primary purpose of the proposed revisions is to clarify the Commission's rules regarding affiliation; directly or indirectly establish, finance, maintain or control; and limits on contributions. This does not impose a significant economic burden because entities affected are

already required to comply with the Act's requirements in these areas.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 110

Campaign funds, Political committees and parties.

For the reasons set out in the preamble, the Federal Election Commission is proposing to amend subchapter A, of chapter 1 of title 11 of the *Code of Federal Regulations* as follows:

PART 100—SCOPE AND DEFINITIONS

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

Authority: 2 U.S.C. 431, 434, 438(a)(8).

2. In § 100.5, paragraph (g)(5) is added to read as follows:

§ 100.5 Political Committee (2 U.S.C. 431(4), (5), (6)).

* * * * *

(g) * * *

Alternative A

(5) Notwithstanding paragraph (g)(4) of this section, the Commission may examine the relationship between an entity associated with an individual holding Federal office or a candidate for Federal office and the authorized committees of that candidate or individual holding Federal office in accordance with the provisions of this paragraph (g)(5).

(i) An unauthorized committee(s) shall be deemed to be directly or indirectly established, financed, maintained, or controlled by a candidate or individual holding Federal office if any of the following are applicable:

(A) The candidate or individual holding Federal office, or an agent of either, has signature authority on the unauthorized committee's checks;

(B) Funds contributed or disbursed by the unauthorized committee are authorized or approved by the candidate or individual holding Federal office, or an agent of either;

(C) The candidate or individual holding Federal office is clearly identified as described in 11 CFR 100.17 on either the stationery or letterhead of the unauthorized committee;

(D) The candidate, individual holding Federal office or his campaign staff, office staff, or immediate family members, or any other agent of either, has the authority to approve, alter or veto the unauthorized committee's solicitations, contributions, donations, disbursements or contracts to make disbursements; or

(E) The unauthorized committee pays for travel by the candidate, his campaign staff or office staff, or any other agent of the candidate, in excess of $10,000 per calendar year.

(ii) *Transition period.* On or after [90 days after publication of the final rule in the **Federal Register**], an unauthorized committee shall not be deemed to be affiliated with an authorized committee unless, based on actions taken by those committees solely after [90 days after publication of the final rule in the **Federal Register**], they satisfy the requirements of paragraph (g)(5)(i). If an entity receives funds from another entity prior to [90 days after publication of the final rule in the **Federal Register**], and the recipient entity disposes of the funds prior to date [90 days after publication of the final rule in the **Federal Register**], the receipt of such funds prior to [90 days after publication of the final rule in the **Federal Register**], shall have no bearing on determining whether the recipient entity is financed by the contributing entity within the meaning of this section. Actions taken by a Federal candidate or individual holding Federal office, or an agent of either, before [90 days after publication of the final rule in the **Federal Register**], shall have no bearing on whether affiliation exists.

(iii) *Determinations by the Commission.*

(A) An entity may request an advisory opinion of the Commission to determine whether it is affiliated with the authorized committees of any Federal candidate or individual holding Federal office. The request for such an advisory opinion must meet the requirements of 11 CFR part 112 and must demonstrate that the entity is not directly or indirectly financed, maintained or controlled by the sponsor.

(B) Nothing in this section shall require entities that are unaffiliated as of [the effective date of these rules] to obtain an advisory opinion to confirm that they are not affiliated.

Alternative B

(5) Notwithstanding paragraph (g)(4) of this section, the Commission may examine the relationship between an entity associated with an individual holding Federal office or a candidate for Federal office and the authorized committees of that candidate or individual holding Federal office in accordance with the provisions of this paragraph (g)(5).

(i) An entity associated with an individual holding Federal office or a candidate for Federal office is affiliated with the authorized committees of that candidate or individual holding Federal office if the conditions set forth in either paragraph (g)(5)(i)(A) or (g)(5)(i)(B) of this section are satisfied.

(A) Any one of the following statements is true:

(*1*) The candidate or individual holding Federal office, or an agent of the candidate or individual holding Federal office, has signature authority on the entity's checks;

(*2*) The candidate or individual holding Federal office, or an agent of the candidate or individual holding Federal office, must approve or authorize disbursements over a certain minimum amount;

(*3*) The candidate or the individual holding Federal office signs solicitation letters or other correspondence on behalf of the entity;

(*4*) The candidate or individual holding Federal office has the authority to approve, alter or veto the entity's solicitations;

(*5*) The candidate or individual holding Federal office has the authority to approve, alter or veto the entity's contributions, donations, or disbursements; or

(*6*) The candidate or individual holding Federal office has the authority to approve the entity's contracts;

(B) Any three of the following statements are true:

(*1*) The campaign staff or immediate family members of the candidate or individual holding Federal office, or any other agent of the candidate or individual holding Federal office, has the authority to approve, alter or veto the entity's solicitations;

(*2*) The campaign staff or immediate family members of the candidate or individual holding Federal office, or any other agent of the candidate or individual holding Federal office, has the authority to approve, alter or veto the entity's contributions, donations, or disbursements;

(*3*) The campaign staff or immediate family members of the candidate or individual holding Federal office, or any other agent of the candidate or individual holding Federal office, has the authority to approve the entity's contracts;

(*4*) The entity and the authorized committees of the candidate or of the individual holding Federal office, share, exchange or sell contributor lists, voter lists, or other mailing lists directly to or with each other, or indirectly through the candidate or individual holding Federal office to or with each other;

(*5*) The entity pays for the travel of the candidate or of the individual holding

Federal office anywhere except to or from the State or district of the candidate or individual holding Federal office;

(*6*) The entity and the authorized committees of the candidate or of the individual holding Federal office's share office space, staff, a post office box, or equipment;

(*7*) The entity and the authorized committees of the candidate or of the individual holding Federal office share common vendors; or

(*8*) The name or nickname of the candidate or of the individual holding Federal office, or other unambiguous reference to the candidate or individual holding Federal office, appears on either the entity's stationery or letterhead;

(ii) *Determinations by the Commission.*

(A) An entity may request an advisory opinion of the Commission to determine whether it is affiliated with the authorized committees of any Federal candidate or individual holding Federal office. The request for such an advisory opinion must meet the requirements of 11 CFR part 112 and must demonstrate that the entity is not directly or indirectly established, financed, maintained, controlled by, or acting on behalf of, the sponsor.

(B) Nothing in this section shall require entities that are unaffiliated to obtain an advisory opinion to confirm that they are not affiliated.

Alternative C

(5) An unauthorized committee established, financed, maintained, or controlled by, or acting on behalf of, a candidate or individual holding Federal office will be deemed to be an authorized committee of such candidate or individual holding Federal office unless it can demonstrate:

(i) It only has made contributions, expenditures, donations, or other disbursements for the direct purpose of funding party committees or influencing the nomination or election of persons other than the candidate or individual holding Federal office;

(ii) It has not made reference to the candidacy or potential candidacy of the candidate or individual holding Federal office in solicitations, communications, or other materials;

(iii) In any speeches or public appearances by the candidate or individual holding Federal office which have been financed by the unauthorized committee, no reference is made to the candidacy or potential candidacy of the candidate or individual holding Federal office, unless such reference is brief, not planned or controlled by the candidate or individual holding Federal office, and in response to a question from an attendee; and

(iv) If such candidate or individual holding Federal office becomes a presidential candidate, any disbursements the unauthorized committee has made for the purpose of paying expenses of particular persons seeking to become caucus or convention delegates in the presidential nomination process or for the purpose of establishing staffed operations in states holding presidential primaries or caucuses in the first three months of the presidential election year are reimbursed by the presidential authorized committee of the candidate or individual holding Federal office within 60 days of being made, or within 60 days of such person becoming a candidate, if later.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

3. The authority citation for part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h, 441k.

4. In § 110.3, paragraph (a)(4) is added to read as follows:

§ 110.3 Contribution limitations for affiliated committees and political party committees; Transfers (2 U.S.C. 441a(a)(5), 441a(a)(4)).

(a) * * *

(4) For purposes of paragraph (a)(1)(i) of this section, an unauthorized committee established, financed, maintained, or controlled by, or acting on behalf of, a candidate or individual holding Federal office will be deemed to be an authorized committee of such candidate or individual holding Federal office unless it can demonstrate:

(i) It only has made contributions, expenditures, donations, electioneering communications, or other disbursements for the direct purpose of funding party committees or influencing the nomination or election of persons other than the candidate or individual holding Federal office;

(ii) It has not made reference to the candidacy or potential candidacy of the candidate or individual holding Federal office in solicitations, communications, or other materials;

(iii) In any speeches or public appearances by the candidate or individual holding Federal office which have been financed by the unauthorized committee, no reference is made to the candidacy or potential candidacy of the candidate or individual holding Federal office, unless such reference is brief, not planned or controlled by the candidate or individual holding Federal office, and in response to a question from an attendee; and

(iv) If such candidate or individual holding Federal office becomes a presidential candidate, any disbursements the unauthorized committee has made for the purpose of paying expenses of particular persons seeking to become caucus or convention delegates in the presidential nomination process or for the purpose of establishing staffed operations in states holding presidential primaries or caucuses in the first three months of the presidential election year are reimbursed by the presidential authorized committee of the candidate or individual holding Federal office within 60 days of being made, or within 60 days of such person becoming a candidate, if later.

* * * * *

Dated: December 19, 2002.

David M. Mason,

Chairman, Federal Election Commission.

[FR Doc. 02–32451 Filed 12–24–02; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1020

[Docket No. 01N–0275]

Electronic Products; Performance Standard for Diagnostic X-Ray Systems and Their Major Components; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration is correcting a proposed rule that appeared in the **Federal Register** of December 10, 2002 (67 FR 76056). The document proposed to amend the performance standard for diagnostic x-ray systems and their major components. The document was published with some inadvertent errors. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 02–30550, appearing on page 76056 in the **Federal Register** of Tuesday, December 10, 2002, the following corrections are made:

1. On page 76081, in the first column, in reference 29, the Internet address is corrected to read ''http://www.fda.gov/cdrh/radhlth/021501_xray.html''.

2. On page 76093, in the third column, the second line of paragraph (h)(1)(ii) is corrected by removing the word ''this'' and adding ''(h)(1)(i)'' after the word ''paragraph''.

Dated: December 18, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 02–32441 Filed 12–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–150313–01]

RIN 1545–BA80

Redemptions Taxable as Dividends; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains corrections to a notice of proposed rulemaking and notice of public hearing (REG–150313–01) which was published in the **Federal Register** on Friday,October 18, 2002 (67 FR 64331). This regulation provides guidance regarding the treatment of the basis of redeemed stock when a distribution in redemption of such stock is treated as a dividend, as well as guidance regarding certain acquisitions of stock by related corporations that are treated as distributions in redemption of stock.

FOR FURTHER INFORMATION CONTACT: Lisa K. Leong at (202) 622–7530 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of these corrections are under sections 302, 304, 704, 861, 1371, 1374, and 1502 of the Internal Revenue Code.

Need for Correction

As published, this notice of proposed rulemaking contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking and notice of public hearing (REG–150313–01), which is the subject of FR. Doc. 02–26449, is corrected as follows:

1. On page 64332, column 1, in the preamble under the paragraph heading ''Paperwork Reduction Act'', paragraph 7, line 12, the language ''loss. The respondents are shareholders'', is corrected to read ''loss (or gain, as appropriate). The respondents are shareholders'.

§ 1.302–5 [Corrected]

2. On page 64339, column 1, § 1.302–5, paragraph (d)(8), line 4 from the bottom of the paragraph ''accelerated inclusion date shall be made'' is corrected to read ''accelerated loss inclusion date shall be made''.

3. On page 64339, column 3, § 1.302–5, *Example 4,* line 3, the language ''any shares of corporation Y to K in Year 4'', is corrected to read ''any shares of corporation Y stock to K in Year 4''.

4. On page 64340, column 3, lines 6 and 7, the language ''equal to PS's basis in the corporation Z stock, ($50 after application of section 301(c)(2)), is'', is corrected to read ''equal to PS's basis in the corporation Z stock ($50 after application of section 301(c)(2)) is''.

§ 1.304–3 [Corrected]

5. On page 64342, column 3, § 1.304–3, paragraph (a), lines 21 through 24, the language ''For the treatment of the redeemed shareholder's basis in the redeemed stock in such cases, see § 1.302–5.'' is removed.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02–32331 Filed 12–24–02; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–7429–4]

RIN 2003–AA00

Regulatory Innovations: Pilot-Specific Rule for Electronic Materials in the EPA Region III Mid-Atlantic States; Hazardous Waste Management System; Modification of the Hazardous Waste Program; Cathode Ray Tubes

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Many used cathode ray tubes (CRTs) are currently classified as characteristic hazardous wastes under RCRA. Such CRTs are therefore subject to the hazardous waste regulations of RCRA Subtitle C unless they come from a household or a conditionally exempt small quantity generator. Today EPA is proposing to conditionally exclude from its hazardous waste program under the Resource Conservation and Recovery Act (RCRA) used CRTs and glass removed from CRTs from the definition of ''solid waste'' in the EPA Region III Mid-Atlantic States (which include the States of Delaware, Maryland, and West Virginia, the Commonwealths of Pennsylvania and Virginia, and the District of Columbia). Additionally, the preamble to this rule clarifies when used CRTs and other used electronic equipment become a ''solid waste.'' This rule will support an ongoing e-Cycling pilot project of EPA Region III's Mid-Atlantic States, which is promoting reuse and recycling of electronics. EPA believes that today's proposed rule will encourage increased recycling and better management of these materials in Region III states.

EPA has proposed a similar, albeit broader, conditional exclusion for CRTs and certain other electronic materials that would be effective nationwide (June 12, 2002, FR 40508–40528). EPA is proposing this regional rule now because it believes that implementing the rule in the Region III states will produce information about the CRT conditional exclusion that will be useful to EPA as it assesses the appropriateness of adopting the RCRA exclusion nationally. EPA expects to withdraw the regional rule if and when a final national rule becomes effective.

In the ''Rules and Regulations'' section of today's **Federal Register**, EPA is promulgating as a direct final rule the same amendment to RCRA's definition of solid waste that it is proposing here. EPA views this as a noncontroversial revision and anticipates no adverse comment. EPA has explained its reasons for this amendment in the preamble of the direct final rule. If we receive no adverse comment to the direct final rule, we will not take further action on this proposed rule. If we receive adverse comment on the direct final rule, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments must be received by January 27, 2003.

ADDRESSES: Comments may be submitted by mail or electronically. Commenters must send an original and

two copies of their comments referencing docket number III–02–OEI–01 to: Marie Holman (3EI00), U.S. EPA Region III, Office of Environmental Innovation, 1650 Arch Street, Philadelphia, PA 19103–2029 or *holman.marie@epa.gov.* Further detailed instructions are provided in the Electronic Comment Submission section of the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For general information about the management of solid waste under RCRA, contact the RCRA/Superfund/EPCRA/UST Hotline at (800) 424–9346 (toll free) or TDD (800) 553–7672 (hearing impaired). For more detailed information on specific aspects of this rulemaking, contact Ms. Marie Holman by U.S. mail at U.S. EPA Region III (3EI00), 1650 Arch Street, Philadelphia, Pennsylvania, 19103–2029, by telephoning 215–814–5463, or by electronic mail at: *holman.marie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Does This Proposed Rule Relate to the Direct Final Pilot-Specific Rule for Electronic Materials in the EPA Region III Mid-Atlantic States; Hazardous Waste Management System; Modification of the Hazardous Waste Program; Cathode Ray Tubes?

EPA is publishing this as a proposed rule if adverse comments are filed to the direct final rule.

In the ''Rules and Regulations'' section of the Federal Register, we are promulgating a direct final rule which will be effective February 24, 2003 without further notice unless we receive adverse comment by January 27, 2003. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

B. How Can I Get Copies of Related Information?

1. Docket

EPA has established an official public docket for this action under Docket ID No. III–02–OEI–01. 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 Region III Library, 1650 Arch Street, Philadelphia, PA 19103. This Docket Facility is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that you make an appointment by calling Marie Holman at 215–814–5463. You may copy a maximum of 100 pages from any file maintained at the docket at no charge. Additional copies cost $0.15 per page.

2. Access to Information

You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.* You can also review some of the supporting documents for the national proposed rule (FR, June 12, 2002, Vol. 67, No. 113, P. 40508–40528) (which supports the regional rule), in electronic format on the Internet at URL: *http://www.epa.gov/epa/epaoswer/hazwaste/recycle/electron/crt.htm.*

You may view public comments and the supporting materials for the issues and memoranda discussed below at U.S. EPA Region III Library, 1650 Arch Street, Philadelphia, PA 19103. The library is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the you make an appointment by calling Marie Holman at 215–814–5463.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. 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 I.B.1.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically or by mail. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in I.B.2 and I.D.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *holman.marie@epa.gov,* Attention Docket ID No. III–02–OEI–01. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-

mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

ii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified above in I.B. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send an original and two copies of you comments referencing docket number III–02–OEI–01 to Marie Holman, Office of Environmental Innovation (3EI00), U.S. EPA, 1650 Arch Street, Philadelphia, PA 19103–2029.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. This information needs to be submitted under separate cover. Send information (original and two copies of CBI) identified as CBI only to the following address: Marie Holman, Office of Environmental Innovation (3EI00), U.S. EPA, 1650 Arch Street, Philadelphia, PA 19103–2029, Attention Docket ID No. III–02–OEI–01. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: December 19, 2002.

Christine T. Whitman,

Administrator, United States Environmental Protection Agency.

[FR Doc. 02–32551 Filed 12–24–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 02–278; DA 02–3554]

Telephone Consumer Protection Act (TCPA) of 1991

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time to file reply comments.

SUMMARY: On September 18, 2002, the Commission released a document (67 FR 62667, October 8, 2002) seeking comment on whether it should change its rules restricting telemarketing calls and facsimile advertisements. This document extends the time to file reply comments in our TCPA proceeding in CG Docket No. 02–278.

DATES: Reply comments are due in this proceeding on January 31, 2003.

ADDRESSES: Parties who choose to file comments by paper must file an original and four copies with the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. Comments may also be filed using the Commission's Electronic Filing System, which can be accessed via the Internet at *www.fcc.gov/e-file/ecfs.html.*

FOR FURTHER INFORMATION CONTACT: Erica H. McMahon or Richard D. Smith, Policy Division, Consumer & Governmental Affairs Bureau, (202) 418–2512.

SUPPLEMENTARY INFORMATION: When the Commission released its Notice of Proposed Rulemaking (Notice) on September 18, 2002, the Federal Trade Commission (FTC) had proposed a number of amendments to its Telemarketing Sales Rule, but had not yet adopted rules based on its proposal. The notice explained that the Commission has the option to seek further comment to fully address the interplay between final FTC action and possible Commission action. On December 18, 2002, the FTC released rules establishing a national do-not-call registry and making other changes to its Telemarketing Sales Rule. In the order, the FTC notes that implementation of its do-not-call registry is contingent upon funding from Congress.

To ensure that all interested parties have ample opportunity to comment on possible Commission action in light of the FTC's recent order, the Consumer & Governmental Affairs Bureau (CGB) extends the reply comment period until January 31, 2003.

Federal Communications Commission.

Margaret M. Egler,

Deputy Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 02–32649 Filed 12–24–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI24

Endangered and Threatened Wildlife and Plants; Designations of Critical Habitat for Plant Species From the Island of Oahu, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the draft economic analysis for the proposed designations of critical habitat for plant species from the island of Oahu, Hawaii. The

comment period for the proposed critical habitat designations originally closed on July 29, 2002. On August 26, 2002, we reopened the comment period and provided notice that the comment period would close on September 30, 2002. On October 10, 2002, we announced a public hearing and reopened the comment period to allow all interested parties to submit oral or written comments on the proposal until November 30, 2002. We are now providing notice of an extension of the comment period to allow peer reviewers and all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis. Over a 10-year time period, the total section 7-related direct costs associated with the plants species listings and critical habitat are estimated at $1.1 million to $2.3 million. Indirect costs have the potential to be as much as $100 million, although the likelihood of this potential being reached is unclear. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this extended comment period and will be fully considered in preparation of the final rule.

DATES: We will accept public comments until January 27, 2003.

ADDRESSES: Send your written comments and information to Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., PO Box 50088, Honolulu, HI 96850–0001; or e-mail your comments to *FW1PIE_Oahu_crithab@r1.fws.gov.* For further instructions on commenting, refer to Public Comments Solicited section of this notice.

To obtain a copy of the draft economic analysis, send a written request to the address listed above, call 808/541–3441, or visit the following Internet site: *http://pacificislands.fws.gov.*

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Office, at the above address (telephone: 808/541–3441; facsimile: 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

Between 1991 and 1996, a total of 101 species historically found on Oahu were listed as endangered or threatened species under the Endangered Species Act of 1973, as amended (the Act)(16 U.S.C. 1531 *et seq.*). On May 28, 2002, we published in the **Federal Register** (67 FR 37108) a proposed rule to propose critical habitat for 99 of the 101 plant species historically found on Oahu. Some of these species may also occur on other Hawaiian islands.

Previously, we proposed that designation of critical habitat was prudent for 45 (*Adenophorus periens, Alectryon macrococcus, Bonamia menziesii, Cenchrus agrimonioides, Centaurium sebaeoides, Colubrina oppositifolia, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyperus trachysanthos, Diellia erecta, Diplazium molokaiense, Eugenia koolauensis, Euphorbia haeleeleana, Flueggea neowawraea, Gouania meyenii, Gouania vitifolia, Hedyotis coriacea, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Isodendrion laurifolium, Isodendrion longifolium, Isodendrion pyrifolium, Lobelia niihauensis, Lysimachia filifolia, Mariscus pennatiformis, Marsilea villosa, Melicope pallida, Nototrichium humile, Peucedanum sandwicense, Phlegmariurus nutans, Phyllostegia mollis, Phyllostegia parviflora, Plantago princeps, Platanthera holochila, Pteris lidgatei, Sanicula purpurea, Schiedea hookeri, Schiedea nuttallii, Sesbania tomentosa, Silene lanceolata, Solanum sandwicense, Spermolepis hawaiiensis, Tetramolopium lepidotum* ssp. *lepidotum,* and *Vigna o-wahuensis*) of the 101 species reported from the island of Oahu. No change is made to the 45 proposed prudency determinations in the May 28, 2002, proposed critical habitat rule for plants from Oahu. In addition, in the May 28, 2002, proposed rule, we proposed that designation of critical habitat was not prudent for *Pritchardia kaalae* because it would likely increase the threats from vandalism or collection of this species on Oahu. In the same rule, we proposed that designation of critical habitat was not prudent for *Cyrtandra crenata* because it had not been seen recently in the wild and no viable genetic material of this species is known to exist. We also proposed that designation of critical habitat is prudent for 54 species (*Abutilon sandwicense, Alsinidendron obovatum, Alsinidendron trinerve, Chamaesyce celastroides* var. *kaenana, Chamaesyce deppeana, Chamaesyce herbstii, Chamaesyce kuwaleana, Chamaesyce rockii, Cyanea acuminata, Cyanea crispa, Cyanea grimesiana* ssp. *obatae, Cyanea humboltiana, Cyanea koolauensis, Cyanea longiflora, Cyanea pinnatifida, Cyanea st.-johnii, Cyanea superba, Cyanea truncata, Cyrtandra dentata, Cyrtandra polyantha, Cyrtandra subumbellata, Cyrtandra viridiflora, Delissea subcordata, Diellia falcata, Diellia unisora, Dubautia herbstobatae, Eragrostis fosbergii, Gardenia mannii, Hedyotis degeneri, Hedyotis parvula, Labordia cyrtandrae, Lepidium arbuscula, Lipochaeta lobata* var. *leptophylla, Lipochaeta tenuifolia, Lobelia gaudichaudii* ssp. *koolauensis, Lobelia monostachya, Lobelia oahuensis, Melicope lydgatei, Melicope saint-johnii, Myrsine juddii, Neraudia angulata, Phyllostegia hirsuta, Phyllostegia kaalaensis, Sanicula mariversa, Schiedea kaalae, Schiedea kealiae, Silene perlmanii, Stenogyne kanehoana, Tetramolopium filiforme, Tetraplasandra gymnocarpa, Trematalobelia singularis, Urera kaalae, Viola chamissoniana* ssp. *chamissoniana,* and *Viola oahuensis*) for which prudency determinations have not been made previously.

We further proposed designation of critical habitat for 99 plant species (*Abutilon sandwicense, Adenophorus periens, Alectryon macrococcus, Alsinidendron obovatum, Alsinidendron trinerve, Bonamia menziesii, Cenchrus agrimonioides, Centaurium sebaeoides, Chamaesyce celastroides* var. *kaenana, Chamaesyce deppeana, Chamaesyce herbstii, Chamaesyce kuwaleana, Chamaesyce rockii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea acuminata, Cyanea crispa, Cyanea grimesiana* ssp. *grimesiana, Cyanea grimesiana* ssp. *obatae, Cyanea humboltiana, Cyanea koolauensis, Cyanea longiflora, Cyanea pinnatifida, Cyanea st.-johnii, Cyanea superba, Cyanea truncata, Cyperus trachysanthos, Cyrtandra dentata, Cyrtandra polyantha, Cyrtandra subumbellata, Cyrtandra viridiflora, Delissea subcordata, Diellia erecta, Diellia falcata, Diellia unisora, Diplazium molokaiense, Dubautia herbstobatae, Eragrostis fosbergii, Eugenia koolauensis, Euphorbia haeleeleana, Flueggea neowawraea, Gardenia mannii, Gouania meyenii, Gouania vitifolia, Hedyotis coriacea, Hedyotis degeneri, Hedyotis parvula, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Isodendrion laurifolium, Isodendrion longifolium, Isodendrion pyrifolium, Labordia cyrtandrae, Lepidium arbuscula, Lipochaeta lobata* var. *leptophylla, Lipochaeta tenuifolia, Lobelia gaudichaudii* ssp. *koolauensis, Lobelia monostachya, Lobelia niihauensis, Lobelia oahuensis, Lysimachia filifolia, Mariscus pennatiformis, Marsilea villosa, Melicope pallida, Melicope saint-johnii, Myrsine juddii, Neraudia angulata, Nototrichium humile, Pelea lydgatei, Peucedanum sandwicense, Phlegmariurus nutans, Phyllostegia hirsuta, Phyllostegia kaalaensis,*

Phyllostegia mollis, Phyllostegia parviflora, Plantago princeps, Platanthera holochila, Pteris lidgatei, Sanicula mariversa, Sanicula purpurea, Schiedea hookeri, Schiedea kaalae, Schiedea kealiae, Schiedea nuttallii, Sesbania tomentosa, Silene lanceolata, Silene perlmanii, Solanum sandwicense, Spermolepis hawaiiensis, Stenogyne kanehoana, Tetramolopium filiforme, Tetramolopium lepidotum ssp. *lepidotum, Tetraplasandra gymnocarpa, Trematalobelia singularis, Urera kaalae, Vigna o-wahuensis, Viola chamissoniana* ssp. *chamissoniana, and Viola oahuensis*). We did not propose critical habitat for *Pritchardia munroi* and *Cyrtandra crenata* for the reasons given above.

We proposed critical habitat designations for 99 species within 25 critical habitat units totaling approximately 45,067 hectares (111,364 acres) on the island of Oahu.

Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act (16 U.S.C. 1531 *et seq.*) with regard to actions carried out, funded, or authorized by a Federal agency. Section 4(b)(2) of the Act requires that the Secretary designate or revise critical habitat based upon the best scientific and commercial data available, and after taking into consideration the economic impact of specifying any particular area as critical habitat. We have prepared a draft economic analysis of the proposed critical habitat designation. The draft economic analysis is available on the Internet and from the mailing address listed below in the Public Comments Solicited section.

The public comment period for the May 28, 2002, proposal originally closed on July 29, 2002. On August 26, 2002, we published in the **Federal Register** (67 FR 54766) a notice reopening the comment period for the proposed designations and non-designations of critical habitat for plant species on the island of Oahu, as well as for the proposed designations and non-designations of critical habitat for plant species on the islands of Kauai, Niihau, Molokai, Maui, Kahoolawe, and Hawaii, and we announced that the comment period would close on September 30, 2002. On October 10, 2002, we announced a public hearing and reopened the comment period to allow all interested parties to submit oral or written comments on the proposal until November 30, 2002 (67 FR 63066). We are now announcing the availability of the draft economic analysis and the extension of the comment period for the proposed designations and non-designations of critical habitat for plant species on the island of Oahu. We will accept public comments on the proposal and the associated draft economic analysis for plants species from the island of Oahu until the date specified above in **DATES**. The extension of the comment period gives all interested parties the opportunity to comment on the proposal and the associated draft economic analysis for plant species from the island of Oahu. Comments already submitted on the proposed designations and non-designations of critical habitat for plant species from the island of Oahu need not be resubmitted as they will be fully considered in the final determinations.

Public Comments Solicited

We specifically request comments on the following matters addressed in the ''Indirect Costs'' section of the draft economic analysis:

(1) The likelihood of adverse impacts on hunting resulting from changes in game management, and the likelihood of such changes in game management;

(2) The likelihood of adverse impacts on military readiness and military communications;

(3) The likelihood of mandated conservation management on private land by the State of Hawaii or the courts;

(4) The likelihood of redistricting of land to Conservation District status;

(5) The likelihood of reduced property values; and

(6) The likelihood of increased costs, delays and denials in permit applications by Federal, State and county authorities, all as a result of the proposed critical habitat designations.

We seek comments on the likelihood of these impacts, including the reasons they might or might not occur, and the likely direct and indirect costs or other effects if the impacts do occur, including the basis for the costs or other effects. To the extent that those submitting comments have specific information related to their comments, we encourage its inclusion.

If you wish to provide written comments, you may submit your comments and materials concerning this proposal by any of several methods:

(1) You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., PO Box 50088, Honolulu, HI 96850–0001.

(2) You may send comments by electronic mail (e-mail) to: *FW1PIE_Oahu_crithab@r1.fws.gov.* If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include ''Attn: RIN 1018–AI24'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Honolulu Fish and Wildlife Office at telephone number 808/541–3441.

(3) You may hand-deliver comments to our Honolulu Fish and Wildlife Office at the address given above under (1).

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at the address under (1) above.

Copies of the draft economic analysis are available on the Internet at *http://pacificislands.fws.gov* or by request from the Field Supervisor at the address and phone number listed in **ADDRESSES.**

Author(s)

The primary author of this document is Michelle Mansker (*See* **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: December 16, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–32522 Filed 12–24–02; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 67, No. 248

Thursday, December 26, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Federal Invention Available for Licensing and Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that the Federally owned invention disclosed in U.S. Patent No. 6245294 ''Method and Apparatus for Surface Treatment of Materials'', issued June 12, 2001, is available for licensing and that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Alkar-RapidPak, Inc. of Lodi, Wisconsin, an exclusive license to this invention.

DATES: Comments must be received within 90 calendar days of the date of publication of this notice in the **Federal Register**.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Room 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Alkar-RapidPak, Inc. of Lodi, Wisconsin has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 90 days from the date of this published notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Michael D. Ruff,

Assistant Administrator.

[FR Doc. 02–32506 Filed 12–24–02; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notices by the Intermountain Region; Utah, Idaho, Nevada, and Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by the ranger districts, forests and regional office of the Intermountain Region to publish legal notices required under 36 CFR 215 and 217. The intended effect of this action is to inform interested members of the public which newspapers the Forest Service will use to publish notices of proposed actions and notices of decisions. This will provide the public with constructive notice of Forest Service proposals and decisions, provide information on the procedures to comment or appeal, and establish the date that the Forest Service will use to determine if comments or appeals were timely.

DATES: Publication of legal notices in the listed newspapers will begin on or after January 1, 2003. The list of newspapers will remain in effect until June 1, 2003, when another notice will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Priscilla McLain, Regional Appeals Manager, Intermountain Region, 324 25th Street, Ogden, UT 84401, and Phone (801) 625–5146.

SUPPLEMENTARY INFORMATION: The administrative procedures at 36 CFR parts 215 and 217 require the Forest Service to publish notices in a newspaper of general circulation. In addition, the Forest Service will provide direct notice to those who have requested notice in writing and those known to be affected by a specific decision. The content of the notices is specified in 26 CFR parts 215 and 217. In general, the notices will identify: the decision or project, by title or subject matter; the name and title of the official making the decision; how to obtain additional information; and where and how to file comments or appeals. The date the notice is published will be used to establish the official date for the beginning of the comment or appeal period.

The newspapers to be used are as follows:

Regional; Forester, Intermountain Region

For decisions made by the Regional Forester affecting National Forests in Idaho: *The Idaho Statesman*, Boise Idaho

For decisions made by the Regional Forester affecting National Forests in Nevada: *The Reno Gazette-Journal,* Reno, Nevada

For decisions made by the Regional Forester affecting National Forests in Wyoming: *Casper Star-Tribune,* Casper, Wyoming

For decisions made by the Regional Forester affecting National Forests in Utah: *Salt Lake Tribune.* Salt Lake City, Utah

If the decision made by the Regional Forester affects all National Forests in the Intermountain Region, it will appear in: *Salt Lake Tribune:* Salt Lake City, Utah.

Ashley National Forest

Ashley Forest Supervisors decisions: *Vernal Express,* Vernal, Utah

Vernal District Ranger decisions: *Vernal Express,* Vernal, Utah

Flaming Gorge District Ranger for decisions affecting Wyoming: *Casper Star Tribune,* Casper, Wyoming

Flaming Gorge District Ranger for decisions affecting Utah: *Vernal Express,* Vernal, Utah

Roosevelt and Duchesne District Ranger decisions: *Unitah Basin Standard,* Roosevelt, Utah

Boise National Forest

Boise Forest Supervisor decisions: *The Idaho Statesman,* Boise, Idaho

Mountain Home District Ranger decisions: *The Idaho Statesman,* Boise, Idaho

Idaho City District Ranger decisions: *The Idaho Statesman,* Boise, Idaho

Cascade District Ranger decisions: *The Long Valley Advocate,* Cascade, Idaho

Lowman District Ranger decisions: *The Idaho World,* Garden Valley, Idaho
Emmett District Ranger decisions: *The Messenger-Index,* Emmett, Idaho

Bridger-Teton National Forest

Bridger-Teton Forest Supervisor decisions: *Casper Star-Tribune,* Casper, Wyoming
Jackson District Ranger decisions: *Casper Star-Tribune,* Casper, Wyoming
Buffalo District Ranger decisions: *Casper Star-Tribune,* Casper, Wyoming
Big Piney District Ranger decisions: *Casper Star-Tribune,* Casper, Wyoming
Pinedale District Ranger decisions: *Casper Star-Tribune,* Casper, Wyoming
Greys River District Ranger decisions: *Casper Star-Tribune,* Casper, Wyoming
Kemmerer District Ranger decisions: *Casper Star-Tribune,* Casper, Wyoming

Caribou-Targhee National Forest

Caribou-Targhee Forest Supervisor decisions for the Caribou portion: *Idaho State Journal,* Pocatello, Idaho
Soda Springs District Ranger decisions: *Idaho State Journal,* Pocatello, Idaho
Montpelier District Ranger decisions: *Idaho State Journal,* Pocatello, Idaho
Westside District Ranger decisions: *Idaho State Journal,* Pocatello, Idaho
Caribou-Targhee Forest Supervisor decisions for the Targhee Portion: *The Post Register,* Idaho Falls, Idaho
Dubois District Ranger decisions: *The Post Register,* Idaho Falls, Idaho
Island Park District Ranger decisions: *The Post Register,* Idaho Falls, Idaho
Ashton District Ranger decisions: *The Post Register,* Idaho Falls, Idaho
Palisades District Ranger decisions: *The Post Register,* Idaho Falls, Idaho
Teton Basin District Ranger decisions: *The Post Register,* Idaho Falls, Idaho

Dixie National Forest

Dixie Forest Supervisor decisions: *The Daily Spectrum,* St. George, Utah
Pine Valley District Ranger decisions: *The Daily Spectrum,* St. George, Utah
Cedar City District Ranger decisions: *The Daily spectrum,* St. George, Utah
Powell District Ranger decisions: *The Daily Spectrum,* St. George, Utah
Escalante District Ranger decisions: *The Daily Spectrum,* St. George, Utah
Teasdale District Ranger decisions: *The Daily Spectrum,* St. George, Utah

Fishlake National Forest

Fishlake Forest Supervisor decisions: *Richfield Reaper,* Richfield, Utah
Loa District Ranger decisions: *Richfield Reaper,* Richfield, Utah
Richfield District Ranger decisions: *Richfield Reaper,* Richfield, Utah
Beaver District Ranger decisions: *Richfield Reaper,* Beaver, Utah
Fillmore District Ranger decisions: *Richfield Reaper,* Fillmore, Utah

Humboldt-Toiyabe National Forests

Humboldt-Toiyabe Forest Supervisor decisions for the Humboldt portion: *Elko Daily Free Press,* Elko, Nevada
Humboldt-Toiyabe Forest Supervisor decisions for the Toiyabe portion: *Reno Gazette-Journal,* Reno, Nevada
Sierra Ecosystem Coordination Center (SECO):
Carson District Ranger decisions: *Mammoth Times,* Mammoth Lakes, California
Bridgeport District Ranger, decisions: *The Review-Herald,* Mammoth Lakes, California
Spring Mountains National Recreation Area Ecosystem (SMNRAE):
Spring Mountains National Recreation Area District Ranger decisions: *Las Vegas Review Journal,* Las Vegas, Nevada
Central Nevada Ecosystem (CNECO):
Austin District Ranger decisions: *Reno Gazette*-Journal, Reno, Nevada
Carson Ranger District decisions: *Reno Gazette*-Journal, Reno, Nevada
Tonopah District Ranger decisions: *Tonopah Times Bonanza-Goldfield News,* Tonopah, Nevada
Ely District Ranger decisions: *Ely Daily Times,* Ely, Nevada
Northeast Nevada Ecosystem (NNECO):
Mountain City District Ranger decisions: *Ely Daily Times,* Ely, Nevada
Ruby Mountains District Ranger decisions: *Elko Daily Free Press,* Elko, Nevada
Jarbidge District Ranger decisions: *Elko Daily Free Press,* Elko, Nevada
Santa Rosa District Ranger decisions: *Humboldt Sun,* Winnemucca, Nevada

Manti-Lasal National Forest

Manti-LaSal Forest Supervisor decisions: *Sun Advocate,* Price, Utah
Sanpete District Ranger decisions: *The Pyramid,* Mt. Pleasant, Utah
Ferron District Ranger decisions: *Emery County Progress,* Castle Dale, Utah
Price District Ranger decisions: *Sun Advocate,* Price, Utah
Moab District Ranger decisions: *The Times Independent,* Moab, Utah
Monticello District Ranger decisions: *The San Juan Record,* Monticello, Utah

Payette National Forest

Payette Forest Supervisor decisions: *Idaho Statesman,* Boise, Idaho
Weiser District Ranger decisions: *Signal American,* Weiser, Idaho
Council District Ranger decisions: *Adam County Record,* Council, Idaho
New Meadows, McCall, and Krassel District Ranger decisions: *Star News,* McCall, Idaho

Salmon-Challis National Forests

Salmon-Challis Forest Supervisor decisions for the Salmon portion: *The Recorder*-Herald, Salmon, Idaho
Salmon-Challis Forest Supervisor decisions for the Challis portion: *The Challis Messenger,* Challis, Idaho
North Fork District Ranger decisions: *The Recorder-Herald,* Salmon, Idaho
Leadore District Ranger decisions: *The Recorder-Herald,* Salmon, Idaho
Salmon/Cobalt District Ranger decisions: *The Recorder-Herald,* Salmon, Idaho
Middle Fork District Ranger decisions: *The Challis Messenger,* Challis, Idaho
Challis District Ranger decisions: *The Challis Messenger,* Challis, Idaho
Yankee Fork District Ranger decisions: *The Challis Messenger,* Challis, Idaho
Lost River District Ranger decisions: *The Challis Messenger,* Challis, Idaho

Sawtooth National Forest

Sawtooth Forest Supervisor decisions: *The Times News,* Twin Falls, Idaho
Minidoka District Ranger decisions: *The Times News,* Twin Falls, Idaho
Ketchum District Ranger decisions: *Idaho Mountain Express,* Ketchum, Idaho
Sawtooth National Recreation Area: *Challis Messenger,* Challis, Idaho
Fairfield District Ranger decisions: *The Times News,* Twin Falls, Idaho

Uinta National Forest

Uinta Forest Supervisor decisions: *The Daily Herald,* Provo, Utah
Pleasant Grove District Ranger decisions: *The Daily Herald,* Provo, Utah
Heber District Ranger decisions: *The Daily Herald,* Provo, Utah, and
Spanish Fork District Ranger decisions: *The Daily Herald,* Provo, Utah

Wasatch-Cache National Forest

Wasatch-Cache Forest Supervisor decisions: *Salt Lake Tribune,* Salt Lake City, Utah
Salt Lake District Ranger decisions: *Salt Lake Tribune,* Salt Lake City, Utah
Kamas District Ranger decisions: *Salt Lake Tribune,* Salt Lake City, Utah
Evanston District Ranger decisions: *Uintah County Herald,* Evanston, Wyoming
Mountain View District Ranger decisions: *Uintah County Herald,* Evanston, Wyoming

Ogden District Ranger decisions: *Ogden Standard Examiner,* Ogden, Utah
Logan District Ranger decisions: *Logan Herald Journal,* Logan, Utah

Dated: December 18, 2002.

Jack G. Troyer,

Regional Forester.

[FR Doc. 02–32512 Filed 12–24–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Equity 23–21 and 32–4 Oil and Gas Wells, Dakota Prairie Grassland, Billings County, North Dakota

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environment impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement to document the analysis and disclose the environmental impacts of the construction of the well pads, access roads, production facilities, utilites, and pipelines proposed under the Surface Use Plan of Operations (SUPO's) for the Equity 23–21 and 32–4 oil and gas wells located in the Bell Lake Inventoried Roadless Area (IRA).

The purpose and need of these oil and gas well projects is to honor valid existing lease rights which grant the exclusive right to drill for, mine, extract, remove and dispose of all oil and gas (except helium) in the lands described within the lease, together with the right to build and maintain necessary improvements thereupon.

This proposal is consistent with the provisions of the Dakota Prairie Grasslands (DPG) Land and Resource Management Plan (LRMP), specifically Goal 2c, Objective 1, which focuses on providing opportunities for oil and gas exploration consistent with the DPG LRMP. This proposal is consistent with key energy legislation including the Energy Security Act of 1980, the Federal Oil and Gas Royalty Management Act of 1982, the Federal Onshore Oil and Gas Leasing Reform Act of 1987, Executive Order 13212, and the Forest Services's Energy Implementation Plan.

Decisions to be made under this proposal include: whether to approve, deny, or modify the Surface Use Plan of Operations as submitted and whether to allow the use of herbicides for control of vegetation and noxious weeds on the well pads and access roads.

Preliminary issues include the fact that the proposed projects are located within the Bell Lake Inventoried Roadless Area (IRA). Honoring the oil and gas lease will mean that access roads and well pads will be constructed in the Bell Lake IRA.

ADDRESSES: The responsible official is David M. Pieper, Dakota Prairie Grasslands Supervisor. Please send written comments to Ronald W. Jablonski, Jr., District Ranger, Medora Ranger District, 161 21st Street West, Dickinson ND 58601. Comments may also be electronically submitted to *rjablonski@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Jeff Adams, ID Team Leader, Medora Ranger District, 161 21st Street West, Dickinson ND 58601 or by e-mail to *jcadams@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The Forest Service proposes to approve the SUPO's for the Equity 23–21 and 32–4 oil and gas well sites located in the NESW of Section 21, T143N, R103W, and the SWNE of Section 4, T143N, R103W, Billings County, North Dakota. This proposal would occur on National Forest System lands. The SUPO includes construction, maintenance, and reclamation proposals for the well pads, access roads, and needed oil production facilities, pipelines, and electric lines.

The Equity 23–21 and 32–4 proposals would include constructing approximately 4,475 and 2,501 feet of new access road, respectively. Each well pad would disturb an area, approximately 2.5 acres in size. Pipelines and electric utilities would be buried along the access roads. Production facilities (*i.e.,* tanks, heater treater, and well pump) would be located on each well pad.

The entire 11,270 acre Bell Lake IRA is leased for oil and gas exploration and development. There are 320 acres of private mineral rights within the IRA. Under the recently signed DPG LRMP, the area within the IRA is to be managed as Management Area (MA) 6.1 ''Rangeland with Broad Resource Emphasis''. This MA directs that valid leases will be honored.

Public participation is important to this analysis. Part of the goal of public involvement is to identify additional issues and to refine general issues. Scoping notices will be mailed to the public on or before January 10, 2003.

People may visit with Forest Service officials at any time during the analysis and prior to the decision. Two periods are specifically designated for comments on the analysis: (1) During the scoping process, and (2) during the draft EIS period.

Durin the scoping process, the Forest Service seeks additional information and comments from individuals, organizations, and federal, state, and local agencies that may be interested in or affected by the proposed action. The Forest Service invites written comments and suggestions on this action, particularly in terms of issues and alternative development.

The draft EIS is anticipated to be available for review in May of 2003. The final EIS is planned for completion in August of 2003.

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 will also publish a legal notice of its availability in the Bismarck Tribune Newspaper, Bismarck, North Dakota. The 45-day comment period will begin the day after the legal notice is published.

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 environment 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.

The responsible official will make the decision on this proposal after considering comments and responses, environmental consequences discussed in the final EIS, applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

Dated: December 19, 2002.

David M. Pieper,

Dakota Prairie Grasslands Supervisor.

[FR Doc. 02–32509 Filed 12–24–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Southwest Idaho Resource Advisory Committee, Boise, ID. USDA, Forest Service.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393), the Boise and Payette National Forests' Southwest Idaho Resource Advisory Committee will meet Wednesday, January 15, 2003 in Boise, Idaho for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on January 15, begins at 10:30 AM, at the Idaho Counties Risk Management Program Building, 3100 Vista Avenue, Boise, Idaho. Agenda topics will include review and approval of project proposals, and an open public forum.

FOR FURTHER INFORMATION CONTACT: Randy Swick, Designated Federal Officer, at (208) 634–2290.

Dated: December 18, 2002.

Cliff Steele,

Acting Forest Supervisor, Payette National Forest.

[FR Doc. 02–32527 Filed 12–24–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Wrangell-Petersburg Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Wrangell-Petersburg Resource Advisory Committee (RAC) will meet beginning at 8 a.m. on Friday, January 17 through noon, Saturday, January 18, 2003, in Wrangell, Alaska. The purpose of this meeting is to review and discuss proposals for funding under Title II, Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act. Public testimony regarding the proposals will also be taken.

DATES: The meeting will be held commencing at 8 a.m. on Friday, January 17 through noon, Saturday, January 18, 2003.

ADDRESSES: The meeting will be held at Harding's Old Sourdough Lodge, 1104 Peninsula, Wrangell, Alaska.

FOR FURTHER INFORMATION CONTACT: Chip Weber, Wrangell District Ranger, PO Box 51, Wrangell, AK 99929, phone (907) 874–2323, e-mail *cweber@fs.fed.us,* or Patty Grantham, Petersburg District Ranger, PO Box 1328, Petersburg, AK 99833, phone (907) 772–3871, e-mail *pagrantham@fs.fed.us.* For further information on RAC history, operations, and the application process, a website is available at *www.fs.fed.us/r10/payments.*

SUPPLEMENTARY INFORMATION: This will be the second meeting of the committee, and will focus on the review and discussion of proposals received by the RAC for funding under Title II of the payments to States legislation (Pub. L. 106–393). Deadline for proposals during this round of funding consideration is January 6, 2003. No proposals will be recommended for funding at their initial reading. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: December 18, 2002.

Scott Fitzwilliams,

Acting Forest Supervisor.

[FR Doc. 02–32528 Filed 12–24–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Mill Creek Watershed, Richland County, WI

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Mill Creek Watershed, Richland County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Tom Krapf, Water Resources Staff Leader, Natural Resources Conservation Service, 6515 Watts Road, Suite 200, Madison, Wisconsin, 53719. Telephone (608) 276–8732.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Don Baloun, Acting State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purpose is flood prevention. The planned works of improvement include the floodproofing of two dwellings which are in the hydraulic shadow of Structure Number 10, and the enactment of a county floodplain zoning ordinance which restricts future development within the hydraulic shadow of Structure Number 10. Sediment will be removed from the pond behind the dam. The dam plunge pool will be brought up to current NRCS Standards.The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Thomas Krapf.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: December 9, 2002.

Don Baloun,

Acting State Conservationist.

Finding of No Significant Impact for Mill Creek Watershed-Supplement Richland County, Wisconsin

Introduction

The Mill Creek Watershed is a federally assisted action authorized for planning under Pub. L. 83–566, the Watershed Protection and Flood Prevention Act. An environmental assessment was undertaken in conjunction with the development of the watershed plan-supplement. This assessment was conducted in consultation with local, state, and federal agencies as well as with interested organizations and individuals. Data developed during the assessment are available for public review at the following location: U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS), 6515 Watts Road, Suite 200, Madison, WI 53719.

Recommended Action

Two dwellings in the hydraulic shadow of Mill Creek 10 will be floodproofed. This action also includes rebuilding the dam plunge pool, removing accumulated sediment to restore the capacity back to 50 years, and repairing the low stage inlet pipes back to their original condition. A floodplain zoning ordinance will be enacted to prevent any future development in the floodplain.

Effect of Recommended Action

The recommended plan would extend the life of Mill Creek Watershed Structure 10 by 50 years. It would allow the dam to return to its original class ''a'' low hazard rating. The floodplain zoning ordinance prohibiting future development in the hydraulic shadow (breach inundation area) of the dam.

The proposed action will have no effect on wetlands.

An initial management summary of cultural resources as they relate to the planned components has been developed. The survey concludes that no significant adverse impacts will occur to cultural resources in the watershed should the plan be implemented. The NRCS has consulted with the State Historic Preservation Office (SHPO) on the effects that planned measures will have on significant cultural resources.

Significant cultural resources identified during implementation will be avoided or otherwise preserved in place to the fullest practical extent. If significant cultural resources cannot be avoided or preserved, pertinent information will be recovered before construction. If there is a significant cultural resource discovery during construction, appropriate notice will be made by NRCS to the State Historic Preservation Officer and the National Park Service (NPS). Consultation and coordination have been and will continue to be used to ensure the provisions of section 106 of Pub. L. 89–665 have been met and to include provisions of Pub. L. 89–523, as amended by Pub. L. 93–291. NRCS will take action as prescribed in NRCS GM 420, part 401, to protect or recover any significant cultural resources discovered during construction.

No threatened or endangered species in the watershed will be affected by the project.

No wilderness areas are within the watershed.

Little impact will be made on scenic values. Project Sponsors will be required to enact a floodplain zoning ordinance which restricts development in the hydraulic shadow of Structure Number 10 prior to any federal reimbursement for relocation expenses.

No significant adverse environmental impacts will result from installations.

Alternatives

The planned action is the most practical means of protecting the watershed, eliminating the threat to loss of life, and complying with the Wisconsin Department of Natural Resources requirements. The Sponsors considered the following alternatives:

(1) No Action

This alternative is not a viable option since the dam will not be in compliance with Wisconsin Department of Natural Resources (DNR) Dam Safety Administrative Code (NR 333). This is because the recent breach analysis has determined there are dwellings in the breach area. This alternative does not meet the project purpose of reducing risk of loss of life, maintaining flood control and maintaining watershed protection.

(2) Dam removal (decommissioning)

With this alternative, Mill Creek Structure 10 would be removed or modified in a safe and acceptable manner such that it would no longer function as originally intended. This alternative would greatly increase the risk to human life, property, roads and bridges due to flooding. This alternative does not meet the project purpose because it does not reduce the risk of loss of life and it does not maintain flood control or watershed protection. This alternative was opposed as documented in the scoping meeting, and therefore it was not considered further.

(3) Structural Upgrade

This alternative consists of raising the height of the dam, widening the auxiliary spillway, increasing the size of the principal spillway, adding a riser to provide sediment storage and treatment of the abutments to reduce water flow and risk of failure if geologic exploration of the site shows it is needed. This alternative would allow Mill Creek Structure 10 to meet current NRCS class ''c'' (high hazard) criteria for providing public health and safety and comply with Wisconsin Department of Natural Resources Dam Safety Administrative Code (NR 333). A floodplain zoning ordinance will be enacted to eliminate any future development in the floodplain.

(4) Structural and Non-structural Rehabilitation

This is the recommended action.

Consultation and Public Participation

Copies of the Plan Supplement have been sent out to the single point of contact for the State of Wisconsin, Wisconsin Department of Natural Resources, Wisconsin Department of Agriculture, Trade, and Consumer Protection, Wisconsin Department of Emergency Government, U.S. Fish and Wildlife Service, U.S. Forest Service, U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, the Wisconsin State Clearinghouse, and the West Central Regional Planning Commission. The document was distributed to American Indian Tribes that have expressed interest in consulting with federal agencies in projects in Richland County.

A scoping meeting was advertised and held on December 10, 2001 and interdisciplinary efforts were used. In addition to the general public, One federal agency (NRCS), two state agencies (DNR, SHPO), and three county agencies (Land Conservation Department, County Zoning Office, County Administration Department), and local conservation organizations were invited to participate in the scoping and planning process.

Specific consultation was conducted with the State Historic Preservation Officer and the county historical society concerning cultural resources in the watershed.

The environmental assessment was transmitted to all participating and interested agencies, groups, and

individuals for review and comment in September 15, 2002. Public meetings were held as needed to keep all interested parties informed of the study progress and to obtain public input to the plan and environmental evaluation.

Agency consultation and public participation to date have shown no unresolved conflicts with the implementation of the selected plan.

Conclusion

The Environmental Assessment summarized above indicates that this federal action will not cause significant local, regional, or national impacts on the environment. Therefore, based on the above findings, I have determined that an environmental impact statement for the Mill Creek Watershed Plan Supplement is not required.

Dated: December 9, 2002.

Don Baloun,

Acting State Conservationist.

[FR Doc. 02–32466 Filed 12–24–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Virginia State Technical Guide

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of Availability of proposed changes in the Virginia NRCS State Technical Guide for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Virginia that changes must be made in the NRCS State Technical Guide specifically in practice standards: #342, Critical Area Planting; #466, Land Smoothing; #468, Lined Waterway or Outlet; #484, Mulching; #516, Pipeline; #533, Pumping Plant; #608, Surface Drainage, Main or Lateral to account for improved technology. These practices will be used to plan and install conservation practices on cropland, pastureland, woodland, and wildlife land.

DATES: Comments will be received for a 30-day period commencing with the date of this publication.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to M. Denise Doetzer, State Conservationist, Natural Resources Conservation Service (NRCS), 1606 Santa Rosa Road, Suite 209, Richmond, Virginia 23229–5014; Telephone number (804) 287–1665; Fax number (804) 287–1736. Copies of the practice standards will be made available upon written request to the address shown above or on the Virginia NRCS Web site *http://www.va.nrcs.usda.gov/DataTechRefs/Standards&Specs/EDITStds/EditStandards.htm.*

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days, the NRCS in Virginia will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Virginia regarding disposition of those comments and a final determination of change will be made to the subject standards.

Dated: December 17, 2002.

L. Willis Miller,

Assistant State Conservationist/Programs, Natural Resources Conservation Service, Richmond, Virginia.

[FR Doc. 02–32467 Filed 12–24–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

Sunshine Act Meeting

AGENCY: Rural Telephone Bank, USDA.

ACTION: Board of Directors meeting.

TIME AND DATE: 9 a.m., Wednesday, January 8, 2003.

PLACE: Room 0204, South Building, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to order.
2. Consideration of the following amendment to the Article V of the Bylaws to allow for meeting by electronic means: SEC. 5.6 Meetings of the Board of Directors may be held by any electronic means, including, without limitation, telephone or any other communications equipment, provided that, during the meeting, all persons participating can clearly and promptly hear, send, and receive all messages or spoken words. Participation in such a meeting shall constitute presence at the meeting.
3. Report on Privatization Study.
4. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Roberta D. Purcell, Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: December 20, 2002.

Hilda Gay Legg,

Governor, Rural Telephone Bank.

[FR Doc. 02–32751 Filed 12–23–02; 2:23 pm]

BILLING CODE 3410–15–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by February 24, 2003.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 4036 South Building, Washington, DC 20250–1522. Telephone: (202) 720–9550. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for approval.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information

on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technical collection techniques or other forms of information technology. Comments may be sent to: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–4120.

Title: 7 CFR part 1728, Electric Standards and Specifications for Materials and Construction.

Type of Request: New collection.

Abstract: The Rural Utilities Service makes loans and loan guarantees in accordance with the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.*, (RE Act). Section 4 of the RE Act requires that RUS make or guarantee a loan only if there is reasonable assurance that the loan, together with all outstanding loans and obligations of the borrower, will be repaid in full within the time agreed. In order to facilitate the programmatic interests of the RE Act, and, in order to assure that loans made or guaranteed by RUS are adequately secure, RUS, as a secured lender, has established certain standards and specifications for materials, equipment, and the construction of electric systems. The use of standards and specifications for materials, equipment and construction units helps assure RUS that: (1) Appropriate standards and specifications are maintained; (2) RUS loan security is not adversely affected; and (3) loan and loan guaranter funds are used effectively and for the intended purposes. 7 CFR 1728 establishes Agency policy that materials and equipment purchased by RUS electric borrowers or accepted as contractor-furnished material must conform to RUS standards and specifications where they have been established and, if included in RUS IP 202–1, ''List of Materials Acceptable for Use on Systems of RUS Electrification Borrowers'' (List of Materials), must be selected from that list or must have received technical acceptance from RUS.

Estimate of Burden: This collection of information is estimated to average 20 hours per response.

Respondents: Businesses or other for profits.

Estimated Number of Respondents: 38.

Estimated Number of Responses per Respondent: 2.30.

Estimated Total Annual Burden on Respondents: 1,760 hours.

Copies of this information can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202) 690–1078. FAX: (202) 720–4120.

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

Dated: December 18, 2002.

Blaine D. Stockton,

Acting Administrator, Rural Utilities Service.

[FR Doc. 02–32462 Filed 12–24–02; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

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

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: December 24, 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 November anniversary dates.

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 November 30, 2003.

	Period to be Reviewed
Antidumping Duty Proceedings	
Mexico: Circular Welded Non-alloy Steel Pipe, A–201–805	11/1/01—10/31/02
Hysla, S.A. de C.V.	
Niples Del Norte, S.A. de C.V.	
Netherlands: Certain Hot-Rolled Carbon Steel Flat Products, A–421–807	5/3/01—10/31/02
Corus Staal BV	
Republic of Korea: Circular Welded Non-Alloy Steel Pipe, A–580–809	11/1/01—10/31/02
Hyundai Hysco (formerly Hyundai Steel Pipe Company)	
Husteel Co., Ltd. (formerly Shinho Steel Co., Ltd.)	
SeaH Steel Corporation, Ltd.	
Romania: Certain Hot-Rolled Carbon Steel Flat Products, A–485–806	5/3/01—10/31/02
Sidex Trading, SRL & Sidex International, PLC	
Metanef, S.A.	
Metagrimex, S.A.	
Thailand: Certain Hot-Rolled Carbon Steel Flat Products A–549–817	5/3/01—10/31/02
Nakornthai Strip Mill Public Co., Ltd.	
Sahaviriya Steel Industries Public Co., Ltd.	
Siam Strip Mill Public Co., Ltd.	
The People's Republic of China: Fresh Garlic,*[1] A–570–831	11/1/01—10/31/02
Clipper Manufacturing Ltd.	

	Period to be Reviewed
Fook Huat Tong Kee Pte., Ltd. Huaiyang Hongda Dehydrated Vegetable Company Jinan Yipin Corporation, Ltd. Shandong Heze International Trade and Developing Company Top Pearl Ltd. Wo Hing (H.K.) Trading Co. Golden Light Trading Company, Ltd. Good Fate International Phil-Sino International Trading Inc. Mai Xuan Fruitex Co., Ltd.	

*If one of the above named companies does not qualify for a separate rate, all other exporters of fresh garlic 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.

[1] While the petitioners requested a review of Zhengzhou Harmoni Spice Co., Ltd. and Xiangcheng Yisheng Foodstuffs Co., Ltd., the companies requested that the Department initiate new shipper reviews. Based upon our initial examination of their new shipper review request, we believe that they are new shippers of subject merchandise. If this turns out not to be the case, we will include Zhengzhou Harmoni Spice Co., Ltd. and Xiangcheng Yisheng Foodstuffs Co., Ltd. in the normal administrative review.

Countervailing Duty Proceedings

None.

Suspension Agreements

None.

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 § 351.211 or a determination under § 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: December 19, 2002.

Holly A. Kuga,

Senior Office Director, Group II, Office 4, Import Administration.

[FR Doc. 02–32570 Filed 12–24–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-427–814]

Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From France

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

ACTION: Notice of final results of antidumping duty administrative review of stainless steel sheet and strip in coils from France.

SUMMARY: On August 7, 2002, the Department of Commerce (''Department'') published the preliminary results of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils from France. The merchandise covered by the order is stainless steel sheet and strip in coils (''SSSS'') as described in the ''Scope of the Review'' section of the Federal Register notice. This review covers imports of subject merchandise from Ugine, S.A (''Ugine'') and Imphy Ugine Precision (''IUP'')[1]. The period of review (''POR'') is July 1, 2000, through June 30, 2001.

Based on our analysis of the comments received, we have made changes in the margin calculation. Therefore, the final results differ from the preliminary results of review. The final weighted-average dumping margin for Ugine is listed below in the section entitled ''Final Results of the Review.''

EFFECTIVE DATE: December 26, 2002.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3208.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 2002, the Department published *Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review for Stainless Steel Sheet and Strip in Coils from France,* 67 FR 51210 (August 7, 2002) (*''Prelim Results''*). In accordance with 19 CFR 351.309(c)(ii), we invited parties to comment on our *Prelim Results*. On September 20, 2002, Ugine and the Petitioners[2] filed comments. On September 27, 2002, Ugine and the Petitioners filed rebuttal comments. Pursuant to 19 CFR 351.309(d)(2), the Petitioners were asked to re-submit their rebuttal comments and omit certain arguments that were not raised by Ugine. *See* Letter from the Department to the Petitioners, dated October 4, 2002. Consequently, the Petitioners submitted their revised rebuttal comments on October 7, 2002. We have now completed the administrative review in accordance with section 751 of the Act. On December 12, 2002, we extended the deadline for issuing the final results. *See Notice of Extension of Time Limit for the Final Results of the*

[1] Ugine, in the instant review, refers to Ugine, S.A. and Imphy Ugine Precision (''IUP'') as a single entity as they were collapsed by Ugine prior to submitting its antidumping duty questionnaire response. We note that Ugine and IUP were also treated as a collective entity during the first administrative review. *See Notice of Final Results of the Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France and accompanying Issues and Decision Memorandum (''First Review Final'')* 67 FR 6493 (February 12, 2001) at Comment 1.

[2] The Petitioners in this case are Allegheny Ludlum Corporation, AK Steel, Inc., North American Stainless, United Steelworkers of America, AFL-CIO/CLC, Butler Armco Independent Union and Zanesville Armco Independent Organization.

Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France, 67 FR 76382 (December 12, 2002).

Scope of the Review

For purposes of this administrative review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this review is classified in the *Harmonized Tariff Schedule of the United States*(HTS) at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81[3], 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this review are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of this review. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this review. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this review. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.''[4]

Certain electrical resistance alloy steel is also excluded from the scope of this review. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (''ASTM'') specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.''[5]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this review. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (''UNS'') as S45500-grade steel, and contains, by

[3] Due to changes to the HTS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

[4] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[5] ''Gilphy 36'' is a trademark of Imphy, S.A.

weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[6]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this review. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[7] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420-J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''.[8]

[6] ''Durphynox 17'' is a trademark of Imphy, S.A.

[7] This list of uses is illustrative and provided for descriptive purposes only.

[8] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (''*Decision Memorandum*'') from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated December 18, 2002, which is hereby adopted by this notice. A list of the issues which parties raised, and to which we have responded, all of which are in the *Decision Memorandum*, 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 Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/*. The paper copy and electronic version of the *Decision Memorandum*are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made changes in the margin calculation. The changes to the margin calculations include the following: (1) We properly converted pounds to kilograms; (2) we corrected the U.S. inventory accounts deduction from the U.S. price and treated the inventory carrying costs the same for both the home-market and the U.S. market; (3) we added U.S. interest revenue to the net U.S. price; (4) we properly included August 31, 2000, as part of the contemporaneous month period; (5) we treated freight revenue as a positive CEP movement expense; and (6) we properly accounted for interest revenue earned on home-market sales.

Final Results of Review

We determine that the following percentage margin exists for the period July 1, 2000, through June 30, 2001:

Stainless Steel Sheet and Strip in Coils from France	
Manufacturer/exporter/reseller	Weighted-Average Margin (percent)
Ugine	1.47

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. For duty-assessment purposes, we calculated importer-specific assessment rates by dividing the dumping margins calculated for each importer by the total entered value of sales for each importer during the period of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of stainless steel sheet and strip in coils from France entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for Ugine will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by the Department, the cash deposit rate will be the ''all others'' rate, which is 9.38 percent.

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

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties or countervailing 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 the antidumping duties or countervailing duties occurred and the subsequent assessment of double antidumping duties or countervailing duties.

Notification of Interested Parties

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. 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 terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) of the Act.

Dated: December 18, 2002.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

APPENDIX 1-- Issues In The Decision Memorandum

1. Negative Dumping Margins
2. Adverse Facts Available on Sales to Affiliated Reseller
3. Conversion of Pounds to Kilograms
4. U.S. Inventory Carrying Costs
5. U.S. Interest Revenue
6. Date of Sale
7. Freight Revenue and Freight Adjustments for Delivered Prices
8. Price Manipulation Between Affiliated Parties
9. Facts Available on Sales to Ugine France Service
10. U.S. Sales Commissions
11. Ugine's Financial Statement Information
12. Hague's Scrap Revenue Calculation
13. U.S. Interest Cost
14. Hague's Financial Statement Information
15. Home Market Interest Revenue
16. Home Market Rebates
17. Home Market Affiliated Common Carrier Prices
18. Home Market Credit Expenses
19. Completeness of the Record

[FR Doc. 02–32569 Filed 12–24–02; 8:45 am]

BILLING CODE 3510–DS–S

CONSUMER PRODUCT SAFETY COMMISSION

Petition Requesting Ban of All-Terrain Vehicles Sold for Use by Children Under 16 Years Old; Extension of Comment Period

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of extension of comment period.

SUMMARY: The Commission is extending its comment period to receive information concerning a petition asking the Commission to ban the sale of adult-size four wheel all-terrain vehicles (ATVs) sold for the use of children under 16 years of age. Seven manufacturers and distributors of ATVs requested a 60-day extension of the comment period. The Commission has decided to extend the comment period 90 days after the original comment period of December 17, 2002, in order to allow sufficient time for comments related to an ATV study that the Commission staff is currently preparing.

DATES: The Office of the Secretary should receive comments on the petition by March 16, 2003.

ADDRESSES: Comments, preferably in five copies, on the petition should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–0800, or delivered to the Office of the Secretary, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Comments may also be filed by telefacsimile to (301) 504–0127 or by e-mail to *cpsc-os@cpsc.gov*. Comments should be captioned ''Petition CP 02–4/HP 02–1, Petition on ATVs.'' A copy of the petition is available for inspection at the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: For information about submitting comments call or write to Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800, ext. 1232.

SUPPLEMENTARY INFORMATION: On October 18, 2002, the Commission published a notice announcing that it has docketed a petition asking that the Commission ban adult-size ATVs sold for the use of children under age 16 and requesting comments on the petition. 67 FR 64353. The petitioners assert that ATVs pose an unreasonable risk of injury and death to children, particularly to children under age 16 who ride adult-size ATVs. The October 18 **Federal Register** notice provided for a 60-day comment period to end December 17, 2002. The Commission has received requests to extend the comment period from American Honda Motor Co., Inc., Arctic Cat, Inc., Bombardier Motor Corporation of America, Kawasaki Motors Corp., U.S.A., Polaris Industries Inc., American Suzuki Motor Corporation, and Yamaha Motor Corporation, U.S.A. These companies, all manufacturers and distributors of ATVs, noted that the Commission staff is preparing a study of ATV-related injuries. The companies requested a 60-day extension of the comment period to allow comment on issues that the study may raise that are relevant to the petition. After considering these requests, the Commission has decided to extend the comment period 90 days after the original comment period of December 17, 2002 to March 16, 2003. Because the study has not yet been released, the Commission was concerned that a 60-day extension may not be adequate to allow interested members of the public sufficient time to review the study and comment on any issues related to the petition.

Dated: December 20, 2002.

Todd Stevenson,

Secretary.

[FR Doc. 02–32596 Filed 12–24–02; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0154]

Federal Acquisition Regulation; Submission for OMB Review; Davis-Bacon Act—Price Adjustment (Actual Method)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Davis-Bacon Act price adjustment (actual method). A request for public comments was published in the **Federal Register** at 67 FR 66617 on November 1, 2002. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before January 27, 2003.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Nelson, Acquisition Policy Division, GSA (202) 501–1900.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Acquisition Regulation (FAR) clause at 52.222–32, Davis-Bacon Act—Price Adjustment (Actual Method), requires that a contractor must submit at the exercise of each option to extend the term of the contract, including a statement of the amount claimed for incorporation of the most current wage determination by the Department of Labor, and any relevant supporting data, including payroll records, that the contracting officer may reasonably require. The contracting officer may include this clause in fixed-price solicitations and contracts, subject to the Davis-Bacon Act, that will contain option provisions to extend the term of the contract. Generally, this clause is only appropriate if contract requirements are predominantly services subject to the Service Contract Act and the construction requirements are substantial and segregable.

B. Annual Reporting Burden

Respondents: 900.

Responses Per Respondent: 1.

Annual Responses: 900.

Hours Per Response: 90.

Total Burden Hours: 81,000.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0154, Davis-Bacon Act—Price Adjustment (Actual Method), in all correspondence.

Dated: December 20, 2002.

Jeremy F. Olson,

Acting Director, Acquisition Policy Division.

[FR Doc. 02–32603 Filed 12–24–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DOD.

ACTION: Notice to Alter Systems of Records.

SUMMARY: The Department of the Air Force is proposing to alter a system of records in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The alteration expands the category of individuals to include parachutists, and expands the records maintained to include information about the parachutist's jumps.

DATES: This proposed action will be effective without further notice on January 27, 2003 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Officer, AF CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043 or DSN 329–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 21, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: December 16, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F011 AF XO A

SYSTEM NAME:

Air Force Operations Resource Management Systems (AFORMS) (May 7, 1999, 64 FR 24605).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with ''Aviation Resource Management System (ARMS)''.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Line eight, after ''aviation'' add ''or parachutist''. Line nine, after ''flying'' add ''or parachutist''. Line eleven, after ''flying'' add ''or jump''.

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete first paragraph and replace with 'The ARMS data base contains a master file of flying and jump records for each individual in categories listed above, a month-to-date transaction file and a twelve month history file, and career flying and jump history. A centralized file of selected information from each individual's master record is also maintained at HQ USAF. In addition to automated data files, this system uses manual files for maintaining historical data and important source documents. An Individual Flight Record Folder (FRF) or Jump Record Folder (JRF) is established for each category of fliers and jumpers listed above and is the prime repository for a computer listing which itemizes each individual's flight and jump accomplishments as well as various source documents which serve to validate information entered into the computer data base for the system. Each Host Aviation Resource Management (HARM) office maintains a file of Aeronautical Orders and Military Pay Orders to provide source documentation of flying pay actions initiated by the flight manager. Information that is maintained in the automated files is derived directly from the ARMS master file or from subsequent processing of information entered into the master file.

* * * * *

PURPOSE(S):

Delete entry and replace with ''The ARMS provides information and automated data processing capabilities used to manage and administer Air Force aviation and parachutist management such as aircrew and parachutist training and evaluation, flight and jump scheduling functions, flying and parachutist safety and related functions needed to attain and maintain combat or mission readiness. All information is entered into the system at the air base level. This information is then processed for use by flying or parachutist resource managers at all levels through periodic computer product reports or automated systems interfaces.

The specific uses of information and user categories for this system are:

Base Level Activities—(1) to establish each member's flying or jump pay entitlement status and to monitor continuing entitlement in accordance with existing directions;

(2) to record each individual's flying or jump activities, including hours, jumps, and specific events, and provide indications of successful attainment of standards or deficiencies;

(3) to establish each individual's Aviation Service code for use in indicating type of flying or jump activity or reason for inactive status if applicable;

(4) to determine each rated member's eligibility to perform operational flying or jumping in accordance with existing USAF directives;

(5) to provide an indication of each rated member's total operational flying time in terms of total aviation or parachutist career duties;

(6) to establish 'suspense lists' for use in scheduling flying personnel for flights, schools, tests and similar events directly related to their duties as professional airmen;

(7) to provide each applicable individual and manager with all aviation career profile information needed to monitor flying career development, professional qualifications and training deficiencies;

(8) to provide information requested by the Air Staff, major command, or other base functions, which relates to the flying duties and accomplishments of all personnel in the file;

(9) to provide statistical data for management analysis and review of all aspects of each base's flying programs.

Other Base Users: Military Personnel Flight—uses information provided by this system, through an automated data interface, to report the flying status of all individuals in the files; provides flying career background information used for assignment actions.

Accounting and Finance Office—uses Military Pay Orders, prepared by aviation management offices, to start and stop flying and jump incentive pay in accordance with each individual's flying status and eligibility as reflected by the information in the system; uses the files to perform payment audits to identify individuals being paid improperly.

Base Supply—uses flying status information to determine which individuals are qualified to draw all authorized flying and jump equipment.

Base Medical Facility—uses system data to determine projected workloads associated with scheduled flight physical examinations.

Major Commands—use all system data to measure the effectiveness of subordinate unit training programs and to check command-wide flying effectiveness.

Air Force Personnel Center—uses ARMS information to establish assignment objectives and career development programs for USAF military personnel in the system.

HQ USAF—uses various identification and flying data to establish statistical data needed to verify the effectiveness of standard procedures, determine the need for policy modification, provide a timely and accurate census of various types of flyers and jumpers and provide a centralized point for collection and collation of data used by all levels of management.

The Defense Finance and Accounting Service uses ARMS information to validate all flying and jump payments.''

* * * * *

SAFEGUARDS:

Delete entry and replace with ''Records are accessed by custodian of the record system, by person(s) responsible for servicing the record system in performance of their official duties. Access is specifically controlled by the HARM office. Records are stored in locked cabinets or rooms. Computer terminals are locked when not in use or kept under surveillance.''

* * * * *

RECORD SOURCE CATEGORIES:

Add ''or parachutist'' after ''aircrew''.

* * * * *

F011 AF XO A

SYSTEM NAME:

Aviation Resource Management System (ARMS).

SYSTEM LOCATION:

Headquarters United States Air Force and major command headquarters. Host, tenant and squadron Aviation Resource Management offices at Air Force installations, and McDonnell Douglas Training Systems, McDonnell Aircraft Company, 12301 Missouri Bottom Road, Hazelwood, MO 63042–1512. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty military personnel, Air Force civilian employees, or contractors, Air Force Reserve and Air National Guard personnel, Army, Navy and Marine Corps active duty military personnel and those foreign military personnel who are assigned to aviation or parachutist duties by competent authority and attached to the U.S. Air Force (USAF) for flying or parachutist support or who have been suspended from flying or jump duties for a period of not more than 5 years.

CATEGORIES OF RECORDS IN THE SYSTEM:

The ARMS data base contains a master file of flying and jump records for each individual in categories listed above, a month-to-date transaction file and a twelve month history file, and career flying and jump history. A centralized file of selected information from each individual's master record is also maintained at HQ USAF. In addition to automated data files, this system uses manual files for maintaining historical data and important source documents. An Individual Flight Record Folder (FRF) or Jump Record Folder (JRF) is established for each category of fliers and jumpers listed above and is the prime repository for a computer listing which itemizes each individual's flight and jump accomplishments as well as various source documents which serve to validate information entered into the computer data base for the system. Each Host Aviation Resource Management (HARM) office maintains a file of Aeronautical Orders and Military Pay Orders to provide source documentation of flying pay actions initiated by the flight manager. Information that is maintained in the automated files is derived directly from the ARMS master file or from subsequent processing of information entered into the master file.

CATEGORIES OF INFORMATION MAINTAINED IN THE MASTER FILE ARE:

Identification Data—provides individual identifiers and other information directly related to each individual in the file.

Duty Assignment Data—Includes information such as the major command of assignment for the individual, the Air Force Specialty Code indicating professional duties, the unit, the responsible Operations system manager, base of assignment, etc.

Aircrew Training and Qualification Data—includes information such as flight and ground professional flying training accomplishments, aircrew qualification status, physical status for flight duties, types of aircraft assigned, etc.

Flying Pay Entitlement Data—Includes information needed to administer the payment of flying incentive pay for each individual.

Local Use Data—contains information used by major or local command to

supplement general system information as needed to meet unique unit requirements within the categories of information listed herein.

System Control Data—Contains computer data used to automatically control internal system functions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

37 U.S.C. 301a, Incentive pay: Pub. L. 92–204, Appropriations Act for 1973, sec. 715; Pub. L. 93–570, Appropriations Act for 1974; Pub. L. 93–294, Aviation Career Incentive Act of 1974; DoD Directive 7730.57, Aviation Career Incentive Act and Required Annual Report; Air Force Instruction 11–401, Aviation Management; Air Force Instruction 11–402, Aviation and Parachutist Service, Aeronautical Ratings and Badges; Air Force Instruction 11–421, Aviation Resource Management; and E.O. 9397 (SSN).

PURPOSE(S):

The ARMS provides information and automated data processing capabilities used to manage and administer Air Force aviation and parachutist management such as aircrew and parachutist training and evaluation, flight and jump scheduling functions, flying and parachutist safety and related functions needed to attain and maintain combat or mission readiness. All information is entered into the system at the air base level. This information is then processed for use by flying or parachutist resource managers at all levels through periodic computer product reports or automated systems interfaces.

The specific uses of information and user categories for this system are:

Base Level Activities—(1) To establish each member's flying or jump pay entitlement status and to monitor continuing entitlement in accordance with existing directions;

(2) To record each individual's flying or jump activities, including hours, jumps, and specific events, and provide indications of successful attainment of standards or deficiencies;

(3) To establish each individual's Aviation Service code for use in indicating type of flying or jump activity or reason for inactive status if applicable;

(4) To determine each rated member's eligibility to perform operational flying or jumping in accordance with existing USAF directives;

(5) To provide an indication of each rated member's total operational flying time in terms of total aviation or parachutist career duties;

(6) To establish 'suspense lists' for use in scheduling flying personnel for flights, schools, tests and similar events directly related to their duties as professional airmen;

(7) To provide each applicable individual and manager with all aviation career profile information needed to monitor flying career development, professional qualifications and training deficiencies;

(8) To provide information requested by the Air Staff, major command, or other base functions, which relates to the flying duties and accomplishments of all personnel in the file;

(9) To provide statistical data for management analysis and review of all aspects of each base's flying programs.

Other Base Users: Military Personnel Flight—uses information provided by this system, through an automated data interface, to report the flying status of all individuals in the files; provides flying career background information used for assignment actions.

Accounting and Finance Office—uses Military Pay Orders, prepared by aviation management offices, to start and stop flying and jump incentive pay in accordance with each individual's flying status and eligibility as reflected by the information in the system; uses the files to perform payment audits to identify individuals being paid improperly.

Base Supply—uses flying status information to determine which individuals are qualified to draw all authorized flying and jump equipment.

Base Medical Facility—uses system data to determine projected workloads associated with scheduled flight physical examinations.

Major Commands—use all system data to measure the effectiveness of subordinate unit training programs and to check command-wide flying effectiveness.

Air Force Personnel Center—uses ARMS information to establish assignment objectives and career development programs for USAF military personnel in the system.

HQ USAF—uses various identification and flying data to establish statistical data needed to verify the effectiveness of standard procedures, determine the need for policy modification, provide a timely and accurate census of various types of flyers and jumpers and provide a centralized point for collection and collation of data used by all levels of management.

The Defense Finance and Accounting Service uses ARMS information to validate all flying and jump payments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD (Blanket Routine Uses) published at the beginning of the Air Force's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, on computer magnetic tapes, magnetic disks, and CD-ROM.

RETRIEVABILITY:

Retrieved by name and Social Security Number.

SAFEGUARDS:

Records are accessed by custodian of the record system, by person(s) responsible for servicing the record system in performance of their official duties and individuals in files. Access is specifically controlled by the Host Operations System Management office. Records are stored in locked cabinets or rooms. Computer terminals are locked when not in use or kept under surveillance.

RETENTION AND DISPOSAL:

File is released to member upon separation.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Operational Training Division, Directorate of Operations and Training, Deputy Chief of Staff/Air and Space Operations, 1480 Air Force Pentagon, Washington, DC 20330–1480.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquires to or visit the Chief, Operational Training Division, Directorate of Operations and Training, Deputy Chief of Staff/Air and Space Operations, 1480 Air Force Pentagon, Washington, DC 20330–1480 or visit their local HARM office. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Individual will be asked to provide their name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this

system should address written requests to the Chief, Operational Training Division, Directorate of Operations and Training, Deputy Chief of Staff/Air and Space Operations, 1480 Air Force Pentagon, Washington, DC 20330–1480 or visit their local HARM office. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Individual will be asked to provide their name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from individuals, aircrew or parachutist managers, automated system interfaces and from source documents such as reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–32449 Filed 12–24–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice to alter systems of records.

SUMMARY: The Defense Logistics Agency proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The alteration adds a new category of records being maintained and a new purpose for those records.

DATES: This action will be effective without further notice on January 27, 2003, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–C, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 21, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: December 16 , 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, , Department of Defense.

S900.10 CA

SYSTEM NAME:

Personnel Roster/Locator Files (October 13, 2000, 65 FR 60921).

CHANGES:

SYSTEM IDENTIFIER:

Delete ''CA'' from entry.

* * * * *

CATEGORIES OF INDIVIDUALS IN THE SYSTEM:

Add a new paragraph to entry ''The Master Database contains current civilian employees and military personnel.''

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Add a new paragraph ''The Master Database contains name, work and home telephone, facsimile, cell, and pager numbers; work and home electronic mail addresses; job title or role; employment status, type, and grade or rank; unit or office of assignment; clearance and data access restrictions; Public Key Infrastructure data; computer hardware and software associations; and voiceprint (for identity verification purposes).''

* * * * *

PURPOSES:

Add a new paragraph ''The Master Database is used as an emergency notification system to simultaneously alert individuals to actual or simulated crisis situations and imminent threats.''

* * * * *

RETRIEVABILITY:

Delete entry and replace with ''Records are retrieved by individual's name, Social Security Number, organization, grade or rank, and information assurance role.''

* * * * *

SAFEGUARDS:

Add a new paragraph ''The Master Database is encrypted at all times, including the backup media, and the system has a very fine-grained access model that limits viewing of any data to only individuals with specific roles that support a ''need-to-know.''

* * * * *

RECORD SOURCES:

Delete entry and replace with ''Record subjects, supervisors, and existing database, computer access, or information security documentation.''

* * * * *

S900.10

SYSTEM NAME:

Personnel Roster/Locator Files.

SYSTEM LOCATION:

Master Database is located at Headquarters, Defense Logistics Agency, Information Assurance Division, ATTN: J–633, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

Decentralized segments exist at Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and the DLA Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The Master Database contains current civilian employees and military personnel.

The decentralized segments contain current civilian employees, military personnel, and a select number of former employees of the DLA activity where records are maintained.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Master Database contains name, work and home telephone, facsimile, cell, and pager numbers; work and home electronic mail addresses; job title or role; employment status, type, and grade or rank; unit or office of assignment; clearance and data access restrictions; Public Key Infrastructure data; computer hardware and software associations; and voiceprint (for identity verification purposes).

The decentralized segments contain name, Social Security Number, organizational assignment, home address and telephone number, grade/rank, position title and job series, day

and month of birth, and spouse or next-of-kin name, address, and telephone numbers.

Security offices and police force records may also contain emergency medical and disability data, including information on special equipment or devices the individual requires, name and telephone number of medical practitioner, and medical alert data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. chapter 31 (Personnel); and E.O. 9397 (SSN).

PURPOSE(S):

The Master Database is used as an emergency notification system to simultaneously alert individuals to actual or simulated crisis situations and imminent threats.

The decentralized segments are used to notify DLA personnel of the arrival of visitors, to plan social and honorary recognition functions, to recall personnel to duty station when required, for use in emergency notification, and to perform relevant functions/requirements/actions consistent with managerial functions.

Medical and disability data is used by security and police officers to identify and locate individuals during medical emergencies, facility evacuations, and similar threat situations.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: In addition to the disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Security and police officers may relay medical and disability data to emergency medical treatment personnel, local fire fighters, and similar groups responding to calls for emergency assistance.

The DoD ''Blanket Routine Uses'' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper and electronic form.

RETRIEVABILITY:

Records are retrieved by individual's name, Social Security Number, organization, grade or rank, and information assurance role.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during non-duty hours.

The Master Database is encrypted at all times, including the backup media, and the system has a very fine-grained access model that limits viewing of any data to only individuals with specific roles that support a need-to-know.

RETENTION AND DISPOSAL:

Records are destroyed upon termination/departure of DLA personnel or when no longer needed for notification of official or social Agency functions.

SYSTEM MANAGER(S) AND ADDRESS:

Master Database: Chief, Information Assurance Division, Headquarters Defense Logistics Agency, ATTN: J–633, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

Decentralized Segments: Heads of Headquarters Defense Logistics Agency (DLA) principal staff elements and Heads of DLA Primary Level Field Activities, which maintain locator/roster files. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DSS–CF, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the particular DLA PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DSS–CF, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the particular DLA PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–CF, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Record subjects, supervisors, and existing database, computer access, or information security documentation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–32448 Filed 12–24–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice to Alter Systems of Records.

SUMMARY: The Defense Logistics Agency proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

S322.10.DMDC is being altered to add a routine use for the purposes of validating demographic data (*e.g.*, Social Security Number, citizenship status, date and place of birth, etc.) for individuals in DoD personnel and pay files so that accurate information is available in support of DoD requirements.

DATES: This action will be effective without further notice on January 27, 2003 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–C, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 9, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: December 16, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base (July 23, 2002, 67 FR 48148).

CHANGES:

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Add a new routine use ''23. To Federal and state agencies for purposes of validating demographic data (*e.g.*, Social Security Number, citizenship status, date and place of birth, etc.) for individuals in DoD personnel and pay files so that accurate information is available in support of DoD requirements.''

* * * * *

S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base.

SYSTEM LOCATION:

Primary location: Naval Postgraduate School Computer Center, Naval Postgraduate School, Monterey, CA 93943–5000.

Back-up location: Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Army, Navy, Air Force and Marine Corps officer and enlisted personnel who served on active duty from July 1, 1968, and after or who have been a member of a reserve component since July 1975; retired Army, Navy, Air Force, and Marine Corps officer and enlisted personnel; active and retired Coast Guard personnel; active and retired members of the commissioned corps of the National Oceanic and Atmospheric Administration; active and retired members of the commissioned corps of the Public Health Service; participants in Project 100,000 and Project Transition, and the evaluation control groups for these programs. All individuals examined to determine eligibility for military service at an Armed Forces Entrance and Examining Station from July 1, 1970, and later.

Current and former DoD civilian employees since January 1, 1972. All veterans who have used the GI Bill education and training employment services office since January 1, 1971. All veterans who have used GI Bill education and training entitlements, who visited a state employment service office since January 1, 1971, or who participated in a Department of Labor special program since July 1, 1971. All individuals who ever participated in an educational program sponsored by the U.S. Armed Forces Institute and all individuals who ever participated in the Armed Forces Vocational Aptitude Testing Programs at the high school level since September 1969.

Individuals who responded to various paid advertising campaigns seeking enlistment information since July 1, 1973; participants in the Department of Health and Human Services National Longitudinal Survey.

Individuals responding to recruiting advertisements since January 1987; survivors of retired military personnel who are eligible for or currently receiving disability payments or disability income compensation from the Department of Veteran Affairs; surviving spouses of active or retired deceased military personnel; 100% disabled veterans and their survivors; survivors of retired Coast Guard personnel; and survivors of retired officers of the National Oceanic and Atmospheric Administration and the Public Health Service who are eligible for or are currently receiving Federal payments due to the death of the retiree.

Individuals receiving disability compensation from the Department of Veteran Affairs or who are covered by a Department of Veteran Affairs' insurance or benefit program; dependents of active and retired members of the Uniformed Services, selective service registrants.

Individuals receiving a security background investigation as identified in the Defense Central Index of Investigation. Former military and civilian personnel who are employed by DoD contractors and are subject to the provisions of 10 U.S.C. 2397.

All Federal (non-postal) civilian employees and all Federal civilian retirees.

All non-appropriated funded individuals who are employed by the Department of Defense.

Individuals who were or may have been the subject of tests involving chemical or biological human-subject testing; and individuals who have inquired or provided information to the Department of Defense concerning such testing.

Individuals who are authorized web access to DMDC computer systems and databases.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized personnel/employment/pay records consisting of name, Service Number, Selective Service Number, Social Security Number, compensation data, demographic information such as home town, age, sex, race, and educational level; civilian occupational information; performance ratings of DoD civilian employees and military members; reasons given for leaving military service or DoD civilian service; civilian and military acquisition work force warrant location, training and job specialty information; military personnel information such as rank, assignment/deployment, length of service, military occupation, aptitude scores, post-service education, training, and employment information for veterans; participation in various in-service education and training programs; date of award of certification of military experience and training; military hospitalization and medical treatment, immunization, and pharmaceutical dosage records; home and work addresses; and identities of individuals involved in incidents of child and spouse abuse, and information about the nature of the abuse and services provided.

CHAMPUS claim records containing enrollee, patient and health care facility, provided data such as cause of treatment, amount of payment, name and Social Security or tax identification number of providers or potential providers of care.

Selective Service System registration data.

Department of Veteran Affairs disability payment records.

Credit or financial data as required for security background investigations.

Criminal history information on individuals who subsequently enter the military.

Office of Personnel Management (OPM) Central Personnel Data File (CPDF), an extract from OPM/GOVT–1, General Personnel Records, containing employment/personnel data on all Federal employees consisting of name,

Social Security Number, date of birth, sex, work schedule (full-time, part-time, intermittent), annual salary rate (but not actual earnings), occupational series, position occupied, agency identifier, geographic location of duty station, metropolitan statistical area, and personnel office identifier. Extract from OPM/CENTRAL–1, Civil Service Retirement and Insurance Records, including postal workers covered by Civil Service Retirement, containing Civil Service Claim number, date of birth, name, provision of law retired under, gross annuity, length of service, annuity commencing date, former employing agency and home address. These records provided by OPM for approved computer matching.

Non-appropriated fund employment/personnel records consist of Social Security Number, name, and work address.

Military drug test records containing the Social Security Number, date of specimen collection, date test results reported, reason for test, test results, base/area code, unit, service, status (active/reserve), and location code of testing laboratory.

Names of individuals, as well as DMDC assigned identification numbers, and other user-identifying data, such as organization, Social Security Number, email address, phone number, of those having web access to DMDC computer systems and databases, to include dates and times of access.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. App. 3 (Pub.L. 95–452, as amended (Inspector General Act of 1978)); 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 1562, Database on Domestic Violence Incidents; Pub.L. 106–265, Federal Long-Term Care Insurance; 10 U.S.C. 2358, Research and Development Projects; and E.O. 9397 (SSN).

PURPOSE(S):

The purpose of the system of records is to provide a single central facility within the Department of Defense to assess manpower trends, support personnel and readiness functions, to perform longitudinal statistical analyses, identify current and former DoD civilian and military personnel for purposes of detecting fraud and abuse of pay and benefit programs, to register current and former DoD civilian and military personnel and their authorized dependents for purposes of obtaining medical examination, treatment or other benefits to which they are qualified, and to collect debts owed to the United States Government and state and local governments.

Information will be used by agency officials and employees, or authorized contractors, and other DoD Components in the preparation of the histories of human chemical or biological testing or exposure; to conduct scientific studies or medical follow-up programs; to respond to Congressional and Executive branch inquiries; and to provide data or documentation relevant to the testing or exposure of individuals.

All records in this record system are subject to use in authorized computer matching programs within the Department of Defense and with other Federal agencies or non-Federal agencies as regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

Military drug test records will be maintained and used to conduct longitudinal, statistical, and analytical studies and computing demographic reports on military personnel. No personal identifiers will be included in the demographic data reports. All requests for Service-specific drug testing demographic data will be approved by the Service designated drug testing program office. All requests for DoD-wide drug testing demographic data will be approved by the DoD Coordinator for Drug Enforcement Policy and Support, 1510 Defense Pentagon, Washington, DC 20301–1510.

DMDC web usage data will be used to validate continued need for user access to DMDC computer systems and databases, to address problems associated with web access, and to ensure that access is only for official purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To the Department of Veteran Affairs (DVA):

a. To provide military personnel and pay data for present and former military personnel for the purpose of evaluating use of veterans benefits, validating benefit eligibility and maintaining the health and well being of veterans and their family members.

b. To provide identifying military personnel data to the DVA and its insurance program contractor for the purpose of notifying separating eligible Reservists of their right to apply for Veteran's Group Life Insurance coverage under the Veterans Benefits Improvement Act of 1996 (38 U.S.C. 1968).

c. To register eligible veterans and their dependents for DVA programs.

d. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of:

(1) Providing full identification of active duty military personnel, including full-time National Guard/Reserve support personnel, for use in the administration of DVA's Compensation and Pension benefit program. The information is used to determine continued eligibility for DVA disability compensation to recipients who have returned to active duty so that benefits can be adjusted or terminated as required and steps taken by DVA to collect any resulting over payment (38 U.S.C. 5304(c)).

(2) Providing military personnel and financial data to the Veterans Benefits Administration, DVA for the purpose of determining initial eligibility and any changes in eligibility status to insure proper payment of benefits for GI Bill education and training benefits by the DVA under the Montgomery GI Bill (Title 10 U.S.C., Chapter 1606—Selected Reserve and Title 38 U.S.C., Chapter 30—Active Duty). The administrative responsibilities designated to both agencies by the law require that data be exchanged in administering the programs.

(3) Providing identification of reserve duty, including full-time support National Guard/Reserve military personnel, to the DVA, for the purpose of deducting reserve time served from any DVA disability compensation paid or waiver of VA benefit. The law (10 U.S.C. 12316) prohibits receipt of reserve pay and DVA compensation for the same time period, however, it does permit waiver of DVA compensation to draw reserve pay.

(4) Providing identification of former active duty military personnel who received separation payments to the DVA for the purpose of deducting such repayment from any DVA disability compensation paid. The law requires recoupment of severance payments before DVA disability compensation can be paid (10 U.S.C. 1174).

(5) Providing identification of former military personnel and survivor's financial benefit data to DVA for the purpose of identifying military retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension program (38 U.S.C. 5106). The information is to be used to process all DVA award actions more efficiently, reduce subsequent

overpayment collection actions, and minimize erroneous payments.

e. To provide identifying military personnel data to the DVA for the purpose of notifying such personnel of information relating to educational assistance as required by the Veterans Programs Enhancement Act of 1998 (38 U.S.C. 3011 and 3034).

2. To the Office of Personnel Management (OPM):

a. Consisting of personnel/employment/financial data for the purpose of carrying out OPM's management functions. Records disclosed concern pay, benefits, retirement deductions and any other information necessary for those management functions required by law (Pub. L. 83–598, 84–356, 86–724, 94–455 and 5 U.S.C. 1302, 2951, 3301, 3372, 4118, 8347).

b. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a) for the purpose of:

(1) Exchanging personnel and financial information on certain military retirees, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military retired pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

(2) Exchanging personnel and financial data on civil service annuitants (including disability annuitants under age 60) who are reemployed by DoD to insure that annuities of DoD reemployed annuitants are terminated where applicable, and salaries are correctly offset where applicable as required by law (5 U.S.C. 8331, 8344, 8401 and 8468).

(3) Exchanging personnel and financial data to identify individuals who are improperly receiving military retired pay and credit for military service in their civil service annuities, or annuities based on the 'guaranteed minimum' disability formula. The match will identify and/or prevent erroneous payments under the Civil Service Retirement Act (CSRA) 5 U.S.C. 8331 and the Federal Employees' Retirement System Act (FERSA) 5 U.S.C. 8411. DoD's legal authority for monitoring retired pay is 10 U.S.C. 1401.

(4) Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and cannot be released for extended active duty in the event of mobilization. Employing Federal agencies are informed of the reserve status of those affected personnel so that a choice of terminating the position or the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Services.

3. To the Internal Revenue Service (IRS) for the purpose of obtaining home addresses to contact Reserve component members for mobilization purposes and for tax administration. For the purpose of conducting aggregate statistical analyses on the impact of DoD personnel of actual changes in the tax laws and to conduct aggregate statistical analyses to lifestream earnings of current and former military personnel to be used in studying the comparability of civilian and military pay benefits. To aid in administration of Federal Income Tax laws and regulations, to identify non-compliance and delinquent filers.

4. To the Department of Health and Human Services (DHHS):

a. To the Office of the Inspector General, DHHS, for the purpose of identification and investigation of DoD employees and military members who may be improperly receiving funds under the Aid to Families of Dependent Children Program.

b. To the Office of Child Support Enforcement, Federal Parent Locator Service, DHHS, pursuant to 42 U.S.C. 653 and 653a; to assist in locating individuals for the purpose of establishing parentage; establishing, setting the amount of, modifying, or enforcing child support obligations; or enforcing child custody or visitation orders; and for conducting computer matching as authorized by E.O. 12953 to facilitate the enforcement of child support owed by delinquent obligors within the entire civilian Federal government and the Uniformed Services work force (active and retired). Identifying delinquent obligors will allow State Child Support Enforcement agencies to commence wage withholding or other enforcement actions against the obligors.

Note 1: Information requested by DHHS is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

Note 2: Quarterly wage information is not disclosed for those individuals performing intelligence or counter-intelligence functions and a determination is made that disclosure could endanger the safety of the individual or compromise an ongoing investigation or intelligence mission (42 U.S.C. 653(n)).

c. To the Health Care Financing Administration (HCFA), DHHS for the purpose of monitoring HCFA reimbursement to civilian hospitals for Medicare patient treatment. The data will ensure no Department of Defense physicians, interns or residents are counted for HCFA reimbursement to hospitals.

d. To the Center for Disease Control and the National Institutes of Mental Health, DHHS, for the purpose of conducting studies concerned with the health and well being of active duty, reserve, and retired personnel or veterans, to include family members.

5. To the Social Security Administration (SSA):

a. To the Office of Research and Statistics for the purpose of (1) conducting statistical analyses of impact of military service and use of GI Bill benefits on long term earnings, and (2) obtaining current earnings data on individuals who have voluntarily left military service or DoD civil employment so that analytical personnel studies regarding pay, retention and benefits may be conducted.

Note 3: Earnings data obtained from the SSA and used by DoD does not contain any information that identifies the individual about whom the earnings data pertains.

b. To the Bureau of Supplemental Security Income for the purpose of verifying information provided to the SSA by applicants and recipients/beneficiaries, who are retired members of the Uniformed Services or their survivors, for Supplemental Security Income (SSI) or Special Veterans' Benefits (SVB). By law (42 U.S.C. 1006 and 1383), the SSA is required to verify eligibility factors and other relevant information provided by the SSI or SVB applicant from independent or collateral sources and obtain additional information as necessary before making SSI or SVB determinations of eligibility, payment amounts, or adjustments thereto.

c. To the Client Identification Branch for the purpose of validating the assigned Social Security Number for individuals in DoD personnel and pay files, using the SSA Enumeration Verification System (EVS).

6. To the Selective Service System (SSS) for the purpose of facilitating compliance of members and former members of the Armed Forces, both active and reserve, with the provisions

of the Selective Service registration regulations (50 U.S.C. App. 451 and E.O. 11623).

7. To DoD Civilian Contractors and grantees for the purpose of performing research on manpower problems for statistical analyses.

8. To the Department of Labor (DOL) to reconcile the accuracy of unemployment compensation payments made to former DoD civilian employees and military members by the states. To the Department of Labor to survey military separations to determine the effectiveness of programs assisting veterans to obtain employment.

9. To the U.S. Coast Guard (USCG) of the Department of Transportation (DOT) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of exchanging personnel and financial information on certain retired USCG military members, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the U.S. Coast Guard and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

10. To the Department of Housing and Urban Development (HUD) to provide data contained in this record system that includes the name, Social Security Number, salary and retirement pay for the purpose of verifying continuing eligibility in HUD's assisted housing programs maintained by the Public Housing Authorities (PHAs) and subsidized multi-family project owners or management agents. Data furnished will be reviewed by HUD or the PHAs with the technical assistance from the HUD Office of the Inspector General (OIG) to determine whether the income reported by tenants to the PHA or subsidized multi-family project owner or management agent is correct and complies with HUD and PHA requirements.

11. To Federal and Quasi-Federal agencies, territorial, state, and local governments to support personnel functions requiring data on prior military service credit for their employees or for job applications. To determine continued eligibility and help eliminate fraud and abuse in benefit programs and to collect debts and over payments owed to these programs. To assist in the return of unclaimed property or assets escheated to states of civilian employees and military member and to provide members and former members with information and assistance regarding various benefit entitlements, such as state bonuses for veterans, etc. Information released includes name, Social Security Number, and military or civilian address of individuals. To detect fraud, waste and abuse pursuant to the authority contained in the Inspector General Act of 1978, as amended (Pub. L. 95–452) for the purpose of determining eligibility for, and/or continued compliance with, any Federal benefit program requirements.

12. To private consumer reporting agencies to comply with the requirements to update security clearance investigations of DoD personnel.

13. To consumer reporting agencies to obtain current addresses of separated military personnel to notify them of potential benefits eligibility.

14. To Defense contractors to monitor the employment of former DoD employees and members subject to the provisions of 41 U.S.C. 423.

15. To financial depository institutions to assist in locating individuals with dormant accounts in danger of reverting to state ownership by escheatment for accounts of DoD civilian employees and military members.

16. To any Federal, state or local agency to conduct authorized computer matching programs regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a) for the purposes of identifying and locating delinquent debtors for collection of a claim owed the Department of Defense or the United States Government under the Debt Collection Act of 1982 (Pub. L. 97–365) and the Debt Collection Improvement Act of 1996 (Pub. L. 104–134).

17. To state and local law enforcement investigative agencies to obtain criminal history information for the purpose of evaluating military service performance and security clearance procedures (10 U.S.C. 2358).

18. To the United States Postal Service to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purposes of:

a. Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and who cannot be released for extended active duty in the event of mobilization. The Postal Service is informed of the reserve status of those affected personnel so that a choice of terminating the position on the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Forces.

b. Exchanging personnel and financial information on certain military retirees who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of retired military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and permit adjustments to military retired pay to be made by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

19. To the Armed Forces Retirement Home (AFRH), which includes the United States Soldier's and Airmen's Home (USSAH) and the United States Naval Home (USNH) for the purpose of verifying Federal payment information (military retired or retainer pay, civil service annuity, and compensation from the Department of Veterans Affairs) currently provided by the residents for computation of their monthly fee and to identify any unreported benefit payments as required by the Armed Forces Retirement Home Act of 1991, Pub.L. 101–510 (24 U.S.C. 414).

20. To Federal and Quasi-Federal agencies, territorial, state and local governments, and contractors and grantees for the purpose of supporting research studies concerned with the health and well being of active duty, reserve, and retired personnel or veterans, to include family members. DMDC will disclose information from this system of records for research purposes when DMDC:

a. Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

b. Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

c. Has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless

the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law; d. Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

21. To the Educational Testing Service, American College Testing, and like organizations for purposes of obtaining testing, academic, socioeconomic, and related demographic data so that analytical personnel studies of the Department of Defense civilian and military workforce can be conducted.

Note 4: Data obtained from such organizations and used by DoD does not contain any information that identifies the individual about whom the data pertains.

22. To Federal and State agencies for purposes of obtaining socioeconomic information on Armed Forces personnel so that analytical studies can be conducted with a view to assessing the present needs and future requirements of such personnel.

23. To Federal and state agencies for purposes of validating demographic data (*e.g.*, Social Security Number, citizenship status, date and place of birth, etc.) for individuals in DoD personnel and pay files so that accurate information is available in support of DoD requirements.

The DoD ''Blanket Routine Uses'' set forth at the beginning of the DLA compilation of record system notices apply to this record system.

Note 5: Military drug test information involving individuals participating in a drug abuse rehabilitation program shall be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The DoD ''Blanket Routine Uses'' do not apply to these types records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by name, Social Security Number, occupation, or any other data element contained in system.

SAFEGUARDS:

Access to personal information at both locations is restricted to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of passwords that are changed periodically. Physical entry is restricted by the use of locks, guards, and administrative procedures.

RETENTION AND DISPOSAL:

The records are used to provide a centralized system within the Department of Defense to assess manpower trends, support personnel functions, perform longitudinal statistical analyses, conduct scientific studies or medical follow-up programs and other related studies/analyses. Records are retained as follows:

(1) Input/source records are deleted or destroyed after data have been entered into the master file or when no longer needed for operational purposes, whichever is later. Exception: Apply NARA-approved disposition instructions to the data files residing in other DMDC data bases.

(2) The Master File is retained permanently. At the end of the fiscal year, a snapshot is taken and transferred to the National Archives in accordance with 36 CFR part 1228.270 and 36 CFR 1234.

(3) Outputs records (electronic or paper summary reports) are deleted or destroyed when no longer needed for operational purposes. **Note:** This disposition instruction applies only to record keeping copies of the reports retained by DMDC. The DOD office requiring creation of the report should maintain its record keeping copy in accordance with NARA-approved disposition instructions for such reports.

(4) System documentation (codebooks, record layouts, and other system documentation) are retained permanently and transferred to the National Archives along with the master file in accordance with 36 CFR part 1228.270 and 36 CFR part 1234.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–CF, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–CF, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–CF, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

The military services, the Department of Veteran Affairs, the Department of Education, Department of Health and Human Services, from individuals via survey questionnaires, the Department of Labor, the Office of Personnel Management, Federal and Quasi-Federal agencies, and the Selective Service System.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–32450 Filed 12–24–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Army Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Special Area Management for the San Jacinto River and Upper Santa Margarita River Watersheds, Riverside County, CA

AGENCY: U.S. Army Corps of Engineers, (DoD).

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps of Engineers) is announcing its intent to prepare a DEIS for a Special Area Management Plan (SAMP). The SAMP is being developed to address anticipated development, infrastructure, and maintenance projects and aquatic resources in the watersheds of the San Jacinto River and Upper Santa Margarita River (SAMP study area). The DEIS will assess the impacts of various land development and aquatic resource protection alternatives as set forth below and further identified during the preparation of the SAMP.

The SAMP will provide a comprehensive plan for protecting and enhancing aquatic resources while providing for the permitting of reasonable economic development and public infrastructure, in coordination with local land use plans and a regional Multi-Species Habitat Conservation Plan (MSHCP) being developed by the U.S. Fish and Wildlife Service for western Riverside County. The SAMP will provide a framework for a long-term programmatic permitting process for projects in the watersheds subject to the Corps of Engineers' permit authority under section 404 of the Clean Water Act. Section 404 of the Clean Water Act regulates the discharge of dredged or fill material into waters of the United States, including wetlands.

In addition, the SAMP will include a comprehensive reserve program for the protection, restoration, and management of aquatic resources within the study area.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by: Dr. Fari Tabatabai, SAMP Program Coordinator, (213) 452–3291, *ftabatabai@spl.usace.army.mil,* Regulatory Branch (CESPL–CO–RS), U.S. Army Corps of Engineers, Los Angeles District, PO Box 532711, Los Angeles, California 90053–2325.

SUPPLEMENTARY INFORMATION:

1. *Proposed Action:* The Corps of Engineers utilizes Special Area Management Plans to assist in long-term planning for regulatory actions under section 404 of the Clean Water Act that involve large areas, complex projects, and sensitive aquatic resources. The subject SAMP study area consists of San Jacinto River and Upper Santa Margarita River watersheds located in western Riverside County.

The SAMP will describe an approach and a set of actions to preserve, enhance, and restore aquatic resources, while allowing reasonable economic development and construction and maintenance of public infrastructure facilities within the study area. Key objectives of the SAMP for these two watersheds in western Riverside County are to: (1) Evaluate the extent and condition of existing aquatic resources; (2) develop a comprehensive reserve program for the protection, restoration and management of aquatic resources; and (3) identify and evaluate alternative land development scenarios in the context of the aquatic resource reserve program. Based on the SAMP, the Corps of Engineers will identify potential areas and/or activities suitable for authorization using programmatic permitting procedures under section 404 of the Clean Water Act. Activities that may be authorized using such programmatic permitting procedures include, but are not limited to, the construction of public infrastructure such as roads, flood control projects and utilities, maintenance of public facilities, and residential, commercial, industrial, and recreational development.

The Corps of Engineers will develop the SAMP in close coordination with other agencies, including the U.S. Fish and Wildlife Service, the U.S. Environmental Protection Agency, and the California Regional Water Quality Control Boards, as necessary. The Corps of Engineers encourages active participation by County and local governments, concerned landowners and the general public.

The California Department of Fish and Game will cooperate in the SAMP process by formulating a Master Streambed Alteration Agreement (MSAA) under sections 1601 and 1603 of the California Fish and Game Code for activities in the SAMP study area that affect lakes, rivers, streams and associated riparian habitats subject to the Department's jurisdiction.

The environmental analysis and the SAMP will be presented in a joint federal and state document. The California Department of Fish and Game will prepare a Program Environmental Impact Report (EIR) in accordance with the California Environmental Quality Act (CEQA) for the actions described in the SAMP. A separate CEQA Notice of Preparation (NOP) will be prepared and published by the Department. The Corps of Engineers and the Department of Fish and Game will work cooperatively to prepare a joint EIS/EIR document, and to coordinate the public noticing and hearing processes under federal and state laws.

2. *Alternatives:* Alternatives that may be considered include the following two categories:

I. No-SAMP alternatives (also called No-Action alternatives): (a) No SAMP would be prepared, all future development would be reviewed under the current project-by-project review; (b) No construction requiring a DA permit would occur.

II. SAMP alternatives: Alternatives that may be considered under this category include those based on the following goals: (a) Maximize opportunities to protect, restore, and manage aquatic resources while allowing minimal impacts to aquatic resources; (b) minimize new impacts to aquatic resources in areas containing high hydrologic, water quality, and habitat integrity, or in low integrity areas that serve as important corridors or regionally rare aquatic resources; and (c) limit new impacts in aquatic resources that provide habitat for federal and state listed aquatic species. Programmatic DA Permit(s) would be issued for specifically identified activities and permitting criteria would be established for other future activities pursuant to the requirements of section 404 of the Clean Water Act. SAMP alternatives would be developed in consideration of the on-going MSHCP that seek to maximize the opportunities to protect, restore and manage aquatic resources. SAMP alternatives also would address alternative methods and institutional arrangements for aquatic resource reserve management.

3. *Scoping Process:* The Corps' scoping process for the DEIS will involve soliciting written comments and a public meeting. Potentially significant issues to be analyzed in the DEIS include aquatic resources, surface water quality, threatened and endangered species, and cultural resources.

4. Other environmental review, consultation requirements or considerations include compliance with section 106 of the National Historic Preservation Act and section 7 of the Endangered Species Act.

Public Scoping:

A public scoping meeting to receive input on the scope of the DEIS will be conducted on January 23, 2003 at 6:30–9 pm. at the Simpson Center located at

305 E. Devonshire Avenue, Hemet, CA 92543. This meeting will address both the DEIS for the SAMP and the EIR for the MSAA. The public scoping will be conducted in an open-house format.

Schedule

The estimated date the DEIS will be made available to the public is November 2003.

Dated: December 16, 2002.

Richard G. Thompson,

Colonel, U.S. Army, District Engineer.

[FR Doc. 02–32457 Filed 12–24–02; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 24, 2003.

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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 19, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision .

Title: The Evaluation of Exchange, Language, International and Area Studies (EELIAS), NRC, FLAS, IIPP, UISFUL, BIE, CIBE, AORC, Language Resource Centers (LRC), International Studies and Research (IRS), Fulbright-Hays Faculty Research Abroad (FRA), Fulbright-Hays Doctoral Dissertation Research Abroad (DDRA), Fulbright-Hays Seminars Abroad (SA), Fulbright-Hays Group Projects Abroad (GPA), and the Technology Innovation and Cooperation for Foreign Information Access (TICFIA) Programs.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 2,595.

Burden Hours: 30,770.

Abstract: LRC, IRS, FRA, DDRA, SA, GPA, and TICFIA are being added for clearance to the system that already contains seven other programs. Information collection assist International Education and Graduate Programs Services (IEGPS) in meeting program planning and evaluation requirements. Program officers require performance information to justify continuation funding, and grantees use this information for self evaluations and to request continuation funding from the Department of Education.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–32461 Filed 12–24–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 24, 2003.

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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be

collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 20, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: Program for International Student Assessment (PISA).

Frequency: One time.

Affected Public: Individuals or household; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 10,800.

Burden Hours: 28,125.

Abstract: The Program for International Student Assessment (PISA) is a new system of international assessments that focus on 15-olds' capabilities in reading literacy, mathematics literacy, and science literacy. PISA 2000 was the first cycle of PISA, which will be conducted every three years, with a primary focus on one area for each cycle. PISA 2000 focused on reading literacy; mathematics literacy will be the focus in 2003, and science literacy in 2006. In addition to assessment data, PISA provides background information on school context and student demographics to benchmark performance and inform policy.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be 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 Kathy Axt at her e-mail address *Kathy.Axt@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. 02–32526 Filed 12–24–02; 8:45 am]

BILLING CODE 4000–01–P

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 January 27, 2003.

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: December 19, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: National Assessment of Educational Progress (NAEP): 2003 Charter Schools Questions.

Frequency: One time.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 658,800.

Burden Hours: 169,101.

Abstract: The charter schools in the NAEP sample will complete the NAEP School Questionnaire, through which they will provide information on instructional organization and time, parental involvement, stability of the teaching staff, and characteristics of the student body. The purpose of the NAEP Charter School Questions is to be able to describe the schools in terms of some key features unique to charter schools. There is no one kind of charter school—who they serve, how they are funded, how they operate, and to whom they must report varies depending on state legislation and the terms of the charter. Nevertheless, it is important for NAEP to be able to describe the charter schools in the sample so that the results can be interpreted in a meaningful way.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or directed to her e-mail address *Vivian.Reese@ed.gov.* Requests may also be 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 Kathy Axt at her e-mail address *Kathy.Axt@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. 02–32459 Filed 12–24–02; 8:45 am]

BILLING CODE 4000–01–P

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 January 27, 2003.

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: December 19, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of the Chief Financial Officer

Type of Review: Revision.

Title: Small Business Innovation Research (SBIR) Program—Phase I—Grant Application Package.

Frequency: Annually.

Affected Public: Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 250.

Burden Hours: 10,000.

Abstract: This application package invites small business concerns to submit a Phase I research application for the Small Business Innovation Research (SBIR) program. This is in response to Pub. L. 106–554, the ''Small Business Reauthorization Act of 2000, H.R. 5667'' (the ''Act'') enacted on December 21, 2000. The Act requires certain agencies, including the Department of Education (ED), to establish a Small Business Innovation Research (SBIR) program by reserving a statutory percentage of their extramural research and development budgets to be awarded to small business concerns for research or R&D through a uniform, highly competitive, three-phase process each fiscal year.

This collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period 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 or directed to her e-mail address *Vivian.Reese@ed.gov.* Requests may also be 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 Kathy Axt at her e-mail address *Kathy.Axt@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. 02–32460 Filed 12–24–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

RIN 1820–ZA13

Access to Telework Fund

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority and proposed application and project requirements.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority and application and project requirements for an Access to Telework Fund (ATF). The Assistant Secretary may use this priority and the requirements for competitions in fiscal year (FY) 2002 and later years. We take this action to expand employment opportunities for individuals with disabilities by providing greater access to computers and other equipment that will allow them to work from home if they choose. Grants would be made to States, including the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and American Indian tribal governments to enable them to provide loans to individuals with disabilities to purchase computers and other equipment for this purpose.

DATES: We must receive your comments on or before January 27, 2003.

ADDRESSES: Address all comments about this proposed priority and proposed application and project requirements to Pamela Martin, U.S. Department of Education, 400 Maryland Avenue, SW., room 3314, Switzer Building, Washington, DC 20202–2645. If you prefer to send your comments through the Internet, use one of the following addresses: *Pamela.Martin@ed.gov* or *Gayle.Palumbo@ed.gov.*

You must include the term ''Access to Telework Fund'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Pamela Martin. Telephone (202) 205–8494 or via Internet: *Pamela.Martin@ed.gov.*

Or Gayle Palumbo, U.S. Department of Education, Rehabilitation Services Administration, 50 United Nations Plaza, room 215, San Francisco, CA 94102. Telephone (415) 556–4071 or via Internet: *Gayle.Palumbo@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, or computer diskette) on request to one of the contact persons listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding this proposed priority and the proposed application and project requirements. To ensure that your comments have maximum effect in developing the notice of final priority and final application and project requirements, we urge you to be specific about any recommended changes. We are particularly interested in receiving comments on the following topics:

1. Eligible applicants for the Access to Telework Fund, including who may apply for an ATF grant and the implications of allowing more than one agency within a State to receive a grant.

2. The authorized activities under this program and appropriate uses of grant funds.

3. The definition of ''telework,'' as it appears in this priority.

4. Requirements, including reporting requirements, and procedures considered essential in the establishment of this loan program and which should be included under ''Application and Project Requirements.'' For example, comments are welcome on more specific outcome measures needed to evaluate the impact of the program.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this proposed priority in room 3038, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for this type of aid, please contact one of the individuals listed under **FOR FURTHER INFORMATION CONTACT**.

We will announce the final priority and final application and project requirements in a notice in the **Federal Register**. We will determine the final priority and final application and project requirements after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this proposed priority and proposed application and project requirements, we invite applications through a notice in the **Federal Register**.

Priority

Access to Telework Fund

The proposed priority would implement the Access to Telework Fund (ATF) proposed by the President in his *New Freedom Initiative.* This new program would enable States, including the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and American Indian tribes to provide loans to individuals with disabilities to purchase computers and other equipment so they can work from home.

The ATF will be conducted under section 303(b) of the Rehabilitation Act of 1973, as amended (Act). The proposed priority supports section 303(b) by furthering the purposes of the Act, specifically by empowering individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion and integration into society.

Background: In February of 2001, the President introduced his *New Freedom Initiative* to help Americans with disabilities by increasing access to assistive technologies, expanding educational opportunities, increasing the ability of Americans with disabilities to integrate into the workforce, and promoting increased access into daily community life. As a part of this initiative, the ATF was proposed to increase the participation of Americans with disabilities in the workforce by expanding telework opportunities.

We anticipate that many employers will provide employees with the equipment they need to telework. We wish to emphasize that this program does not relieve covered employers from their obligations under the Americans with Disabilities Act (ADA). However, we realize that some individuals with disabilities need an alternative mechanism to access computers and other needed equipment not provided by an employer to enable them to work from home. The Access to Telework Fund will provide that alternative mechanism.

The employment rate for people with disabilities is unacceptably low and for individuals with significant disabilities it is even lower. Yet most people with disabilities who can work, but do not have jobs, say that they would like to work and contribute to the country's economy. However, individuals with disabilities experience many barriers to employment, including inadequate transportation, fatigue, inaccessible work environments, and the need for personal assistance. For many, these barriers can be reduced or eliminated through the availability of viable alternatives such as telework and other alternative work options.

Telework and other alternative work options, such as home-based self-employment, are rapidly expanding employment options in the emerging information age. These work options provide employment opportunities to many Americans who want or need a flexible work environment. Americans with disabilities should have the same access to pursue employment opportunities in traditional and alternative work settings as other members of society.

Promoting telework options may also bring more individuals with disabilities into the labor market. Many individuals with disabilities, and individuals with chronic illnesses, may not be aware of how new technologies can accommodate flexible work schedules and expand employment options. Becoming more aware of what is available, and that options do exist, may open more doors to employment. The availability of telework and other flexible work arrangements for people with disabilities can reduce or eliminate barriers to employment. Some employees may want or need to telework almost exclusively, while others may choose to work from home only if the need arises. These alternatives can mean the difference between being able to work and not being able to work.

Computer technology and the Internet have tremendous potential to broaden the lives and increase the independence and employment of many people with disabilities. However, the computer and Internet revolution has not reached as many people with disabilities as the population without disabilities. Only 25 percent of people with disabilities own a computer, compared with 66 percent of U.S. adults without disabilities, and only 20 percent of people with disabilities have access to the Internet, compared with 40 percent of U.S. adults.

The primary barrier to wider access to computer equipment is cost. Computers with adaptive technology (*e.g.,* screen readers, voice synthesizers, adaptive keyboards, and specialized software) can cost as much as $20,000. The median income of Americans with disabilities is far below the national average. Thus, for many individuals with disabilities, owning a computer with adaptive technology is prohibitively expensive.

It is often very difficult for individuals with disabilities to save enough money to purchase computer or other necessary office equipment. Cash benefit programs do not provide sufficient funds for both living expenses and savings, and income support programs limit the amount of assets a person can accumulate. For a number of reasons, people with disabilities often find it difficult to access loans as a method to purchase necessary equipment. For example, they may have insufficient cash or collateral, lack an appropriate credit rating, or face attitudinal barriers.

Proposed Priority: Under 34 CFR 75.105 (c)(3) we propose to give an absolute preference to applications that meet the following priority. Under an absolute priority we consider only applications that meet the priority.

This priority supports grants to States for the establishment of an Access to Telework Fund to provide loans to individuals with disabilities for the purpose of purchasing computers and other equipment, including adaptive equipment, so that the individuals with disabilities can telework from home.

The term ''telework'' typically encompasses work that can be performed effectively from home or from other designated sites away from the office, such as work on the road or at a telework center. For the purposes of this program, telework is limited to work that can be performed effectively from home and does not include work from the road or a telework center. Successful applicants will develop programs that will enable them to provide loans, for the purchase of computers and other equipment, to individuals with disabilities who want to work at home as an employee, a contractor, or work in home-based self-employment on a full- or part-time basis. Individuals with disabilities who are employees and work from home for part of the work week are eligible for loans for equipment they need while working at home.

Consistent with legislative history, the Department intends to give grantees the flexibility to design and implement the Access to Telework program in a manner that will encourage individuals with disabilities to apply for loans.

Eligible Applicants: State agencies from the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, are eligible to apply for ATF grants. These agencies may include, but are not limited to, State vocational rehabilitation agencies; State employment agencies; State agencies currently administering programs under the Assistive Technology Act, including the Assistive Technology State Grant Program or the Alternative Financing Program; Governors' offices; or other appropriate State agencies. Applicants may also include consortia of State agencies, with one agency acting as the official applicant for the grant.

Governing bodies of American Indian tribes located on Federal and State reservations (and consortia of those governing bodies) consistent with section 7(19)(B) of the Act are also eligible to apply for ATF grants.

More than one agency within a State may apply for a grant, but there must be coordination and communication between grantees in any single State.

Application and Project Requirements

In accordance with the application and project requirements that follow, applicants under this competition must successfully demonstrate that they will:

A. Achieve the program's short-term goal of increasing access to technology for disabled individuals through the provision of loans that must be used to purchase computers and other equipment, including adaptive equipment, so that individuals with disabilities can telework from home; and

B. Achieve the program's long-term goal of increasing employment opportunities and competitive employment outcomes for individuals with disabilities.

Application, matching, reporting, and other project requirements are as follows:

A. General Requirements for Applicants under this Competition

(1) Each applicant under the ATF competition must provide information, in its application, on the manner in which its proposed loan program will expand employment opportunities for individuals with disabilities by including information on the expected impact and outcomes of the project. More specifically, applicants must project a goal of how many people could achieve employment outcomes with the level of grant funding being requested. Applicants also must be specific about what data they will collect in order to measure project outcomes against the goal. Additional outcome measures, such as increases in salary or customer satisfaction levels, must also be included to support the application.

(2) Each applicant is allowed flexibility in the development of its proposed loan program under the Access to Telework Fund. However, the proposed loan procedures and criteria must be explained in the application for funding. At a minimum, the application must contain the following:

(a) Procedures that provide for the timely review and processing of loan applications and that include methods and processes that reduce paperwork and duplication of effort, particularly as they relate to the needs and eligibility of individuals with disabilities to receive loans from the project, including—

(i) Loan application procedures;

(ii) The criteria whereby an individual with a disability may qualify for a loan, including criteria for determining credit worthiness; and

(iii) If proposed, the description of any appeal process for applicants who are denied loans.

(b) The type or types of alternative financing mechanisms the applicant is proposing to provide as part of the project and in conjunction with contracting organizations, if any, including—

(i) A low-interest loan program;

(ii) An interest buy-down program;

(iii) A revolving fund;

(iv) A loan guarantee or insurance program; and

(v) Any other mechanism that meets the requirements and intent of this program and is approved by the Secretary.

(c) Policies, procedures, and specifications related to the awarding and collection of loans, including—

(i) Minimum and maximum loan amounts;

(ii) Criteria for determining the amount of a loan, the interest on loans, and how interest will be determined;

(iii) Loan repayment and collection procedures, including procedures for handling situations in which individuals are delinquent in repayment or default on loans, and the consequences of defaulting on a loan; and

(iv) If appropriate, possibilities for deferral of repayment and loan forgiveness under specified circumstances.

(d) Outreach and marketing strategies the applicant proposes to use to inform individuals with disabilities and other appropriate target groups about the program.

(3) Each applicant must provide information, in its application, on the procedures to be used to ensure the individuals with disabilities who receive loans under this program intend to work from home.

(4) If an applicant chooses to enter into contracts with private financial institutions, banks, credit unions, other

State agencies, or community-based organizations to administer the Access to Telework Fund, each contract must include—

(a) A provision requiring that the program funds, including the Federal and non-Federal shares of the cost of the program, be administered in a manner consistent with the requirements of this program; and

(b) Provisions for contract oversight and evaluation in order to protect Federal financial interests.

(5) Each applicant must provide a description of each organization, if any, that it intends to use by contract or other arrangements to carry out the Access to Telework Fund. The role and responsibilities of each organization must also be included.

B. Application Assurances

Each applicant must provide the following assurances in its application:

(1) ATF funds will not be used as a substitute for employer responsibilities under the ADA or to fulfill responsibilities of other parties under the ADA.

(2) All Federal and matching funds that support the Access to Telework Fund, including all principal and interest repaid during the life of the program, will be placed in a permanent separate account and identified and accounted for separately from any other funds.

(3) The funds specified in paragraph (B)(2) will be invested in low risk securities in which a regulated insurance company may invest under the laws of the State.

(4) Funds comprised of the principal and interest from the account described in paragraph (B)(2) and any interest or investment income that accrues on or derives from the investments noted in paragraph (B)(3) must also be available to support the Access to Telework Fund.

(5) ATF funds will be used to supplement and not supplant Federal (funding other than through this program), State, and local public funds used to support similar services to individuals with disabilities.

(6) The ATF program will be continued on a permanent basis or for as long as funding exists to support such a program, including funding identified in paragraphs (B)(2) and (B)(3).

(7) The grantee will administer the funds with the same judgment and care that a person of prudence, discretion, and intelligence would exercise in the management of his or her own financial affairs.

(8) Materials used by potential loan applicants to obtain information on loan availability, eligibility requirements, and procedures for applying for a loan will be provided in accessible formats.

(9) The project will coordinate and share information and resources with other ATF projects within the State, as well as with the alternative financing programs such as those funded under titles I and III of the Assistive Technology Act.

(10) Policies and procedures will be established to ensure that access to the ATF will be given to consumers regardless of type of disability, age, income level, or type of computers and other equipment for which financing is requested through the program.

C. Matching Requirements and Limitations on Indirect Costs

(1) The Federal share of the cost of the ATF must not be more than 90 percent. Therefore, each applicant must demonstrate it will provide at least 10 percent of the total program cost in non-Federal funds.

(2) The grantee must provide the non-Federal share of the cost of the ATF in cash from State, tribal, local, or private sources.

(3) The non-Federal match requirement must be met within the 12-month project period.

(4) Federal funds may be drawn down and expended before or after the non-Federal match requirement is met, as long as the match is provided within the 12-month project period.

(5) Each grantee must limit indirect costs charged to the Federal grant to 10 percent of the total direct costs.

D. Reporting Requirements

Through the analysis of data collected under the following reporting requirements, the Secretary will assess grantee success in meeting the program's overall goals of—

(1) Increasing access to technology for disabled individuals; and

(2) Increasing employment opportunities and competitive employment outcomes for individuals with disabilities.

Performance measures used to determine whether the goals have been accomplished will include— numbers of loans made to individuals with disabilities; numbers of individuals who obtained telework employment as a result of ATF loans; and ATF default rates. Grantee evaluation systems must be capable of collecting and analyzing this and the following additional required information.

Each grantee must collect and submit to the Secretary the following information within 90 calendar days after the end of the project period and annually thereafter, for as long as an ATF program identified in paragraphs (B)(2) and (B)(3), Application Assurances, is in operation:

(1) The total financial contribution to the project, including the Federal share and non-Federal matching contributions, and the source of the non-Federal share.

(2) The amount of ATF funding requested by and provided to each individual consumer applicant for a loan.

(3) The total number of loans requested by and made to individuals with disabilities and the total number of loans in each of the types of alternative financing mechanisms listed in paragraph (A)(2)(b).

(4) The number of loan applicants denied and the reasons for denial.

(5) The amount and terms of each loan provided, including the interest rate.

(6) The types of equipment financed through the project, including the total number of each type of equipment financed.

(7) Information on the characteristics of each individual with a disability served under the project, including demographic information such as age and ethnicity; type of disability; employment status at the time of loan application; whether the consumer tried to secure financial support from other sources and, if so, a description of those sources; whether the individual consumer went to work, if he or she is teleworking for some part of his or her job, and the occupation in which the individual is working; the hourly salary the individual consumer is earning and a comparison of the consumer's salary with that reported in the previous annual ATF report; and information on whether each individual has repaid his or her loan, is in repayment status, is delinquent on repayments, or has defaulted on the loan.

(8) A breakdown of expenditures from the ATF program, including information on the amount paid in direct loans to individuals with disabilities, the amount devoted to administrative costs of the program, and the nature of those administrative costs.

(9) The default rate under the program.

Executive Order 12866

This notice of proposed priority and proposed application and project requirements has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with this notice are those resulting from

requirements we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice, we have determined that the benefits of the proposed priority and proposed application and project requirements justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of potential costs and benefits: The Assistant Secretary has determined that the cost to the Federal Government associated with this program will not exceed $20 million in FY 2002 or FY 2003. In addition, grant recipients (State agencies from the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and governing bodies of American Indian tribes located on Federal and State reservations) must contribute a required non-Federal match of at least 10 percent of the total program cost. No other costs will result from the announcement of this proposed priority and proposed application and project requirements.

The benefit of this proposed priority and proposed application and project requirements will be the establishment of the Access to Telework Fund proposed by the President in the *New Freedom Initiative,* which calls for the provision of loans to individuals with disabilities for the purpose of purchasing computers and other equipment, including adaptive equipment, so that individuals with disabilities can telework from home.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

You may review 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: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.235, Special Demonstration Programs, Access to Telework Fund)

Program Authority: 29 U.S.C. 773(b).

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–32574 Filed 12–24–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records

AGENCY: Office of Management, Department of Education.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Act), the Department of Education (Department) publishes this notice of a new system of records for the collection and maintenance of information on the issuance of Identification Media for Department of Education employees, retirees, and contractors.

DATES: The Department seeks comment on the new system of records described in this notice, in accordance with the requirements of the Privacy Act. We must receive your comments on or before January 27, 2003.

The Department filed a report describing the system of records covered by this notice with the Chair of the Senate Committee on Governmental Affairs, the Chair of the House Committee on Government Reform, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on December 20, 2002. This system of records will become effective at the later date of— (1) the expiration of the 40-day period for OMB review on January 29, 2003 or (2) January 27, 2003, unless the system of records needs to be changed as a result of public comment or OMB review.

ADDRESSES: Address all comments about this system of records to Director, Security Services, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., room 2W229, FB6, Washington, DC 20202. If you prefer to send comments through the Internet, use the following address: *comments@ed.gov.*

You must include the term ''Security Notice'' in the subject line of the electronic comment.

During and after the comment period, you may inspect all comments about this notice in room 2W229, 400 Maryland Avenue, SW., Federal Building 6, Washington, DC, between the hours of 8 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or printer magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Jerry Shepherd. Telephone: (202) 260–7754. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Introduction

The Privacy Act (5 U.S.C. 552a(e)(4)) requires the Department to publish in the **Federal Register** this notice of a new system of records maintained by the Department. The Department's regulations implementing the Privacy Act are contained in the Code of Federal Regulations (CFR) in 34 CFR part 5b.

The Privacy Act applies to a record about an individual that contains individually identifiable information that is retrieved by a unique identifier associated with each individual, such as a name or social security number. The information about each individual is

called a ''record'' and the system, whether manual or computer-based, is called a ''system of records.'' The Privacy Act requires each agency to publish notices of systems of records in the **Federal Register** and to prepare reports to the Office of Management and Budget (OMB) whenever the agency publishes a new or altered system of records.

Electronic Access to This Document

You may view this document, as well as 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 the document published in the **Federal Register**. Free Internet access to the official version 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: December 20, 2002.

William J. Leidinger,

Assistant Secretary for Management.

For the reasons discussed in the preamble, the Assistant Secretary for the Office of Management, U.S. Department of Education publishes a notice of a new system of records to read as follows:

18–05–16

SYSTEM NAME:

Identification Media Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Security Services, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., room 2C103, Washington, DC 20202.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current employees, Department of Education (Department) retirees, and other persons doing business with the Department.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records including an individual's name, home address, social security number, date of birth, contract expiration date, security clearance level and access, digital picture, office location, and telephone number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12977 (October 19, 1995) establishing the Interagency Security Committee (ISC) to develop and oversee the implementation of security standards for federal facilities); Title 40 U.S.C. Sections 19, 285, & 490; 41 CFR 101–20.302, Department of Justice Vulnerability Assessment of Federal Facilities Report at table 2–8 (June 28, 1995); and the U.S. Department of Education, Departmental Directive OM: 4–112 (August 30, 2002).

PURPOSE(S):

Records in this system are maintained to provide the Department with information related to the issuance of identification media and access to restricted areas. This system will not be utilized as a means of tracking employee working hours.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

1. *Disclosure for Use by Law Enforcement Agencies.* The Department may disclose information contained in a record in this system of records to appropriate Federal, State, or local agencies responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutorial responsibility within the receiving entity's jurisdiction.

2. *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

3. *Litigation and Alternative Dispute Resolution (ADR) Disclosure.*

(a) *Introduction.* In the event that one of the following parties is involved in litigation or ADR, or has an interest in litigation or ADR, the Department may disclose certain records to the parties described in paragraphs b, c, and d of this routine use under the conditions specified in those paragraphs:

(i) The Department or any of its components.

(ii) Any Department employee in his or her official capacity.

(iii) Any employee of the Department in his or her official capacity where the Department of Justice (DOJ) is requested to provide or arrange for representation of the employee.

(iv) Any employee of the Department in his or her individual capacity where the Department has agreed to represent the employee.

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the Department of Justice (DOJ).* If the Department determines that disclosure of certain records to the DOJ or attorneys engaged by DOJ is relevant and necessary to litigation or ADR and is compatible with the purpose for which the records were collected, the Department may disclose those records as a routine use to DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, individual, or entity designated by the Department or otherwise empowered to resolve disputes is relevant and necessary to the administrative litigation or ADR and is compatible with the purpose for which the records were collected, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, Counsel, Representatives, and Witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative, or witness is relevant and necessary to the litigation or ADR and is compatible with the purpose for which the records were collected, the Department may disclose those records as a routine use to the party, counsel, representative, or witness.

(4) *Freedom of Information Act (FOIA) Advice Disclosure.* To the Department of Justice and the Office of Management and Budget (OMB) if the Department seeks advice regarding whether records maintained in this system of records are required to be released under the FOIA and the Privacy Act of 1974.

(5) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable to this system notice.

POLICIES AND PRACTICES OF STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in secured space either in locked lektrievers, in a room accessible by access control card, or in fire resistant safes with manipulation proof combination locks. Digital records are maintained in a secure computer database.

RETRIEVABILITY:

Electronic and paper records are retrieved by the name of the individual.

SAFEGUARDS:

Paper records are maintained and secured in locked lektrievers or in fire resistant safes with manipulation proof combination locks. All records, including those records that are maintained on the computer database, are in limited access rooms with access control. All users are required to have an appropriate security clearance before they are allowed access, on a ''need-to-know'' basis, to the records. Computer databases are kept on a secured server. Authorized log-on codes and passwords prevent unauthorized users from gaining access to data and system resources. Users must have valid Security System accounts and passwords before accessing the application. Users are required to change their passwords periodically, and they are not allowed to repeat any old passwords. Any individual attempting to log on who fails is locked out of the system after three attempts. Access after that time requires intervention by the system manager.

RETENTION AND DISPOSAL:

Electronic identification media records are destroyed/deleted when no longer needed or after separation or transfer from the Department or expiration of contract relationship with the Department, whichever is earlier, in accordance with the National Archives and Records Administration's General Records Schedule (GRS) 20, item (3)(b), with the exception of Department retirees. Electronic identification media records for retirees from the Department are maintained for not more than five years or when no longer needed, whichever is earlier. All paper ID records are maintained in the personnel security and suitability files for not more than five years after separation or transfer from the Department or expiration of contract relationship with the Department in accordance with GRS 18, item 22. These paper records are disposed of by electronic erasure, disintegrator, or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Security Services, U.S. Department of Education, Office of Management, 400 Maryland Avenue, SW., room 2W229, Washington, DC 20202.

NOTIFICATION PROCEDURE:

If you wish to inquire whether a record exists regarding you in this system, you should contact the system manager at the address listed above. You must provide your name, name of organization, and subject matter. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURE:

If you wish to request access to your records, you should contact the system manager at the address listed under System Manager(s) and Address. You must comply with the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURE:

If you wish to request an amendment to your records, you should contact the system manager at the address listed under System Manager(s) and Address. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Information contained in this system of records is obtained from individuals, their employers, and contractors of the Department.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–32573 Filed 12–24–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket Nos. EA–273]

Application To Export Electric Energy; Rainy River Energy Corporation

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Rainy River Energy Corporation (Rainy River) has applied to export electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act for a period of two years.

DATES: Comments, protests or requests to intervene must be submitted on or before January 27, 2003.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. § 824a(e)).

On November 25, 2002, Rainy River applied to the Office of Fossil Energy, of the Department of Energy (DOE), for authority to export electric energy, on its own behalf, from the United States to Canada. Rainy River, a Minnesota corporation, is engaged in the marketing of electric power at wholesale. Rainy River will purchase the power to be exported from electric utilities and Federal power marketing agencies as defined in Sections 3(22) and (19)(16 U.S.C. Section 796 (22) and (19)) of the FPA.

In FE Docket No. EA–273, Rainy River proposes to export electric energy to Canada and to arrange for the delivery of those exports to Canada over the international transmission facilities presently owned by Minnesota Power, Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Eastern Maine Electric Cooperative, International Transmission Co., Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnkota Power Cooperative, Inc., New York Power Authority, Niagara Mohawk Power Corp., Northern States Power Company and Vermont Electric Transmission Company.

The construction of each of the international transmission facilities to be utilized by Rainy River has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the Rainy River application to export electric energy to Canada should be clearly marked with Docket EA–273. Additional copies are to be filed directly with Steven W. Tyacke, Esq., Rainy River Energy Corporation, 30 West Superior Street, Duluth, MN 55802.

A final decision will be made on this application after the environmental impact has been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.doe.gov.* Upon reaching the Fossil Energy Home page, select ''Regulatory'' Programs,'' then ''Electricity Regulation,'' and then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC, on December 17, 2002.

Anthony Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 02–32537 Filed 12–24–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–445–004]

Alliance Pipeline L.P.; Notice of Compliance Filing

December 19, 2002.

Take notice that on November 27, 2002, Alliance Pipeline L.P. (Alliance) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, proposed to become effective January 1, 2003:

Second Revised Sheet No. 11
Second Revised Sheet No. 12
Second Revised Sheet No. 13
Second Revised Sheet No. 14

Alliance states that it provides firm service under Rate Schedule FT–1 for its existing shippers, all of whom have agreed to pay negotiated rates. The negotiated rate agreements provide that changes in Alliance's costs will be reflected in its negotiated rates from time to time.

Alliance states that the tariff sheets listed above set forth the essential elements of its Rate Schedule FT–1 negotiated rate transactions, including the rates thereunder, and that it is filing the listed tariff sheets to reflect changes made to the rates charged under its negotiated rate agreements as a result of changes in its costs.

Alliance states that its filing is made pursuant to the authorization set forth in its negotiated rate agreements and section 39 of the General Terms and Conditions of its FERC Gas Tariff.

Alliance states that copies of its filing have been mailed to all customers, state commissions, and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: December 30, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32554 Filed 12–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–206–000]

ANR Pipeline Company; Notice of Tariff Filing

December 19, 2002.

Take notice that on December 16, 2002, ANR Pipeline Company (ANR), tendered for filing FERC Gas Tariff, Second Revised Volume No. 1, Fourth Revised Sheet No. 161A.02, with an effective date of January 16, 2003.

ANR states that it is tendering the revised tariff sheet in order to set forth clearly the criteria that would give ANR the right to terminate a capacity release transaction in the event of Releasing Shipper's loss of creditworthiness status.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions 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 under the ''e-Filing'' link.

Intervention Date: December 30, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32557 Filed 12–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–45–001]

ANR Pipeline Company; Notice of Compliance Filing

December 19, 2002.

Take notice that on December 16, 2002, ANR Pipeline Company (ANR), tendered for filing an explanatory statement to clarify its intent with regard to the tariff language proposed as a part of its October 29, 2002, Tariff filing as required by the Commission's November 29, 2002, letter order.

ANR respectfully requests that the Commission accept this clarification.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before December 26, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32558 Filed 12–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–064]

ANR Pipeline Company; Notice of Negotiated Rate Filing

December 19, 2002.

Take notice that on December 13, 2002, ANR Pipeline Company (ANR) tendered for filing and approval Amendments to two Service Agreements between ANR and Wisconsin Public Service Corporation, which revise the MDQ under such Agreements. ANR requests that the Commission accept and approve the agreements to be effective December 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions 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 under the ''e-Mail'' link.

Intervention Date: December 26, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32560 Filed 12–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–33–000]

Aquila, Inc., Complainant v. Public Service Company of Colorado, Respondent; Notice of Complaint

December 19, 2002.

Take notice that on December 18, 2002, Aquila, Inc., (Aquila) tendered for filing a ''Complaint Seeking Rate Relief Pursuant To Section 306 of the Federal Power Act and Motion To Consolidate'' against Public Service Company of Colorado (PSCO). Aquila's complaint alleges that PSCO has included costs in the fuel cost adjustment charge under Aquila's prior power purchase agreement with PSCO that are not eligible for recovery thereunder. Aquila seeks refunds, plus interest, of the alleged unlawful charges it has paid to PSCO and a Commission investigation and hearing, which it requests the Commission to consolidate with similar pending complaints in Docket Nos. EL02–25 et.al.

Aquila states that copies of the Complaint were served, simultaneous with filing with the Commission on PSCO, its parent company Exel Energy, Inc., and the Public Utilities Commission of the State of Colorado.

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.

Comment Date: January 8, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32553 Filed 12–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–045]

Dominion Transmission, Inc.; Notice of Tariff Filing

December 19, 2002.

Take notice that on December 13, 2002, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Third Revised Sheet No. 1402, with an effective date of December 16, 2002.

DTI states that the filing is being made to correct the October 25, 2002, filing in which Third Revised Sheet No. 1402 was inadvertently reserved for future use. This filing is to reinstate Third Revised Sheet No. 1402 to its original form before the October 25, 2002, filing.

DTI states that copies of its letter of transmittal and enclosures have been served upon DTI's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: December 26, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32559 Filed 12–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–205–000]

Gulfstream Natural Gas System, L.L.C.; Notice of Tariff Filing

December 19, 2002.

Take notice that on December 16, 2002, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed in Appendix A of the filing, to be effective March 1, 2003.

Gulfstream states that it is making this filing to implement Rate Schedule SPS Supply Pooling Service, which will create pooling service on Gulfstream's pipeline in order to accommodate title transfer tracking. Rate Schedule SPS will also provide enhanced flexibility for Gulfstream's shippers, as well as increased certainty for Gulfstream's firm shippers.

Gulfstream states that copies of its filing have been mailed to all affected customers of Gulfstream and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions 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 under the ''e-Filing'' link.

Intervention Date: December 30, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32556 Filed 12–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–20–000]

Northern Natural Gas Company; Notice of Application

December 19, 2002.

Take notice that on December 10, 2002, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP03–20–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) and part 157 of the Commission's regulations thereunder (18 CFR 157.7 and 157.18), for permission and approval to abandon certain pipeline facilities in Nebraska, all as more fully set forth in the application which is on file with the Commission and open to public inspection. 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 (202) 502–8222 or for TTY, (202) 208–1659.

Specifically, Northern proposes to abandon by removal approximately 310 feet and to abandon in place approximately 4.5 miles of 16-inch pipeline, known as its A-line and located in Dodge County, Nebraska. Northern states that the reason for the proposed abandonment is to eliminate an encroached area of the pipeline and to make way for the City of Fremont, Nebraska, and private developers located in Dodge County. It is asserted that the proposed abandonment would not result in the abandonment of service to any of Northern's existing shippers and would not adversely affect the capacity of Northern's system or interfere with Northern's ability to meet

its current contract obligations. The cost of abandoning the pipeline facilities is estimated at $123,000.

Any questions regarding this application should be directed to Michael T. Loeffler, Director, Certificates and Community Relations for Northern, 1111 South 103rd Street, Omaha, Nebraska 68124, at (402) 398–7103 or Bret Fritch, Senior Regulatory Analyst, at (402) 398–7140.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before January 9, 2003, file with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest. However, the non-party commentators will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-filing'' link. The Commission strongly encourages intervenors to file electronically.

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

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32552 Filed 12–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–408–003]

Sabine Pipe Line LLC; Notice of Compliance Filing

December 19, 2002.

Take notice that on December 17, 2002, Sabine Pipe Line LLC (Sabine) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective October 1, 2002.

Second Sub First Revised Sheet No. 204A
Third Sub Third Revised Sheet No. 297

Sabine asserts that the purpose of this filing is to correct two typographical errors found on the sheets previously filed to comply with Commission's order issued December 3, 2002, in Docket No. RP02–408–001.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: December 30, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32555 Filed 12–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–480–003]

Texas Eastern Transmission, LP; Notice of Negotiated Rate Filing

December 19, 2002.

Take notice that on December 16, 2002, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, Original Sheet No. 106, listing Middle Tennessee Natural Gas Utility District (Middle Tennessee) as a party to a negotiated rate agreement, as well as the negotiated rate agreement between Middle Tennessee and Texas Eastern under Rate Schedule FT–1 (Negotiated Rate Agreement), attached to the filing as Appendix A. Texas Eastern requests that the Commission grant all necessary waivers and accept for filing the tariff sheet and the Negotiated Rate Agreement to become effective December 1, 2002.

Texas Eastern states that copies of the filing were mailed to all affected customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. 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, please contact FERC Online

Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions 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 under the ''e-Filing'' link.

Intervention Date: December 30, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32561 Filed 12–24–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[IN149–1; FRL–7428–8]

Notice of Resolution of Notice of Deficiency for Clean Air Act Operating Permit Program in Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that our recent approvals of rule changes made by the State of Indiana (published at 67 FR 34844 and 67 FR 52615) have, collectively, resolved all of the issues listed in the December 11, 2001 (66 FR 64039) notice of program deficiency (NOD) for the Indiana title V operating permit program. As a result, we will not apply section 179(b) sanctions pursuant to 40 CFR 70.10(b)(3) within 18 months of the date of the finding of the deficiency. In addition, we will not promulgate, administer, and enforce a whole or partial program pursuant to 40 CFR 70.10(b)(4) within 2 years of the date of finding of deficiency.

DATES: The effective dates of our approvals for Indiana's NOD corrections were July 15, 2002, and October 15, 2002.

ADDRESSES: The documents relevant to the above action are available for public inspection during normal business hours at the following address: EPA, Region 5, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604. To arrange viewing of these documents, call Sam Portanova at (312) 886–3189.

FOR FURTHER INFORMATION CONTACT: Sam Portanova, EPA, Region 5, 77 W. Jackson Boulevard (AR–18J), Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION: This supplemental information is organized as follows:

A. What Action Are We Taking?
B. What Is The Background Information?
C. What Did We Determine?

A. What Action Are We Taking?

We are notifying the public that our recent approvals of rule changes made by the State of Indiana have, collectively, resolved all of the title V program deficiencies identified in the December 11, 2001, NOD and that the NOD is no longer in effect.

B. What Is the Background Information?

Indiana submitted revisions to its title V program on February 7, 2002, to correct five of the six program deficiency issues identified by EPA in the NOD. Indiana submitted revisions to its permit regulations on March 5, 2002, to correct the remaining deficiency issue identified in the NOD.

C. What Did We Determine?

On May 16, 2002, we published a direct final approval (67 FR 34844) of the title V program revisions that Indiana submitted on February 7, 2002. We did not receive any comments on this direct final notice and the approval became effective on July 15, 2002. The period for judicial review of this approval expired on July 15, 2002. On August 13, 2002, we published a direct final approval (67 FR 52615) of permit regulation revisions that Indiana submitted on March 5, 2002. We did not receive any comments on this direct final notice and the approval became effective on October 15, 2002. The period for judicial review of this approval expired on October 15, 2002. Each of these approvals announced our finding that certain deficiencies identified in the NOD had been resolved. This notice announces that, collectively, the two approvals resolve all deficiencies identified in the NOD.

Dated: November 21, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 02–32565 Filed 12–24–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7430–1]

EPA Science Advisory Board Executive Committee; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Executive Committee (EC) of the U.S. EPA Science Advisory Board (SAB) will meet on Tuesday, January 14, 2003 and Wednesday, January 15, 2003 at the Marriott Hotel, 1331 Pennsylvania Avenue, NW., Washington, DC 20004 (202–393–2000). The meeting will begin by 9 a.m. on January 14 and adjourn no later than 1 p.m. on January 15, 2003 Eastern Time. The meeting is open to the public, however, seating is limited and available on a first come basis.

Purpose of the Meeting: This meeting of the SAB Executive Committee is one in a series of periodic meetings in which the EC takes action on reports generated by SAB Committees, meets with Agency senior officials, and addresses a variety of issues germane to the operation of the Board. The agenda for the meeting will be posted on the SAB Web site *(www.epa.gov/sab)* approximately two weeks before the meeting and may include, but not be limited to the following reports. (Please check the draft agenda on the SAB Web site for any changes to reports being reviewed).

1. Action on Committee reports, including:

(a) Drinking Water Committee (DWC): Long Term Enhanced Surface Water Treatment Rule Proposal and Stage II Disinfection/Disinfectant By-Product (DBP) Rule Proposal: An SAB Report (please see 66 FR 56557, November 8, 2001 for further information).

(b) Radiation Advisory Committee (RAC): Review of Multi-Agency Radiological Lab Analytic Protocols (MARLAP): An SAB Report (please see 67 FR 56829, September 5, 2002 for further information).

2. Meeting with Agency officials, including Dr. Paul Gilman, Science Advisor to the EPA Administrator, and Assistant Administrator, Office of Research and Development, USEPA.

3. Matters of Board business, including (a) Finalizing the SAB Operations Plan for FY2003; and (b) Updates on a number of activities including the EC's Reorganization Subcommittee (RSC).

Availability of Review Materials: Draft SAB reports or other relevant materials will be posted on the SAB Web site *(www.epa.gov/sab)* approximately two weeks before the date of the meeting. The draft meeting agenda will also be posted on the Web site at the same time.

For Further Information—Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (5 minutes or less) must contact Mr. A. Robert Flaak, Designated Federal Officer, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–4546; FAX (202) 501–0582; or via e-mail at *flaak.robert@epa.gov.*

Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Mr. Flaak no later than noon Eastern Time on January 8, 2003. General information concerning this meeting is available from Ms. Betty Fortune, Office Assistant, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–4534; FAX (202) 501–0323; or via e-mail at *fortune.betty@epa.gov.*

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to Mr. Flaak at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format)). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on the SAB Web site *(http://www.epa.gov/sab)* and in The FY2001 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0323.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Mr. Flaak at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: December 19, 2002.

Vanessa Vu, PhD,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 02–32602 Filed 12–24–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7429–1]

Report to Congress on the Impacts and Control of Combined Sewer Overflows and Sanitary Sewer Overflows; Availability of Public Health Experts Workshop Summary (EPA 833–R–02–002)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Pub. L. 106–554 required EPA to provide to Congress a report on the impacts and control of combined sewer overflows (CSOs) and sanitary sewer overflows (SSOs). In evaluating the extent of human health impacts caused by municipal CSOs and SSOs, EPA invited a group of public health experts to participate in a facilitated discussion of this issue on August 14 and 15, 2003, in Arlington, Virginia. EPA has published a summary of this meeting under publication number EPA 833–R–02–002.

ADDRESSES: To obtain paper copies of the summary, contact Kevin DeBell, EPA Office of Wastewater Management, 1200 Pennsylvania Ave., NW., Mail Code 4203M, Washington, DC 20460; telephone (202) 564–0040; e-mail *debell.kevin@epa.gov;* fax (202) 564–6392. To obtain an electronic copy of the summary, visit EPA's National Pollutant Discharge Elimination System Web site at *http://www.epa.gov/npdes/.*

FOR FURTHER INFORMATION CONTACT: Kevin DeBell, EPA Office of Wastewater Management, telephone (202) 564–0040, e-mail *debell.kevin@epa.gov,* fax (202) 564–6392.

SUPPLEMENTARY INFORMATION: The Consolidated Appropriations Act for Fiscal Year 2001, Pub. L. 106–554 (also referred to as the ''Wet Weather Water Quality Act of 2000''), required EPA to provide two Reports to Congress. The first report, ''Implementation and Enforcement of the Combined Sewer Overflow Control Policy (EPA 833–R–01–003),'' was delivered on January 29, 2002. The second report, due to Congress on December 15, 2003, must summarize:

(A) The extent of the human health and environmental impacts caused by municipal CSOs and SSOs, including the location of discharges causing such impacts, the volume of pollutants discharged, and the constituents discharged;

(B) The resources spent by municipalities to address these impacts; and

(C) An evaluation of the technologies used by municipalities to address these impacts.

In assessing the human health impact of CSOs and SSOs, initial research revealed that relatively little data were available. Factors complicating data collection in this area include public perception of reporting overflows in recreational areas; difficulty in separating sewer overflow loadings of pathogens from other sources; multiple pathways for illness; underreporting of waterborne illnesses; and a lack of comprehensive tracking for such illnesses.

In response to these challenges, EPA held a Public Health Impacts Experts Workshop on August 14 and 15, 2002. A group of nine external and EPA experts in public health, epidemiology, and wastewater treatment attended the workshop. Observers included representatives of stakeholder organizations and EPA personnel. The workshop intended to elucidate issues associated with sewer overflow health impacts; to review and supplement data sources; and to critique the proposed methodology for this effort. The workshop solicited individual opinions and provided a forum for information exchange.

The summary of this workshop includes background information, remarks of the presenters and participants, summaries of discussion sessions, an attendee list, an agenda, and additional information.

(**Authority:** Division B, Title I, Sec. 112, Pub. L. 106–554, 114 Stat. 2763A–224.)

Linda Boornazian,

Director, Water Permits Division, Office of Wastewater Management.

[FR Doc. 02–32566 Filed 12–24–02; 8:45 am]

BILLING CODE 6561–12–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

December 18, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 24, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804 or Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at (202) 418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–XXXX.

Title: FCC Wireless Telecommunications Bureau Technical Support Request Form.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit, not-for-profit institutions, individuals or households, and state, local or tribal government.

Number of Respondents: 17,500.

Estimated Time Per Response: 8 minutes.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 2,333 hours.

Total Annual Cost: $235,666.

Needs and Uses: The FCC Wireless Telecommunications Bureau supports several computer/internet-based systems used to support their licensing and auction services. In offering this service, the public often requests help or consultation with using these systems. The FCC currently receives these requests via telephone and e-mail. There is currently no burden or cost estimate for submitting these e-mails and telephone requests. A streamlined, electronic form should substantially decrease public and staff burden since all the information needed to facilitate a technical support request will now be submitted in a standard format. This will eliminate or at least minimize the need to follow-up with the customers to obtain al the information necessary to respond to their request. This form will also help presort requests to previously defined categories to all staff to respond quickly.

OMB Control No.: 3060–1009.

Title: Telecommunications Reporting Worksheet, CC Docket No. 96–45.

Form No.: FCC Form 499–M.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 1.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion, annual, quarterly, monthly, and other reporting requirements, recordkeeping requirement, and third party disclosure requirement.

Total Annual Burden: 1 hour.

Total Annual Cost: N/A.

Needs and Uses: Pursuant to the Communications Act of 1934, as amended, telecommunications carriers (and certain other providers of telecommunications services) must contribute to the support and cost recovery mechanisms for telecommunications relay services, numbering administration, number portability, and universal service. The Commission is seeking comment on three connection-based proposals to further refine the record in the proceeding to revisit its universal service contribution methodology. If adopted, the proposals may entail altering the current reporting requirements to which interstate telecommunications carriers are subject under Part 54 of the Commission's rules.

OMB Control No.: 3060–0463.

Title: Telecommunications Services for Individuals with Hearing and Speech Disabilities and the Americans with Disabilities Act of 1990, 47 CFR part 64 (sections 64.601—64.605).

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, and state, local or tribal government.

Number of Respondents: 5,052

Estimated Time Per Response: 6 hours.

Frequency of Response: On occasion, annual and every five year reporting requirements, third party disclosure requirement, and recordkeeping requirement.

Total Annual Burden: 26,831 hours.

Total Annual Cost: N/A.

Needs and Uses: Title IV of the Americans with Disabilities Act (ADA), which is codified at section 225 of the Communications Act of 1934, as amended (the Act), mandates that the Federal Communications Commission (FCC) ensure that interstate and intrastate telecommunications relay services (TRS) are available, to the extent possible and in the most efficient manner, to individuals in the United States with hearing and speech disabilities. Title IV aims to further the Act's goal of universal service by providing to individuals with hearing or speech disabilities telephone services that are functionally equivalent to those available to individuals without such disabilities. Since the establishment of this mandate, the Commission has taken numerous steps to increase the availability of TRS, and to ensure that TRS users have access to the same services available to all telephone service users.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–32478 Filed 12–24–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency is submitting a request for review and approval of a collection of information under the

emergency processing procedures in the Office of Management and Budget (OMB) regulation 5 CFR 1320.13. FEMA is requesting that this information collection be approved by January 21, 2003. The approval will authorize FEMA to use the collection through July 31, 2003. FEMA plans to follow this emergency request with a request for a 3-year approval. The request will be processed under OMB's normal clearance procedures in accordance with the provisions of OMB regulation 5 CFR 1320.10. To help us with the timely processing of the emergency and normal clearance submissions to OMB, FEMA invites the general public to comment on the proposed collection of information.

SUPPLEMENTARY INFORMATION: Section 420 of the Robert R. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended, authorizes the President to provide assistance, including grants, equipment, supplies, and personnel, to any State for the suppression of any fire on publicly or privately-owned forest or grassland, which threatens such destruction as would constitute a major disaster. Under E.O. 12148, the President has delegated this authority to the Director of FEMA, who in turn has re-delegated the authority to the Response and Recovery Executive Associate Director. FEMA has issued regulations pertaining to fire suppression assistance (FSA) contained in 44 CFR part 206, subpart L.

Collection of Information:

Title: Request for Fire Suppression Assistance.

Type of Information Collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

OMB Number: 3067–0066.

Abstract: FEMA provides assistance for fire suppression of forest or grassland fires, which threatens destruction to life and/or improved property as would constitute a major disaster under Fire Suppression Assistance Program (FSAP). FEMA Form 20–10, Financial Status Report, is used by the Grantee during the closeout process to provide FEMA with a final reporting of costs under the FSAP. FEMA Form 90–91, Damage Survey Report, is prepared by the Principal Advisor, State Forester, and a FEMA representative upon termination of eligible fire suppression assistance. Standard Form (SF) 424, Federal Assistance (referred to by States as a Fire Project Application), is submitted by a State immediately after FEMA's Regional Director terminates fire suppression assistance. Standard Form 270, Request for Advance or Reimbursement, is used by the State as an option to receive funds. In addition, under Section 420 of the Stafford Act there must be a FEMA-State Agreement. Also, a State Administrative Plan must be developed by the State for the Administration of a Fire Suppression Assistance Grant. The plan must designate the State agency that will be responsible for the administration of the program and ensure compliance with the law and regulation applicable to (FSA) grants and ensure the administrative plan is incorporated into the State Emergency Plan. Applicants are required to notify FEMA of all benefits, actual or anticipated, received from other sources for the lost for which they are applying to FEMA for assistance. The State may appeal any cost or eligibility determination under the approved declaration within 60 days after receipt of the notice of action being appealed.

Affected Public: State, local or tribal government.

Estimated Total Annual Burden Hours:

Information collection	Respondents per year	House per response	Total burden
FEMA-Statement Agreement	11	1.5 hour	16.5 hours
Standard Form 424	42	1 hour	42 hours
FEMA Form 20–10	42	1 hour	42 hours
FEMA Form 90–91	42	30 minutes	21 hours
Standard Form 270 or Letter of Credit	1	30 minutes	30 minutes
State Administrative Plan	11	8 hour	88 hours
Hazard Mitigation Plan	11	160 hours	1,760 hours
Appeals	1	1 hour	1 hour
Duplication of Benefits	1	1 hour	1 hour
Estimated total	42		1,972

Estimated Cost: FEMA anticipate costs will be significantly less for the majority of applying States—approximately $500.00 per year for those States with State Administrative Plans and Hazard Mitigation Plans already developed as a requirement of receiving fire suppression assistance grants previously. A GS–12 at $23.94 per hour processes 6 fire suppression assistance grants, it takes no more than 11 hours to process each grant from start to finish. Seven personnel processing 6 grants = 42 grants × 11 hours = 462 hours × $23.94 = $11,060.28.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses. Submit comments to the OMB within 30 days of the date of this notice. To ensure that FEMA is fully aware of any comments or concerns that you share with OMB, please provide us with a copy of your comments. FEMA will continue to accept comments for 60 days from the date of this notice.

OMB Addresses: Interested persons should submit written comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Emergency Management Agency, 725 17th Street, NW., Washington, DC 20503.

FEMA Addresses: Submit written comments to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology and Services Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Requests for additional information

contact Lorine Boardwine, Response and Recovery Directorate, at (202) 646–2948. Contact Ms. Anderson at (202) 646–2625, facsimile number (202) 646–3347, or e-mail address *InformationCollections@fema.gov* for copies of the proposed collection of information.

Dated: December 17, 2002.

Edward W. Kernan,

Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 02–32521 Filed 12–24–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1444–DR]

Ohio; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Ohio, (FEMA–1444–DR), dated November 18, 2002, and related determinations.

EFFECTIVE DATE: December 12, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Ohio is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 18, 2002:

Cuyahoga and Summit Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–32520 Filed 12–24–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011528–022.
Title: Japan-U.S. Eastbound Freight Conference.
Parties:
American President Lines, Ltd.
Hapag-Lloyd Container Line GMBH
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
A.P. Moller-Maersk Sealand
Nippon Yusen Kaisha
Orient Overseas Container Line Limited
P&O Nedlloyd B.V.
P&O Nedlloyd Limited
Wallenius Wilhelmsen Lines AS
Synopsis: The proposed amendment extends the suspension of the agreement for another six month period through July 31, 2003.

Agreement No.: 200233–006.
Title: Packer Avenue Lease and Operating Agreement.
Parties: Philadelphia Regional Port Authority Astro Holdings, Inc.
Synopsis: The amendment extends the term of the lease until December 31, 2012, and changes the compensation and security deposit provisions.

Agreement No.: 201110–005.
Title: Port of Oakland and Hanjin Shipping Co., Ltd. Marine Terminal Agreement.
Parties: City of Oakland Board of Port Commissioners Total Terminals International, LLC.
Synopsis: The amendment to the agreement adds alternative payment provisions for the agreement's minimum annual compensation.

Agreement No.: 201140.
Title: West Basin Container Terminal Cooperative Working Agreement.
Parties:
China Shipping (North America) Holding Co., Ltd.
Yang Ming Line Holding Co.
Marine Terminals Corporation.
Synopsis: The agreement sets forth the general terms and conditions upon which the parties will jointly establish and operate a marine terminal facility at the Port of Los Angeles.

Agreement No.: 201141.
Title: Marine Terminal Agreement between SK Shipping and the City and County of San Francisco.
Parties:
City and County of San Francisco SK Shipping Co. Ltd.
Synopsis: The agreement covers the non-exclusive use of the port's marine terminal at Pier 80.

By Order of the Federal Maritime Commission.

Dated: December 20, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–32581 Filed 12–24–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Atallah Business Group, Inc., 6811 North West 87 Avenue, Miami, FL 33178. *Officers:* Betsy De Los Angeles Perez-Diaz, Secretary (Qualifying Individual), Ramses Atallah, President.

Famous Target Logistics Inc., 147–39 175th Street, Suite 215, Jamaica, NY 11434. *Officers:* Rende Li, Vice President (Qualifying Individual) Yuen Chun Wong, Director.

Scarbrough International Express Lines, Ltd. dba, Six Lines, Ltd., Six Pack Express, Inc., 10841 Ambassador Drive, Kansas City, MO 64153. *Officers:* Sean Kevin Scarbrough, President (Qualifying Individual) Roger Lee Scarbrough, CEO

Panex Logistics Int'l (U.S.A.), Inc., 9111 S. La Cienega Blvd., Suite 104, Inglewood, CA 90301. *Officer:* Chul Heui Choi, President (Qualifying Individual)

Embarque Bella Vista Inc., 1170 Randall Avenue, Bronx, NY 10474.

Officers: Diego Rivera, President (Qualifying Individual) Eloy Mora, Vice President

CRC Universal, Inc., 7957 NW 67 Street, Miami, FL 33166. *Officers:* Carlos L. Mulet, President (Qualifying Individual) Colin G. Lowe, Vice President

J.M.P. Shipping, L.L.C., 10185 Lakeside Drive, Coral Gables, FL 33156. *Officer:* Jeffrey Paul Patterson, Managing Member (Qualifying Individual)

Savant International Logistics Ltd., Cargo Building 80, Rm. 101, JFK Int'l Airport, Jamaica, NY 11430. *Officers:* Hal Robbins, Vice President (Qualifying Individual), Leonard Satz, President

FMI Container Lines Inc., 9133 S. La Cienega Blvd., Suite 140, Inglewood, CA 90301. *Officers:* David Shin, President (Qualifying Individual), Chin Shin, Treasurer

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Fast Track Worldwide Logistics, Inc., 1571 NW 93 Avenue, Miami, FL 33172. *Officers:* Alberto A. Rodriguez, Secretary (Qualifying Individual) Niurka Al Varado, President

Latek Logistics Inc., 301 Pen Horn Avenue, Unit 4, Secaucus, NJ 07094. *Officers:* Behcet Tuysuzogu, President (Qualifying Individual), Mustafa Sillan, Vice President

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

All American Cargo-Servicios Nicaraguenses, Corp., dba All American Cargo-Servicios Nicaraguenses, 1925 NW 21 Terrace, Miami, FL 33142. *Officers:* Martha Elizabeth Rivas, Treasurer (Qualifying Individual), Oscar Galo, President

A.Y. Transport, Inc., 125 Component Drive, San Jose, CA 95131. *Officers:* Amit Ezyoni, CEO Yeela Haggai, Partner (Qualifying Individual),

Transworld Logistics and Shipping Services Inc., dba Allcargo Movers Inc., 200 Middlesex-Essex Tpk. Suite 200, Iselin, NJ 08830. *Officers:* Michael Veynberg, Treasurer (Qualifying Individual), Sivaswamy Iyer Ramakrishnan, President

Dated: December 20, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–32578 Filed 12–24–02; 8:45 am]

BILLING CODE 4140–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean-Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/Address	Date Reissued
3459F	Cross Ocean International, Inc., 10101 S. Roberts Road, Suite 200, Palos Hills, IL 60465	November 3, 2002.
2638F	Intercorp Forwarders, Ltd., 3534 84th Street, Unit B–7, Jackson Heights, NY 11372	August 15, 2002.
4306N	International Transport Services, Inc., 18747 Sheldon Road, Cleveland, OH 44130	November 3, 2002.
16281	Pan Asia Line Corporation, 820 So. Garfield Avenue, #303, Alhambra, CA 91801.	October 23, 2002.
3478F	Sextant Overseas Shipping Corp., P.O. Box 126, Enid Road, Summit, NY 12175	June 19, 2002.
15605N	Solid Trans Inc., 5146 W. 104th Street, Inglewood, CA 90304	June 30, 2002.

Dated: December 20, 2002.

Sandra L. Kusumoto,

Director, , Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–32580 Filed 12–24–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 1367NF.

Name: BLG Incorporated dba Cross Water Line.

Address: 350 Albany Street, Suite 6 I, New York, NY 10280.

Date Revoked: October 25, 2002.

Reason: Failed to maintain valid bonds.

License Number: 16712NF.

Name: Eagle International Express Ltd. dba Eagle International Ltd., dba Eagle Express, An Eagle Company.

Address: 2765 Old Higgins Road, Elk Grove Village, IL 60007.

Date Revoked: October 23, 2002.

Reason: Failed to maintain valid bonds.

License Number: 173NF.

Name: International Shipping Corporation.

Address: 2630 NW 112th Avenue, Miami, FL 33172–1818.

Date Revoked: November 7,2002.

Reason: Failed to maintain valid bonds.

License Number: 12190N.

Name: Reliable Overseas Shipping & Trading, Inc.

Address: 239–241 Kingston Avenue, Brooklyn, NY 11213.

Date Revoked: November 16, 2002.

Reason: Failed to maintain a valid bond.

December 20, 2002.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–32579 Filed 12–24–02; 8:45 am]

BILLING CODE 6730–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0228]

Information Collection: Nondiscrimination in Federal Financial Assistance Programs

AGENCY: Office of Equal Employment Opportunity, GSA.

ACTION: Notice of reinstatement and request for public comments of OMB clearance number 3090–0228.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration requested in June 2002 that the Office of Management and Budget (OMB) reinstate an information collection regarding nondiscrimination in Federal financial assistance

programs. OMB reinstated the collection on August 7, 2002. This information is needed to facilitate nondiscrimination in GSA's Federal Financial Assistance Programs, consistent with Federal civil rights laws and regulations that apply to recipients of Federal financial assistance.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: *Comment Due Date:* February 24, 2003.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Stephanie Morris, General Services Administration (MVA), Room 4035, 1800 F Street, NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: K. Evelyn Britton, Office of Civil Rights, (202) 501–4347.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration (GSA) has mission responsibilities related to monitoring and enforcing compliance with Federal civil rights laws and regulations that apply to Federal Financial Assistance programs administered by GSA. Specifically, those laws provide that no person on the ground of race, color, national origin, disability, sex or age shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program in connection with which Federal financial assistance is extended under laws administered in whole or in part by GSA. These mission responsibilities generate the requirement to request and obtain certain data from recipients of Federal surplus property for the purpose of determining compliance, such as the number of individuals, based on race and ethnic origin, of the recipient's eligible and actual serviced population; race and national origin of those denied participation in the recipient's program(s); non-English languages encountered by the recipient's program(s) and how the recipient is addressing meaningful access for individuals that are Limited English Proficient; whether there has been complaints or lawsuits filed against the recipient based on prohibited discrimination and whether there has been any findings; and whether the recipient's facilities are accessible to qualified individuals with disabilities.

B. Annual Reporting Burden

Respondents: 500.
Responses Per Respondent: 1.
Total Responses: 500.
Hours Per Response: 2.
Total Burden Hours: 1000.
Obtaining Copies of Proposals: A copy of this proposal may be obtained from the General Services Administration, Regulatory & Federal Assistance Publications Division, (MVA), Room 4035, 1800 F Street, NW., Washington, DC 20405, or by telephoning (202) 208–7312, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0228, Nondiscrimination in Federal Financial Assistance Programs, in all correspondence.

Dated: November 26, 2002.

Michael Carleton,

Chief Information Officer.

[FR Doc. 02–32476 Filed 12–24–02; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–24]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Families, Communities, and Diabetes Management Project—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Diabetes Mellitus Type 2 is a chronic metabolic disease with a potential for serious health consequences that include both psychological and physical conditions. Effective management of this disease is important to prevent the development of these problems. No previous studies have systematically examined the ways in which psychological functioning, patient-provider relationships, family and social support, health insurance availability and utilization, lifestyle practices, and community support influence diabetes self-management among African American patients. Most diabetes management information is based on research conducted primarily with White patients. Accordingly, the Division of Diabetes Translation within the National Center for Chronic Disease Prevention and Health Promotion of the Centers for Disease Control and Prevention plans to conduct a longitudinal, family-centered research project to determine optimal ways of teaching African American patients and their families how to work together to manage diabetes successfully.

The research will involve samples of 40- to 64-year-old African American men and women with Type 2 diabetes and their close family members. Participating families will be divided into two groups, an intervention group that will receive the intervention at the beginning of the study, and a comparison group that will receive a modified version at the end. Measurements of self-care adherence and diabetes control will include both self-reports and objective measures such as blood glucose levels obtained through clinical lab work. Other data will include diabetes knowledge, community characteristics, social support, community support, psychological functioning, patient-provider relationships, and health care coverage. Participant involvement will occur over 13 month period. The estimated cost to respondents is $213,236.

respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Adults with Diabetes:				
Questionnaires	400	3	60/60	1200
Clinical Lab Work	400	3	60/60	1200
Glucose Test Meter Training	400	1	60/60	400
Family Members: Questionnaires	400	3	45/60	900
Teenagers: Questionnaires	400	3	30/60	600
Total				4300

Dated: December 19, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Evaluation.

[FR Doc. 02–32516 Filed 12–24–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–03–25]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Reducing the Risk of Zoonotic Disease Transmission In Venues Where the Public Has Contact With Animals: A Survey of Current Practices—New—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention. The purpose of this project is reduce transmission of zoonotic disease to those persons who interact with farm animals in a number of different settings. Though most of these interactions probably do not result in human illness, several recent outbreaks have highlighted the potential danger of infectious disease transmission in venues where the public comes into contact with animals and their environment. A large outbreak of *E. coli* O157:H7 infections among visitors to a petting zoo in Pennsylania in 2000 prompted CDC to develop recommendations to address this issue. Several large outbreaks of *E. coli* O157:H7 have also occurred at county fairs from persons being exposed to animals and their environment. No state or federal laws exist that deal specifically with public health issues relating to interactions between the public and farm animals.

The proposed study consists of a self-administered, written questionnaire mailed to petting zoos and fairs (state, regional, and county). The survey asks individuals to describe their zoo or fair's current practices regarding human interaction with animals, food and beverage consumption in relation to animal interaction areas, and handwashing facilities. The list of zoos comes from facilities licensed by the U.S. Department of Agriculture to show animals for commercial purposes. The list of fairs comes from the International Association of Fairs and Expositions, a private trade organization that volunteered to participate with CDC in having its members complete this survey. Study objectives are to describe current practices and to determine how CDC, other federal agencies, and non-governmental organizations can best educate zoos and fairs about safe animal-human interaction. There is no cost to respondents.

Survey	No. of respondents	No. of responses/respondent	Average burden/response (in hours)	Total burden (in hours)
Written Questionnaire	1400	1	10/60	233
Total				233

Dated: December 19, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–32519 Filed 12–24–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–13–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

Evaluation of the Graduate Certificate Program—New—National Center for HIV, STD, and TB Prevention (NCHSTP), the Centers for Disease Control and Prevention (CDC). The National Center for HIV, STD and TB, CDC proposes to collect data to evaluate the Graduate Certificate Program (GCP). From July 1997 through January 2001, NCHSTP Prevention Support Office administered the GCP which funded 130 CDC public health professionals and 130 state and local public health professionals to attend a distance learning program that consisted of approximately one-half of the requirements of a graduate-level degree. The purpose of the proposed project is to evaluate the process, impact, and outcome measures of the GCP that were described in the original Request for Proposal (RFP). CDC is looking to establish perceived or measurable benefits of the program, as well as to evaluate the effectiveness of the distance-based education approach.

The data collected will be used to determine the effectiveness of the distance-based training approach, and to provide recommendations for developing similar training strategies in the future.

Data will be collected through an attitudinal survey that will be available in both paper and electronic copies. The survey will be administered to 520 respondents (approximately 260 state and local public health professionals (130 participants and 130 nonparticipants) and 260 supervisors (130 supervisors of participants and 130 supervisors of nonparticipants). It is estimated that it will take respondents approximately 20 minutes to complete the survey. The annual burden for this data collection is 192 hours.

Respondents	No. of respondents	No. of responses/respondent	Average burden/response (in hours)
Federal Public Health Professionals	144	1	20/60
State and Local Public Health Professionals	144	1	20/60
Supervisors of Participants	144	1	20/60
Survey of Non-participant Supervisors	144	1	20/60

Dated: December 19, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–32517 Filed 12–24–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH).

Time and Date: 8 a.m.–5 p.m., January 7, 2003. 8 a.m.–12:30 p.m., January 8, 2003.

Place: The Westin Cincinnati, 21 East Fifth Street, Cincinnati, Ohio 45202, telephone 513/621–7700, fax 513/852–5670.

Status: Open 8 a.m.–5 p.m., January 7, 2003. Open 8 a.m.–9:45 a.m., January 8, 2003. Closed 10 a.m.–12:30 p.m., January 8, 2003.

Background: The Advisory Board on Radiation and Worker Health (''the Board'') was established under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) of 2000 to advise the President, through the Secretary of Health and Human Services (HHS), on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Board include providing advice on the development of probability of causation guidelines which have been promulgated by HHS as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, evaluation of the scientific validity and quality of dose reconstructions conducted by the National Institute for Occupational Safety and Health (NIOSH) for qualified cancer claimants, and advice on the addition of classes of workers to the Special Exposure Cohort.

In December 2000 the President delegated responsibility for funding, staffing, and operating the Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was signed on August 3, 2001, and in November 2001, the President completed the appointment of an initial roster of 10 Board members. In April, and again in August 2002, the President appointed additional members to ensure more balanced representation on the Board.

Purpose: This board is charged with (a) providing advice to the Secretary, HHS on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS on the scientific validity and quality of dose reconstruction efforts performed for this Program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters to be Discussed: The meeting will convene in open session from 8 a.m.–5 p.m. on January 7, 2003, and 8 a.m.–9:45 a.m. on January 8, 2003, to address matters related to program and dose reconstruction contract status, Atomic Weapons Employer site profile development, and hear a report from the Dose Reconstruction Workgroup. The remainder of the meeting will proceed in closed session.

The purpose of the closed session is to include development, review, and discussion of a proposed Independent Government Cost Estimate (IGCE) for a technical support

contract intended to assist the Board in fulfilling its statutory duty to advise the Secretary, HHS regarding dose reconstruction efforts under the EEOICPA. The IGCE will include contract cost estimates, the disclosure of which would adversely impact the Government's negotiating position and strategy in regards to this contract by giving potential bidders and undue advantage in determining the price associated with their bids. The information being discussed will include information of a confidential nature.

This portion of the meeting will be closed to the public in accordance with provisions set forth regarding subject matter considered confidential under the terms of 5 U.S.C. 552b(c)(9)(B), 48 CFR 5.401(b)(1) and (4), and 48 CFR 7.304(d), and the Determination of the Director, Management Analysis and Services Office, Centers for Disease Control and Prevention, pursuant to Pub. L. 92–463.

This notice is being published 15 days less than meeting date, due to administrative delay. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Larry Elliott, Executive Secretary, ABRWH, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/841–4498, fax 513/458–7125.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 16, 2002.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–32511 Filed 12–24–02; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0215]

Agency Information Collection Activities; Announcement of OMB Approval; Export Certificates for FDA Regulated Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration is announcing that a collection of information entitled ''Export Certificates for FDA Regulated Products Under Sections 801(e) and 802 of the Federal Food, Drug, and Cosmetic Act'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Mark L. Pincus, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1471.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 9, 2002 (67 FR 57241), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0498. The approval expires on November 30, 2005. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: December 18, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 02–32443 Filed 12–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0315]

Agency Information Collection Activities; Announcement of OMB Approval; Medical Devices: Humanitarian Use Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Medical Devices: Humanitarian Use Devices'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 18, 2002 (67 FR 64392), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0332. The approval expires on November 30, 2005. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: December 18, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 02–32444 Filed 12–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00P–1378]

Draft Guidance for Industry on Labeling for Topically Applied Cosmetic Products Containing Alpha Hydroxy Acids as Ingredients; Availability; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of December 2, 2002 (67 FR 71577). The document announced the availability of a draft guidance entitled ''Guidance for Industry: Labeling for Topically Applied Cosmetic Products Containing Alpha Hydroxy Acids as Ingredients.'' The document was published with an inadvertent error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 02–30340, appearing on page 71577 in the **Federal Register** of Monday, December 2, 2002, the following correction is made:

1. On page 71577, in the third column, in the second paragraph, in the third line, ''-hydroxyoctanoic acid, and -hydroxydecanoic acid'' is corrected to read ''α-hydroxyoctanoic acid, and α-hydroxydecanoic acid''.

2. On page 71578, in the third column, under ''IV. References,'' in reference 1., in the third line, ''-Hydroxy Acids'' is corrected to read ''α-Hydroxy Acids''.

Dated: December 18, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 02–32613 Filed 12–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4736–N–18]

Notice of Proposed Information Collection for Public Comment—Public Housing Drug Elimination Program Formula Allocation: Plan, Consultation, Reporting Resident Survey

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: February 24, 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: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4249, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–0614, extension 4128. (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 whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Public Housing Drug Elimination Program Formula Allocation: Plan, Consultation, Reporting Resident Survey.

OMB Control Number: 2577–0124.

Description of the need for the information and proposed use: To continue to expend existing funding, each PHDEP recipient must submit to HUD a plan for addressing the problem of drug related and violent crime in and around the housing covered by the plan. In accordance with 24 CFR 761.35, recipients are required to evaluate and report on its performance with the plan.

Agency form numbers, if applicable: None.

Members of affected public: State or Local Government; Individuals or households; Not for profit institutions.

Estimation of the total number of hours needed to pare the information collection including number of respondents, frequency of response, and hours of response: 1,085 respondents, annually, 87 average hours per response, total reporting burden 94,395 hours. These hours reflect current requirements. Particularly in view of Congress' decision not to fund PHDEP in FY 2002, HUD is reviewing proposals to substantially streamline reporting requirements.

Status of the proposed information collection: Reinstatement, without change.

Authority: Section 3506 of the paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 18, 2002.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 02–32439 Filed 12–24–02; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exxon Valdez Oil Spill Trustee Council; Notice of Meeting

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the *Exxon Valdez* Oil Spill Public Advisory Committee.

DATES: January 14, 2003, at 4 p.m.

ADDRESSES: Hotel Captain Cook, 939 West 5th Avenue, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 ''C'' Street, Suite 119, Anchorage, Alaska, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Committee was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91–081 CV. The meeting agenda will feature discussions about the status of the Gulf of Alaska Ecosystem Monitoring and Research program and the election of officers.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 02–32479 Filed 12–24–02; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Mono Basin Area Sage Grouse as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the Mono Basin area sage grouse (*Centrocercus urophasianus phaios*) under the Endangered Species Act of 1973, as amended. We find the petition does not present substantial scientific or commercial information indicating that listing this species may be warranted.

DATES: The finding announced in this document was made December 26, 2002.

ADDRESSES: The complete file for this finding is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife

Service, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, NV 89502.

FOR FURTHER INFORMATION CONTACT: Robert D. Williams, Field Supervisor, Nevada Fish and Wildlife Office (see **ADDRESSES**) (telephone 775/861–6300; facsimile 775/861–6301).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, (Act) as amended (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. This finding is to be based on all information available to us at the time we make the finding. To the maximum extent practicable, this finding is to be made within 90 days of our receipt of the petition, and notice of this finding is to be published promptly in the **Federal Register**. Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424). If the finding is that substantial information was presented, we are required to promptly commence a review of the status of the involved species, if one has not already been initiated, under our internal candidate assessment process.

On January 2, 2002, we received a petition, dated December 28, 2001, from the Institute for Wildlife Protection requesting that the greater sage grouse (*Centrocercus urophasianus phaios*) occurring in the Mono Basin area of Mono County, California, and Lyon County, Nevada, be emergency listed as an endangered distinct population segment (DPS) under the Act. The petition clearly identified itself as such and contained the name, address, and signature of the petitioning organization's representative. Accompanying the petition was information related to the taxonomy, life history, demographics, movements, habitats, threats, and the past and present distribution of the greater sage grouse. The petitioner contends that the sage grouse occurring in the Mono Basin are genetically unique from the birds that occur in the rest of the range of the species and possesses other distinctive features as well. Also, the petitioner contends that sage grouse in the Mono Basin are imminently threatened with extinction. In order to determine if substantial information is available to indicate that the petitioned action may be warranted, the Service has reviewed the following: the subject petition, literature cited in the petition, information provided by recognized experts or agencies cited in the petition, and information otherwise available in Service files.

The petitioner's request is to list the Mono Basin area population of the greater sage grouse (*Centrocercus urophasianus phaios*) as a DPS. However, the scientific name used by the petitioner to identify the greater sage grouse is incorrect. The correct scientific name for the greater sage grouse is *Centrocercus urophasianus,* whereas *C. u. phaios* is the western subspecies of the greater sage grouse and does not occur in the Mono Basin (Aldrich 1946, 1963; American Ornithologists' Union (AOU) 1957; Johnsgard 1973). The sage grouse that occurs in the Mono Basin area has been described as the eastern subspecies of the greater sage grouse (*C. urophasianus urophasianus*) (Aldrich 1946, 1963; AOU 1957; Johnsgard 1973).

The following information regarding the description and natural history of the sage grouse has been condensed from the following sources: Aldrich 1963, Johnsgard 1973, Connelly *et al.* 1988, Fischer *et al.* 1993, Drut 1994, Western Sage and Columbian Sharp-Tailed Grouse Workshop 1996 and 1998, Schroeder *et al.* 1999, and Governor Guinn's Sage Grouse Conservation Planning Team 2001.

The sage grouse is the largest North American grouse species. Adult males range in size from 66 to 76 centimeters (cm) (26 to 30 inches (in)) and weigh between 2 and 3 kilograms (kg) (4 and 7 pounds (lb)); adult females range in size from 48 to 58 cm (19 to 23 in) and weigh between 1 and 2 kg (2 and 4 lb). Males and females have dark grayish-brown body plumage with many small gray and white speckles, fleshy yellow combs over the eyes, long pointed tails, and dark-green toes. Males also have blackish chin and throat feathers, conspicuous phylloplumes (specialized erectile feathers) at the back of the head and neck, and white feathers forming a ruff around the neck and upper belly. During breeding displays, males also exhibit olive-green apteria (fleshy bare patches of skin) on their breasts.

Sage grouse depend on a variety of shrub steppe habitats throughout their life cycle, and are particularly tied to several species of sagebrush (*Artemesia* spp.). Throughout much of the year, adult sage grouse rely on sagebrush to provide roosting cover and food. During the winter they depend almost exclusively on sagebrush for food. The type and condition of shrub steppe plant communities strongly affect habitat use by sage grouse populations. However, these populations also exhibit strong site fidelity (loyalty to a particular area). Sage grouse populations may disperse up to 160 kilometers (km) (100 miles (mi)) between seasonal use areas; however, average population movements are generally less than 34 km (21 mi). Sage grouse are also capable of dispersing over areas of unsuitable habitat.

During the spring breeding season, primarily during the morning hours just after dawn, male sage grouse gather together and perform courtship displays on areas called leks (areas where animals assemble and perform courtship displays). Areas of bare soil, short grass steppe, windswept ridges, exposed knolls, or other relatively open sites may serve as leks. Leks range in size from less than 0.4 hectare (ha) (1 acre (ac)) to more than 40 ha (100 ac) and can host several to hundreds of males. Some leks are used for many years. These ''historic'' leks are typically larger than, and often surrounded by, smaller ''satellite'' leks, which may be less stable in size and location within the course of one year and between two or more years. A group of leks where males and females may interact within a breeding season or between years is called a lek complex. Males defend individual territories within leks and perform elaborate displays with their specialized plumage and vocalizations to attract females for mating.

Females may travel up to 35 km (22 mi) after mating, and typically select nest sites under sagebrush cover, although other shrub or bunchgrass species are sometimes used. Nests are relatively simple and consist of scrapes on the ground. Clutch sizes range from 6 to 13 eggs. Nest success ranges from 10 to 63 percent and is relatively low compared to that of other prairie grouse species. Shrub canopy and grass cover provide concealment for sage grouse nests and young, and may be critical for reproductive success.

Sage grouse typically live between 1 and 4 years; however, sage grouse up to 10 years of age have been recorded in the wild. The annual mortality rate for sage grouse is roughly 50 to 55 percent, which is relatively low compared to rates for other prairie grouse species. Females generally have a higher survival rate than males, which accounts for a female-biased sex ratio in adult birds.

Prior to European expansion into western North America, sage grouse (*C. urophasianus*) were believed to occur in

the States of Washington, Oregon, California, Nevada, Idaho, Montana, Wyoming, Colorado, Utah, South Dakota, North Dakota, Kansas, Oklahoma, Nebraska, New Mexico, Arizona, and the Canadian provinces of British Columbia, Alberta, and Saskatchewan (Schroeder *et al.* 1999). Currently, sage grouse occur in 11 States and 2 Canadian provinces, ranging from extreme southeastern Alberta and southwestern Saskatchewan, south to western Colorado, and west to eastern California, Oregon, and Washington. In addition, sage grouse occur in southern Idaho, the northern two-thirds of Nevada, parts of Utah, most of Wyoming, southern and eastern Montana, and extreme western North and South Dakota. Sage grouse have been extirpated from Nebraska, Kansas, Oklahoma, New Mexico, Arizona, and British Columbia (Schroeder *et al.* 1999).

Rangewide, sage grouse distributions have declined in a number of areas, most notably along the northern and northwestern periphery and in the center of their historic range. There may have been between roughly 1.6 million and 16 million sage grouse rangewide prior to European expansion across western North America (65 FR 51578). The Western States Sage Grouse Technical Committee (WSSGTC) (1999) estimated that there may have been about 1.1 million birds in 1800. Braun (1998) estimated that the 1998 rangewide spring population numbered about 157,000 sage grouse. More recent estimate puts the number of sage grouse rangewide at between roughly 100,000 and 500,000 birds (65 FR 51578). Sage grouse population levels may have declined from historic to recent times between 69 and 99 percent (65 FR 51578). WSSGTC (1999) estimates the decline from historic times to the present day may have been about 86 percent.

Apparently, much of the overall decline in sage grouse populations occurred from the late 1800s to the mid 1900s (Hornaday 1916, Crawford 1982, Drut 1994, Washington Department of Fish and Wildlife (WDFW) 1995, Braun 1998, Schroeder *et al.* 1999). Other declines in sage grouse populations apparently occurred in the 1920s and 1930s, and then again in the 1960s and 1970s (Connelly and Braun 1997).

Mono Basin Area Sage Grouse

Sage grouse in the Mono Basin area of California historically occurred in most of Mono County, the far eastern part of Alpine County, and in northern Inyo County (Leach and Hensley 1954, Hall 1995). By 1995, suitable habitat within this area had declined approximately 71 percent from an estimated historic level of 916,571 ha (2,264,889 ac) to 265,758 ha (656,700 ac) (Hall 1995). Most (93 percent) of the remaining sage grouse distribution and all known leks in the Mono Basin part of California occur in Mono County (Hall 1995, BLM 2002). Lek areas in Mono County include Fales, Bodie Hills, Parker, Sagehen, Adobe, Long Valley, and the White Mountains. From 1995 to 2002, California Department of Fish and Game (CDFG) spring population estimates for sage grouse in Mono County varied from 664 to 1,435 birds with an average of 1,075 birds (Sam Blankenship, CDFG, pers. comm. 2002).

In Nevada Esmeralda, Mineral, Lyon, and Douglas Counties share borders with Mono County, and this could be characterized as the Mono Basin area. Historically, sage grouse occurred in all four of these Nevada counties (Gullion and Christensen 1957). Sage grouse habitat in this part of Nevada has declined from historic levels but the amount of loss is not known (San Stiver, Nevada Division of Wildlife (NDOW), pers. comm. 2002). Active leks are present in all these counties except Esmeralda County. Active leks occur in the following areas: Ninemile and Mt. Grant areas of Mineral County; the Sweetwater, Desert Creek, and North Pine Nuts area of Lyon County; and the South Pine Nuts area of Douglas County (BLM 2002). No sage grouse spring population estimates are available for Douglas County. NDOW was unable to provide 2002 population estimates for Mineral and Lyon Counties.

The petitioner requested that we emergency list the Mono Basin area sage grouse as an endangered DPS of the species under the Act. Under our DPS policy (61 FR 4722), we use three elements to assess whether a population under consideration for listing may be recognized as a DPS: (1) A population segment's discreteness from the remainder of the taxon; (2) the population segment's significance to the taxon to which it belongs; and (3) ''[t]he population segment's conservation status in relation to the Act's standards for listing (*i.e.*, is the population segment, when treated as if it were a species, endangered or threatened.)''. If we determine that a population being considered for listing may represent a DPS, then the level of threat to the population is evaluated based on the five listing factors established by the Act to determine if listing it as either threatened or endangered may be warranted.

A population segment of a vertebrate species may be considered discrete if it satisfies either of the following conditions. The first condition is whether the species' population is markedly separated, or isolated, from other populations of the same taxon ''as a consequence of physical, physiological, ecological, or behavioral factors.'' When these four factors are evaluated, ''[q]uantitative measures of genetic or morphological discontinuity may provide evidence of this separation.'' The second condition, which does not apply here, is whether the population segment can be ''delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.''

In determining the discreteness, or isolation, of the Mono Basin area sage grouse, one of the factors to consider is physical separation from the rest of the taxon. The petitioner did not provide substantial information to demonstrate that the Mono Basin area sage grouse are physically isolated from other nearby populations. Although these birds are associated with separate locations on a landscape consisting of various mountain ranges and intervening valleys, they are able to move between these areas. For example, sage grouse in Nevada are known to travel to lek sites in the Bodie Hills in California (Craig Mortimore, NDOW, pers. comm. 2002). Telemetry data from Nevada indicates that sage grouse move between the Desert Creek area and the Sweetwater Mountains (S. Stiver, pers. comm. 2002). Exchange is also possible between the northernmost lek locations in Lyon County and the next closest area of habitat to the north in the Pah Rah Range. The distance between these two locations (about 18 km (28 miles)) is well within the species' maximum estimated dispersal distance of 160 km (100 mi) (WDFW 1995; Schroeder *et al.* 1999).

The DPS policy states that genetic information may be used to provide evidence of separation. The petitioner cites an unpublished study which provides evidence to suggest that sage grouse in both Lyon County, Nevada, and Mono County, California, are genetically unique from the rest of the taxon (Benedict *et al.* 2000; Taylor 2000; Benedict *et al.* 2001). However, the results of this study are limited to genetic samples taken from the Bodie Hills and Long Valley areas in California, and the Desert Creek and Sweetwater areas in Nevada. These leks comprise approximately 31 percent of known lek areas in the Mono Basin area,

and other leks that have not been located are probably present within the Mono Basin area. This study used samples from hunter-collected wings and, therefore, did not include lek areas closed to hunting. Given the limited genetic information available, a determination regarding separation of these genetically unique birds from the rest of the taxon cannot be completed. Benedict *et al.* (2000) recommends that additional studies be conducted, including morphology and behavioral studies, to clarify the taxonomy of the Mono Basin area sage grouse.

Two other factors to consider with regard to discreteness or isolation of a population are the behavioral and morphological aspects. Taylor (2002) initiated a study in 2001 to determine if previously collected genetic data relating to the Mono Basin area sage grouse are supported by behavioral and morphological differences. Male vocalizations, strutting behavior, and display rates were determined and compared for birds both within and outside the Mono Basin (Taylor 2002). Preliminary results from this work indicate that no behavioral differences exist between sage grouse within the Mono Basin and those found outside it (Taylor 2002). The comparative work on morphological characteristics has not been completed. Although this study is incomplete, it suggests that sage grouse within the Mono Basin cannot be considered a DPS on the basis of behavioral factors. The petitioner does not provide any information to document that sage grouse within the Mono Basin area exhibit any unique behavioral or morphological traits. No information is presented in the petition, nor is there any available in the Service files, to indicate that there are physical, genetic, behavioral, morphological, physiological, or ecological differences between sage grouse that occur in the Mono Basin and those found outside the area.

In summary, to make a DPS determination, we examined physical, physiological, ecological, and behavioral factors. Since there are no international government boundaries of significance, this condition for a finding of discreteness was not considered in reaching this determination. Neither the information presented in the petition nor that available in Service files presents substantial scientific or commercial information to demonstrate that the Mono Basin area sage grouse is discrete from the remainder of the taxon. Accordingly, we are unable to define a listable entity of sage grouse within the Mono Basin area. Therefore, we did not address the second element for determining a DPS, which is the potential significance of the Mono Basin area sage grouse to the remainder of the taxon. Finally, since the Mono Basin area sage grouse cannot be defined as a DPS at this time, we did not evaluate its status as endangered or threatened on the basis of the Act's definitions of those terms and the factors in section 4(a) of the Act.

The petitioner requests that we emergency-list the Mono Basin area sage grouse. Substantial information to define a listable entity in the Mono Basin area does not exist. However, in making this finding, we evaluated the threats to the Mono Basin area sage grouse presented by the petitioner to determine whether or not the continued survival of sage grouse in the Mono Basin area was threatened in a manner warranting emergency action. The Act identifies five factors to be considered, either singly or in combination, to determine whether a species may be threatened or endangered. The five listing factors that we must consider are: (1) Present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; and (5) other natural or human-caused factors affecting the species' continued existence. Our evaluation of these threats is presented below.

The petitioner cites multiple threats to sage grouse within the California portion of the Mono Basin area. These include large fires, cheatgrass invasion, pinyon-juniper invasion, high road densities, high-speed highways, powerlines, military installations, livestock grazing, livestock fencing, water diversions and groundwater pumping by the Los Angeles Department of Water and Power, joggers with off-leash dogs, dirt bikers, mountain bikers, sport-utility vehicle drivers, a recreational vehicle park, potential gold mining, the expansion of the Town of Mammoth Lakes airport, hunting, poaching, falconry, the landfill for the town of Mammoth Lakes, excessive soil erosion, a population bottleneck (the smallest number of individuals ever observed for a species) caused by winter conditions, demographic stochasticity, low sage grouse production, and improper grazing practices allowed by the Bureau of Land Management and the U.S. Forest Service. In the Nevada portion of the Mono Basin (Lyon County in particular was cited by the petitioner), the petitioner cites threats from agriculture, mining, traffic (related to both mining and highways), aircraft operations at an airstrip, development, grazing, and fire.

In reviewing the petition and available information, we find that most of the threats cited by the petitioner for the Mono Basin area are speculative, and that insufficient information is provided to demonstrate that they actually threaten the continued existence of sage grouse in the Mono Basin area. The petitioner cited threats such as high road densities and associated recreational road use by motorized recreational vehicle drivers, livestock fencing, a proposed recreational vehicle park, a proposed airport expansion for the town of Mammoth Lakes, and the Mammoth Lakes landfill. All potentially could threaten sage grouse populations in the area; however, none have been documented to do so. Hunting and a winter population bottleneck have been documented as threats for limited portions of the Mono Basin area (Gibson 1998, 2001) but have not been proven to threaten sage grouse populations for the Mono Basin area as a whole. A review of the best available scientific and commercial data does not lead us to conclude that the Mono Basin area sage grouse is threatened with extinction, nor are the threats of such a magnitude to warrant emergency listing.

Petition Finding

We have reviewed the petition, literature cited in the petition, other pertinent literature, and information available in Service files. After our review we find the petition does not present substantial information to indicate that the petitioned action is warranted. This finding is based on the following: (a) Insufficient information to determine whether the Mono Basin area sage grouse are separated from other sage grouse throughout the range of the taxon; (b) contradictory information presented by preliminary results from a behavioral and morphological study that suggests that Mono Basin area sage grouse are not different from other populations of greater sage grouse; and (c) insufficient information to document that the threats presented threaten the continued existence of the species in the Mono Basin.

References Cited

A complete list of all references cited herein is available upon request from the Nevada Fish and Wildlife Office (*see* **ADDRESSES**).

Author

The primary author of this notice is Kevin Kritz, U.S. Fish and Wildlife

Service, Nevada Fish and Wildlife Office (*see* **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 10, 2002.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 02–32523 Filed 12–24–02; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–747 (Final)]

Fresh Tomatoes From Mexico

AGENCY: United States International Trade Commission.

ACTION: Suspension of investigation.

SUMMARY: On December 16, 2002, the Department of Commerce published notice in the **Federal Register** of the suspension of its antidumping investigation on fresh tomatoes from Mexico (67 FR 77044). The basis for the suspension is an agreement between Commerce and producers/exporters which account for substantially all imports of this product from Mexico, wherein each signatory producer/exporter agreed to revise its prices to eliminate completely the injurious effects of exports of this merchandise to the United States. Accordingly, the U.S. International Trade Commission gives notice of the suspension of its antidumping investigation involving imports from Mexico of fresh tomatoes, provided for in subheadings 0702.00 and 9906.07.01 through 9906.07.09 of the Harmonized Tariff Schedule of the United States.

EFFECTIVE DATE: December 16, 2002.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines ((202) 205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). 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.*

Authority: This investigation is being suspended under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.40 of the Commission's rules (19 CFR 207.40).

By order of the Commission.

Issued: December 19, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–32475 Filed 12–24–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 299–2002]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of Justice proposes to establish a new system of records to be maintained by the Immigration and Naturalization Service (INS). The Refugee Access Verification Unit Records (RAVU), JUSTICE/INS–006, is a new system of records for which no public notice consistent with the provisions of 5 U.S.C. 552a (e)(4) and (11) has been published.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment on proposed new routine use disclosures. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by (insert date 30 days from the publication date of this notice). The public, OMB, and the Congress are invited to submit any comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on this system.

Dated: December 13, 2002.

Paul R. Corts,

Assistant Attorney General for Administration.

Justice/INS–006

SYSTEM NAME:

Refugee Access Verification Unit Records (RAVU).

SYSTEM LOCATION:

The system is accessible only to the Refugee Branch at the Office of International Affairs, Immigration and Naturalization Service (INS), 425 I Street NW., Second Floor, Union Labor Life Building, Washington, DC 20536. The location may change at the discretion of and depending on the needs of the INS.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(Please note: The system description pertains to refugees. However, this notice is designed to cover only United States citizens (USCs) and lawful permanent residents (LPRs) who are included in this information system.)

(1) Refugee applicants with priority three (P3) and priority four (P4) status, who are conditionally approved for refugee resettlement but have not yet traveled to the United States;

(2) P3 and P4 refugee applicants who have not yet received a refugee classification interview by INS; and

(3) Anchor relatives (*i.e.*, lawful permanent residents and/or United States citizen relatives) in the United States who have filed an Affidavit of Relationship (AOR) on behalf of a refugee applicant overseas under the P3 and P4 worldwide processing priorities.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains copies of refugee applications and interview worksheets, INS applications and related forms, affidavits of relationship, AOR review checklists and decision notices; biographic and demographic information such as family trees and documents of identity, communications from voluntary agencies, Members of Congress, U.S. Government agencies, and international organizations; and biographic and demographic information stored electronically such as anchor name and address, applicant name, voluntary agency and decision.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1522(b) (Authorization for Programs for Initial Domestic Resettlement of and Assistance to Refugees) and 22 U.S.C. 1157 (Annual Admission of Refugees and Admission of Emergency Situation Refugees).

PURPOSES:

To create a system of records for storing and reporting the results of the AOR review mandated by the Homeland Security Council.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSE OF SUCH USES:

A. To the appropriate agency/organization/task force, regardless of

whether it is federal, state, local, foreign, or tribal, charged with the enforcement (*e.g.*, investigation and prosecution) of a law (criminal or civil), regulation, or treaty, of any record contained in this system of records which indicates either on its face, or in conjunction with other information, a violation or potential violation of that law, regulation, or treaty.

B. To an attorney or representative who is acting on behalf of an individual covered by this system of records (as defined in 8 CFR 1.1(j)) in conjunction with any proceeding before the Immigration and Naturalization Service or the Executive Office for Immigration Review.

C. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

D. To a Member of Congress, or staff acting upon the Member's behalf, when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

E. To the General Services Administration (GSA) and the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

F. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

G. To a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

STORAGE:

Records are stored in electronic media and printed copies.

RETRIEVABILITY:

By case number, alien number, and applicant name.

SAFEGUARDS:

All records containing personal information are maintained in secured file cabinets or in restricted areas, access to which is limited to authorized personnel of the INS. Where the records are computerized, access is under the direct supervision of the system manager.

RETENTION AND DISPOSAL:

The following INS proposal for retention and disposal is pending approval by NARA

RAVU electronic records will be maintained on a desktop computer for two years and then transferred to CD–ROM, where they will be maintained for 18 years before destruction. RAVU case files will be maintained for two years and then destroyed.

SYSTEM MANAGER (S) AND ADDRESS:

Director, Refugee Branch, Office of International Affairs, 111 Massachusetts Avenue, Second Floor, Washington, DC 20536.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe the Immigration and Naturalization Service might have Refugee Access Verification Unit Records pertaining to themselves should write to the System Manager identified above. The individual must specify that he/she requests RAVU records to be checked regarding a specific affidavit of relationship. At a minimum, the individual must include: name, date and place of birth, his/her INS ''A'' number, current mailing address and zip code, names of relatives petitioned for on the affidavit of relationship, and a notarized signature or pursuant to 28 U.S.C. 1746, make a dated statement under penalty of perjury as a substitute for notarization.

RECORDS ACCESS PROCEDURE:

Make all requests for access in writing to the Freedom of Information Act/Privacy Act Office at 425 I Street NW, Second Floor, Union Labor Life Building, Washington, DC 20536, or to the System Manager noted above. Clearly mark the envelope and letter ''Privacy Act Request.'' The requester must specify that he/she requests RAVU records to be checked regarding a specific affidavit of relationship. At a minimum, the requester must include: name, date and place of birth, his/her INS ''A'' number, current mailing address and zip code, names of relatives petitioned for on the affidavit of relationship, and a notarized signature or pursuant to 28 U.S.C. 1746, make a dated statement under penalty of perjury as a substitute for notarization.

CONTESTING RECORDS PROCEDURES:

Direct all requests to contest or amend information in the record to the FOIA/PA Officer at the address identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope ''Privacy Act Request.'' The record must be identified in the same manner as described for making a request for access.

RECORD SOURCE CATEGORIES:

These records contain information obtained directly from the individual who is the subject of these records as well as relatives, sponsors, Members of Congress, U.S. Government agencies, voluntary agencies, international organizations, and local sources at overseas posts.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–32538 Filed 12–24–02; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of December, 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, or are threatened to become totally or partially separated; and

(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 of such firm or subdivision.

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–42,354; Kalmar Industries Corp., White Oak, TX

TA–W–41,940; Precision Threading Corp. d/b/a Cheboygan Tap and Tool Co., Cheboygan, MI

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–42,261; Eybl Cartex, Inc., a Div. of Eybl International, Fountain Inn, SC

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–42,358; Pratt and Whitney, a Div. of United Technologies Corp., Tulsa Airfoil Repair Operations, Claremore, OK

TA–W–42,121; Agere Systems, Inc., Infrastructure Div., Laser Realization Group, Formerly Lucent Technologies, Inc., Microelectronics Business, Breinigsville, PA

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–42,301; Tennecast/CDT, Barberton, OH: October 21, 2001.

TA–W–42,297; Choctaw Electronics Enterprise, Choctaw, MS: October 11, 2001

TA–W–42,293; Rollway Bearing Corp., Liverpool, NY: September 25, 2001.

TA–W–42,227; Jabil Circuit, Inc., Meridian, ID: September 23, 2001.

TA–W–42,104; Motor Products Corp., Barberton, OH: August 14, 2001.

TA–W–41,979; Corning Cable Systems, Pedestal Production, Strafford, MS: July 29, 2001. 2001.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of section 222 have been met.

TA–W–50,057; Evans Rule Co., Inc., a Div. of The L.S. Starrett Co., Charleston, SC: November 12, 2001.

TA–W–50,040; Vista Wood Products, Greensburg, KY: November 7, 2001.

TA–W–50,037; The Hubbard Co., Bremen, GA: November 6, 2001.

TA–W–50,001; Reliant Bolt, Inc., Bedford Park, IL: November 4, 2001.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of section 222 have been met.

TA–W–50,228; Lau Industries, Inc., Indianapolis, IN: December 2, 2001.

TA–W–50,212 & A; Lakeside Machine, Inc., Gladstone, MI and Escanaba, MI: November 27, 2001.

TA–W–50,143; True North Enterprises, L.P., La Feria, TX: November 19, 2001.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), subchaper D, chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of December, 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–07572; Precision Threading Corp. d/b/a Cheboygan Tap and Tool, Cheboygan, MI

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

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–07504; State of Alaska Commercial Fisheries Entry Commission Permit #65058M, Togiak, AK

NAFTA–TAA–07411; State of Alaska Commercial Fisheries Entry Commission Permit #56738W, Iliamna, AK

NAFTA–TAA–07335; State of Alaska Commercial Fisheries Entry Commission, Permit #60891H, Naknek, AK

NAFTA–TAA–07333; State of Alaska Commercial Fisheries Entry Commission Permit #58138R, Naknek, AK

NAFTA–TAA–07219; State of Alaska Commercial Fisheries Entry Commission Permit #59285C, Egegik, AK

NAFTA–TAA–06688; State of Alaska Commercial Fisheries Entry Commission Permit #SO3T57785G, Dillingham, AK

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–07590; Jabil Circuit, Inc., Meridian, ID: September 23, 2001.

NAFTA–TAA–07643; Lau Industries, Inc., Indianapolis, IN: October 29, 2001.

NAFTA–TAA–06535; American Meter Co., Industrial Products Unit, Erie, PA: September 9, 2001.

I hereby certify that the aforementioned determinations were issued during the month of December, 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: December 16, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–32591 Filed 12–24–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,449]

Biljo, Inc., Currently Known as Kalikow Brothers LP, Dublin, GA; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on June 11, 2002, applicable to workers of Biljo, Inc., located in Dublin, Georgia. The notice was published in the **Federal Register** on June 24, 2002 (67 FR 42583).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce men's and boy's slacks and pants. Information provided by the State shows that Biljo, Inc. was taken over by Kalikow Brothers LP and some of workers at that plant were separated under the Kalikow name.

It is the Department's intent to include all workers of Biljo, Inc. adversely affected by increased imports.

Based on the new information provided by the State, the Department is amending the certification to expand coverage to workers of Kalikow Brothers LP.

The amended notice applicable to TA–W–41,449 is hereby issued as follows:

''All workers of Biljo, Inc., Dublin, Georgia, who became totally or partially separated from employment on or after June 2, 2002, through June 11, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC, this 3rd day of December, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–32587 Filed 12–24–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,042]

Chamco Equipment Ltd., Vancouver, WA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 8, 2002 in response to a worker petition filed by a company official on behalf of workers at Chamco, Equipment LTD, Vancouver, Washington.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 9th day of December, 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–32593 Filed 12–24–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,270]

Dixon Ticonderoga Company, Inc., Sandusky Division, Sandusky, OH; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 21, 2002, in response to a worker petition filed by the company on behalf of workers at Dixon Ticonderoga Company, Inc., Sandusky Division, Sandusky, Ohio.

The subject firm requested that the existing petition be terminated. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 10th day of December, 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–32590 Filed 12–24–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,065]

Haemer-Wright Tool and Die, Inc., Saegertown, Pennsylvania; Notice of Revised Determination on Reopening

On December 4, 2002, the Department, on its own motion, reopened its investigation for the former workers of the subject firm.

The initial investigation resulted in a negative determination issued on December 13, 2001, because the ''contributed importantly'' test of the Group Eligibility Requirements of the Trade Act was not met for workers at the subject firm. The workers produce tool and die and parts thereof. The denial notice was published in the **Federal Register** on December 26, 2001 (66 FR 66425).

The Department has obtained new information showing that from 2000 to 2001, a major declining customer of Haemer-Wright Tool And Die, Inc. increased import purchases of tool and die and parts thereof, while reducing purchases from the subject firm.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with the articles produced by Haemer-Wright Tool And Die, Inc., Saegertown, Pennsylvania, contributed importantly to the decline in sales and to the total or partial separation of workers of that firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Haemer-Wright Tool And Die, Inc., Saegertown, Pennsylvania, who became totally or partially separated from employment on or after September 4, 2000, through two years from the date of certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC this 5th day of December, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–32586 Filed 12–24–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,346]

Haemer-Wright Tool & Die, Inc., Saegertown, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 1, 2002, in response to a worker petition filed on behalf of workers at Haemer-Wright Tool & Die, Inc., Saegertown, Pennsylvania.

The petitioning group of workers have been determined eligible to apply for Trade Adjustment Assistance under petition number TA–W–40,065. Further investigation in this case would serve no purpose, and the investigation is terminated.

Signed at Washington, DC, this 5th day of December, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–32592 Filed 12–24–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,917, TA–W–41,917A, and TA–W–41,917B]

Pfaltzgraff Company, Also Known as Susquehanna Pfaltzgraff, York, PA, Thomasville, PA, and Dover, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 30, 2002, applicable to workers of Pfaltzgraff Company, also known as Susquehanna Pfaltzgraff, located in York, Pennsylvania. The notice was published in the **Federal Register** on October 22, 2002 (67 FR 64923).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers produce dinnerware. The company official reports that worker separations have occurred at the company's dinnerware production plants in Thomasville and Dover, Pennsylvania.

Since corporate-wide sales have declined and company imports have increased, the Department is amending the certification to include workers at the plants in Thomasville and Dover, Pennsylvania.

The amended notice applicable to TA–W–41,917 is hereby issued as follows:

''All workers of Pfaltzgraff Company, also known as Susquehanna Pfaltzgraff, York, Pennsylvania (TA–W–41,917), Thomasville, Pennsylvania (TA–W–41,917A), and Dover, Pennsylvania (TA–W–41,917B), who became totally or partially separated from employment on or after July 12, 2001, through September 30, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC, this 3rd day of December, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–32589 Filed 12–24–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,598 and TA–W–41,598A]

Sonoco Products Company, Santa Maria Plant, Santa Maria, CA, and Mt. Olive, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 4, 2002, applicable to workers of Sonoco Products Company, Santa Maria Plant, Santa Maria, California. The notice was published in the **Federal Register** on November 5, 2002 (67 FR 67418).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers produce plastic T-shirts bags. The company official reports that production has declined and worker separations have occurred at the company's plant in Mt. Olive, North Carolina.

It is the Department's intent to include all workers of the firm affected by increased imports. Therefore, the Department is amending the certification to include workers at Sonoco Products Company in Mt. Olive, North Carolina.

The amended notice applicable to TA–W–41,598 is hereby issued as follows:

''All workers of Sonoco Products Company, Santa Maria Plant, Santa Maria, California (TA–W–41,598) and Mt. Olive, North Carolina (TA–W–41,598A), engaged in employment related to the production of plastic T-shirt bags, who became totally or partially separated from employment on or after May 15, 2001, through October 4, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC, this 3rd day of December 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–32588 Filed 12–24–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Unemployment Compensation for Ex-Servicemembers (UCX) Handbook; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data could be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workforce Security (OWS) is soliciting comments concerning the proposed revision and extension of the Unemployment Compensation for Ex-Servicemembers (UCX) Handbook.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before February 24, 2003.

ADDRESSES: Written comments on this notice may be mailed or delivered to Charles E. Longus, Jr., Office of Workforce Security (OWS), U.S. Department of Labor, Room S–4522, Frances Perkins Building, 200 Constitution Ave., NW., Washington, DC 20210, telephone (202) 693–3223 (this is not a toll-free number), fax number (202) 693–3229.

SUPPLEMENTARY INFORMATION:

I. Background

The UCX law (5 U.S.C. 8521–8523) provides for the payment of unemployment compensation to ex-servicemembers separated from the military service for certain reasons. State workforce agencies (SWAs), through agreement with the Secretary of Labor, act as agents of the Secretary for the purpose of providing unemployment compensation to ex-servicemembers (UCX) following the Department's regulations at 20 CFR part 614 and guidelines in the Department's

Handbook for Unemployment Compensation for Ex-Servicemembers. Each SWA must be able to obtain certain military service information from each claimant filing for UCX benefits to enable them to determine his/her eligibility. The forms ETA 841 and ETA 843 (and related instructions) contained in the UCX Handbook are necessary and utilized by SWAs for the purpose of obtaining this needed information. The form ETA 841, which is in the current Office of Management and Budget (OMB) inventory of approved burden collection, has become an optional form and is no longer used by the majority of SWAs. Since the ETA 841 is rarely used, the burden is so minimal it cannot be determined; hence, no burden is being requested.

Information pertaining to the UCX claimant can only be obtained from the individual's military discharge papers, the appropriate branch of military service or the Department of Veterans Affairs (formerly the Veterans Administration). If the claimant does not have this information available, the most feasible and effective way to obtain this information is by use of the form prescribed by the Department of Labor for State agency use. Without this information, SWAs could not adequately determine the eligibility of ex-servicemembers and would not be able to properly administer the program.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- 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;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

This is a request for OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) of an extension to an existing collection of information previously approved and assigned OMB control No. 1205–0176. The current burden was based on an inventory of 66,126 UCX claims filed in FY 1999 attributed to military downsizing that took place during FY 1999 which caused a higher number of UCX claims to be filed. This request is based on same number of UCX claims filed in FY 99 since it is estimated that approximately the same number of UCX claims will be filed in fiscal years 2003, 2004 and 2005 attributed to the recall of ex-servicemembers, reservists and National Guard members to active duty due to the Middle East and Afghanistan crises. Fifty-three (53) SWAs fill out the ETA 843. The ETA 843 is used by SWAs only when it is necessary to obtain additional clarifying information from the military pertaining to the UCX claimant or to obtain a copy of DD Form 214 that was not issued to the claimant when separated from military service. It is estimated that only 5 percent (3,306) of the UCX claims filed will require use of the ETA 843. The form ETA 843 maybe sent to any one of the four branches of military service (Army, Navy, Marines, Air Force), the Coast Guard, or the National Oceanic Atmospheric Administration. These latter two agencies are considered branches of military service for UCX purposes but are not under the jurisdiction of the Department of Defense.

Type of Review: Extension, without change.

Agency: Employment and Training Administration.

Title: Unemployment Compensation for Ex-Servicemembers (UCX) Handbook.

OMB Number: 1205–0176.

Recordkeeping: The Department of Labor (DOL) does not maintain a system of records for the UCX program. UCX records are maintained by the SWAs acting as agents for the Federal Government in the administration of the UCX program. The DOL procedures permit the SWAs, upon request, to dispose of UCX records according to State law provisions 3 years after final action (including appeals or court action) on the claim, or such records may be transferred in less than the 3-year period if microphotographed in accordance with appropriate microphotography standards.

Affected Public: State governments (state workforce agencies).

Total Respondents: 3,306.

Frequency: As needed.

Total responses: 3,306.

Average Time Per Response: 1.0 minutes.

Estimated Total Burden Hours: 55 hours.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): $1,526,952.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 18, 2002.

Cheryl Atkinson,

Administrator, Office of Workforce Security.

[FR Doc. 02–32447 Filed 12–24–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection of the ETA 5159, Claims and Payment Activities; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the collection of the ETA 5159, Claims and Payment Activities. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before February 24, 2003.

ADDRESSEE: Thomas Stengle, U.S. Department of Labor, Employment and Training Administration, Room S–4231, 200 Constitution Ave. NW., Washington, DC, 20210; telephone number (202) 693–2991; fax (202) 693–

3229 (these are not toll free numbers). E-mail: *tstengle@doleta.gov*.

SUPPLEMENTARY INFORMATION:

I. *Background:* The ETA 5159 report contains information on claims activities including the number of initial claims, first payments, weeks claimed, weeks compensated, benefit payments and final payments. These data are used in budgetary and administrative planning, program evaluation, actuarial and program research, and reports to Congress and the public.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

- 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;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. *Current Actions:* This is a request for OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c) (2) (A)) for continuing an existing collection of information previously approved and assigned OMB Control No. 1205–0010.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Claims and Payment Activities.

OMB Number: 1205–0010.

Agency Number: ETA 5159.

Affected Public: State Government.

Cite/Reference/Form/etc: ETA 5159.

Total Respondents: 53.

Frequency: Monthly.

Total Responses: 720.

Average Time per Response: 2.6 hours.

Estimated Total Burden Hours: 1359 hours per year.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 19, 2002.

Cheryl Atkinson,

Administrator, Office of Workforce Security.

[FR Doc. 02–32585 Filed 12–24–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7646]

Nestle Purina, St. Joseph, Missouri; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on October 31, 2002, in response to a petition filed by the Retail, Wholesale and Department Store Union (RWDSU) on behalf of workers at Nestle Purina, St. Joseph, Missouri.

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 3rd day of December 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–32595 Filed 12–24–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6387, NAFTA–6387A, and NAFTA–6387B]

Pfaltzgraff Company, Also Known as Susquehanna Pfaltzgraff, York, PA, Thomasville, PA, and Dover, PA; 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, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA-Transitional Adjustment Assistance on September 10, 2002, applicable to workers of Pfaltzgraff Company, also known as Susquehanna Pfaltzgraff, located in York, Pennsylvania. The notice was published in the **Federal Register** on September 27, 2002 (67 FR 61162).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers produce dinnerware. The company official reports that worker separations have occurred at the company's dinnerware production plants in Thomasville and Dover, Pennsylvania.

The intent of the Department's certification is to include all workers of the subject firm that been impacted by the increase in company imports from Mexico. Since corporate-wide sales have declined and company imports have increased, the Department is amending the certification to include workers at the plants in Thomasville and Dover, Pennsylvania.

The amended notice applicable to NAFTA–6387 is hereby issued as follows:

''All workers of Pfaltzgraff Company, also known as Susquehanna Pfaltzgraff, York, Pennsylvania (NAFTA–6387), Thomasville, Pennsylvania (NAFTA–6387A), and Dover, Pennsylvania (NAFTA–6387B), who became totally or partially separated from employment on or after July 15, 2001, through September 10, 2004, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.''

Signed in Washington, DC, this 3rd day of December, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–32594 Filed 12–24–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Mallie Coal Company, Inc.

[Docket No. M–2002–102–C]

Mallie Coal Company, 8442 Hwy. 6, Corbin, Kentucky 40701 has filed a petition to modify the application of 30 CFR 75.380(f)(4)(i) (Escapeways; bituminous and lignite mines) to its Mine No. 6 (MSHA I.D. No. 15–18440) located in Knox County, Kentucky. The petitioner proposes to use one ten pound or two five pound portable

chemical fire extinguishers on each Mescher Jeep used for traveling in the primary escapeway at the Mine No. 6. The petitioner states that the equipment operator will inspect each fire extinguisher on a daily basis prior to entering the primary escapeway, that records of examinations will be maintained and defective fire extinguishers will be replaced prior to entering the mine. The petitioner asserts that the proposed alternative method would provide a greater measure of protection than the existing standard.

2. Mallie Coal Company, Inc.

[Docket No. M–2002–103–C]

Mallie Coal Company, Inc., 8442 Hwy. 6, Corbin, Kentucky 40701 has filed a petition to modify the application of 30 CFR 75.342 (Methane monitors) to its Mine No. 6 (MSHA I.D. No. 15–18440) located in Knox County, Kentucky. The petitioner proposes to use hand-held continuous-duty methane and oxygen detectors in lieu of machine mounted methane monitors on three-wheel tractors with drag bottom buckets. The petitioner asserts that the operator will be qualified in the proper use of said detector and that application of the existing standard would reduce the safety of the miners.

3. Mettiki Coal, LLC

[Docket No. M–2002–104–C]

Mettiki Coal, LLC, 1001 Pennsylvania Avenue, NW, Washington, DC 20004–2595 has filed a petition to modify the application of 30 CFR 77.214(a) (Refuse piles; general) to its Mettiki's General Mine (MSHA I.D. No. 18–00671) located in Garrett County, Maryland. The petitioner requests a modification of the existing standard to permit the extension of its Mettiki General's refuse pile over four sealed openings to the abandoned Mettiki Gobbler's Knob Mine. The petitioner has listed specific terms and conditions in this petition that would be followed to comply with the proposed alternative method. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. Mears Enterprises, Inc.

[Docket No. M–2002–105–C]

Mears Enterprises, Inc., PO Box 157, 410 Franklin Street, Clymer, PA 15728 has filed a petition to modify the application of 30 CFR 75.1100–2(e)(2) (Quantity and location of firefighting equipment) to its Dora No. 8 Mine (MSHA I.D. No. 36–08704) located in Jefferson County, Pennsylvania. The petitioner requests a modification of the existing standard to permit an alternate method of compliance for the use of firefighting equipment required at temporary electrical installations at the Dora No. 8 Mine. The petitioner proposes to use two fire extinguishers at all temporary electrical installations instead of using one portable fire extinguisher and 240 pounds of rock dust. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard with no diminution of safety to the miners.

5. Highland Mining Company

[Docket No. M–2002–106–C]

Highland Mining Company, 1970 Barrett Court, PO Box 1990, Henderson, Kentucky 42419 has filed a petition to modify the application of 30 CFR 75.1101–1(b) (Deluge-type water spray systems) to its Highland 9 Mine (MSHA I.D. No. 15–02709) located in Union County, Kentucky. The petitioner proposes to have a trained person conduct a weekly examination and functional test of the deluge type fire suppression systems installed at conveyor belt drives in lieu of using dust covers for nozzles of water deluge fire suppression system. The petitioner states that the trained person would conduct a visual examination at each water deluge type fire suppression system, and conduct a function test of the water deluge type fire suppression systems by actuating the system and observing its performance. The petitioner further states that the results of the examinations and functional tests would be recorded in a book that would be maintained on the surface. The book would be made available to the authorized representative of the Secretary and retained for one year. The petitioner also proposes to correct any malfunction or clogged nozzle detected as a result of the weekly examination or functional test immediately, and post the procedure used to perform the functional test at or near each belt drive which utilizes a water deluge fire suppression system. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

6. Highland Mining Company

[Docket No. M–2002–107–C]

Highland Mining Company, 1970 Barrett Court, PO Box 1990, Henderson, Kentucky 42419–1990 has filed a petition to modify the application of 30 CFR 75.1101–1(b) (Deluge-type water spray systems) to its Highland 11 Mine (MSHA I.D. No. 15–18480) located in Union County, Kentucky. The petitioner proposes to have a trained person conduct a weekly examination and functional test of the deluge type fire suppression systems installed at conveyor belt drives in lieu of using dust covers for nozzles of water deluge fire suppression systems. The petitioner states the trained person would conduct a visual examination at each water deluge type fire suppression system, and conduct a function test of the water deluge type fire suppression systems by actuating the system and observing its performance. The petitioner further states that the results of the examinations and functional tests would be recorded in a book that would be maintained on the surface. The book would be made available to the authorized representative of the Secretary and retained for one year. The petitioner also proposes to correct any malfunction or clogged nozzle detected as a result of the weekly examination or functional test immediately, and post the procedure used to perform the functional test at or near each belt drive which utilizes a water deluge fire suppression system. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

7. A, B & J Coal Company, Inc.

[Docket No. M–2002–108–C]

A, B & J Coal Company, Inc., PO Box 35, Vansant, Virginia 24656 has filed a petition to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (Plug and receptacle-type connectors), respectively, to its Mine #3C (MSHA I.D. No. 15–18313) located in Pike County, Kentucky. The petitioner proposes to use a permanently installed spring-loaded locking device on battery plug connectors on mobile battery-powered equipment. The spring-loaded locking device would prevent unintentional loosening of the battery plugs from battery receptacles and eliminate the hazards associated with difficult removal of padlocks during emergency situations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

8. Coastal Coal-West Virginia, LLC

[Docket No. M–2002–109–C]

Coastal Coal-West Virginia, LLC, 61 Missouri Run Road, Cowen, West Virginia 26206 has filed a petition to modify the application of 30 CFR

75.1002 (Installation of electric equipment and conductors; permissibility) to its Mine No. 10A (MSHA I.D. No. 46–08852) located in Webster County, West Virginia. The petitioner proposes to use continuous mining machines with nominal voltage of the power circuits not to exceed 2,400 volts at the Mine No. 10A. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

9. Coastal Coal-West Virginia, LLC

[Docket No. M–2002–110–C]

Coastal Coal-West Virginia, LLC, 61 Missouri Run Road, Cowen, West Virginia 26206 has filed a petition to modify the application of 30 CFR 75.1002 (Installation of electric equipment and conductors; permissibility) to its Upper Mercer Mine (MSHA I.D. No. 46–08875) located in Webster County, West Virginia. The petitioner proposes to use continuous mining machines with nominal voltage of the power circuits not to exceed 2,400 volts at the Upper Mercer Mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

10. Black Energy Coal, Inc.

[Docket No. M–2002–111–C]

Black Energy Coal, Inc., PO Box 159, Dana, Kentucky 41615 has filed a petition to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (Plug and receptacle-type connectors) to its Mine #2 (MSHA I.D. No. 15–18369) located in Pike County, Kentucky. For mobile battery-powered machines, the petitioner proposes to use permanently installed spring-loaded locking devices on the battery plug connectors to prevent unintentional loosening of battery plugs from battery receptacles and to eliminate the potential hazards associated with difficult removal of padlocks during emergency situations. The petitioner asserts that using padlocks instead of spring-loaded locking devices would not result in a diminution of safety to the miners. The petitioner further asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

11. Black Energy Coal, Inc.

[Docket No. M–2002–112–C]

Black Energy Coal, Inc., PO Box 159, Dana, Kentucky 41615 has filed a petition to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (Plug and receptacle-type connectors) to its Mine #3 (MSHA I.D. No. 15–16856) located in Pike County, Kentucky. For mobile battery-powered machines, the petitioner proposes to use permanently installed spring-loaded locking devices on the battery plug connectors to prevent unintentional loosening of battery plugs from battery receptacles and to eliminate the potential hazards associated with difficult removal of padlocks during emergency situations. The petitioner asserts that using padlocks instead of spring-loaded locking devices would not result in a diminution of safety to the miners. The petitioner further asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to *comments@msha.gov,* or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before January 27, 2003. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 17th day of December 2002.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 02–32456 Filed 12–24–02; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL2–98]

NSF International; Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of NSF International for expansion of its recognition as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7, and presents the Agency's preliminary finding. This preliminary finding does not constitute an interim or temporary approval of the application.

DATES: You may submit comments in response to this notice, or any request for extension of the time to comment, by (1) Regular mail, (2) express or overnight delivery service, (3) hand delivery, (4) messenger service, or (5) FAX transmission (facsimile). Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. Comments (or any request for extension of the time to comment) must be submitted by the following dates:

Regular mail and express delivery service: Your comments must be postmarked by January 10, 2003.

Hand delivery and messenger service: Your comments must be received in the OSHA Docket Office by January 10, 2003. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m.

Facsimile and electronic transmission: Your comments must be sent by January 15, 2003.

ADDRESSES: *Regular mail, express delivery, hand-delivery, and messenger service:* You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket NRTL2–98, Room N–2625, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC 20210. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this notice, Docket NRTL2–98, in your comments.

Internet access to comments and submissions: OSHA will place comments and submissions in response to this notice on the OSHA Web page *www.osha.gov.* Accordingly, OSHA cautions you about submitting information of a personal nature (*e.g.*, social security number, date of birth). There may be a lag time between when comments and submissions are received and when they are placed on the Web page. Please contact the OSHA Docket Office at (202)693–2350 for information about materials not available through the OSHA Web page and for assistance in using the Web page to locate docket submissions. Comments and submissions will also be available for

inspection and copying at the OSHA Docket Office at the address above.

Extension of Comment Period: Submit requests for extensions concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW., Washington, DC 20210. Or fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Sherry Nicolas, Office of Technical Programs and Coordination Activities, NRTL Program, Room N3653 at the address shown immediately above for the program, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that NSF International (NSF) has applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). NSF's expansion request covers the use of additional test standards. OSHA's current scope of recognition for NSF may be found in the following informational Web page: *http://www.osha-slc.gov/dts/otpca/nrtl/nsf.html.*

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform *independent* safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, OSHA can accept products ''properly certified'' by the NRTL.

The Agency processes applications for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on an application. These notices set forth the NRTL's scope of recognition or modifications of this scope. We maintain an informational Web page for each NRTL, which details its scope of recognition. These pages can be accessed from our Web site at *http://www.osha-slc.gov/dts/otpca/nrtl/index.html.*

The most recent notices published by OSHA for NSF's recognition covered an expansion of recognition, which became effective on June 28, 2000 (65 FR 39944).

The current address of the testing facility (site) that OSHA recognizes for NSF is: NSF International, 789 Dixboro Road, Ann Arbor, MI 48105

General Background on the Application

NSF has submitted a request, dated June 25, 2002 (*see* Exhibit 10), to expand its recognition to use 12 additional test standards. The NRTL Program staff has determined that all of the additional test standards will be included in the expansion because they are ''appropriate test standards,'' within the meaning of 29 CFR 1910.7(c). The staff makes such determinations in processing expansion requests from any NRTL. Therefore, OSHA would include 12 standards in the expansion, as listed below.

UL 73 Motor-Operated Appliances.
UL 399 Drinking-Water Coolers.
UL 466 Electric Scales.
UL 514B Fittings for Cable and Conduit.
UL 514C Nonmetallic Outlet Boxes, Flush-Device Boxes and Covers.
UL 514D Cover Plates for Flush-Mounted Wiring Devices.
UL 541 Refrigerated Vending Machines.
UL 751 Vending Machines.
UL 982 Motor-Operated Household Food Preparing Machines.
UL 1453 Electric Booster and Commercial Storage Tank Water Heaters.
UL 1563 Electric Spas, Equipment Assemblies, and Associated Equipment.
UL 1795 Hydromassage Bathtubs.

The designations and titles of the above test standards were current at the time of the preparation of this notice.

OSHA's recognition of NSF, or any NRTL, for a particular test standard is limited to equipment or materials (*i.e.*, products) for which OSHA standards require third party testing and certification before use in the workplace. Consequently, an NRTL's scope of recognition excludes any product(s) that fall within the scope of a test standard, but for which OSHA standards do not require NRTL testing and certification.

A few of the UL test standards listed above also are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience, we use the designation of the standards developing organization (*e.g.*, UL 751) for the standard, as opposed to the ANSI designation (*e.g.*, ANSI/UL 751). Under our procedures, any NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard. (Contact ANSI or the ANSI Web site (*http://www.ansi.org*) and click ''NSSN'' to find out whether or not a test standard is currently ANSI-approved.)

Preliminary Finding on the Application

NSF has submitted an acceptable request for expansion of its recognition as an NRTL. In connection with this request, OSHA did perform an on-site review of NSF's NRTL testing facility. NRTL Program assessment staff reviewed information pertinent to the request and recommended that NSF's recognition be expanded to include the additional test standards listed above (*see* Exhibit 11).

Following a review of the application file, the assessor's recommendation, and other pertinent documents, the NRTL Program staff has concluded that OSHA can grant to NSF the expansion of recognition as an NRTL to use the additional test standards listed above. The staff, therefore, recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon the recommendations of the staff, the Assistant Secretary has made a preliminary finding that NSF International can meet the requirements, as prescribed by 29 CFR 1910.7, for the expansion of recognition. This preliminary finding does not constitute an interim or temporary approval of the application.

OSHA welcomes public comments, in sufficient detail, as to whether NSF has met the requirements of 29 CFR 1910.7 for expansion of its recognition as a Nationally Recognized Testing Laboratory. Your comments should consist of pertinent written documents and exhibits. To consider a comment, OSHA must receive it at the address provided above (*see* **ADDRESSES**), no later than the last date for comments (*see* **DATES** above). Should you need more time to comment, OSHA must receive your written request for extension at the address provided above no later than the last date for comments. You must include your reason(s) for any request for extension. OSHA will limit any extension to 30 days, unless the requester justifies a longer period. We may deny a request for extension if it is frivolous or otherwise unwarranted. You may obtain or review copies of NSF's requests, the on-site review reports, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S.

Department of Labor, at the above address. Docket No. NRTL2–98 contains all materials in the record concerning NSF's application.

The NRTL Program staff will review all timely comments and, after resolution of issues raised by these comments, will recommend whether to grant NSF's expansion request. The Agency will make the final decision on granting the expansion, and in making this decision, may undertake other proceedings that are prescribed in Appendix A to 29 CFR section 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Signed at Washington, DC this 11th day of December, 2002.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 02–32446 Filed 12–24–02; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (02–149)]

Availability of Annual Report on Alternative Fuel Vehicle (AFV) Acquisitions for Fiscal Years 1999, 2000, and 2001

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of NASA's annual report on its alternative fuel vehicle (AFV) acquisitions for fiscal years 1999, 2000, and 2001.

SUMMARY: Under the Energy Policy Act of 1992 (42 U.S.C. 13211–13219) as amended by the Energy Conservation Reauthorization Act of 1998 (Pub. L. 105–388), and Executive Order 13149 (April 2000), ''Greening the Government Through Federal Fleet and Transportation Efficiency,'' NASA's annual AFV reports are available on the following NASA Web site: *http://www.hq.nasa.gov/office/codej/codejlg/afv.htm.*

ADDRESSES: Logistics Management Office, NASA Headquarters, Code JG, 300 E Street SW., Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: William Gookin, (202) 358–2306, or *wgookin@hq.nasa.gov.*

Jeffrey E. Sutton,

Assistant Administrator for Management Systems.

[FR Doc. 02–32609 Filed 12–24–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA is resubmitting the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until January 27, 2003.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara, (703) 518–6447, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428. Fax No. 703–518–6489. E-mail: *mcnamara@ncua.gov.*

OMB Reviewer: Mr. Joseph F. Lackey, (202) 395–4741, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the: NCUA Clearance Officer, Neil McNamara, (703) 518–6447.

It is also available on the following website: *www.NCUA.gov.*

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0032.

Form Number: N/A.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: Records Preservation. Part 749 of NCUA Regulations directs each credit union to store copies of their members' share and loan balances away from the credit union's premises.

Respondents: All credit unions.

Estimated No. of Respondents/Record keepers: 9,984.

Estimated Burden Hours Per Response: 2 hours.

Frequency of Response: Quarterly.

Estimated Total Annual Burden Hours: 19,968.

Estimated Total Annual Cost: $998,400.

By the National Credit Union Administration Board on December 17, 2002.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–32495 Filed 12–24–02; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB For Revision to a Currently Approved Information Collections; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collections to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. chapter 35). These information collection are published to obtain comments from the public.

DATES: Comments will be accepted until January 27, 2003.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara, (703) 518–6447, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax No. 703–518–6489. E-mail: mcnamara@ncua.gov.

OMB Reviewer: Mr. Joseph F. Lackey, (202) 395–4741, Office of Management and Budget, Room 10226, New Executive Office Building,Washington, DC 20503.

FOR FURTHER INFORMATION: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, Neil McNamara, (703) 518–6447.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0142.

Form Number: N/A.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Title: 12 CFR 741.6(c) Requirements for Insurance.

Description: Credit Unions that submit late or inaccurate call reports are required to submit a proposal that describes how it will avoid another late or inaccurate report.

Respondents: Federally insured credit unions.

Estimated No. of Respondents/ Recordkeepers: 630.

Estimated Burden Hours Per Response: 2 hours.

Frequency of Response: Reporting and on occasion.

Estimated Total Annual Burden Hours: 1,260.

Estimated Total Annual Cost: $21,186.60.

By the National Credit Union Administration Board on December 17, 2002.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–32497 Filed 12–24–02; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB For Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until January 27, 2003.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Office or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara, (703) 518–6447, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, Fax No. 703–518–6489, E-mail: *mcnamara@ncua.gov*.

OMB Reviewer: Mr. Joseph F. Lackey, (202) 395–4741, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the: NCUA Clearance Officer, Neil McNamara, (703) 518–6447.

It is also available on the following Web site: *http://www.NCUA.gov*.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0129.

Form Number: N/A.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: Corporate Credit Unions.

Description: Part 704 of NCUA's Rules and Regulations direct corporate credit unions to maintain records concerning their activities.

Respondents: Corporate credit unions.

Estimated No. of Respondents/Record keepers: 34.

Estimated Burden Hours Per Response: 153 hours.

Frequency of Response: Reporting, recordkeeping, on occasion and annually.

Estimated Total Annual Burden Hours: 70,142 hours.

Estimated Total Annual Cost: $2,248.

By the National Credit Union Administration Board on December 17, 2002.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–32498 Filed 12–24–02; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB For Revision to a Currently Approved Information Collections; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collections to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. Chapter 35). These information collection are published to obtain comments from the public.

DATES: Comments will be accepted until January 27, 2003.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara, (703) 518–6447, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6489, E-mail: *mcnamara@ncua.gov.*

OMB Reviewer: Mr. Joseph F. Lackey, (202) 395–4741, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, Neil McNamara, (703) 518–6447.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0143.

Form Number: N/A.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Title: 12 CFR part 760 Loans in Areas Having Special Flood Hazards.

Description: Federally insured credit unions are required by statute and by proposed 12 CFR part 760 to file reports, make certain disclosures and keep records. Borrowers use this information to make valid purchase decisions. The NCUA uses the records to verify compliance.

Respondents: All federal credit unions.

Estimated No. of Respondents/ Recordkeepers: 5,500.

Estimated Burden Hours Per Response: 7 minutes.

Frequency of Response: Recordkeeping and on occasion.

Estimated Total Annual Burden Hours: 101,333.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on December 17, 2002.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–32499 Filed 12–24–02; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA is resubmitting the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until January 27, 2003.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara, (703) 518–6447, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, Fax No. 703–518–6489, E-mail: *mcnamara@ncua.gov.*

OMB Reviewer: Mr. Joseph F. Lackey (202) 395–4741, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the: NCUA Clearance Officer, Neil McNamara, (703) 518–6447.

It is also available on the following Web site: *http://www.NCUA.gov.*

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0053.

Form Number: NCUA 4501.

Type of Review: Revision to a currently approved collection.

Title: Report of Officials.

Description: 12 U.S.C. 1761—This statutory provision requires that a record of the names and addresses of the executive officers, members of the supervisory committee, credit committee, and loan officers shall be filed with the administration within 10 days of their election/appointment.

Respondents: All Federally Insured Credit Unions.

Estimated No. of Respondents/Record keepers: 9,900.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: Annually.

Estimated Total Annual Burden Hours: 9,900.

Estimated Total Annual Cost: $0.

By the National Credit Union Administration Board on December 17, 2002.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–32500 Filed 12–24–02; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB For Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA is resubmitting the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub.L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until January 27, 2003.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara, (703) 518–6447, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, Fax No. 703–518–6489, E-mail: *mcnamara@ncua.gov.*

OMB Reviewer: Mr. Joseph F. Lackey, (202) 395–4741, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the: NCUA Clearance Officer, Neil McNamara, (703) 518–6447.

It is also available on the following Web site: *http://www.NCUA.gov.*

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0057.

Form Number: N/A.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: FCU Recordkeeping of Meeting Minutes and Other Documents.

Description: The Federal Credit Union Act and NCUA's Federal Credit Union Bylaws require each federal credit union to prepare and maintain minutes of its board and member meetings and copies of other important documents and election results. In addition, the board's secretary must inform the NCUA Board of any address change of a federal credit union.

Respondents: Federal credit unions.

Estimated No. of Respondents/Record keepers: 6,118.

Estimated Burden Hours Per Response: 4 hours.

Frequency of Response: Recordkeeping and reporting on occasion and annually.

Estimated Total Annual Burden Hours: 21,107.

Estimated Total Annual Cost: $0.

By the National Credit Union Administration Board on December 17, 2002.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–32501 Filed 12–24–02; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB For Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub.L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until January 27, 2003.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara, (703) 518–6447, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, Fax No. 703–518–6489, E-mail: *mcnamara@ncua.gov.*

OMB Reviewer: Mr. Joseph F. Lackey, (202) 395–4741, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the: NCUA Clearance Officer, Neil McNamara, (703) 518–6447.

It is also available on the following Web site: *http://www.NCUA.gov.*

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0068.

Form Number: N/A.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Title: 12 CFR 701.31 Non Discrimination Policy.

Description: This regulation requires a federal credit union (FCU) to keep a copy of the property appraisal. It also requires that a FCU using geographical factors in evaluating real estate loan applications must disclose such facts on the appraisal and state for justification. This regulation insures compliance with the Fair Housing anti-redlining requirements.

Respondents: Federal Credit Unions.

Estimated No. of Respondents/Record keepers: 4,000.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: Recordkeeping on occasion.

Estimated Total Annual Burden Hours: 4,000.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on December 17, 2002.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–32502 Filed 12–24–02; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL INDIAN GAMING COMMISSION

Fee Rates

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given, pursuant to 25 CFR 514.1(a)(3), that the National Indian Gaming Commission has adopted final annual fee rates of 0.00% for tier 1 and 0.0665% (.000665) for tier 2 for calendar year 2002. These rates shall apply to all assessable gross revenues from each gaming operation under the jurisdiction of the Commission. If a tribe has a certificate of self-regulation under 25 CFR part 518, the final fee rate on class II revenues for calendar year 2002 shall be one-half of the annual fee rate, which is 0.03325% (.0003325).

FOR FURTHER INFORMATION CONTACT: Bobby Gordon, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005; telephone 202/632–7003; fax 202/632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act established the National Indian Gaming Commission which is charged with, among other things, regulating gaming on Indian lands.

The regulations of the Commission (25 CFR part 514), as amended, provide for a system of fee assessment and payment that is self-administered by gaming operations. Pursuant to those regulations, the Commission is required to adopt and communicate assessment rates; the gaming operations are required to apply those rates to their revenues, compute the fees to be paid, report the revenues, and remit the fees to the Commission on a quarterly basis.

The regulations of the Commission and the final annual rate being adopted today are effective for calendar year 2002. Therefore, all gaming operations within the jurisdiction of the Commission are required to self-administer the provisions of these regulations and report and pay any fees that are due to the Commission by December 31, 2002.

Richard B. Schiff,

Acting Chief of Staff, National Indian Gaming Commission.

[FR Doc. 02–32508 Filed 12–24–02; 8:45 am]

BILLING CODE 7565–01–M

NUCLEAR REGULATORY COMMISSION

Licensing Support System Advisory Reivew Panel

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of renewal of the Charter of the Licensing Support Network Advisory Review Panel (LSNARP).

SUMMARY: The Licensing Support System Advisory Review Panel was established by the U.S. Nuclear Regulatory Commission as a Federal Advisory Committee in 1989. Its purpose was to provide advice on the fundamental issues of design and development of an electronic information management system to be used to store and retrieve documents relating to the licensing of a geologic repository for the disposal of high-level radioactive waste, and on the operation and maintenance of the system. This electronic information management system was known as the Licensing Support System (LSS). In November, 1998 the Commission approved amendments to 10 CFR part 2 that renamed the Licensing Support System Advisory Review Panel as the Licensing Support Network Advisory Review Panel.

Membership on the Panel continues to be drawn from those interests that will be affected by the use of the LSN, including the Department of Energy, the NRC, the State of Nevada, the National Congress of American Indians, affected units of local governments in Nevada, the Nevada Nuclear Waste Task Force, and a coalition of nuclear industry groups. Federal agencies with expertise and experience in electronic information management systems may also participate on the Panel.

The Nuclear Regulatory Commission has determined that renewal of the charter for the LSNARP until December 12, 2004 is in the public interest in connection with duties imposed on the Commission by law. This action is being taken in accordance with the Federal Advisory Committee Act after consultation with the Committee Management Secretariat, General Services Administration.

FOR FURTHER INFORMATION CONTACT: Andrew L. Bates, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555: Telephone 301–504–1963.

Dated: December 19, 2002.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 02–32545 Filed 12–24–02; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Survey of Nonparticipating Single Premium Group Annuity Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (''PBGC'') is requesting that the Office of Management and Budget (''OMB'') extend approval, under the Paperwork Reduction Act, of a collection of information (OMB control number 1212–0030; expires January 31, 2003). This voluntary collection of information is a quarterly survey of insurance company rates for pricing annuity contracts. The survey is conducted by the American Council of Life Insurers for the PBGC. This notice informs the public of the PBGC's request and solicits public comment on the collection of information.

DATES: Comments should be submitted by January 27, 2003.

ADDRESSES: Comments may be mailed to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attn: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503. Copies of the request for extension (including the collection of information) may be obtained without charge by writing to the PBGC's Communications and Public Affairs Department, Suite 240, 1200 K Street, NW., Washington, DC 20005–4026, or by visiting that office or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and request connection to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street,

NW., Washington, DC 20005–4026, 202–326–4024. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and request connection to 202–326–4024).

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation's regulations prescribe actuarial valuation methods and assumptions (including interest rate assumptions) to be used in determining the actuarial present value of benefits under single-employer plans that terminate (29 CFR part 4044) and under multiemployer plans that undergo a mass withdrawal of contributing employers (29 CFR part 4281). Each month the PBGC publishes the interest rates to be used under those regulations for plans terminating or undergoing mass withdrawal during the next month.

The interest rates are intended to reflect current conditions in the investment and annuity markets. To determine these interest rates, the PBGC gathers pricing data from insurance companies that are providing annuity contracts to terminating pension plans through a quarterly ''Survey of Nonparticipating Single Premium Group Annuity Rates.'' The survey is distributed by the American Council of Life Insurers and provides the PBGC with ''blind'' data (*i.e.*, is conducted in such a way that the PBGC is unable to match responses with the companies that submitted them). The information from the survey is also used by the PBGC in determining the interest rates it uses to value benefits payable to participants and beneficiaries in PBGC-trusteed plans for purposes of the PBGC's financial statements.

The survey is directed at insurance companies that have volunteered to participate, most or all of which are members of the American Council of Life Insurers. The survey is conducted quarterly and will be sent to approximately 22 insurance companies. Based on experience under the current approval, the PBGC estimates that 11 insurance companies will complete and return the survey. The PBGC further estimates that the average annual burden of this collection of information is 41 hours and $88.

The collection of information has been approved by OMB under control number 1212–0030 through January 31, 2003. The PBGC is requesting that OMB extend its approval for another three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Issued in Washington, DC, this 19th day of December, 2002.

Stuart A. Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 02–32494 Filed 12–24–02; 8:45 am]

BILLING CODE 7708–01–P

UNITED STATES POSTAL SERVICE COMMISSION

Sunshine Act Meeting

TIMES AND DATES: 1 p.m., Monday, January 6, 2003; 8:30 a.m., Tuesday, January 7, 2003.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

STATUS: January 6—1 p.m. (Closed); January 7—8:30 a.m. (Open).

MATTERS TO BE CONSIDERED:

Monday, January 6—1 p.m. (Closed)

1. Financial Performance
2. Postal Rate Commission Opinion and Recommended Decision in Docket No. MC2002–3, Experimental Periodicals Co-Palletization Dropship Discounts
3. Strategic Planning
4. Rate Case Planning
5. Personal Matters and Compensation Issues

Tuesday, January 7—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, December 9–10, 2002
2. Remarks of the Postmaster General and CEO
3. Consideration of Board Resolution on Capital Funding
4. Annual Report on Government in the Sunshine Act Compliance
5. Fiscal Year 2002 Comprehensive Statement on Postal Operations
6. Quarterly Report on Financial Performance
7. Quarterly Report on Service Performance
8. Corporate Flats Strategy
9. Capital Investment
   a. Northern New Jersey Metro Processing & Distribution Center Modification Request for Additional Funding
10. Election of Chairman and Vice Chairman of the Board of Governors
11. Tentative Agenda for the February 3–4, 2003, meeting in Las Vegas, Nevada

CONTACT PERSON FOR MORE INFORMATION: William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 2687–4800.

William T. Johnstone,

Secretary.

Stanley F. Mires,

Certifying Officer.

[FR Doc. 02–32647 Filed 12–20–02; 4:52 am]

BILLING CODE 7710–12–M

RAILROAD RETIREMENT BOARD

Actuarial Advisory Committee With Respect to the Railroad Retirement Account; Notice of Public Meeting

Notice is hereby given in accordance with Public Law 92–463 that the Actuarial Advisory Committee will hold a meeting on January 17, 2003, at 10 a.m. at the office of the Chief Actuary of the U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, on the conduct of the 22nd Actuarial Valuation of the Railroad Retirement System. The agenda for this meeting will include a discussion of the assumptions to be used in the 22nd Actuarial Valuation. A report containing recommended assumptions and the experience on which the recommendations are based will have been sent by the Chief Actuary to the committee before the meeting.

The meeting will be open to the public. Persons wishing to submit written statements or make oral presentations should address their communications or notices to the RRB Actuarial Advisory Committee, c/o Chief Actuary, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

Dated: December 19, 2002.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 02–32513 Filed 12–24–02; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27624]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (Act)

December 19, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed

transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 13, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After January 13, 2003 the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Xcel Energy Inc. (70–10096)

Xcel Energy Inc. (''Xcel''), a registered holding company, located at 800 Nicollet Mall, Minneapolis, Minnesota 55402, has filed an application-declaration (''Application'') under sections 6(a), 7, 12(c), 32 and 33 of the Act and rules 46, 53 and 54 under the Act.

By order dated August 22, 2000 (HCAR No. 27218) (the ''Prior Financing Order''), the Commission authorized Xcel to, among other things, (i) issue and sell common stock and long-term debt securities during a period through September 30, 2003 (''Authorization Period''), provided that the aggregate proceeds of these issuances, together with any long-term debt and preferred securities issued by financing entities established by Xcel, did not exceed $2.0 billion [1] and (ii) issue and sell short-term debt in an aggregate principal amount of up to $1.5 billion outstanding at any time. In this Application, Xcel seeks to increase the aggregate amount of common stock and long-term debt securities that it may issue during the Authorization Period from the $2.0 billion authorized by the Prior Financing Order to $2.5 billion, as described below. Xcel also seeks to modify certain of the conditions applicable to the financing authorizations granted in the Prior Financing Order.[2] In addition, Xcel seeks authorization of the Commission to declare and pay dividends out of capital and surplus during the Authorization Period in an aggregate amount not to exceed $260 million.

Specifically, Xcel requests authority to issue and sell common stock and/or long-term debt securities for the uses described below, provided that the aggregate proceeds received during the Authorization Period upon issuance of this common stock (exclusive of the issuance of common stock specifically authorized in the Prior Financing Order in respect of employee benefit plans and dividend reinvestment plan and the issuance of common stock specifically authorized in the Commission's order dated May 30, 2002 (HCAR No. 27533) (''NRG Order'')) [3] and the aggregate principal amount of long-term debt issued and outstanding at any one time during the Authorization Period, together with any long-term debt or preferred securities issued by financing subsidiaries established by Xcel under the Prior Financing Order, shall not exceed $2.5 billion (''Aggregate Financing Limit'').[4]

Xcel also requests certain modifications to the financing conditions contained in the Prior Financing Order. Xcel requests that the financing authority granted by the Commission in the Prior Financing Order and the financing authority requested in this Application be subject to the following general terms and conditions, where appropriate:

(i) The securities would be issued at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets;

(ii) The maturities of the debt securities would not exceed fifty years;

(iii) Any long-term debt issued by Xcel (other than debt securities not rated by the rating agencies) will, at the time of original issuance, be rated at least investment grade by a nationally recognized credit rating organization; provided that Xcel requests that the Commission reserve jurisdiction over the issuance of long-term debt in those circumstances where the security, upon issuance, would be unrated or would be rated below investment grade;

(iv) Xcel's common equity as reflected on its most recent Form 10–K or Form 10–Q and as adjusted to reflect subsequent events that affect capitalization,[5] will be at least 30% of Xcel's consolidated total capitalization; provided that in any event when Xcel does not satisfy the 30% common equity ratio, Xcel may issue common stock under this authorization; and

(v) the underwriting fees, commissions and other similar remuneration paid in connection with the noncompetitive issuance of any security issued by Xcel under this authorization will not exceed the greater of (i) 5% of the principal or total amount of the securities being issued; or (ii) issuances expenses that are paid at the time in respect of the issuance of securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality.

Further, Xcel requests that the Commission authorize Xcel to engage in the financing transactions authorized in the Prior Financing Order and in the Commission's order dated March 7, 2002 (HCAR No. 27494) (the ''100% Order'')[6] (together, ''Financing Orders'') and in this Application at a time when Xcel does not satisfy the requirement that Xcel maintain a ratio of common equity to total capitalization of at least 30% (''Xcel 30% Test''). This requested authorization is supplemental, and in addition, to the authorization granted by the Commission on November 7, 2002 (HCAR No. 27597) (''Xcel 30% Order'').[7]

Xcel now requests authorization to issue common stock at any time, even if the Xcel 30% Test is not met. Xcel further requests that, pending

[1] The authorization in the Prior Financing Order to issue up to $2.0 billion of common stock and long-term debt was in addition to the authorization in the Prior Financing Order for Xcel to issue up to 30 million shares of its common stock under various employee benefit and dividend reinvestment plans.

[2] Except to the extent specifically provided below, all terms and conditions of the Prior Financing Order would remain in effect and all securities issued by Xcel under authorization granted by the Commission in this proceeding would be subject to the terms and conditions of the Prior Financing Order.

[3] In the NRG Order, the Commission authorized Xcel to acquire through an exchange offer and subsequent short-form merger the outstanding publicly-held stock of its 74%-owned subsidiary, NRG Energy, Inc. (''NRG''), and issue up to 33,394,564 shares of its common stock for that purpose.

[4] As of December 15, 2002, Xcel had issued $1,805 million, consisting of $517.5 million of common stock, $1,230 million of long-term debt outstanding, and a commitment to issue up to $57.5 million of long-term debt. These amounts would be counted against the Aggregate Financing Limit.

[5] Total capitalization is defined as the sum of common stock equity, preferred stock, long-term debt (including current maturities) and short-term debt.

[6] The 100% Order authorized Xcel to use the proceeds of its securities issuances to invest up to 100% of its ''consolidated retained earnings,'' as defined in rule 53(a)(1)(i) under the Act, in exempt wholesale generators (''EWGs'') and foreign utility companies (''FUCOs''), as those terms are defined in sections 32 and 33 of the Act, respectively.

[7] In the Xcel 30% Order, the Commission authorized Xcel to engage in certain specified financing transactions through March 31, 2003, at a time when Xcel's common equity ratio was less than 30%, provided that Xcel's common equity ratio was at least 24%.

completion of the record, the Commission reserve jurisdiction over the authorization of Xcel and its subsidiaries to engage in any other financing transactions authorized in the Financing Orders and in this proceeding at any time that Xcel does not satisfy the Xcel 30% Test.

Subject to the limits described above, Xcel may sell common stock, options, warrants, stock purchase rights and other equity-linked securities or contracts to purchase common stock in any of the following ways: (i) Through underwriters or dealers; (ii) through agents; or (iii) directly to a limited number of purchasers or a single purchaser. Xcel may also issue common stock in public or privately-negotiated transactions in exchange for the equity securities or assets of other companies, provided that the acquisition of any such equity securities or assets has been authorized in this proceeding or in a separate proceeding or is exempt under the Act or the rules under the Act.

Also, subject to the limits described above, Xcel's long-term debt will be unsecured and: (i) May be subordinated in right of payment to other debt and other obligations of Xcel; (ii) may be convertible into any other securities of Xcel; (iii) will have maturities ranging from one to 50 years; (iv) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the principal amount thereof; (v) may be entitled to mandatory or optional sinking fund provisions; (vi) may provide for reset of the interest rate pursuant to a remarketing arrangement; and (vii) may be called from existing investors by a third party. In addition, Xcel may have the right from time to time to defer the payment of interest on all or a portion of its long-term debt (which may be fixed or floating or ''multi-modal,'' *i.e.*, where the interest is periodically reset, alternating between fixed and floating interest rates for each reset period). Xcel contemplates that long-term debt securities would be issued and sold directly to one or more purchasers in privately-negotiated transactions or to one or more investment banking or underwriting firms or other entities who would resell these securities without registration under the Securities Act of 1933, as amended (''33 Act''), in reliance upon one or more applicable exemptions from registration under the 33 Act, or to the public either (i) through underwriters selected by negotiation or competitive bidding, or (ii) through selling agents acting either as agent or as principal for resale to the public either directly or through dealers.

The Prior Financing Order authorizes Xcel and/or its Subsidiaries [8] to form one or more financing subsidiaries to issue preferred securities and/or long-term debt securities, the proceeds of which may be loaned to Xcel. Applicants state that any issuance of any long-term debt securities by a financing subsidiary established by Xcel would be counted against the $2.5 billion Aggregate Financing Limit described above.

Applicants state that the proceeds from these sales would be used for purposes previously approved by the Commission in the Prior Financing Order, including: (i) Financing investments by and capital expenditures of Xcel and its Subsidiaries; (ii) the repayment, redemption, refunding or purchase by Xcel or any of its Subsidiaries of securities issued by such companies without the need for prior Commission approval under rule 42 or a successor rule; (iii) financing working capital requirements of Xcel and its Subsidiaries; and (iv) other lawful general purposes. In addition, Applicants state that any use of proceeds to make investments in any ''energy-related company,'' as defined in rule 58 under the Act, would be subject to the investment limitation of that rule. Applicants further state that any use of proceeds to make investments in any EWG or FUCO would be subject to the investment limitation and other conditions set forth in the 100% Order or under any order amending or replacing the 100% Order. Xcel further commits that no financing proceeds will be used to acquire the equity securities of any new subsidiary unless that acquisition has been approved by the Commission in this proceeding or in a separate proceeding or is in accordance with an available exemption under the Act or the rules under the Act.

Xcel further commits that at any time that the Xcel 30% Test is not met, neither Xcel nor any Subsidiary of Xcel (other than NRG and NRG's subsidiaries) will invest or commit to invest any funds in NRG and/or any EWG or FUCO, except for any amount required to honor the obligations of Xcel under the Support and Capital Subscription Agreement dated May 29, 2002 between Xcel and NRG (the ''Support Agreement'') and/or under any guaranty of the obligations of NRG or any EWG or FUCO, which was a valid and binding obligation of Xcel before the time that Xcel ceased to comply with the Xcel 30% Test and was entered into by Xcel in conformity with the terms and conditions of the Prior Financing Order and the 100% Order. Furthermore, Xcel commits that during the time that Xcel is not in compliance with the Xcel 30% Test, Xcel will not permit NRG to invest, or commit to invest, in any new projects which qualify as EWGs or FUCOs; provided, however, NRG may increase its investment in EWGs and FUCOs as a result of the qualification of existing projects as EWGs or FUCOs and NRG may make additional investments in an existing EWG or FUCO to the extent necessary to complete any project or desirable to preserve or enhance the value of NRG's investment in that project. Xcel requests that the Commission reserve jurisdiction over any additional investment by Xcel and its Subsidiaries in NRG and/or any EWG or FUCO during the period that the Xcel 30% Test is not met.

Xcel also requests authorization for Xcel to declare and pay dividends out of capital and unearned surplus in an aggregate amount not to exceed $260 million during the Authorization Period. Xcel states that it will not declare or pay any dividend out of capital or unearned surplus in contravention of any law restricting the payment of dividends. In addition, Xcel states that it will comply with the terms of any credit agreements and indentures that restrict the amount and timing of distributions by Xcel to its shareholders.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–32529 Filed 12–24–02; 8:45 am]

BILLING CODE 8010–01–P

[8] The term ''Subsidiaries'' is defined in the Prior Financing Order, and includes each of Xcel's utility subsidiaries and nonutility subsidiaries, as well as any future direct or indirect nonutility subsidiaries of Xcel whose equity securities may be acquired in accordance with an order of the Commission or in accordance with an exemption under the Act or the Commission's rules thereunder.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47030; File No. SR–CTA/CQ–2002–01]

Consolidated Tape Association; Notice of Filing and Summary Effectiveness of the Fourth Substantive Amendment to the Second Restatement of the Consolidated Tape Association Plan and the Second Substantive Amendment to the Restated Consolidated Quotation Plan

December 18, 2002.

Pursuant to Rule 11Aa3–2 [1] under the Securities Exchange Act of 1934 (''Act''), notice is hereby given that on December 16, 2002, the Consolidated Tape Association (''CTA'') Plan and Consolidated Quotation (''CQ'') Plan Participants (''Participants'') [2] filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposal to amend the CTA and CQ Plans (collectively, the ''Plans''). The proposal represents the 4th substantive amendment made to the Second Restatement of the CTA Plan (''4th Amendment'') and the 2nd substantive amendment to the Restated CQ Plan (''2nd Amendment''), and reflects several changes unanimously adopted by the Participants. The proposed amendments would introduce a capacity planning process into the Plans and would allocate among the Participants the costs associated with their capacity needs under the Plans.

The Commission is putting into effect summarily the 4th Amendment to the CTA Plan and the 2nd Amendment to the CQ Plan, and publishing this notice to solicit comments from interested persons on the proposed amendments to the Plans generally.

I. Description and Purpose of the Amendment

A. Rule 11Aa3–2

The Participants propose to introduce a capacity planning process into the Plans. The Participants will engage in the capacity planning process on a semi-annual basis. The proposed capacity planning process requires each Participant to submit its projected capacity needs directly to the Securities Industry Automation Corporation (''SIAC'' or ''Processor''), the processor under both Plans. The process avoids any need for Participants to share their individual capacity needs with one another. SIAC will provide each Participant with aggregate capacity projections for all Participants, but will not provide any individual Participant's capacity projections with any other Participant.

Under the proposed plan:

1. Semi-Annual Planning Cycles

a. At the start of each semi-annual capacity planning cycle, each Participant will develop and submit to SIAC an initial set of projected capacity needs.

b. Once it receives all of the initial sets of projected capacity needs, SIAC will aggregate the initial projected capacity requirements for all of the Participants and will notify each Participant as to:

i. the initial aggregate capacity projections for all Participants;

ii. the percentage of capacity requirements attributable to that Participant; and

iii. the amount of any projected excess capacity or any projected deficit capacity.

(SIAC determines the excess or deficit by comparing the capacity that the then existing systems under the Plans can provide and the aggregate projected capacity needs of the Participants.)

c. Each Participant will then notify the Processor of its final projected capacity needs.

d. Based on the information that SIAC provides, CTA and the CQ Operating Committee will determine and advise SIAC of any increase or decrease that they propose to make to the capacity of their respective systems. However, in directing SIAC to make any proposed change, the Participants must cause the system to have no less capacity than the capacity necessary to meet the aggregate projected capacity requirements for the system for all Participants.

e. SIAC will then submit to each Participant a proposal for increasing or decreasing total system capacity and each Participant's proportionate share of the estimated costs for implementing any change. Each Participant's proportionate share of the costs will reflect that Participant's percentage of the final projected capacity requirements for all Participants.

f. SIAC will bill each Participant directly and each Participant will pay SIAC for the services that SIAC renders to it. The cost of the services for each Participant will be its proportionate share of the total cost to all of the Participants.

g. Each Participant will be entitled to use its proportionate share of the final capacity requirements of all Participants and, at no extra cost, of any excess capacity. If the Processor determines that a Participant is using more than its proportionate share of the aggregate capacity and the excess capacity, that Participant may be subject to a fine. The proceeds from any such fine will be distributed to each of the other Participants in accordance with their proportionate shares.

2. Intra-Cycle Capacity Transfers

a. In between the semi-annual capacity planning cycles, a Participant may seek to increase or decrease the amount of capacity available to it by notifying SIAC of its desire for more or less capacity. Under those circumstances, a Participant may purchase additional capacity only if another Participant has submitted to SIAC an unfilled request to sell a portion of its capacity or if excess capacity exists in the system at that time. A Participant may sell some of its capacity only if another Participant has submitted to SIAC an unfilled request to purchase additional capacity.

b. If SIAC is able to match Participants' requests to buy and sell capacity within a planning cycle, SIAC will effect the sale for the Participants without revealing either Participant's identity.

c. If a Participant determines to acquire available excess capacity, SIAC shall adjust each Participant's proportionate share of system costs based on the new amount of capacity available to the Participant acquiring the available excess capacity.

d. On a periodic basis, SIAC will determine and inform each Participant of the total amount of the system capacity currently available, whether it is available from available excess capacity or from a Participant that seeks to sell capacity.

Under this plan, SIAC will not disclose to any Participant:

1. The initial or final projected capacity requirements of any other Participant;

2. The percentage of the aggregate amount of capacity attributable to any other Participant; or

3. Any other Participant's between-planning-cycles request to increase or decrease capacity.

The Participants believe that the filing of the proposed amendments is in fulfillment of the national market system objectives regarding the dissemination of market information as

[1] 17 CFR 240.11Aa3–2.

[2] Each Participant executed the proposed amendments. The Participants are the American Stock Exchange LLC (''AMEX''); Boston Stock Exchange, Inc. (''BSE''); Chicago Board Options Exchange, Inc. (''CBOE''); Chicago Stock Exchange, Inc. (''CHX''); Cincinnati Stock Exchange, Inc. (''CSE''); National Association of Securities Dealers, Inc. (''NASD''); New York Stock Exchange, Inc. (''NYSE''); Pacific Exchange, Inc. (''PCX''); and Philadelphia Stock Exchange, Inc. (''PHLX'').

anticipated by Sections 11A(a)(1)(C),[3] 11A(a)(1)(D)[4] and 11A(a)(3)(B)[5] of the Act.

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendment

The Participants have requested that the proposed amendments to the Plans become effective summarily upon publication of notice of the amendments, on a temporary basis not to exceed 120 days, so that the proposed new capacity planning process can be implemented on January 1, 2003, the date of the next capacity planning cycle.[6]

D. Development and Implementation Phases

The Participants propose to commence to plan for their capacity needs pursuant to the new process with the next capacity planning cycle, which begins on January 1, 2003.

E. Analysis of Impact on Competition

The Participants believe that the proposed amendments do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Participants do not believe that the proposed plan amendments introduce terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D)[7] of the Act.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

The forms of agreement between the Participants and SIAC have been revised to reflect the new obligations of the Participants and the Processor in respect of the new capacity planning process.

G. Approval by Sponsors in Accordance with Plan

In accordance with Section IV(b) of the CTA Plan and Section IV(c) of the Restated CQ Plan, each of the Participants has approved the amendments.

H. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

I. Terms and Conditions of Access

Not applicable.

J. Method of Determination and Imposition, and Amount of, Fees and Charges

Not applicable.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Rule 11Aa3–1

A. Reporting Requirements

Not applicable.

B. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

The proposed amendments provide a new process pursuant to which the Participants under the Plans can plan for the capacity needs of the systems that they use to gather market data from their respective marketplaces for consolidation and distribution to the public.

C. Manner of Consolidation

Not applicable.

D. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

E. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

F. Terms of Access to Transaction Reports

Not applicable.

G. Identification of Marketplace of Execution

Not Applicable.

III. Date of Effectiveness of the Proposed Amendment

The Commission has determined, pursuant to Rule 11Aa3–2(c)(4)[8] under the Act, that the proposed amendments, which generally implement a new capacity planning process, will become effective summarily upon publication of this notice of amendments in the **Federal Register** on a temporary basis not to exceed 120 days. The Commission believes that it is appropriate to put the proposed amendments into effect summarily because they should provide for the maintenance of fair and orderly markets, and should remove impediments to, and perfect the mechanism of, a national market system. By granting temporary summary effectiveness, the Participants can begin to plan their capacity needs pursuant to the proposed capacity planning process for the January 1, 2003 capacity planning cycle.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed amendments to the 4th Amendment to the CTA Plan and the 2nd Amendment to the CQ Plan are 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 amendments that are filed with the Commission, and all written communications relating to the proposal between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of CTA. All submissions should refer to File No. SR–CTA/CQ–2002–01 and be submitted by January 16, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

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[3] 15 U.S.C. 78k–1(a)(1)(C).

[4] 15 U.S.C. 78k–1(a)(1)(D).

[5] 15 U.S.C. 78k–1(a)(3)(B).

[6] Telephone conversation between Thomas F. Haley, Chairman, CTA, and Kathy A. England, Assistant Director, Sapna C. Patel, Attorney, Ian K. Patel, Attorney, Division of Market Regulation (''Division''), Commission, on December 17, 2002. *See also* letter from Thomas E. Haley, Chairman, CTA, to Kathy A. England, Assistant Director, Division, Commission, dated December 16, 2002. The Commission's notes that the original filing of the proposed amendments to the Plans incorrectly stated that the proposed amendments would take effect upon filing with the Commission because they are concerned solely with the administration of the Plans.

[7] 15 U.S.C. 78k–1(c)(1)(D).

[8] 17 CFR 240.11Aa3–2(c)(4).

[9] 17 CFR 200.30–3(a)(27).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47027; File No. 4–429]

Joint Industry Plan; Notice of Filing of Amendment to the Options Intermarket Linkage Plan To Provide a Process for Potential New Options Exchanges To Have Interim Access to Linkage Information

December 18, 2002.

Pursuant to section 11A of the Securities Exchange Act of 1934 (''Act'')[1] and rule 11Aa3–2 thereunder,[2] notice is hereby given that on November 8, 2002, November 14, 2002, November 15, 2002, November 26, 2002, and December 6, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx''), International Securities Exchange LLC (''ISE''), Chicago Board Options Exchange, Inc. (''CBOE''), American Stock Exchange LLC (''Amex''), and Pacific Exchange, Inc. (''PCX'') (collectively the ''Participants'') respectively submitted to the Securities and Exchange Commission (''SEC'' or ''Commission'') Amendment No. 5 to the Options Intermarket Linkage Plan (the ''Linkage Plan'').[3] The amendment proposes to provide a process for potential new options exchanges to have interim access to Linkage information to help such exchanges prepare to join the Linkage. The Commission is publishing this notice to solicit comments from interested persons on the proposed Linkage Plan amendment.

I. Description and Purpose of the Amendment

Currently, the Plan allows a new exchange to join the Linkage by executing the Plan, filing an amendment to the Plan including themselves as a participant, and paying the then-applicable participation fee. Thus, the Plan provides new entrants with the ability to join the Linkage unilaterally, without requiring any action by the current Participants.

However, before an exchange can join the Linkage, it first must be a participant exchange in The Options Clearing Corporation and be a party to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''OPRA Plan'').[4] This effectively requires that the applicant exchange have effective rules for the trading of options approved by the Commission. While this is a reasonable requirement for full participation in the Linkage, the Participants acknowledge that this structure does not recognize that exchanges proposing to develop an options market reasonably need access to Linkage information, particularly technical information, in order to build their market and prepare for Linkage participation. The proposed amendment will provide conditional interim access to Linkage information.

The Participants anticipate that a new entrant will require the existing Participants to spend considerable time working with an applicant on both technical and policy issues. Accordingly, the proposed amendment includes certain requirements as a safeguard to limit access to serious applicants fully committed to pursuing the development of an options market. Specifically, an applicant will have access to Linkage documentation, testing and other necessary Linkage facilities upon the Commission having published for comment the applicant's proposed rules governing the trading of standardized options. The applicant also must affirm that it is seriously pursuing the establishment of an options market and must pay a refundable deposit towards the participation fee. Once an applicant is granted interim access, such access will remain in effect for one year. If the applicant has not yet joined the Linkage after this time period, it can request an additional period of access, and the Linkage participants will not unreasonably deny such a request.

II. Implementation of the Plan Amendment

The Participants intend to make the proposed amendment to the Linkage Plan reflected in this filing effective when the Commission approves the amendment.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Linkage Plan amendment is consistent with the Act. Persons making written submission 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 Linkage Plan amendment that are filed with the Commission, and all written communications relating to the proposed Linkage Plan amendment 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 filings will also be available for inspection and copying at the principal offices of the Amex, CBOE, ISE, Phlx, and PCX. All submissions should refer to File No. 4–429 and should be submitted by January 16, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

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[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage proposed by the Amex, CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, upon request by the Phlx and PCX, the Commission issued orders to permit these exchanges to participate in the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000) and 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000).

[4] OPRA is a national market system plan approved by the Commission pursuant to section 11A of the Exchange Act, 15 U.S.C. 78k–1, and rule 11Aa3–2 thereunder, 17 CFR 240.11Aa3–2. *See* Securities Exchange Act Release No. 17638 (March 18, 1981). The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The five signatories to the OPRA Plan that currently operate an options market are the American Stock Exchange, the Chicago Board Options Exchange (''CBOE''), the International Securities Exchange (''ISE''), the Pacific Exchange, and the Philadelphia Stock Exchange. The New York Stock Exchange is a signatory to the OPRA Plan, but sold its options business to the Chicago Board Options Exchange in 1997. *See* Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

[5] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47029; File No. SR–ISE–2002–19]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by International Securities Exchange, Inc., Relating to Rules Governing the Intermarket Linkage

December 18, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

September 24, 2002, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization.

The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to adopt new Chapter 19 of its rules, governing the operation of the intermarket linkage (the ''Linkage''). The Linkage Rules will become effective once the Commission approves this filing and as the Exchange implements the operation of the applicable provisions of the Linkage. For example, the provisions of Chapter 19 regarding order protection will not become effective until the Exchange implements the Linkage operations governing Satisfaction Orders (as defined in Chapter 19 of the Rules) and trade-through processing. Below is the text of the proposed rule change; proposed new text is italicized.

* * * * *

Chapter 19

Intermarket Linkage

Rule 1900. Definitions

The following terms shall have the meaning specified in this Rule solely for the purpose of this Chapter 19:

(1) ''Aggrieved Party'' means a member of a Participant Exchange whose bid or offer was traded-through.

(2) ''Block Trade'' means a trade on a Participant Exchange that:

(i) involves 500 or more contracts and has a premium value of at least $150,000;

(ii) is effected at a price outside of the NBBO; and

(iii) involves either:

(A) a cross (where a member of the Participant Exchange represents all or a portion of both sides of the trade), or

(B) any other transaction i.e., in which such member represents an order of block size on one side of the transaction only) that is not the result of an execution at the current bid or offer on the Participant Exchange.

Contemporaneous transactions at the same price on a Participant Exchange shall be considered a single transaction for the purpose of this definition.

(3) ''Complex Trade'' means the execution of an order in an option series in conjunction with the execution of one or more related orders(s) in different options series in the same underlying security occurring at or near the same time for the equivalent number of contracts and for the purpose of executing a particular investment strategy.

(4) ''Crossed Market'' means a quotation in which the Exchange disseminates a bid (offer) in a series of an Eligible Option Class at a price that is greater than (is less than) the price of the offer (bid) for the series then being displayed from another Participant Exchange.

(5) ''Eligible Market Maker,'' with respect to an Eligible Option Class, means a market maker that:

(i) is assigned to, and is providing two-sided quotations in, the Eligible Option Class; and

(ii) is in compliance with the requirements of Rule 1904.

(6) ''Eligible Option Class'' means all option series overlying a security (as that term is defined in Section 3(a)(10) of the Exchange Act) or group of securities, including both put options and call options, which class is traded on the Exchange and at least one other Participant Exchange.

(7) ''Firm Customer Quote Size'' with respect to a P/A Order means the lesser of: (a) the number of option contracts that the Participant Exchange sending a P/A Order guarantees it will automatically execute at its disseminated quotation in a series of an Eligible Option Class for Public Customer orders entered directly for execution in that market; or (b) the number of option contracts that the Participant Exchange receiving a P/A Order guarantees it will automatically execute at its disseminated quotation in a series of an Eligible Option Class for Public Customer orders entered directly for execution in that market. This number shall be at least 10.

(8) ''Firm Principal Quote Size'' means the number of options contracts that a Participant Exchange guarantees it will execute at its disseminated quotation for incoming Principal Orders in an Eligible Option Class. This number shall be 10.

(9) ''Linkage'' means the systems and data communications network that link electronically the Participant Exchanges for the purposes specified in the Plan.

(10) ''Linkage Order'' means an order routed through the Linkage as permitted under the Plan. There are three types of Linkage Orders:

(i) ''Principal Acting as Agent (''P/A'') Order,'' which is an order for the principal account of a Primary Market Maker (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the Primary Market Maker is acting as agent;

(ii) ''Principal Order,'' which is an order for the principal account of a market maker (or equivalent entity on another Participant Exchange) and is not a P/A Order; and

(iii) ''Satisfaction Order,'' which is an order sent through the Linkage to notify a Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

(11) ''Locked Market'' means a quotation in which the Exchange disseminates a bid (offer) in a series of an Eligible Option Class at a price that equals the price of the offer (bid) for the series then being displayed from another Participant Exchange.

(12) ''NBBO'' means the national best bid and offer in an options series as calculated by a Participant Exchange.

(13) ''Non-Firm'' means, with respect to quotations, that members of a Participant Exchange are relieved of their obligation to be firm for their quotations pursuant to Rule 11Ac1–1 under the Exchange Act.

(14) ''Participant Exchange'' means a registered national securities exchange that is a party to the Plan.

(15) ''Plan'' means the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage, as such plan may be amended from time to time.

(16) ''Reference Price'' means the limit price attached to a Linkage Order by the sending Participant Exchange. Except with respect to a Satisfaction Order, the Reference Price is equal to the bid disseminated by the receiving Participant Exchange at the time that the Linkage Order is transmitted in the case of a Linkage Order to sell and the offer disseminated by the receiving Participant Exchange at the time that the Linkage Order is transmitted in the case of a Linkage Order to buy. With respect to a Satisfaction Order, the Reference Price is the bid or offer price reflecting order(s) of Public Customers disseminated by the sending Participant Exchange that was traded through, except in the case of a Trade-Through that is a Block Trade, in which case the Reference Price shall be the price of the Block Trade that caused the Trade-Through.

(17) ''Trade-Through'' means a transaction in an option series at a price that is inferior to the NBBO.

(18) ''Third Participating Market Center Trade-Through'' means a Trade-

Through in a series of an Eligible Option Class that is effected by executing a Linkage Order, and such execution results in a sale (purchase) at a price that is inferior to the best bid (offer) being disseminated by another Participant Exchange.

(19) ''Verifiable Number of Customer Contracts'' means the number of Public Customer contracts in the book of a Participant Exchange.

Rule 1901. Operation of the Linkage

By subscribing to the Plan, the Exchange has agreed to comply with, and enforce compliance by its Members with, the Plan. In this regard, the following shall apply:

(a) Pricing. Members may send P/A Orders and Principal Orders through the Linkage only if such orders are priced at the NBBO.

(b) P/A Orders.

(1) Sending of P/A Orders for Sizes No Larger than the Firm Customer Quote Size. A Primary Market Maker may send through the Linkage a P/A Order for execution in the automatic execution system of a Participant Exchange if the size of such P/A Order is no larger than the Firm Customer Quote Size. Except as provided in subparagraph (b)(2)(ii) below, a Primary Market Maker may not break up an order of a Public Customer that is larger than the Firm Customer Quote Size into multiple P/A Orders, one or more of which is equal to or smaller than the Firm Customer Quote Size, so that such orders could be represented as multiple P/A Orders through the Linkage.

(2) Sending of P/A Orders for Sizes Larger than the Firm Customer Quote Size. If the size of a P/A Order is larger than the Firm Customer Quote Size, a Primary Market Maker may send through the Linkage such P/A Order in one of two ways:

(i) The Primary Market Maker may send a P/A Order representing the entire Public Customer order. If the receiving Participant Exchange's disseminated quotation is equal to or better than the Reference Price when the P/A Order arrives at that market, that exchange will execute the P/A Order at its disseminated quotation for at least the Firm Customer Quote Size. Within 15 seconds of receipt of such order, the receiving Participant Exchange will inform the Primary Market Maker of the amount of the order executed and the amount, if any, that was canceled.

(ii) Alternatively, the Primary Market Maker may send an initial P/A Order for the Firm Customer Quote Size pursuant to subparagraph (b)(1) above. If the Participant Exchange executes the P/A Order and continues to disseminate the same quotation at the NBBO 15 seconds after reporting the execution of the initial P/A Order, the Primary Market Maker may send an additional P/A Order to the same Participant Exchange. If sent, such additional P/A Order must be for at least the lesser of 100 contracts or the entire remainder of the Public Customer order.

In any situation where a receiving Participant Exchange does not execute a P/A Order in full, such exchange is required to move its quotation to a price inferior to the Reference Price of the P/A Order.

(c) Principal Orders.

(1) Sending of an Initial Principal Order. An Eligible Market Maker may send a Principal Order through the Linkage at a price equal to the NBBO. Subject to the next paragraph, if the Principal Order is not larger than the Firm Principal Quote Size, the receiving Participant Exchange will execute the order in its automatic execution system, if available, if its disseminated quotation is equal to or better than the price specified in the Principal Order when that order arrives at the receiving Participant Exchange. If the Principal Order is larger than the Firm Principal Quote Size, the receiving Participant Exchange will (a) execute the Principal Order at its disseminated quotation for at least the Firm Principal Quote Size and (b) within 15 seconds of receipt of such order, reply to the sending Participant Exchange, informing such Participant Exchange of the amount of the order that was executed and the amount, if any, canceled. If the receiving Participant Exchange does not execute the Principal Order in full, it will move its quote to a price inferior to the Reference Price of the Principal Order.

(2) Receipt of Multiple Principal Orders. Once the Exchange provides an automatic execution of a Principal Order in a series of an Eligible Option Class (the ''initial execution''), the Exchange may reject any Principal Order(s) in the same Eligible Option Class sent by the same Participant Exchange for 15 seconds after the initial execution unless: (a) There is a change of price in the Exchange's disseminated offer (bid) in the series of the Eligible Option Class in which there was the initial execution; and (b) such price continues to be the NBBO. After this 15 second period, and until the sooner of (y) one minute after the initial execution or (z) a change in the Exchange's disseminated bid (offer), the Exchange is not obligated to provide an automatic execution for any Principal Orders in the same Eligible Option Class received from the Participant Exchange that sent the order resulting in the initial execution, and thus may treat any such Principal Orders as being greater than the Firm Principal Quote Size.

(d) Responses to Linkage Orders.

(1) Failure to Receive a Timely Response. A Member who does not receive a response to a P Order or a P/A Order within 20 seconds of sending the order may reject any response received thereafter purporting to report an execution of all or part of that order. The Member so rejecting the response shall inform the Exchange Participant sending that response of the rejection within 15 seconds of receipt of the response.

(2) Failure to Send a Timely Response. If a Member responds to a P Order or P/A Order more than 20 seconds after receipt of that order, and the Participant Exchange to whom the Member responded cancels such response, the Member shall cancel any trade resulting from such order and shall report the cancellation to OPRA.

(e) Receipt of Linkage Orders. The Exchange will provide for the execution of P/A Orders and Principal Orders if its disseminated quotation is (i) equal to or better than the Reference Price, and (ii) equal to the then-current NBBO. Subject to paragraph (c) above, if the size of a P/A Order or Principal Order is not larger than the Firm Customer Quote Size or Firm Principal Quote Size, respectively, the Exchange will provide for the execution of the entire order, and shall execute such order in its automatic execution system if that system is available. If the size of a P/A Order or Principal Order is larger than the Firm Customer Quote Size or Firm Principal Quote Size, respectively, the Primary Market Maker must address the order within 15 seconds to provide an execution for at least the Firm Customer Quote Size or Firm Principal Quote Size, respectively. If the order is not executed in full, the Exchange will move its disseminated quotation to a price inferior to the Reference Price.

Rule 1902. Order Protection

(a) Avoidance and Satisfaction of Trade-Throughs.

(1) General Provisions. Absent reasonable justification and during normal market conditions, Members should not effect Trade-Throughs. Except as provided in paragraph (b) below, if a Member effects a Trade-Through with respect to the bid or offer of a Participant Exchange in an Eligible Option Class and the Exchange receives a Satisfaction Order from an Aggrieved Party, either:

(i) the Member who initiated the Trade-Through shall satisfy, or cause to

be satisfied, the Aggrieved Party by filling the Satisfaction Order in accordance with subparagraph (a)(2) below; or

(ii) if the Member elects not to do so (and, in the case of Third Participating Market Center Trade-Through, the Member obtains the agreement of the contra party that received the Linkage Order that caused the Trade-Through), then the price of the transaction that constituted the Trade-Through shall be corrected to a price at which a Trade-Through would not have occurred. If the price of the transaction is corrected, the Member correcting the price shall report the corrected price to OPRA, notify the Aggrieved Party of the correction and cancel the Satisfaction Order.

(2) Price and Size. The price and size at which a Satisfaction Order shall be filled is as follows:

(i) Price. A Satisfaction Order shall be filled at the Reference Price. However, if the Reference Price is the price of an apparent Block Trade that caused the Trade-Through, and such trade was not, in fact, a Block Trade, then the Member may cancel the Satisfaction Order. In that case, the Member shall inform the Aggrieved Party within three minutes of receipt of the Satisfaction Order of the reason for the cancellation. Within three minutes of receipt of such cancellation, the Aggrieved Party may resend the Satisfaction Order with a Reference Price of the bid or offer that was traded through.

(ii) Size. An Aggrieved Party may send a Satisfaction Order up to the size of the Verifiable Number of Customer Contracts that were included in the disseminated bid or offer that was traded through. Subject to subparagraph (2)(i) above and paragraph (b) below, a Member shall fill in full all Satisfaction Orders it receives following a Trade-Through, subject to the following limitations:

(A) If the number of contracts to be satisfied exceeds the size of the transaction that caused the Trade-Through, the size of the Satisfaction Order(s) that must be filled with respect to each Participant Exchange(s) shall be limited to the size of the transaction that caused the Trade-Through, and the remainder of any Satisfaction Order(s) shall be canceled;

(B) If the transaction that caused the Trade-Through was for a size larger than the Firm Customer Quote Size with respect to any of the Participant Exchange(s) traded through, the total number of contracts to be filled, with respect to all Satisfaction Orders received, shall not exceed the size of the transaction that caused the Trade-Through. In that case, the Member shall fill the Satisfaction Orders pro rata based on the Verifiable Number of Customer Contracts traded through on each Participant Exchange, and shall cancel the remainder of such Satisfaction Order(s); and

(C) Notwithstanding paragraphs (A) and (B) above, if the transaction that caused the Trade-Through occurred during the five minutes prior to the regularly-scheduled close of trading in the principal market in which the underlying security is traded, the maximum number of contracts to be satisfied with respect to any one Participant Exchange is 10 contracts.

(3) Rejection of Fills of Satisfaction Orders. Within 30 seconds of receipt of notification that another Participant Exchange has filled a Member's Satisfaction Order, the Member that sent the Satisfaction Order may reject such fill, but only to the extent that either: (i) the order(s) for the customer contracts underlying the Satisfaction Order already have been filled; or (2) the customer order(s) to buy (sell) the contracts underlying the Satisfaction Order were canceled.

(4) Protection of Customers. Whenever subparagraph (a)(1) applies, if Public Customer orders (or P/A Orders representing Public Customer orders) constituted either or both sides of the transaction involved in the Trade-Through, each such Public Customer order (or P/A Order) shall receive:

(i) the price that caused the Trade-Through; or

(ii) the price at which the bid or offer traded through was satisfied, if it was satisfied pursuant to subparagraph (a)(1)(i), or the adjusted price, if there was an adjustment, pursuant to subparagraph (a)(1)(ii),

whichever price is most beneficial to the Public Customer order. Resulting differences in prices shall be the responsibility of the Member who initiated the Trade-Through.

(b) Exceptions to Trade-Through Liability. The provisions of paragraph (a) pertaining to the satisfaction of Trade-Throughs shall not apply under the following circumstances:

(1) the Member who initiated the Trade-Through made every reasonable effort to avoid the Trade-Through, but was unable to do so because of a systems/equipment failure or malfunction;

(2) the Member trades through the market of a Participant Exchange to which such Member had sent a P/A Order or Principal Order, and within 20 seconds of sending such order the receiving Participant Exchange had neither executed the order in full nor adjusted the quotation traded through to a price inferior to the Reference Price of the P/A Order or Principal Order;

(3) the bid or offer traded through was being disseminated from a Participant Exchange whose quotes were Non-Firm with respect to such Eligible Option Class;

(4) the Trade-Through was other than a Third Participating Market Center Trade-Through and occurred during a period when, with respect to the Eligible Option Class, the Exchange's quotes were Non-Firm; provided, however, that, unless one of the other conditions of this paragraph (b) applies, during any such period: (i) Members shall make every reasonable effort to avoid trading through the firm quotes of another Participant Exchange; and (ii) it shall not be considered an exception to paragraph (a) if a Member regularly trades through the firm quotes of another Participant Exchange during such period;

(5) the bid or offer traded through was being disseminated by a Participant Exchange during a trading rotation in the Eligible Option Class;

(6) the transaction that caused the Trade-Through occurred during a trading rotation;

(7) the transaction that caused the Trade-Through was the execution of a Complex Trade;

(8) in the case of a Trade-Through other than a Third Participating Market Center Trade-Through, a Satisfaction Order with respect to the Trade-Through was not received by the Exchange from the Aggrieved Party promptly following the Trade-Through and, in any event, (i) except in the final five minutes of trading, within three minutes from the time the report of the transaction(s) that constituted the Trade-Through was disseminated over OPRA, and (ii) in the final five minutes of trading, within one minute from the time the report of the transaction(s) that constituted the Trade-Through was disseminated over OPRA; or

(9) in the case of a Third Participating Market Center Trade-Through, a Satisfaction Order with respect to the Trade-Through was not received by the Exchange promptly following the Trade-Through. In applying this provision, the Aggrieved Party must send the Exchange a Satisfaction Order within three minutes from the time the report of the transaction that constituted the Trade-Through was disseminated over OPRA. To avoid liability for the Trade-Through, the Member receiving such Satisfaction Order must cancel the Satisfaction Order and inform the Aggrieved Party of the identity of the Participant Exchange that initiated the

Trade-Through within three minutes of the receipt of such Satisfaction Order (within one minute in the final five minutes of trading). The Aggrieved Party then must send the Participant Exchange that initiated the Trade-Through a Satisfaction Order within three minutes of receipt of the cancellation of the initial Satisfaction Order (within one minute in the final five minutes of trading).

(c) Responsibilities and Rights Following Receipt of Satisfaction Orders.

(1) When a Member receives a Satisfaction Order, that Member shall respond as promptly as practicable pursuant to Exchange procedures by either:

(i) specifying that one of the exceptions to Trade-Through liability specified in paragraph (b) above is applicable and identifying that particular exception; or

(ii) taking the appropriate corrective action pursuant to paragraph (a) above.

(2) If the Member who initiated the Trade-Through fails to respond to a Satisfaction Order or otherwise fails to take the corrective action required under paragraph (a) within three minutes of receiving notice of a Satisfaction Order, and the Exchange determines that:

(i) there was a Trade-Through; and

(ii) none of the exceptions to Trade-Through liability specified in paragraph (b) above were applicable;

then, subject to the next paragraph, the Member who initiated the Trade-Through shall be liable to the Aggrieved Party for the amount of the actual loss resulting from non-compliance with paragraph (a) and caused by the Trade-Through.

If either (a) the Aggrieved Party does not establish the actual loss within 30 seconds from the time the Aggrieved Party received the response to its Satisfaction Order (or, in the event that it did not receive a response, within four minutes from the time the Aggrieved Party sent the Satisfaction Order) or (b) the Aggrieved Party does not notify the Exchange Participant that initiated the Trade-Through of the amount of such loss within one minute of establishing the loss, then the liability shall be the lesser of the actual loss or the loss caused by the Trade-Through that the Aggrieved Party would have suffered had that party purchased or sold the option series subject to the Trade-Through at the ''mitigation price.''

The ''mitigation price'' is the highest reported bid (in the case where an offer was traded through) or the lowest reported offer (in the case where a bid was traded through), in the series in question 30 seconds from the time the Aggrieved Party received the response to its Satisfaction Order (or, in the event that it did not receive a response, four minutes from the time the Aggrieved Party sent the Satisfaction Order). If the Participant Exchange receives a Satisfaction Order within the final four minutes of trading (on any day except the last day of trading prior to the expiration of the series which is the subject of the Trade-Through), then the mitigation price shall be the price established at the opening of trading in that series on the Aggrieved Party's Participant Exchange on the next trading day. However, if the price of the opening transaction is below the opening bid or above the opening offer as established during the opening rotation, then the mitigation price shall be the opening bid (in the case where an offer was traded through) or opening offer (in the case where a bid was traded through). If the Trade-Through involves a series that expires on the day following the day of the Trade-Through and the Satisfaction Order is received within the four minutes of trading, the ''mitigation price'' shall be the final bid (in the case where an offer was traded through) or offer (in the case where a bid was traded through) on the day of the trade that resulted in the Trade-Through.

(3) A Member that is an Aggrieved Party under the rules of another Participant Exchange governing Trade-Through liability must take steps to establish and mitigate any loss such Member might incur as a result of the Trade-Through of the Member's bid or offer. In addition, the Member shall give prompt notice to the other Participant Exchange of any such action in accordance with subparagraph (c)(2) above.

(d) Limitations on Trade-Throughs. Members may not repeatedly trade through better prices available on other exchanges, whether or not the exchange or exchanges whose quotations are traded through are Participant Exchanges, unless one or more of the provisions of paragraph (b) above are applicable. In applying this provision:

(1) The Exchange will consider there to have been a Trade-Through if a Member executes a trade at a price inferior to the NBBO even if the Exchange does not receive a Satisfaction Order from an Aggrieved Party pursuant to subparagraph (a)(1);

(2) The Exchange will not consider there to have been a Trade-Through if a Member executes a Block Trade at a price inferior to the NBBO if such Member satisfied all Aggrieved Parties pursuant to subparagraph (a)(2) following the execution of the Block Trade; and

(3) The Exchange will not consider there to have been a Trade-Through if a Member executes a trade a price inferior to the quotation being disseminated by an exchange that is not a Participant Exchange if the Member made a good faith effort to trade against the superior quotation of the non-Participant Exchange prior to trading through that quotation. A ''good faith effort'' to reach a non-Participant Exchange's quotation requires that a Member at least had sent an order that day to the non-Participant Exchange in the class of options in which there is a Trade-Through, at a time at which such non-Participant Exchange was not relieved of its obligation to be firm for its quotations pursuant to Rule 11Ac1–1 under the Exchange Act, and such non-Participant Exchange neither executed that order nor moved its quotation to a price inferior to the price of the Member's order within 20 seconds of receipt of that order.

Rule 1903. Locked and Crossed Markets

(a) Eligible Market Maker Locking or Crossing a Market. An Eligible Market Maker that creates a Locked Market or a Crossed Market shall unlock (uncross) that market or shall direct a Principal Order through the Linkage to trade against the bid or offer that the Eligible Market Maker locked (crossed).

(b) Members Other than an Eligible Market Maker Locking or Crossing a Market. A Member other than an Eligible Market Maker that creates a Locked Market or a Crossed Market shall unlock (uncross) the market.

Rule 1904. Limitation on Principal Order Access

A Market Maker shall not be permitted to send Principal Orders in an Eligible Option Class through the Linkage for a given calendar quarter if the market maker effected less than 80 percent of its volume in that Eligible Option Class on the Exchange in the previous calendar quarter (that is, the market maker effected 20 percent or more of its volume by sending Principal Orders through the Linkage). This ''80/20'' is represented as follows:

$$\frac{X}{X+Y}$$

''X'' equals the total contract volume the market maker effects in an Eligible Option Class against orders of Public Customers on the Exchange during a calendar quarter (a) including contract volume effected by executing P/A

Orders sent to the Exchange through the linkage, but (b) excluding contract volume effected by sending P/A Orders through the Linkage for execution on another Participant Exchange. ''Y'' equals the total contract volume the market maker effects in such Eligible Option Class by sending Principal Orders through the Linkage during that calendar quarter.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt Chapter 19 of the ISE rules, governing operation of the Linkage. These rules implement the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage (the ''Plan'').[3] The Exchange is proposing the following five new rules:

- ISE Rule 1900, Definitions: This proposed rule contains definitions unique to the Linkage; all other definitions in the Exchange's rules continue to apply to this chapter. Generally, these definitions would incorporate into the Exchange's rules the definitions contained in the Plan.
- ISE Rule 1901, Operation of the Linkage: This rule would incorporate Section 7 of the Plan into the ISE's rules. It would establish the conditions pursuant to which market makers may enter Linkage orders and imposes obligations on the Exchange on how it must process incoming Linkage orders. Pursuant to a proposed amendment to the Plan being submitted concurrently with this filing, the proposed rule provides that a member of the ISE may reject an execution of certain Linkage orders received more than 20 seconds after sending the order. This would be a reduction from the 30 seconds currently in the Plan.
- ISE Rule 1902, Order Protection: This proposed rule contains the trade-through provisions required under Section 8(c) of the Plan. First, it would establish a general standard that members should avoid trade-throughs (defined in ISE Rule 1900 to be a trade at a price inferior to the national best bid and offer). If a member does effect a trade-through, the member would be responsible for satisfying a member of another exchange pursuant to paragraphs (a)(2) and (c) of the rule, subject to the exceptions in paragraph (b) of the rule. Both the satisfaction procedures and the exceptions to the satisfaction requirements would incorporate the relevant provision of the Plan. Finally, paragraph (d) of the rule would establish potential regulatory liability for members who repeatedly trade through other exchanges, whether or not the exchanges traded through participate in the Linkage. This proposed rule also reflects two pending amendments to the Plan:

As with ISE Rule 1901, this proposed rule reflects the pending amendment to reduce from 30 seconds to 20 seconds the time period a member must wait for a response to a Linkage order. If the member does not receive the response within 30 seconds, the member can trade through the non-responding exchange without liability.

In addition, this proposed rule reflects a pending Plan amendment that would limit liability for trade-throughs in the last few minutes of a trading day to 10 contracts per exchange. The purpose of that amendment is to provide protection for small customer orders, but also to limit the potential risk to members who may not be able to hedge options positions they assume near the close of trading.

- ISE Rule 1903, Locked and Crossed Markets: This proposed rule implements Section 7(a)(i)(C) of the Plan by indicating that locked and crossed markets should be avoided and providing procedures to unlock and uncross markets that do occur.
- ISE Rule 1904, Limitation on Principal Order Access: This proposed rule codifies the ''80/20 Test'' contained in Section 8(b)(iii) of the Plan. Specifically, a market maker on the Exchange would be restricted from sending principal orders (other than P/A orders, which reflect unexecuted customer orders) through the Linkage if the market maker effects less than 80 percent of specified order flow on the Exchange. The Exchange would apply this test on a calendar quarter basis.

With respect to the proposed fee change, the Exchange is proposing to clarify that its existing fees will apply to Principal Orders (''P Orders'') and Principal Acting as Agent Orders (''P/A Orders''). Thus, market makers on other exchanges sending orders for their own account to the ISE would pay the same fees that the ISE levies generally on all non-customer transactions. Today, these fees are applicable to such market maker transactions if they send their orders to the ISE through existing order-routing facilities. These fees also are the same fees applicable to ISE market makers. The Exchange believes that it is appropriate to charge market makers on the other exchanges the same fees members pay for proprietary transactions when such market makers access the liquidity available on the ISE.

This proposal also specifies that the existing ISE fees would not apply to Satisfaction Orders. The Plan amendments pending at the Commission would prohibit a Party to the Plan from charging a fee to a member of another exchange that is seeking to satisfy customer orders on its book that were traded-through.

2. Basis

The Exchange believes that the basis under the Exchange Act for the Linkage rules generally is the requirement under Section 6(b)(5)[4] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed fee change is based on Section 6(b)(4)[5] that requires an exchange to have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. With respect to the proposed disciplinary sanctions for engaging in a pattern of trade-throughs,

[3] Approved by the Commission in Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000), as subsequently amended. *See* Securities Exchange Act Release No. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001) (''Initial Amendment Order'') and Securities Exchange Act Release No. 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002). In addition, this proposed rule change reflects additional changes to the Plan that the ISE is filing concurrently with this filing. Such pending changes are noted in the discussion of the proposals.

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78f(b)(4).

the proposal is based on Section 6(b)(6)[6] that requires an exchange to have rules that provide for the appropriate discipline of members for violations of the Exchange Act, the rules and regulation thereunder, and the rules of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change; or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-ISE–2002–19 and should be submitted by January 16, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–32471 Filed 12–24–02; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78f(b)(6).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47021; File Nos. SR–NASD–2002–162; SR–NYSE–2002–36]

Self-Regulatory Organizations; Notice of Extension of Comment Period for the Proposed Rule Changes by the National Association of Securities Dealers, Inc. and New York Stock Exchange, Inc. Relating to Supervisory Control Amendments

December 18, 2002.

On August 16, 2002, the New York Stock Exchange (''NYSE'' or ''Exchange''), and on November 4, 2002, the National Association of Securities Dealers, Inc. (''NASD''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') proposed rule changes pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] regarding the supervisory and supervisory control procedures of member firms. A complete description of the proposed rule changes is found in the notices of filing, which were published in the **Federal Register** on November 27, 2002.[3] The comment periods expire on December 18, 2002.

To give the public additional time to comment on the proposed rule changes, the Commission has decided to extend the comment periods pursuant to Section 19(b)(2) of the Act.[4] Accordingly the comment periods shall be extended until January 17, 2003.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NYSE–2002–36 or SR–NASD–2002–162 and should be submitted by January 17, 2003

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–32473 Filed 12–24–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 46858 (November 20, 2002), 67 FR 70994 (SR–NYSE–2002–36) and 46859 (Novmeber 20, 2002), 67 FR 70990 (SR–NASD–OP2002–162); *see also* Securities Exchange Act Release No. 46858A (November 27, 2002, 67 FR 72261 (SR–NYSE–2002–36 Correction).

[4] 15 U.S.C. 78s(b)(2).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47022; File No. SR–NASD–2002–158]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Establishment of a Nasdaq Official Closing Price and a Trade Report Modifier With Which To Identify That Price to the Public

December 18, 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 November 1, 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 (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by Nasdaq. The Commission is publishing this notice to solicit

comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to establish a Nasdaq Official Closing Price (''NOCP''), and a trade report modifier with which to identify that price to the public. Nasdaq would program its proprietary systems to append the new modifier—''.M'' for Market Close—to one trade report message in each Nasdaq National Market and SmallCap security to identify it as the NOCP in that security. The dissemination of the NOCP would not affect the consolidated last sale price disseminated pursuant to the national market system plan governing trading of Nasdaq securities (''Nasdaq UTP Plan'') or the last sale price of any exchange that is a member of that plan.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

Currently, Nasdaq does not have an official closing price. Instead, market participants generally use a last sale price that vendors identify from among the last sale prices that Nasdaq disseminates in its role as the Exclusive Securities Information Process (''ESIP'') for the Nasdaq UTP Plan. As the ESIP, Nasdaq currently disseminates a consolidated last sale price (''Consolidated Close''), which is the price of the last trade reported to the ESIP by any UTP Participant prior to 4:01:30 p.m. In addition, Nasdaq disseminates the last sale price of each individual participant in the Nasdaq UTP Plan (''Individual Market Close''), including Nasdaq, which is the price of the last trade reported by each individual Participant market center prior to 4:01:30 p.m. Nasdaq market participants rely on either the Consolidated Close or Nasdaq's Individual Market Close for many post-close activities, including pricing indices, large institutional orders (commonly called ''market-on-close orders''), and mutual fund values. The Consolidated Close is the primary measure of the market for a variety of constituents, including sell-side and buy-side institutions, market indexers, securities issuers, and individual investors.

Despite their widespread acceptance, the Consolidated Close and Nasdaq Individual Market Close are imperfect measures of the value of Nasdaq issues at the close of normal market hours. For instance, the Consolidated Close is somewhat arbitrary in that it is simply the price of the final unmodified trade to be reported to Nasdaq prior to 4:01:30 p.m. by any Nasdaq member or UTP Exchange. Due to wide disparities in the speed at which market participants report trades within Nasdaq's 90-second trade reporting window, trades reported at 4:01:30 p.m. can be significantly away from the market when it closes at 4:00:00 p.m. In addition, although Nasdaq has traditionally monitored the Consolidated Close to guard against the prospect of gaming, as a result of changes to the Nasdaq UTP Plan, Nasdaq no longer performs that function on behalf of other UTP Plan Participants. As a result, Nasdaq is concerned that the Consolidated Close may no longer reliably and accurately reflect each security's value at the close of the market.

Mechanics of the Proposal

Nasdaq proposes to replace the methodology currently used to calculate Nasdaq's Individual Market Close with the NOCP methodology described below. The NOCP would be based on the price of the last unmodified trade reported to Nasdaq's proprietary trade reporting system—Automated Confirmation Transaction System or ''ACT''—at or before 4:00:02 p.m. (the ''Predicate Trade''). Nasdaq systems would ''normalize'' the price of the Predicate Trade by comparing it to Nasdaq's best bid and ask prices (*i.e.*, the best prices displayed by all SuperMontage participants) at the time the Predicate Trade was reported, or by comparing it to the Nasdaq best bid and offer at 4:00:00 p.m. for trades reported after that time (''Predicate BBO'').[3] If the price of the Predicate Trade falls at either side of or within the Predicate BBO, that price becomes the NOCP. If the price of the Predicate Trade falls outside the Predicate BBO, Nasdaq would adjust it up to the Predicate BBO bid if it is below the bid price or down to the Predicate BBO ask if it is above the ask price. As described in more detail below, the NOCP methodology would only impact the Individual Market Close for Nasdaq; it would not impact the Consolidated Close or Individual Market Closes of the UTP Exchanges that are disseminated by the ESIP.

The Predicate Trade can be any trade that currently updates the Individual Market Close for Nasdaq, subject to certain limitations. First, Nasdaq would only consider trades submitted with the Nasdaq market center identifier. Specifically, Nasdaq would only consider trade reports submitted to ACT, either by NASD members or by UTP Exchanges that use Nasdaq's proprietary execution systems. Nasdaq would not consider trades reported by NASD members to any venue outside of Nasdaq, including the NASD Alternative Display Facility or other UTP Exchanges, nor would it consider any trades reported by UTP Exchanges not executed through Nasdaq proprietary systems. Thus, if no NASD member reports a trade in a given security to Nasdaq prior to 4:00:02 p.m., Nasdaq would report no NOCP in that security.

Second, Nasdaq would only consider unmodified trades reported at or before 4:00:02 p.m. Nasdaq chose 4:00:02 p.m. as the proper reference point to provide every trade type a reasonable chance to set the close. The current close disadvantages certain trade types that are reported too quickly to set the closing price, such as trades reported via Nasdaq execution systems or by market participants' own automated systems, which often report trades almost instantly. In fact, NASD members report over 90 percent of trades to Nasdaq within two seconds of execution, despite Nasdaq's 90-second trade reporting window. Nasdaq believes that unmodified trades would more accurately reflect the true state of the market at the close of normal market hours. Thus, Nasdaq would not consider trade reports submitted after 4:00:02 p.m. and, with one exception, it would not consider any trades reported with a modifier, such as a .T (after normal market hours), .OR (out of range), or .PRP (prior reference price).[4]

[3] Nasdaq Market participants would not have the ability to append the new modifier to trade reports; only Nasdaq trade reporting systems would append this modifier, and only for transactions in Nasdaq National Market and SmallCap Market securities.

[4] Nasdaq would consider a trade submitted to Nasdaq with a .SLD modifier (reported more than 90 seconds after execution) or a .PRP modifier to

Continued

Third, Nasdaq would adjust the NOCP only if the Predicate Trade is cancelled or corrected by 4:30:00 p.m., even though Nasdaq would continue to accept trade cancel and correction messages via ACT until 5:15:00 p.m. If, between 4:00:02 p.m. and 4:30:00 p.m., a market participant enters a cancel or correct message regarding the Predicate Trade, Nasdaq would process that message, and recalculate the NOCP. Nasdaq would not consider in the NOCP calculation any cancel or correct message that arrives after 4:30:00 p.m. Nasdaq believes 4:30:00 p.m. is the proper deadline because data vendors, mutual funds, and investors need a timely, definitive closing price, and, even on busy days, Nasdaq receives over 99 percent of cancels and corrections before 4:30 p.m.

Consider the following example:

Time of report	Price of report	Market center	Concurrent BBO
3:59:55	19.98	Nasdaq	20.00–20.02
3:59:58	20.00 .SLD	Nasdaq	19.99–20.01
4:00:00	20.02	NASD	20.01–20.02
4:00:01	20.05	CINN	19.99–20.01
4:00:03	20.02	Nasdaq	20.01–20.02
4:01:29	19.95	CINN	19.99–20.01

In this scenario, Nasdaq's Individual Market Close, under the proposed NOCP methodology, would be 20.00, whereas the Nasdaq Individual Market Close under the current methodology would be 20.02 and the Consolidated Close would be 19.95. The Predicate Trade would be the trade reported at 3:59:55 p.m.; the Predicate BBO would be 20.00–20.02; and the Nasdaq NOCP would result from normalizing the 19.98 price up to the Predicate BBO of 20.00. The NASD and CINN prints are not eligible to be the Predicate Trade because UTP Exchanges reported them to the ESIP, not to ACT. Nor is the 3:59:59 p.m. trade eligible since it has an .SLD modifier appended. The 4:00:03 p.m. and 4:01:29 p.m. trades are ineligible because they were reported after 4:00:02 p.m.

Impact on the Consolidated Last Sale Calculation

The NOCP would not be eligible to set the Consolidated Close under the Nasdaq UTP Plan, although the Predicate Trade would be eligible as are all unmodified trade reports. While the NOCP is based on an actual trade, it is not necessarily an actual trade price. Therefore, Nasdaq believes that including it in the Consolidated Close is not consistent with the Nasdaq UTP Plan. It would also give Nasdaq an unfair advantage by manufacturing an additional opportunity for Nasdaq to set the Consolidated Close. To avoid that result, Nasdaq would append the .M modifier and publish it with a trade size of zero to signal to the ESIP and vendors not to include it in the Consolidated Close calculation. The NOCP would, on the other hand, be used to populate the Nasdaq Individual Market Close field that the ESIP currently disseminates. The Predicate Trade would be reported to the ESIP according to Nasdaq's existing trade reporting rules and it would be eligible to set the Consolidated Close, as it would be today.

Nasdaq recognizes that it must educate investors and vendors about its new NOCP and the .M modifier to avoid creating confusion. Currently, the Nasdaq ESIP disseminates a Closing Trade Summary Report that includes the Consolidated Close as well as the Individual Market Closes for Nasdaq and for each UTP Exchange that trades Nasdaq securities. If this proposal is approved, the Individual Market Close field for Nasdaq in the Closing Trade Summary Report would contain the NOCP in place of its last sale price. Neither the Consolidated Close nor any of the Individual Market Closes for any UTP Exchange would be affected by this proposal.

The Nasdaq ESIP is engaged in a development effort to accommodate the new trade modifier and its treatment in the consolidated data streams. Nasdaq has also discussed the addition of the new .M trade modifier with the UTP Operating Committee, and has made it clear that any UTP participant can use the new trade modifier if it chooses.

2. Statutory Basis

Nasdaq believes the proposed rule change is consistent with the provisions of sections 15A of the Act [5] in general, and with section 15A(b)(6) of the Act [6] in particular, because it is designed, among other things, to protect investors and the public interest. Nasdaq's current proposal is consistent with the NASD's obligations under these provisions of the Act because it would result in the public dissemination of information that more accurately reflects the trading in a particular security at the close. Furthermore, to the extent a security is a component of an index, the index would more accurately reflect the value of the market, or segment of the market, the index is designed to measure. The corresponding result should be trades, or other actions, executed at prices more reflective of the current market when the price of an execution, or other action, is based on the last sale, the high price or low price of a security, or the value of an index.

Nasdaq also believes the proposal is consistent with the NASD's obligations under its transaction reporting plan for Nasdaq National Market System securities approved by the Commission.[7]

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such

be the Predicate Trade if, and only if, it is the only trade of the day by any market participant. In that case, the Predicate BBO would be the BBO at the time the trade was reported.

[5] 15 U.S.C. 78*o*–3.

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] See Securities Exchange Act Release No. 18590 (March 24, 1982), 47 FR 13617 (March 31, 1982).

longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Nasdaq consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–158 and should be submitted by January 16, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–32532 Filed 12–24–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47026; File No. SR–PCX–2002–64]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Exchange Rules for the Options Intermarket Linkage

December 18, 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 September 26, 2002, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in items I, II, and III below, which items have been prepared by the self-regulatory organization.

The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to adopt new rules relating to the operation of the Options Intermarket Linkage. The text of the proposed rule change is below; proposed new language is italicized.

* * * * *

Intermarket Linkage

Definitions

Rule 6.92(a). The following terms have the meaning specified in this rule solely for the purposes of rules 6.92—6.95.

(1) ''Aggrieved Party'' means a Member of a Participant Exchange whose bid or offer was traded-through.

(2) ''Block Trade'' means a trade on a Participant Exchange that:

(i) Involves 500 or more contracts and has a premium value of at least $150,000;

(ii) Is effected at a price outside of the NBBO; and

(iii) Involves either:

(A) A cross (where a Member of the Participant Exchange represents all or a portion of both sides of the trade), or

*(B) Any other transaction (*i.e., *in which such Member represents an order of block size on one side of the transaction only) that is not the result of an execution at the current bid or offer on the Participant Exchange.*

Contemporaneous transactions at the same price on a Participant Exchange will be considered a single transaction for the purpose of this definition.

(3) ''Broker/Dealer'' means an individual or organization registered with the United States Securities and Exchange Commission in accordance with section 15(b)(1) of the Exchange Act or a foreign broker or dealer exempt from such registration pursuant to rule 15a-6 under the Exchange Act.

(4) ''Complex Trade'' means the execution of an order in an option series in conjunction with the execution of one or more related orders in different option series in the same underlying security occurring at or near the same time for the equivalent number of contracts and for the purpose of executing a particular investment strategy.

(5) ''Crossed Market'' means a quotation in which the Exchange disseminates a bid (or offer) in a series of an Eligible Option Class at a price that is greater than (or less than) the price of the offer (or bid) for the series then being displayed by another Participant Exchange.

(6) ''Customer'' means an individual or organization that is not a Broker/Dealer. Used with reference to a Linkage Order, it means an order which, if executed, would result in the purchase or sale for an account in which no Broker/Dealer has an interest.

(7) ''Eligible Market Maker,'' with respect to an Eligible Option Class, means a market maker that:

(i) Is assigned to, and is providing two-sided quotations in, the Eligible Option Class;

(ii) Is logged on to participate in Auto-Ex in such Eligible Option Class; and

(iii) Is in compliance with the requirements of rule 6.95 (relating to limitation on principal order access).

(8) ''Eligible Option Class'' means all option series overlying a security (as that term is defined in section 3(a)(10) of the Exchange Act) or group of securities, including both put options and call options, which class is traded on the Exchange and at least one other Participant Exchange.

(9) ''Firm Customer Quote Size'' with respect to a P/A Order means the lesser of (a) the number of option contracts that the Participant Exchange sending a P/A Order guarantees it will automatically execute at its disseminated quotation in a series of an Eligible Option Class for Customer orders entered directly for execution in that market; or (b) the number of option contracts that the Participant Exchange receiving a P/A Order guarantees it will automatically execute at its disseminated quotation in a series of an Eligible Option Class for Customer orders entered directly for execution in that market. This number will be at least 10.

(10) ''Firm Principal Quote Size'' means the number of option contracts that a Participant Exchange guarantees it will execute at its disseminated quotation for incoming Principal Orders in an Eligible Option Class. This number will be at least 10.

(11) ''Linkage'' means the systems and data communications network that link electronically the Participant Exchanges for the purposes specified in the Plan.

(12) ''Linkage Order'' means an order routed through the Linkage as permitted

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

under the Plan. There are three types of Linkage Orders:

(i) ''Principal Acting as Agent (''P/A'') Order,'' which is an order for the principal account of a Lead Market Maker (or equivalent entity on another Participant Exchange that is authorized to represent Customer orders), reflecting the terms of a related unexecuted Customer order for which the Lead Market Maker is acting as agent;

(ii) ''Principal Order,'' which is an order for the principal account of an Eligible Market Maker (or equivalent entity on another Participant Exchange) and is not a P/A Order; and

(iii) ''Satisfaction Order,'' which is an order sent through the Linkage to notify a Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

(13) ''Locked Market'' means a quotation in which the Exchange disseminates a bid (or offer) in a series of an Eligible Option Class at a price that equals the price of the offer (or bid) for the series then being displayed from another Participant Exchange.

(13A) ''Member'' has the meaning as set forth in section (3)(a)(3)(A) of the Exchange Act.

(14) ''NBBO'' means the national best bid and offer in an option series as calculated by a Participant Exchange.

(15) ''Non-Firm'' means, with respect to quotations, that Members of a Participant Exchange are relieved of their obligation to be firm for their quotations pursuant to Rule 11Ac1–1 under the Exchange Act.

(16) ''Participant Exchange'' means a registered national securities exchange that is a party to the Plan.

(17) ''Plan'' means the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage, as such plan may be amended from time to time.

(18) ''Reference Price'' means the limit price attached to a Linkage Order by the sending Participant Exchange. Except with respect to a Satisfaction Order, the Reference Price is equal to the bid disseminated by the receiving Participant Exchange at the time that the Linkage Order is transmitted in the case of a Linkage Order to sell and the offer disseminated by the receiving Participant Exchange at the time that the Linkage Order is transmitted in the case of a Linkage Order to buy. With respect to a Satisfaction Order, the Reference Price is the bid or offering price disseminated by the sending Participant Exchange that was traded-through, except in the case of a Trade-Through that is a Block Trade, in which case the Reference Price will be the price of the Block Trade that caused the Trade-Through.

(19) ''Trade-Through'' means a transaction in an option series at a price that is inferior to the NBBO.

(20) ''Third Participating Market Center Trade-Through'' means a Trade-Through in a series of an Eligible Option Class that is effected by executing a Linkage Order, and such execution results in a sale (or purchase) at a price that is inferior to the best bid (or offer) being disseminated by another Participant Exchange.

(21) ''Verifiable Number of Customer Contracts'' means the number of Customer contracts in the book of a Participant Exchange.

Operation of the Linkage

Rule 6.93 By subscribing to the Plan, the Exchange has agreed to comply with, and enforce compliance by its Members with, the Plan. In this regard, the following will apply:

(a) Pricing. Members may send P/A Orders and Principal Orders through the Linkage only if such orders are priced at the NBBO.

(b) P/A Orders.

(1) Sending of P/A Orders for Sizes No Larger than the Firm Customer Quote Size. A Lead Market Maker may send through the Linkage a P/A Order for execution in the automatic execution system of a Participant Exchange if the size of such P/A Order is no larger than the Firm Customer Quote Size. Except as provided in subparagraph (b)(2)(ii) below, an LMM may not break up an order of a Customer that is larger than the Firm Customer Quote Size into multiple P/A Orders, one or more of which is equal to or smaller than the Firm Customer Quote Size, so that such orders could be represented as multiple P/A Orders through the Linkage.

(2) Sending of P/A Orders for Sizes Larger than the Firm Customer Quote Size. If the size of a P/A Order is larger than the Firm Customer Quote Size, a Lead Market Maker may send through the Linkage such P/A Order in one of two ways:

(i) The Lead Market Maker may send a P/A Order representing the entire Customer Order. If the receiving Participant Exchange's disseminated quotation is equal to or better than the Reference Price when the P/A Order arrives at that market, that exchange will execute the P/A Order at its disseminated quotation for at least the Firm Customer Quote Size. Within 15 seconds of receipt of such order, the receiving Participant Exchange will inform the Lead Market Maker of the amount of the order executed and the amount, if any, that was canceled.

(ii) Alternatively, the Lead Market Maker may send an initial P/A Order for the Firm Customer Quote Size pursuant to subparagraph (b)(1) above. If the Participant Exchange executes the P/A Order and continues to disseminate the same quotation at the NBBO 15 seconds after reporting the execution of the initial P/A Order, the Lead Market Maker may send an additional P/A Order to the same Participant Exchange. If sent, such additional P/A Order must be for at least the lesser of 100 contracts or the entire remainder of the Customer order.

In any situation where a receiving Participant Exchange does not execute a P/A Order in full, such exchange will be required to move its quotation to a price inferior to the Reference Price of the P/A Order.

(c) Principal Orders.

(1) Sending of an Initial Principal Order. An Eligible Market Maker may send a Principal Order through the Linkage at a price equal to the NBBO. If the Principal Order is not larger than the Firm Principal Quote Size, the receiving Participant Exchange will execute the order in its automatic execution system, if available, if its disseminated quotation is equal to or better than the price specified in the Principal Order when that order arrives at the receiving Participant Exchange. If the Principal Order is larger than the Firm Principal Quote Size, the receiving Participant Exchange will (a) execute the Principal Order at its disseminated quotation for at least the Firm Principal Quote Size and (b) within 15 seconds of receipt of such order, reply to the sending Participant Exchange, informing such Participant Exchange of the amount of the order that was executed and the amount, if any, that was canceled. If the receiving Participant Exchange does not execute the Principal Order in full, it will move its quote to a price inferior to the Reference Price of the Principal Order.

(2) Receipt of Multiple Principal Orders Once the Exchange provides an automatic execution of a Principal Order in a series of an Eligible Option Class (the ''initial execution''), the Exchange may reject any Principal Order(s) in the same Eligible Option Class sent by the same Participant Exchange for 15 seconds after the initial execution unless: (a) there is a change of price in the Exchange's disseminated offer (bid) in the series of the Eligible Option Class in which there was the initial execution; and (b) such price continues to be the NBBO. After this 15 second period, and until the sooner of (y) one minute after the initial execution

or (z) a change in the Exchange's disseminated bid (offer), the Exchange is not obligated to provide an automatic execution for any Principal Orders in the same Eligible Option Class received from the Participant Exchange that sent the order resulting in the initial execution, and thus may treat any such Principal Orders as being greater than the Firm Principal Quote Size.

(d) Responses to Linkage Orders.

(1) Failure to Receive a Timely Response. A Member who does not receive a response to a P Order or a P/A Order within 20 seconds of sending the order may reject any response received thereafter purporting to report an execution of all or part of that order. The Member so rejecting the response will inform the Exchange Participant sending that response of the rejection within 15 seconds of receipt of the response.

(2) Failure to Send a Timely Response. If a Member responds to a P Order or P/A Order more than 20 seconds after receipt of that order, and the Participant Exchange to whom the Member responded cancels such response, the Member will cancel any trade resulting from such order and will report the cancellation to OPRA.

(e) Receipt of Linkage Orders. The Exchange will provide for the execution of P/A Orders and Principal Orders if its disseminated quotation is (i) equal to or better than the Reference Price, and (ii) equal to the then-current NBBO. Subject to paragraph (c), above, if the size of a P/A Order or Principal Order is not larger than the Firm Customer Quote Size or Firm Principal Quote size, respectively, the Exchange will provide for the execution of the entire order, and will execute such order in its automatic execution system if that system is available. If the size of a P/A Order or Principal Order is larger than the Firm Customer Quote Size or Firm Principal Quote Size, respectively, the Lead Market Maker must address the order within 15 seconds to provide an execution for at least the Firm Customer Quote Size or Firm Principal Quote Size, respectively. If the order is not executed in full, the Exchange will move its disseminated quotation to a price inferior to the Reference Price.

Order Protection

Rule 6.94 (a) Avoidance and Satisfaction of Trade-Throughs.

(1) General Provisions. Absent reasonable justification and during normal market conditions, Members should not effect Trade-Throughs. Except as provided in paragraph (b) below, if a Member effects a Trade-Through with respect to the bid or offer of a Participant Exchange in an Eligible Option Class and the Exchange receives a Satisfaction Order from an Aggrieved Party, either:

(i) The Member who initiated the Trade-Through must satisfy, or cause to be satisfied, the Aggrieved Party by filling the Satisfaction Order in accordance with subsection (a)(2) below; or

(ii) If the Member elects not to do so (and, in the case of Third Participating Market Center Trade-Through, the Member obtains the agreement of the contra party that received the Linkage Order that caused the Trade-Through), then the price of the transaction that constituted the Trade-Through will be corrected to a price at which a Trade-Through would not have occurred. If the price of the transaction is corrected, the Member correcting the price must report the corrected price to OPRA, notify the aggrieved party of the correction and cancel the Satisfaction Order.

(2) Price and Size. The price and size at which the Satisfaction Order will be filled are as follows:

(i) Price. A Satisfaction Order will be filled at the Reference Price. However, if the Reference Price is the price of an apparent Block Trade that caused the Trade-Through, and such trade was not, in fact, a Block Trade, then the Member may cancel the Satisfaction Order. In that case, the Member will inform the Aggrieved Party within three minutes of receipt of the Satisfaction Order of the reason for the cancellation. Within three minutes of receipt of such cancellation, the Aggrieved Party may resend the Satisfaction Order with a Reference Price of the bid or offer that was traded-through.

(ii) Size. An Aggrieved Party may send a Satisfaction Order up to the size of the Verifiable Number of Customer Contracts that were included in the disseminated bid or offer that was traded through. Subject to subparagraph (2)(i) above and paragraph (b) below, a Member will fill in full all Satisfaction Orders it receives following a Trade-Through, subject to the following limitations:

(A) If the number of contracts to be satisfied exceeds the size of the transaction that caused the Trade-Through, the size of the Satisfaction Order(s) that must be filled with respect to each Participant Exchange(s) will be limited to the size of the transaction that caused the Trade-Through, and the remainder of any Satisfaction Order(s) will be canceled;

(B) If the transaction that caused the Trade-Through was for a size larger than the Firm Customer Quote Size with respect to any of the Participant Exchange(s) traded through, the total number of contracts to be filled, with respect to all Satisfaction Orders received, will not exceed the size of the transaction that caused the Trade-Through. In that case, the Member will fill the Satisfaction Orders pro rata based on the Verifiable Number of Customer Contracts traded through on each Participant Exchange, and will cancel the remainder of such Satisfaction Order(s); and

(C) Notwithstanding paragraphs (A) and (B) above, if the transaction that caused the Trade-Through occurred during the five minutes prior to the regularly-scheduled close of trading in the principal market in which the underlying security is traded, the maximum number of contracts to be satisfied with respect to any one Participant Exchange is 10 contracts.

(3) Rejection of Fills of Satisfaction Orders. Within 30 seconds of receipt of notification that another Participant Exchange has filled a Member's Satisfaction Order, the Member that sent the Satisfaction Order may reject such fill, but only to the extent that either: (i) The order(s) for the customer contracts underlying the Satisfaction Order already have been filled; or (2) the customer order(s) to buy (sell) the contracts underlying the Satisfaction Order were canceled.

(4) Protection of Customers. Whenever subsection (a)(1) applies, if Customer orders (or P/A Orders representing Customer orders) constituted either or both sides of the transaction involved in the Trade-Through, each such Customer order (or P/A Order) will receive:

(i) The price that caused the Trade-Through; or

(ii) The price at which the bid or offer traded through was satisfied, if it was satisfied pursuant to subsection (a)(1)(i), or the adjusted price, if there was an adjustment, pursuant to subsection (a)(1)(ii),

Whichever price is most beneficial to the Customer order. Resulting differences in prices will be the responsibility of the Member who initiated the Trade-Through.

(b) Exceptions to Trade-Through Liability. The provisions of subsection (a) pertaining to the satisfaction of Trade-Throughs will not apply under the following circumstances:

(1) The Member who initiated the Trade-Through made every reasonable effort to avoid the Trade-Through, but was unable to do so because of a systems/equipment failure or malfunction;

(2) The Member traded through the market of a Participant Exchange to

which such Member had sent a P/A Order or Principal Order, and within 20 seconds of sending such order the receiving Participant Exchange had neither executed the order in full nor adjusted the quotation traded through to a price inferior to the Reference Price of the P/A Order or Principal Order;

(3) The bid or offer traded through was being disseminated from a Participant Exchange whose quotes were Non-Firm with respect to such Eligible Option Class;

(4) The Trade-Through was other than a Third Participating Market Center Trade-Through and occurred during a period when, with respect to the Eligible Option Class, the Exchange's quotes were Non-Firm; provided, however, that unless one of the other conditions of this subsection (b) applies, during any such period: (i) Members must make every reasonable effort to avoid trading through the firm quotes of another Participant Exchange; and (ii) it will not be considered an exception to paragraph (a) if a Member regularly trades through the firm quotes of another Participant Exchange during such period;

(5) The bid or offer traded through was being disseminated by a Participant Exchange during a trading rotation in the Eligible Option Class;

(6) The transaction that caused the Trade-Through occurred during a trading rotation;

(7) The transaction that caused the Trade-Through was the execution of a Complex Trade;

(8) In the case of a Trade-Through other than a Third Participating Market Center Trade-Through, a Satisfaction Order with respect to the Trade-Through was not received by the Exchange from the Aggrieved Party promptly following the Trade-Through and, in any event, (i) except in the final five minutes of trading, within three minutes from the time the report of the transaction(s) that constituted the Trade-Through was disseminated over OPRA, and (ii) in the final five minutes of trading, within one minute from the time the report of the transaction(s) that constituted the Trade-Through was disseminated over OPRA; or

(9) In the case of a Third Participating Market Center Trade-Through, a Satisfaction Order with respect to the Trade-Through was not received by the Exchange promptly following the Trade-Through. In applying this provision, the Aggrieved Party must send the Exchange a Satisfaction Order within three minutes from the time the report of the transaction that constituted the Trade-Through was disseminated over OPRA. To avoid liability for the Trade-Through, the Member receiving such Satisfaction Order must cancel the Satisfaction Order and inform the Aggrieved Party of the identity of the Participant Exchange that initiated the Trade-Through within three minutes of the receipt of such Satisfaction Order (within one minute in the final five minutes of trading). The Aggrieved Party then must send the Participant Exchange that initiated the Trade-Through a Satisfaction Order within three minutes of receipt of the cancellation of the initial Satisfaction Order (within one minute in the final five minutes of trading).

(c) Responsibilities and Rights Following Receipt of Satisfaction Orders.

(1) When a Member receives a Satisfaction Order, that Member must respond as promptly as practicable pursuant to Exchange procedures by either:

(i) Specifying that one of the exceptions to Trade-Through liability specified in paragraph (b) above is applicable and identifying that particular exception; or

(ii) Taking the appropriate corrective action pursuant to paragraph (a) above.

(2) If the Member who initiated the Trade-Through fails to respond to a Satisfaction Order or otherwise fails to take the corrective action required under paragraph (a) within three minutes of receiving notice of a Satisfaction Order, and the Exchange determines that:

(i) There was a Trade-Through; and

(ii) None of the exceptions to Trade-Through liability specified in subsection (b) above were applicable;

Then, subject to the next paragraph, the Member who initiated the Trade-Through will be liable to the Aggrieved Party for the amount of the actual loss resulting from non-compliance with paragraph (a) and caused by the Trade-Through.

If either (a) the Aggrieved Party does not establish the actual loss within 30 seconds from the time the Aggrieved Party received the response to its Satisfaction Order (or, in the event that it did not receive a response, within four minutes from the time the Aggrieved Party sent the Satisfaction Order) or (b) the Aggrieved Party does not notify the Exchange Participant that initiated the Trade-Through of the amount of such loss within one minute of establishing the loss, then the liability will be the lesser of the actual loss or the loss caused by the Trade-Through that the Aggrieved Party would have suffered had that party purchased or sold the option series subject to the Trade-Through at the ''mitigation price.''

The ''mitigation price'' is the highest reported bid (in the case where an offer was traded through) or the lowest reported offer (in the case where a bid was traded through), in the series in question 30 seconds from the time the Aggrieved Party received the response to its Satisfaction Order (or, in the event that it did not receive a response, four minutes from the time the Aggrieved Party sent the Satisfaction Order). If the Participant Exchange receives a Satisfaction Order within the final four minutes of trading (on any day except the last day of trading prior to the expiration of the series which is the subject of the Trade-Through), then the mitigation price will be the price established at the opening of trading in that series on the Aggrieved Party's Participant Exchange on the next trading day. However, if the price of the opening transaction is below the opening bid or above the opening offer as established during the opening rotation, then the mitigation price will be the opening bid (in the case where an offer was traded through) or opening offer (in the case where a bid was traded through). If the Trade-Through involves a series that expires on the day following the day of the Trade-Through and the Satisfaction Order is received within the four minutes of trading, the ''mitigation price'' will be the final bid (in the case where an offer was traded through) or offer (in the case where a bid was traded through) on the day of the trade that resulted in the Trade-Through.

(3) A Member that is an Aggrieved Party under the rules of another Participant Exchange governing Trade-Through liability must take steps to establish and mitigate any loss such Member might incur as a result of the Trade-Through of the Member's bid or offer. In addition, the Member must give prompt notice to the other Participant Exchange of any such action in accordance with subsection (c)(2) above.

(d) Limitations on Trade-Throughs. Members may not repeatedly trade through better prices available on other exchanges, whether or not the exchange or exchanges whose quotations are traded through are Participant Exchanges, unless one or more of the provisions of paragraph (b) above are applicable. In applying this provision:

(1) The Exchange will consider there to have been a Trade-Through if a Member executes a trade at a price inferior to the NBBO even if the Exchange does not receive a Satisfaction Order from an Aggrieved Party pursuant to subparagraph (a)(1);

(2) The Exchange will not consider there to have been a Trade-Through if

a Member executes a Block Trade at a price inferior to the NBBO if such Member satisfied all Aggrieved Parties pursuant to subsection (a)(2) following the execution of the Block Trade; and

(3) The Exchange will not consider there to have been a Trade-Through if a Member executes a trade at a price inferior to the quotation being disseminated by an exchange that is not a Participant Exchange if the Member made a good faith effort to trade against the superior quotation of the non-Participant Exchange prior to trading through that quotation. A ''good faith effort'' to reach a non-Participant Exchange's quotation requires that a Member at least had sent an order that day to the non-Participant Exchange in the class of options in which there is a Trade-Through, at a time at which such non-Participant Exchange was not relieved of its obligation to be firm for its quotations pursuant to Rule 11Ac1–1 under the Exchange Act, and that the non-Participant Exchange neither executed that order nor moved its quotation to a price inferior to the price of the Member's order within 20 seconds of receipt of that order.

Locked and Crossed Markets

Rule 6.95 (a) Eligible Market Maker Locking or Crossing a Market. An Eligible Market Maker that creates a Locked Market or a Crossed Market will unlock (uncross) that market or will direct a Principal Order through the Linkage to trade against the bid or offer that the Eligible Market Maker locked (crossed).

(b) Members Other than an Eligible Market Maker Locking or Crossing a Market. A Member other than an Eligible Market Maker that creates a Locked Market or a Crossed Market will unlock (uncross) the market.

Limitation on Principal Order Access

Rule 6.96 A Market Maker will not be permitted to send Principal Orders in an Eligible Option Class through the Linkage for a given calendar quarter if the Market Maker effected less than 80 percent of its volume in that Eligible Option Class on the Exchange in the previous calendar quarter (that is, the Market Maker effected 20 percent or more of its volume by sending Principal Orders through the Linkage). This ''80/20'' is represented as follows:

$$\frac{X}{X+Y}$$

''X'' equals the total contract volume the Market Maker effects in an Eligible Option Class against orders of Customers on the Exchange during a calendar quarter (a) including contract volume effected by executing P/A Orders sent to the Exchange through the linkage, but (b) excluding contract volume effected by sending P/A Orders through the Linkage for execution on another Participant Exchange. ''Y'' equals the total contract volume the Market Maker effects in such Eligible Option Class by sending Principal Orders through the Linkage during that calendar quarter.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The 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

On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage (''Linkage Plan'' or ''Plan'') proposed by the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc. and the International Securities Exchange LLC.[3] On November 16, 2000, the Commission approved an amendment to the Linkage Plan to add the PCX as a Participant Exchange[4] and an amendment to the Linkage Plan to add the Philadelphia Stock Exchange, Inc. as a Participant Exchange.[5] The Commission approved additional amendments to the Linkage Plan in June 2001 that conformed the Linkage Plan to the requirements of Exchange Act rule 11Ac1–7[6] and in May 2002 that addressed satisfaction of trade-throughs, how participants could withdraw from the Plan, establishment of a timetable for implementation of Linkage, and requirements that each Participant submit to the Commission a project plan for implementation and monthly status reports.[7] The Exchange is now proposing to adopt new PCX rules that are intended to reflect certain provisions of the Linkage Plan.

Specifically, the Exchange is proposing to adopt new PCX rule 6.92 (''Definitions''), which includes definitions of the following terms for the purposes of PCX rules 6.92–6.96: Aggrieved Party, Block Trade, Broker/Dealer, Complex Trade, Crossed Market, Customer, Eligible Market Maker, Eligible Option Class, Firm Customer Quote Size, Firm Principal Quote Size, Linkage, Linkage Order, Principal Acting as Agent (''P/A'') Order, Principal Order, Satisfaction Order, Locked Market, Member, NBBO, Non-Firm, Participant Exchange, Plan, Reference Price, Trade-Through, Third Participating Market Center Trade-Through and Verifiable Number of Customer Contracts.

The Exchange is proposing to adopt new PCX rule 6.93 (''Operation of the Linkage''), which is intended to clarify the manner in which the Exchange will comply with, and enforce compliance by its members with, the Linkage Plan. More specifically, the proposed rule specifies pricing requirements applicable to orders sent through the Linkage; procedures for sending P/A orders under the Plan; procedures for sending Principal Orders under the Plan; procedures relating to responses to Linkage Orders; and procedures applicable to the receipt of Linkage Orders on the Exchange pursuant to the Linkage Plan.

Proposed PCX rule 6.94 (''Order Protection'') sets forth various provisions on the avoidance and satisfaction of Trade-Throughs; exceptions to Trade-Through liability; responsibilities and rights following receipt of Satisfaction Orders; and limitations on Trade-Throughs. Proposed PCX rule 6.95 sets forth rules relating to Locked and Crossed Markets. Finally, proposed PCX rule 6.96 establishes a limitation on Principal Order access.

2. Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,[8] in general, and section 6(b)(5),[9] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged

[3] *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000).

[4] *See* Securities Exchange Act Release No. 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000).

[5] *See* Securities Exchange Act Release No. 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000).

[6] *See* Securities Exchange Act Release No. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001).

[7] *See* Securities Exchange Act Release No. 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX–2002–64 and should be submitted by January 16, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–32530 Filed 12–24–02; 8:45 am]

BILLING CODE 8020–01–P

[10] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Emergency Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13 effective October 1, 1995, the Paperwork Reduction Act of 1995. The information collection packages that may be included in this notice are for new information collections, revisions to OMB-approved information collections and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB)

Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10235, 725 17th St., NW., Washington, DC 20503. Fax: 202–395–6974.

(SSA)

Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1338 Annex Building, 6401 Security Blvd., Baltimore, MD 21235. Fax: 410–965–6400.

I. SSA has submitted the information collection listed below for emergency consideration by OMB. SSA has requested OMB approval within 30 days from the date of this notice. Therefore, your comments will be most useful if received before the 30 days concludes. You can obtain copies of the OMB clearance package by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

Request for Internet Services—Password—0960–0632. SSA uses a personal identification number (PIN)/password process for verifying the identity of individuals who choose to use the Internet and Automated Telephone Response in order to conduct business with the agency. An individual will be requested to provide certain information about himself or herself that SSA can verify in its records in order to obtain a password for use with its electronic services. The information that SSA collects varies depending on individual circumstances. Some examples of the information collected are: name, social security number, password request code, benefit payment amount, and other shared secret types of information from SSA records. Once the requestor's identity is verified, SSA issues a PIN to the requestor which will allow them to establish a password for use with SSA Internet/telephone transactions.

Until now, the services offered have been primarily to beneficiaries receiving benefits under title II of the Social Security Act, including Retirement, Survivors and Disability benefits. Beginning in April 2003, SSA will offer the opportunity for certain beneficiaries receiving benefits under title XVI of the Social Security Act, known as Supplemental Security Income (SSI), to report their wages electronically. SSA will initiate a 6-month Proof of Concept project to test the beneficiary acceptance of this technology for reporting wages. Participation in this Proof of Concept is voluntary. Individuals who must report wages include SSI beneficiaries, and, in some cases, the parent or spouse of the SSI beneficiary. In order to use SSA's electronic services, SSA must authenticate the person using its PIN/password process to protect the information in its records from those not authorized to receive it. This technology is expected to be more secure, less burdensome, faster and provide better customer service than other available options. The respondents are individuals who elect to conduct business with the agency in an electronic medium.

Type of Request: Revised information collection.

Number of Respondents: 391,267.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 65,211 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. Quickstart Enrollment—31 CFR 209 and 210—0960–0564

The information collected is needed by SSA to facilitate electronic transmission of data for direct deposit of funds to a payee's account. The respondents are Social Security beneficiaries and SSI recipients requesting direct deposit to their financial institutions.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 3,950,000.

Frequency of Response: 1.

Average Burden Per Response: 3 minutes.

Estimated Annual Burden: 197,500 hours.

2. Request for Internet Services Representative Payee, 20 CFR 401.45 Report—0960–NEW

Background

SSA is developing an Internet Representative Payee Report form (I623) to electronically report on the use of benefit payments made on behalf of Social Security beneficiaries and SSI recipients. As part of this process, SSA will conduct a proof of concept (POC) test that will be limited to 40 organizational representative payees. During the projected 6-month POC test, participating organizations will use the I623 to complete and file the representative payee report instead of using the paper SSA–623.

The Collection

Organizations participating in the POC will designate up to three employees that will be authenticated using SSA's existing Integrated Registration for Employers and Submitters (IRES) OMB control number 0960–0626. Once authenticated, the employee will be required to enter a Personal Identification Number (PIN) and Password to gain access to the online I623 application. The PIN and Password will serve as the electronic signature. SSA will use the information collected through the I623 to determine whether the payments provided to the representative payee have been used for the beneficiary's current maintenance and personal needs and whether the representative payee continues to be concerned with the beneficiary's welfare. The respondents are organizational representative payees designated to receive funds on behalf of Social Security beneficiaries and/or SSI recipients.

Type of request: New information collection.

Number of Respondents: 40 organizations.

Frequency of Response: 117.5 per respondent.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 1,175 hours.

Dated: December 19, 2002.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 02–32515 Filed 12–24–02; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4238]

Office of Foreign Missions, Diplomatic Motor Vehicle Office

30-Day Notice of Proposed Information Collection: Form DS–100, Application for Registration (Mission Vehicle); Form DS–101, Application for Registration (Personal Vehicle); Form DS–102, Application for Title; and Form DS–104, Application for Replacement Plates; OMB Collection Number 1405–0072

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Extension of a currently approved collection.

Originating Office: DS/OFM/VTC/V—Diplomatic Security/Office of Foreign Missions.

Title of Information Collection: Application for Registration (Mission Vehicle), Application for Registration (Personal Vehicle), Application for Title, and Application for Replacement Plates.

Frequency: As often as is necessary to register vehicles, issue titles and issue license plates.

Form Number: DS–100, DS–101, DS–102 and DS–104.

Respondents: Foreign mission personnel assigned to the United States: diplomatic agents, consular officers, administrative and technical staff, specified official representatives of foreign governments to international organizations, and their dependents.

Estimated Number of Respondents: 18,500.

Average Hours Per Response: .5 hours (30 minutes).

Total Estimated Burden: 9,250.

Public comments are being solicited to permit the agency to:

- 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.
- Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from U.S. Department of State, Office of Foreign Missions, State Annex 33, Room 218, Washington, DC 20520–3302, who may be reached on (202) 895–3500. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: November 22, 2002.

Jacqueline D. Robinson,

Director, Diplomatic Motor Vehicles, Office of Foreign Missions, Department of State.

[FR Doc. 02–32543 Filed 12–24–02; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF STATE

[Public Notice 4240]

Culturally Significant Objects Imported for Exhibition Determinations: ''An Imperial Collection: Women Artists from the State Hermitage Museum''

DEPARTMENT: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''An Imperial Collection: Women Artists from the State Hermitage Museum,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the National Museum of Women in the Arts, Washington, DC, from on or about February 14, 2003 to on or about June 8, 2003; the Charles and Emma Frye Art Museum, Seattle, WA, from on or about July 9, 2003 to on or about November 28, 2003; and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Orde F. Kittrie, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/401–4779). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 19, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–32542 Filed 12–24–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4239]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Manet/Velazquez: The French Taste for Spanish Painting''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Manet/Velazquez: The French Taste for Spanish Painting,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, NY, from on or about February 24, 2003, to on or about June 8, 2003; and at possible additional venues yet to be determined, is in the national interest. Public notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Orde F. Kittrie, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/401–4779). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 19, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–32541 Filed 12–24–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4241]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Summer Institute for English Language Administrators From Francophone and Lusophone Sub-Saharan Africa

*Summary:*The African Programs Branch, Office of Academic Exchange Programs of the Bureau of Educational and Cultural Affairs (ECA) announces an open competition for an assistance award. Accredited, post-secondary educational institutions meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to develop a Summer Institute for English-as-a-Foreign Language (EFL) Administrators from Francophone and Lusophone Sub-Saharan Africa. The Summer Institute will provide a six-week program in education management for 16 secondary school EFL supervisors/inspectors and school administrators with strong EFL backgrounds selected from French and Portuguese-speaking countries of Sub-Saharan Africa.

Program Information

Overview

The Bureau asks for detailed proposals from U.S. institutions of higher education, which have an acknowledged reputation in the fields of education administration and EFL. Special expertise in handling cross-cultural programs and experience with educational systems in Sub-Saharan Africa and African education administrators are highly desired. Note: Applicant organizations should demonstrate a proven record (at least four years) of experience in international exchange.

The general objective of the Institute is to support and encourage the upgrading of English language programs in secondary schools in French and Portuguese-speaking African countries through enhancing participants' management and organizational skills and broadening their understanding of U.S. institutions and culture.

Guidelines

Pending availability of FY 2003 funds, the Institute should begin on or about June 1, 2003, and end before September 30, 2003. Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

The proposal should be designed to support the following specific activities:

(a) *A five-week academic program* with emphasis on developing the capacities of 16 Sub-Saharan African supervisors/inspectors/administrators to strengthen EFL programs through more effective management of teachers, students, and resources. Detailed academic objectives are set forth in the Solicitation Package.

(b) *Cultural activities* facilitating interaction among the African participants, American students, faculty, and administrators and the local community to promote mutual understanding between the people of the United States and the people of African countries, planned within the five-week academic program.

(c) *One week of escorted, cultural and educational site visits in Washington, DC,* complementing and reinforcing the academic program. Site visits include a meeting at the Bureau of Educational and Cultural Affairs.

(d) *Follow-on communication* among participants and the U.S. institution to continue exchanges of ideas developed during the Institute.

(e) *Assistance to participants to select, purchase and ship professional*

materials to use in follow-on activities and training projects in their home countries.

Participants will be selected by the Bureau, based on nominations from U.S. Embassies. Minimum qualifications for all participants will be (1) adequate proficiency in English to be able to participate in and benefit from the program, (2) the equivalent of BA/BS degrees from their national education systems, and (3) job responsibilities related to school/program administration. Participants will enter the United States on J-visas, using DS–2019 forms issued by ECA.

The U.S. institution should plan to conduct an initial needs assessment of participants and should be prepared to adjust program emphasis as necessary to respond to participants' concerns for EFL education. Specific areas to address in the five-week academic program follow:

1. Managing the teaching staff: Evaluating, supporting, motivating teachers; designing and conducting in-service training programs; promoting professional ethics; building staff cohesiveness.
2. Student development: Setting behavioral/learning standards, evaluating student progress, creating a school culture conducive to learning, fostering parental involvement.
3. Managing resources: conducting resource inventories, allocating/tracking resources, budgeting, optimizing limited resources, developing access to outside resources.
4. Education Technology: introduction and/or enrichment of computer-based word processing and appropriate software for participants who lack these skills, introduction to computer networks for EFL professionals, introduction/enrichment of knowledge of e-mail and the Internet as pedagogic and research tools.

Few participants will have visited the United States previously. In view of this, an initial orientation to the host institution community and an introduction to U.S. society and system of education should be considered an integral part of the Institute.

Management of the academic program, the week in Washington, DC and on-site arrangements will be the responsibility of the Institute grantee. The host institution is responsible for arrangements for lodging, food, maintenance and local travel for participants while at the host institution and in Washington. The Bureau will arrange participants' international travel. The Bureau will provide the host institution with participants' *curricula vitae* and travel itineraries and will be available to offer guidance throughout the Institute.

Budget Guidelines

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. The cost to the Bureau for the Summer Institute should not exceed $125,000 based on 16 participants. Subject to availability of funds, one grant will be awarded to conduct the 2003 Summer Institute.

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Allowable costs for the program include the following:

(1) Instructional costs (for example: instructors' salaries, honoraria for outside speakers, educational course materials);

(2) Lodging, meals, and incidentals for participants;

(3) Expenses associated with cultural activities planned for the group of participants (for example: tickets, transportation);

(4) Administrative costs as necessary.

Proposals should maximize cost-sharing through private sector support as well as institutional direct funding contributions.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/E/AF–03–01.

For Further Information Contact: Office of Academic Exchanges, African Programs Branch, ECA/A/E/AF, Room 232, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 260–2754, fax: (202) 619–6137 or e-mail: *wbell@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Wylita Bell on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at *http://exchanges.state.gov/education/RFGPs.* Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Friday, February 14, 2003. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and seven copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/E/AF–03–01, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of

these goals in their program contents, to the full extent deemed feasible.

Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 6Z, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD–SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547. Telephone: (202) 401–9810. FAX: (202) 401–9809.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission. Proposals should exhibit quality, rigor and appropriateness of proposed syllabus to the academic objectives the Summer Institute. Proposals should demonstrate effective use of community and regional resources to enhance the cultural and educational experiences of participants. Teaching objectives should be reasonable, feasible, and flexible.

2. *Program planning:* Detailed calendar and relevant work plan should demonstrate substantive undertakings and logistical capacity. Calendar and plan should adhere to the program overview and guidelines described above. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. *Multiplier effect/impact:* Proposed program should contribute to long-term, mutual understanding and sharing of information about Africa among Americans, as well as to the understanding of and knowledge of the U.S. among the African participants.

4. *Support of Diversity:* Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity. Program administrators should strive for diversity among Institute staff, university students, and the host community who interact with participants.

5. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve a substantive academic program and effective cross-cultural communication with African participants. Proposal should show evidence of strong on-site administrative capabilities with specific discussion of how logistical arrangements will be undertaken. Proposals should demonstrate institutional experience in and knowledge of Africa (Francophone and Lusophone) as well as expertise in education in developing countries.

6. *Experience:* Proposals should demonstrate an institutional record of successful implementation of exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

7. Project Evaluation: Proposals should include a plan to evaluate the Summer Institute's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

8. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

9. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

10. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program cited above is provided through the Fulbright-Hays Act.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: December 18, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–32599 Filed 12–24–02; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4196]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on January 15, 2003, in Room 6319 of the United States Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the 34th session of the International Maritime Organization (IMO) Sub-Committee on Standards of Training and Watchkeeping (STW) to be held on February 24–28, 2003, at the IMO Headquarters in London, England.

The primary matters to be considered include:

1. Measures to enhance maritime security;
2. Unlawful practices associated with certificates of competency (*i.e.*, forged certificates);
3. Large passenger safety;
4. Training of crew in launching and recovery operations of fast rescue boats and the means of rescue in adverse weather conditions;
5. Mandatory education and training requirements for fatigue prevention, mitigation, and management;
6. Preparation of procedures for regular updating of the so-called ''white list'' and consideration of the need for amending the STCW Convention and Code;
7. Consider the requirements and procedures related to the recognition of certificates under STCW regulation I/10; and
8. Consider the navigational requirements for Watchkeeping at anchor.

Members of the public may attend the meeting up to the seating capacity of the room. Interested persons may seek information by writing: LCDR Luke Harden, U.S. Coast Guard (G–MSO–1), Room 1210, 2100 Second Street, SW., Washington, DC 20593–0001 or by calling (202) 267–0229.

Dated: December 19, 2002.

Frederick J. Kenney,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 02–32597 Filed 12–24–02; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 4197]

Shipping Coordinating Committee, Facilitation Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Tuesday, January 14, 2003, in Room 1303 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC, 20593–0001.

The purpose of the meeting is to review the agenda items to be considered at the thirtieth session of the Facilitation Committee (FAL 30) of the International Maritime Organization (IMO), which is scheduled for January 27 to 31, 2003, at the IMO headquarters in London. Proposed U.S. positions on the agenda items for FAL 30 will be discussed.

The major items for discussion for FAL 30 will include the following:

- Convention on Facilitation of International Maritime Traffic
- Consideration and adoption of proposed amendments to the Annex to the Convention
- Electronic means for the clearance of ships
- Application of the Committee's Guidelines
- General review of the Convention including harmonization with other international instruments
- Prevention and suppression of acts of terrorism against shipping—Facilitation aspects
- Measures and procedures for the treatment of people rescued at sea—Facilitation aspects
- Formalities connected with the arrival, stay and departure of ships
- Formalities connected with the arrival, stay and departure of persons—Stowaways
- Ship/port interface
- Facilitation aspects of other IMO forms and certificates
- Technical co-operation sub-programme for facilitation

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Chief, Office of Standards Evaluation and Development, U.S. Coast Guard Headquarters, Commandant (G–MSR), Room 1400, 2100 Second Street, SW., Washington, DC, 20593–0001 or by calling Mr. David A. Du Pont at: (202) 267–0971.

Dated: December 19, 2002.

Frederick J. Kenney,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 02–32598 Filed 12–24–02; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Proposed Endangered Species Habitat Bank for the Preble's Meadow Jumping Mouse, Douglas County, CO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: The FHWA is proposing to sign an agreement with the U.S. Fish and Wildlife Service (Service) which designates 25 acres of property owned by the Colorado Department of Transportation (CDOT) as a habitat conservation bank for the Preble's Meadow Jumping Mouse (*Zapus hudsonius preblei*). The bank will be used to compensate for impacts to the Preble's Meadow Jumping Mouse as a result of highway improvements. The FHWA, the Service, and CDOT are considering entering an agreement, which outlines the banking procedures. Interested parties are invited to review and provide comment on the proposed agreement to the address listed below.

DATES: Comments must be received on or before February 24, 2003.

FOR FURTHER INFORMATION CONTACT: Edrie Vinson, Environmental Program Manager, Federal Highway Administration, 555 Zang Street, Room 250, Lakewood, CO 80228. Telephone (303) 969–6730, ext. 378.

SUPPLEMENTARY INFORMATION:

Electronic Access

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

Availability of Document

Individuals interested in reviewing a copy of the Plan are asked to contact the Colorado Division of the Federal Highway Administration by telephone at (303) 969–6730, or by submitting a written request for a copy of the document to the Environmental Program Manager at the address listed above in section **FOR FURTHER INFORMATION CONTACT.**

Background

One of the FHWA's strategic goals is to protect and enhance the natural environment and communities affected by highway transportation. The FHWA and DCOT are bound under Federal environmental regulations to evaluate, consider, and mitigate significant environmental impacts of its projects.

The Service has jurisdiction over the conservation, protection, restoration, enhancement, and management of native fish, wildlife, plants, and habitat necessary for biologically sustaining populations of those species pursuant to the provisions of various Federal laws including the Endangered Species Act.

The CDOT's mission is to provide the best multi-modal transportation system for Colorado that most effectively moves people, goods, and information, while at the same time adhering to CDOT's values, which include working in partnership with all, using resources wisely, and making decisions that are compatible with Colorado's quality of life, including environmental and economic goals.

The Colorado Division of the FHWA provides financial assistance to the State of Colorado through the Federal-aid highway program to create the best transportation system in the world for the American people through proactive leadership, innovation, and excellence in service.

Establishment of the East Plum Creek Conservation Bank Agreement represents an excellent opportunity to support and enhance the ongoing habitat conservation planning efforts in the regions by conserving highly valuable resources at the site. Within its boundaries, the East Plum Creek Conservation Bank will provide for the permanent protection of the preble's meadow jumping mouse (PMJM) through the preservation, restoration, and enhancement of off-site lands that possess comparable or greater habitat values.

The property supports aquatic, riparian, upland and wetland habitat for the PMJM. Native vegetation communities occur on the site such as willow shrub lands and herbaceous wet meadows.

The Service has determined that the East Plum Creek Conservation Bank lands, as the have been and are being improved and restored through the conservation actions described in Exhibit F (Habitat Management Plan) of the Agreement, are suitable to mitigate for impacts to habitat for PMJM within the Service area.

The parties desire to establish a Conservation Bank in order to provide for the permanent conservation of the property, the use of the land as mitigation and the use of Conservation Bank credits by CDOT to offset unavoidable temporary and permanent impacts associated with its projects in need of such mitigation.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: December 18, 2002.

William C. Jones,

Division Administrator, Colorado.

[FR Doc. 02–32464 Filed 12–24–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Sherburne and Stearns Counties, MN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a Tier I environmental impact statement (EIS) will be prepared for a proposed east/west minor arterial connection between Trunk Highway (TH) 15 and TH 10, including a crossing of the Mississippi River, in an area south of 10th Street South and north of Interstate 94 in the St. Cloud Metropolitan Area, Sherburne and Stearns Counties, Minnesota. The Tier I EIS will include the analysis needed for a location decision.

FOR FURTHER INFORMATION CONTACT: Cheryl Martin, Federal Highway Administration, Galtier Plaza, 380 Jackson Street, Suite 500, St. Paul, Minnesota 55101, Telephone (651) 291–6120; or Scott Mareck, Transportation Planner/GIS Coordinator, St. Cloud Area Planning Organization, 1040 County Road 4, St. Cloud, Minnesota 56303, Telephone (320) 252–7568.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the City of St. Cloud, Minnesota, will prepare a Tier I EIS on a proposal to construct an east/west minor arterial connection between TH 15 and TH 10, in an area south of 10th Street South and north of Interstate 94 in the St. Cloud Metropolitan Area, in Sherburne and Stearns Counties, Minnesota. The proposed action is being considered to preserve an alignment for the construction of a future highway, including a river crossing, to address the need for improved east/west minor arterial continuity, land use and trip generation growth, and forecasted 2025 congestion on existing bridges.

The Tier I EIS will evaluate the social, economic, transportation and environmental impacts of alternatives, including: (1) No-Build, (2) Transportation Demand Management, and (3) Three alignment alternatives identified within the 33rd Street Corridor.

The Tier II EIS will be prepared in fifteen to twenty years. At that time, design alternatives for the preferred alignment will be considered and environmental impacts and mitigation will be studied in greater detail. It is anticipated that the ''St. Cloud Metropolitan Area Mississippi River Crossing Scoping Document/Draft Scoping Decision Document'' will be published early in 2003. A press release will be published to inform the public of the document's availability. Copies of the scoping document will be distributed to agencies, interested persons and libraries for review to aid in identifying issues and analyses to be contained in the Tier I EIS. A thirty-day comment period for review of the document will be provided to afford an opportunity for all interested persons, agencies and groups to comment on the proposed action. A public scoping meeting will also be held during the comment period. Public notice will be given for the time and place of the meeting. A Tier I Draft EIS will be prepared based on the outcome of the scoping process.

Coordination has been initiated and will continue with appropriate Federal, State and local agencies and private organizations and citizens who have previously expressed or are known to have an interest in the proposed action. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: December 17, 2002.

Stanley M. Graczyk,

Project Development Engineer, Federal Highway Administration, St. Paul, Minnesota.

[FR Doc. 02–32514 Filed 12–24–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2002–13295]

Oregon Department of Transportation Application for Exemptions for Farmers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemptions; request for comments.

SUMMARY: The FMCSA has received an application from the Oregon Department of Transportation (ODOT) for exemptions from all the Federal regulatory requirements concerning parts and accessories necessary for the safe operation of commercial motor vehicles (CMVs) and concerning the inspection, repair and maintenance of CMVs on behalf of motor carriers certified by and registered with ODOT as farmers. ODOT believes that enforcing its general rules of the road and vehicle safety regulations would ensure that the level of safety for the farmers is equivalent to or greater than the level of safety that would be achieved by complying with the Federal regulations. The exemptions, if granted, would preempt inconsistent local requirements in Oregon applicable to interstate commerce.

DATES: We must receive your comments on or before January 27, 2003.

ADDRESSES: You can mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL, 401–400 Seventh Street, SW., Washington, DC 20590–0001. You can also submit comments at *http://dmses.dot.gov.* Please include the docket number that appears in the heading of this document. You can examine and copy this document and all comments received at the same Internet address or at the Dockets Management Facility from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want to know that we received your comments, please include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Bus and Truck Standards and Operations, (202) 366–4009, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Sections 31315 and 31136 of title 49 of the United States Code (U.S.C.) provide the FMCSA with authority to grant exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs). An exemption provides relief from one or more FMCSRs given to a person or class of persons subject to the regulations. An exemption provides the person or class of persons with relief from the regulations for up to two years, and may be renewed. These sections also require the agency to consider whether the terms and conditions for the exemption would achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulations when evaluating applications for exemptions.

On December 8, 1998, FMCSA published an interim final rule implementing section 4007 of the Transportation Equity Act for the 21st Century (TEA–21)(codified at 49 U.S.C. 31315) (*See* 63 FR 67600). The regulations at 49 CFR part 381 establish the procedures to be followed to request waivers and to apply for exemptions from the FMCSRs, and the provisions used to process them.

The agency must publish a notice in the **Federal Register** for each exemption requested, explaining the request that has been filed; providing the public with an opportunity to inspect the safety analysis and any other relevant information known to the agency; and requesting public comment on the exemption (See 49 U.S.C. 31136(e)(1) and 49 CFR part 381.315).

Before granting a request for an exemption, the agency must publish a notice in the **Federal Register** identifying: (1) who will receive the exemption, (2) what regulation is covered by the exemption, (3) how long the exemption is in effect, and (4) all terms and conditions of the exemption. The terms and conditions established by the FMCSA must ensure that the exemption will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with the regulation.

ODOT Application for an Exemption

ODOT applied for exemptions from all the requirements of 49 CFR Parts 393 and 396 on behalf of all motor carriers certified and registered with ODOT as farmers. A copy of the application is included in the docket referenced in the heading to this notice. There are currently 14,000 motor carriers in this category operating in both interstate and intrastate commerce. The exemption would apply only when these carriers engage in transportation related to farm operations and the commercial motor vehicle (CMV) is registered with ODOT as a farm vehicle. The exemption would not apply when a carrier operates as a for-hire carrier.

ODOT asserts the exemption would have no effect on the enforcement of Oregon laws and regulations concerning rules of the road and vehicle equipment. The State believes that its motor vehicle safety regulations would provide adequate safety requirements for the interstate operation of farm vehicles.

ODOT indicated that it requests the exemption primarily because the State may lose Motor Carrier Safety Assistance Program (MCSAP) funding from the FMCSA for having laws and regulations, applicable to interstate operations, that are less stringent than the Federal requirements. ODOT asserts that based on discussions with legislators and public meetings with farm groups, it is unlikely that the Oregon legislature would revise current law.

ODOT stated that the exemption would be consistent with the long-standing practice of Oregon safety officials. Since 1978, Oregon statutes have included an exemption for farm vehicles that are less than 80,000 pounds. Interstate farmers have been treated the same as intrastate farmers with regard to safety regulations. The State does not believe this practice has had an adverse impact on safety based on its review of reportable crashes in Oregon.

The State defines a reportable crash as one in which there is a fatality, injury, or damage exceeding $1,000. From 1995 through 2001, commercial farm trucks were involved in 89 reportable crashes, resulting in 7 fatalities. The total number of crashes for all commercial vehicles during the same time period was 11,767 including 459 fatalities. With regard to crash causation, the State indicated that during calendar year 2001, only 3 percent of all reportable crashes in Oregon were attributable, in whole or in part, to the mechanical condition of the commercial vehicle.

Number of Commercial Motor Vehicles That Would Be Exempted

While there are approximately 14,000 motor carriers certified and registered with ODOT as farmers, only about half

of these carriers have been issued farm license plates. ODOT's Driver and Motor Vehicle Services Division has issued approximately 37,000 farm license plates for trucks operating in Oregon. However, because of the seasonal nature of farm work, it is estimated that only 13,000 farm plates are valid at any given time. The difference between the number of farmers and the number of farm license plates arises because the plates are issued for seasons, and depending on what the farmers are growing they only operate CMVs during certain times of the year.

Method to Ensure an Equivalent or Greater Level of Safety

ODOT believes the level of safety for farmers operating under the exemption would be equivalent to the level of safety that would be provided by the Federal safety regulations because the State would continue to enforce its rules of the road and equipment regulations applicable to all motorists and motor vehicles. Farm vehicles are currently required to comply with State requirements related to parts and accessories, including brakes, lights, mudguards and fenders, emissions and exhaust, windows, horns, mirrors, etc. Furthermore, ODOT has the authority to inspect any vehicle to verify compliance. By publication of this notice the FMCSA hopes to receive data enabling the agency to determine whether to grant or deny this exemption.

Potential Impacts If the Exemption is Not Granted

ODOT believes that if the exemption is not granted, the State would no longer be eligible for participation in MCSAP. For fiscal year 2003, it is estimated that Oregon will receive $2,009,000 in basic grant funds and an additional $437,481 in incentive funds.

Request for Comments

In accordance 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comment from all interested parties on ODOT's application for an exemption from all the Safety requirements of Subchapter B to Chapter III, title 49 of the CFR. The agency may grant or deny the application based on the comments received, and any other relevant information that is available to the agency.

Issued on: December 20, 2002.

Annette M. Sandberg,

Deputy Administrator.

[FR Doc. 02–32584 Filed 12–24–02; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before January 27, 2003.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications (*see* Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC 20590 or at *http://dms.dot.gov.*

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on December 19, 2002.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials, Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of Exemption thereof
13162–N	RSPA–02–13799	Exact Sciences Corporation, Maynard, MA.	49 CFR 171–180	To authorize the transportation in commerce of diagnostic specimens, Division 6.2, in quantities greater than presently authorized, to be transported as unregulated. (Modes 1, 2, 3, 4.)
13172–N	RSPA–02–14007	Raytheon Co., Tewksbury, MA.	49 CFR 173.302(a), 175.3	To authorize the transportation in commerce of helium, Division 2.2, in fully wrapped carbon-fiber reinforced aluminum lined non-DOT cylinders with a maximum service pressure of 3240 psi and a water capacity of 260 liters. (Modes 1, 2, 3, 4, 5.)
13173–N	RSPA–02–14003	Dynetek Industries Ltd., Calgary Alberta, Canada.	49 CFR 173.302(a), 175.3	To authorize the manufacture, mark, sale and use of DOT–CFFC specification fully wrapped carbon fiber reinforced aluminum lined cylinders mounted in protective enclosures for use in transporting Division 2.1 and 2.2 hazardous materials. (Modes 1, 2, 3, 4, 5.)
13174–N	RSPA–02–14017	Carleton Technologies Inc., Orchard Park, NY.	49 CFR 173.302(a), 175.3	To authorize the manufacture, mark, sale and use of non-DOT specification fully wrapped composite fiber reinforced aluminum lined cylinders for use in transporting helium, Division 2.2. (Modes 1, 2, 4.)

NEW EXEMPTIONS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of Exemption thereof
13176–N	RSPA–02–14016	Union Pacific Railroad Company, Omaha, NE.	49 CFR 174.83	To authorize a bulk packaging of aluminum smelting by-products, Division 4.3, transported by rail to be switched under its own momentum. (Mode 2.)
13177–N	RSPA–02–14015	Quality Containment Company, Owensboro, KY.	49 CFR 173.304(a)(2), 173.34(d)&(e).	To authorize the manufacturing, mark, sell and use of non-DOT specification full opening head, steel salvage cylinders for over packaging damaged or leaking chlorine and sulfur dioxide cylinders. (Modes 1, 3.)
13178–N	RSPA–02–14019	ConocoPhillips, Anchorage, AK.	49 CFR 172.101, Table Col. (9B).	To authorize the transportation in commerce of 350 gallon DOT Specification bulk containers for use in transporting flammable liquids, n.o.s by cargo aircraft. (Mode 4.)
13179–N	RSPA–02–14020	EnviroTech Systems Inc., Lynnwood, WA.	49 CFR 173–21, 173.308	To authorize the transportation in commerce of lighters that have been removed from their approved inner packaging, are partially used, and are being transported for disposal without further approval. (Mode 1.)
13180–N	RSPA–02–14021	The Association of HazMat Shippers, Washington, DC.	49 CFR 123, 172.203(a), 172.301 (c), 173.22, 173.306, 173.306(a)(1).	To authorize the transportation in commerce of aerosols with a capacity of 50 ml or less containing Division 2.2 gas and no other hazardous materials be transported without certain hazard communication requirements. (Modes 1, 2, 3.)
13181–N	RSPA–02–14022	Thermo MF Physics, Colorado Springs, CO.	49 CFR 173.403, 173.424	To authorize the transportation in commerce of a specially designed device consisting of a non-DOT specification cylinder for use in transporting sulfur hexafluoride, Division 2.2. (Modes 1, 3, 4, 5.)
13182–N	RSPA–02–14023	Cytec Industries Inc., West Paterson, NJ.	49 CFR 173.304(b)	To authorize the transportation in commerce of foreign designed cylinders with relief from filling limits for use in transporting phosphine, Division 2.3 (Modes 1, 3.)
13186–N	RSPA–02–14014	Quality Containment Company, Owensboro, KY.	49 CFR 173.301(f), 173.304(a)(2).	To authorize the manufacture, marking, sell and use of non-DOT specification full opening head, steel salvage cylinders for overpacking damaged or leaking chlorine cylinders. (Modes 1, 3.).

[FR Doc. 02–32524 Filed 12–24–02; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (*e.g.,* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, *etc.*) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before January 10, 2003.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street, SW., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on December 19, 2002.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials, Exemptions and Approvals.

Application No.	Docket No.	Applicant	Modification of exemption
8554–M		American West Explosives, Inc., Springfield, MO (*See* Footnote 1)	8554
9778–M		Baker Atlas, Houston, TX (*See* Footnote 2)	9778
9929–M		Orbital Sciences Corporation, Dulles, VA (*See* Footnote 3)	9929
11194–M		Carleton Technologies, Inc. (Pressure Tech. Div.), Glen Burnie, MD (*See* Footnote 4)	11194
11380–M		Baker Atlas (Houston Technology Ctr), Houston, TX (*See* Footnote 5)	11380
12056–M	RSPA–98–3730	Department of Defense (MTMC), Fort Eustis, VA (*See* Footnote 6)	12056
12102–M	RSPA–98–4005	Roche Diagnostics Corporation, Indianapolis, IN (*See* Footnote 7)	12102
12130–M	RSPA–98–4386	FIBA Technologies, Inc., Westboro, MA (*See* Footnote 8)	12130
13102–M	RSPA–02–13784	Watts Regulator Company, North Andover, MA (*See* Footnote 9)	13102
13127–M	RSPA–02–13477	American Pacific Corporation, Cedar City, UT (*See* Footnote 10)	13127

[1] To modify the exemption to authorize the transportation of a Class 8 material in a specialized container mounted on a bulk truck.
[2] To modify the exemption to authorize the transportation of an additional Class 7 material in non-DOT specification packaging.
[3] To modify the exemption to update the list of authorized transporters and airports for the transportation of certain Division 1.3C materials in unauthorized packaging that exceed the quantity limitation.
[4] To modify the exemption to authorize utilization of an S-Glass outer overwrap for the non-DOT specification fiber reinforced plastic full composite cylinders transporting certain Division 2.1 and 2.2 gases.
[5] To modify the exemption to authorize changes to an existing tank design assembly and the addition of a new tank design for the transportation of Division 2.1 materials.
[6] To modify the exemption to authorize two additional destination facilities and authorize an increased number of round trip shipments containing Division 2.3 and 6.1 materials.
[7] To modify the exemption to authorize transportation by common or contract carrier of certain unapproved Class 1 explosive materials desensitized by wetting with water, alcohol or other suitable diluent so as to eliminate their explosive properties.
[8] To modify the exemption to authorize optional inspection access hole (manholes) for the non-DOT specification insulated portable tanks transporting certain Division 2.2 materials.
[9] To reissue the exemption originally issued on an emergency basis for the transportation of certain non-DOT specification packagings, described as actuators, charged with limited quantities of various hazardous materials.
[10] To reissue the exemption originally issued on an emergency basis for the transportation of certain Division 5.1 materials in lined flexible intermediate bulk containers (FIBC).

[FR Doc. 02–32525 Filed 12–24–02; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34290]

CSX Transportation, Inc.—Corporate Family Merger Exemption—The Western Railway of Alabama

CSX Transportation, Inc. (CSXT)[1] and The Western Railway of Alabama (WRA),[2] have filed a verified notice of exemption with respect to a proposed corporate restructuring, through which WRA, which is controlled by CSXT, will be merged into CSXT, with CSXT as the surviving entity. Under the agreement and plan of merger, CSXT will own all of the assets of WRA and will be responsible for all debts, liabilities, and obligations of WRA.

The transaction was scheduled to be consummated on or after December 3, 2002, the effective date of the exemption (7 days after the exemption was filed).

The purpose of the transaction is to simplify the corporate structure and reduce corporate overhead and duplication.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Although applicants do not expect any employees to be adversely affected by this merger and control transaction, they have agreed to apply employee protective conditions pursuant 49 U.S.C. 11326(a). Therefore, any employees adversely affected by the merger and control transaction will be protected by the conditions set forth in *New York Dock Ry.–Control–Brooklyn Eastern Dist.,* 360 I.C.C. 60 (1979).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34290 must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Louis E. Gitomer, BALL JANIK LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: December 19, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–32567 Filed 12–24–02; 8:45 am]
BILLING CODE 4915–00–P

[1] CSXT, a Class I carrier, owns and operates approximately 23,297 miles of railroad. CSXT and its railroad subsidiaries operate in the States of Alabama, Connecticut, District of Columbia, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia, and the Provinces of Ontario and Quebec.

[2] WRA owns and operates approximately 128.23 miles of railroad in the State of Alabama.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34292]

Santa Clara Valley Transportation Authority—Acquisition Exemption—Union Pacific Railroad Company

Santa Clara Valley Transportation Authority (VTA), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Union Pacific Railroad Company (UP) approximately 14.88 miles of railroad right-of-way and related improvements known as the WP Milpitas Line. The line is located between a point north of Pasco Padre Parkway at approximately UP milepost 2.61 (former Western Pacific Railroad (WP) San Jose Branch milepost 33.14), and William Street in San Jose, CA, at approximately UP milepost 17.49 (former WP San Jose Branch milepost 48.02), in Alameda and Santa Clara Counties, CA. VTA is acquiring the line in order to construct a public transportation system.[1] VTA will not obtain the right or obligation to conduct freight rail service on any portion of the line, and will not at any time hold itself out as a freight common carrier. UP will retain an exclusive permanent easement for purposes of providing freight rail service on the line.

The transaction was scheduled to be consummated on December 11, 2002, the effective date of the exemption (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio*.[2] Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34292, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Charles A. Spitulnik, One Massachusetts Avenue, NW., Suite 800, Washington, DC 20001.

Board decisions and notices are available on our website at *http://''WWW.STB.DOT.GOV.''*

[1] According to VTA, construction will begin after UP has relocated its freight rail service to an adjacent line and abandoned or discontinued operations on the subject line.

[2] VTA, a State of California public agency, asserts that, because it will not be acquiring a common carrier obligation here, the Board lacks jurisdiction over this transaction. For that reason, VTA states that it intends to file a motion to dismiss and vacate this notice. If and when such a motion is filed, it will be addressed in a subsequent Board decision.

Decided: December 17, 2002.

By the Board,

David M. Konschnik,

Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–32256 Filed 12–24–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of meeting and announcement of membership.

SUMMARY: This notice announces the date, time, and location for the first meeting of the eighth renewed term of the Treasury Advisory Committee on Commercial on Commercial Operations (COAC), announcement of members, and the provisional agenda for consideration by the Committee.

DATES: The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on Friday, January 24, 2003, at 9 a.m. at the Department of the Treasury, in the Cash Room, located at 15th Street and Pennsylvania Avenue, NW., Washington, DC. (Main entrance off of Pennsylvania Avenue) The duration of the meeting will be approximately four hours, starting at 9 a.m.

Membership: The twenty (20) members for the eighth term of COAC are:

Sandra M. Fallgatter, JC Penny Purchasing Corp.
Carol Fuchs, Katten, Muchin Zaris, & Rosemman
Dennis Heck, Yamaha Corp. of America
Michael D. Laden, Target Customs Brokers, Inc.
Arthur Litman, Tower Group
James Finnegan, Kulicke & Soffa
Angela Gitten, Miami International Airport
D. Scott Johnson, Gap, Inc.
Marian Ladner, Strasburger and Price
Mary Jo Muoio, Barthco International, Inc.
Peterson, John F., C.H. Powell Company
Norman Schenk, United Parcel Service
Sandra Scott, Roadway Express
Renee Stein, Microsoft Corporation
Thomas G. Travis, Sandler, Travis & Rosenberg
Karen Phillips, Canadian National
Robert Schueler, Jr., Delphi Corporation
Kevin M. Smith, General Motors Corp.
Katherine M. Terricciano, Philips Electronics N. America
Tim Van Oost, BP

FOR FURTHER INFORMATION CONTACT: Helen Belt, Tariff and Trade Specialist (Regulatory, Tariff, and Trade Enforcement), Office of the Under Secretary (Enforcement), telephone—(202) 622–0230.

At this meeting, the Advisory Committee is expected to pursue the following agenda. The agenda may be modified prior to the meeting.

Agenda:

(1) Customs Business.
(2) Customs Trade Partnership Against Terrorism, 24-hr. Manifest Rules, Customs Structure in Department of Homeland Security.
(3) Merchandise Processing Fee; Proper Deduction of Freight & Other Costs from Customs Value.
(4) OR&R.
(5) Committee Administration.
(6) Agenda Items for Next Meeting.

SUPPLEMENTARY INFORMATION: The meeting is open to the public; however, participation in the Committee's deliberations is limited to Committee members, Customs and Treasury Department staff, and persons invited to attend the meeting for special presentations. A person other than an Advisory Committee member who wishes to attend the meeting should contact Theresa Manning at (202) 622–0220 or Helen Belt at (202) 622–0230 for pre-clearance.

Dated: December 19, 2002.

Timothy E. Skud,

Deputy Assistant Secretary, (Regulatory, Tariff, and Trade Enforcement).

[FR Doc. 02–32612 Filed 12–24–02; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Departmental Offices Designation of Nauru and Ukraine as Primary Money Laundering Concerns

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of designation.

SUMMARY: This notice advises the public that the Department of the Treasury, on December 20, 2002, designated the countries of Nauru and Ukraine as primary money laundering concerns pursuant to section 5318A of Title 31, U.S.C., as added by section 311 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (U.S.A. Patriot Act) Act of 2001.

DATES: The designations made by this notice are effective December 20, 2002. Comments on certain aspects of this

notice should be submitted by January 27, 2003. In making comments, please refer to the ''Public Comments Requested'' in the supplementary information portion of this preamble.

ADDRESSES: Commenters are encouraged to submit comments by electronic mail because paper mail in the Washington, DC area may be delayed. Comments submitted by electronic mail may be sent to *regcomments@do.treas.gov* with the caption in the body of the text, ''Attn: Section 311—Designation of Jurisdictions.'' Comments also may be submitted by paper mail (preferably and original and three copies) to Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220 ''Attn: 311—Designation of Jurisdictions.'' Comments should be sent by one method only. Comments may be inspected at the Department of the Treasury between 10 a.m. and 4 p.m., in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 622–0990 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Office of Enforcement, Department of the Treasury, (202) 622–0400; Office of the Assistant General Counsel (Enforcement), (202) 622–1927; or the Office of the Assistant General Counsel (Banking and Finance), (202) 622–0480 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Designation of Nauru and Ukraine as Primary Money-Laundering Concerns

This document formally designates the countries of Nauru and Ukraine as primary money-laundering concerns under 31 U.S.C. 5318A, as added by section 311(a) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (U.S.A. Patriot Act) Act of 2001 (Pub. L. 107–56) (the Act).

II. Imposition of Special Measures

The Department of the Treasury places these jurisdictions, and those with whom they have dealings, upon notice of its intent, after appropriate consultation, to follow this designation with the imposition of special measures authorized by section 5318A(a). With respect to Nauru, Treasury intends to impose the special measure described in section 5318A(b)(5), which will prohibit financial dealings by U.S. financial institutions with any Nauru licensed institution, unless otherwise excepted. Under the terms of section 5318A(a)(2)(C), this special measure can be imposed only by promulgation of a rule. Treasury intends to initiate a rulemaking shortly.

With respect to Ukraine, Treasury intends to impose one or more of the information-gathering and record-keeping requirements of the special measures described in section 5318A(b)(1) through (4). Those special measures can be imposed by an order, which is limited in duration to 120 days, and which may be extended indefinitely through a rulemaking (see section 5318A(a)(2) and (3)). Treasury intends to issue an order while simultaneously initiating a rulemaking to impose special measures on Ukraine.

III. Public Comments Requested

The Department of the Treasury solicits comments from all interested persons concerning the appropriate special measures to impose on Ukraine. Specifically, Treasury solicits comments from the financial sector, including domestic financial institutions and domestic financial agencies, concerning its ability to comply with orders or regulations that impose actions under special measures one through four authorized by section 5318A(a). Treasury has also determined to propose imposition of special measure five upon Nauru, but solicits comments from any institution licensed by Nauru as to reasons the institution should be excepted from the prohibitions imposed under this measure. The prohibitions of special measure five would not apply to the Bank of Nauru.

IV. Background

On October 26, 2001, the President signed into law the U.S.A. Patriot Act. Title III of the Act makes a number of amendments to the anti-money laundering provisions of the Bank Secrecy Act (BSA), which are codified in subchapter II of chapter 53 of title 31, United States Code. These amendments are intended to make it easier to prevent, detect, and prosecute international money laundering and the financing of terrorism.

BSA section 5318A, as added by section 311 of the Act, authorizes the Secretary of the Treasury (Secretary) to designate a foreign jurisdiction, institution, class of transactions or type of account as being of ''primary money laundering concern,'' and to impose one or more of five ''special measures'' with respect to such a jurisdiction, institution, class of transactions, or type of account. The Secretary has delegated his authority under section 5318A to the Under Secretary of the Treasury (Enforcement).

Section 5318A specifies those factors that the Secretary must consider before designating a jurisdiction, institution, transaction, or account as of ''primary money laundering concern.'' The evaluation of these factors against the summary of the administrative record, as subsequently set forth in this designation, has resulted in the conclusion that both jurisdictions are of primary money laundering concern.[1]

Once the Secretary has considered the factors, consulted with the Secretary of State and the Attorney General (or their designees), and made a finding that a jurisdiction is a primary money laundering concern, the Secretary is authorized to impose one or more of the five ''special measures'' described in 5318A(b). These special measures can be imposed individually, jointly, or in combination with respect to a designated ''primary money laundering concern.'' Four of the special measures impose information-gathering and record-keeping requirements upon those domestic financial institutions and agencies dealing either directly with the jurisdiction designated as one of primary money laundering concern, or dealing with those having direct dealings with the designated jurisdiction.[2] Those four measures require: (1) Keeping records and filing reports on particular transactions, including the identities of the participants in the transactions and the beneficial owners of the funds involved; (2) obtaining information on the beneficial ownership of any account

[1] The following factors, in accordance with the requirements of section 5318A(c)(2)(A), are considered to be potentially relevant factors in evaluating the necessity of designating Nauru and Ukraine. Nauru and Ukraine meet the majority of these factors. First, whether organized criminal groups, international terrorists, or both, have transacted business within the designated jurisdiction. Second, with respect to its banking practices, Treasury must also evaluate (1) The extent to which the jurisdiction or financial institutions operating in the jurisdiction offer bank secrecy or special regulatory advantages to non-residents or nondomiciliaries of the jurisdiction; (2) the substance and quality of administration of the bank supervisory and counter-money laundering laws of the jurisdiction; (3) the relationship between the volume of financial transactions occurring in the jurisdiction and the size of the economy of the jurisdiction; and (4) the extent to which the jurisdiction is characterized as an offshore banking or secrecy haven by credible international organizations or multilateral expert groups. Third, with respect to its enforcement mechanisms, Treasury must evaluate whether the United States has a mutual legal assistance treaty with the jurisdiction, and determine the experience of United States law enforcement officials and regulatory officials in obtaining information about transactions originating in, or routed through to, such jurisdiction. Finally, Treasury must evaluate the extent to which the jurisdiction is characterized by high levels of official or institutional corruption.

[2] Treasury is currently examining the extent of the applicability of these requirements on those financial institutions enumerated under the U.S.A. Patriot Act.

opened or maintained in the United States by a foreign person or a foreign person's representative; (3) identifying and obtaining information about customers permitted to use, or whose transactions are routed through, a foreign bank's ''payable-through'' account; or (4) identifying and obtaining information about customers permitted to use, or whose transactions are routed through, a foreign bank's ''correspondent'' account.

Under the fifth special measure, a domestic financial institution or agency may be prohibited from opening or maintaining in the United States a correspondent account or a payable-through account for or on behalf of a foreign financial institution if the account involves the designee.

In selecting which special measures to impose, the Secretary must consider a number of factors.[3] In addition, imposition of special measures (1) through (4) requires consultation with the Chairman of the Board of Governors of the Federal Reserve System, any other appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act), the Secretary of State, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the National Credit Union Administration Board, and any other agencies and interested parties as the Secretary may find appropriate. Imposition of special measure (5) requires consultation with the Secretary of State, the Attorney General and the Chairman of the Board of the Federal Reserve System.

The Treasury intends, after consultation as provided above, to impose the fifth special measure with respect to Nauru, and actions under special measures one through four with respect to Ukraine. Section 5318A lists several factors that the Secretary must consider, in consultation with the Secretary of State and the Attorney General, before imposing these special measures. Pursuant to section 5318A, any of these first four special measures can be imposed by order, regulation or as otherwise permitted by law. Special measures imposed by an order can be effective for not more than 120 days, unless subsequently continued by a regulation promulgated before the end of the 120-day period.

The fifth special measure can only be imposed through the issuance of a regulation. The issuance of the fifth measure also requires consultation with the Chairman of the Federal Reserve.

A. Nauru

At one point in time, the island of Nauru had one of the highest per capita incomes in the developing world due to the mining and export of phosphates, a funding source expected to be completely depleted within five to ten years. Most of the funds emanating from the phosphate mining, originally contained in the country's trust funds, have been depleted through waste, poor investments and fraud. In addition to these problems, the Nauru government itself has been characterized by extensive instability.

In an effort to raise funds, the island has resorted to several alternate endeavors, including the selling of offshore banking licenses. Nauru is notorious for permitting the establishment of offshore banks with no physical presence in Nauru or in any other country. These banks maintain no banking records that Nauru or any other jurisdiction can review. The evidence indicates that the entities that obtain these offshore banking licenses are subject to cursory and wholly inadequate review by the country's officials and lack any credible on-going supervision. In addition, one of the common requirements imposed by Nauru on these offshore banks is they not engage in economic transactions involving either the currency of Nauru (currently the Australian dollar) or its citizens or residents. Consequently, these offshore banks have no apparent legitimate connection with the economy or business activity of Nauru. Indeed, only one bank appears to be physically located in Nauru, the ''Bank of Nauru.'' It is a local community bank that also serves as the Central Bank.

Nauru's Banking Act also prohibits employees or officers of a financial institution from revealing to anyone, including government officials, any information relating to banking transactions in and out of Nauru. In addition, foreign authorities may only receive, with the prior approval of the Nauruan Minister of Finance, macro-level information, such as the total sums of moneys and types of currency transferred from a country into Nauru. Foreign authorities cannot receive information regarding individual transactions. Consequently, there is an extensive secrecy regime surrounding the Nauru banking system.

The Financial Crimes Enforcement Network has recently reported that 400 offshore banks have been granted licenses by Nauru.[4] It has been verified by on-site reports that a 1,000 square foot wooden structure is ''home'' to some 400 of these banks who have no physical or legal residence anywhere else in the world. The United States Government has been able to verify the names of 161 of the institutions licensed by Nauru, and they are presented as Appendix A to this designation. These are institutions for which the limited information available indicated that there is a strong likelihood as to their status as offshore shell banks that are not subject to effective banking supervision. Although the jurisdiction, and not the institutions themselves, are being designated, the list of institutions demonstrates the extensive opportunities for money-laundering activity on the island.

As a consequence of the current practices of Nauru, the Financial Action Task Force (FATF) placed Nauru on the ''Non-Cooperative Country and Territory'' (NCCT) list in June 2000 for maintaining an inadequate anti-money laundering (AML) regime according to international standards. According to the FATF, Nauru's anti-money laundering weaknesses included, but were not limited to, the following: money laundering was not a criminal offense; offshore banks licensed by Nauru were not required to maintain customer identification or transaction records; Nauruan financial institutions were under no obligation to report suspicious transactions; and Nauru maintained strong bank secrecy laws. On August 28, 2001, Nauru passed the Anti-Money Laundering Act of 2001 (''the AML Act''). On September 25, 2001, however, FATF indicated that the AML Act was not consistent with international standards because it did not apply to the numerous offshore banks licensed by Nauru. In response to FATF pressure, on December 6, 2001, Nauru passed amendments to its AML Act. Nonetheless, according to the FATF, the revised anti-money laundering law that now exists provides for a wholly inadequate anti-money laundering legislative and regulatory regime. In addition, Nauru has not yet addressed the remaining and most important deficiency of its AML

[3] In determining generally what special measures to select and to impose, the Secretary, in consultation with the agencies and ''interested parties'' set forth immediately above, must consider the following factors: (1) Whether similar action has been or is being taken by other nations or multilateral groups; (2) whether the imposition of any particular special measure would create a significant competitive disadvantage, including any undue cost or burden associated with compliance, for financial institutions organized or licensed in the United States; (3) the extent to which the action or the timing of the action would have a significant adverse systemic impact on the international payment, clearance, and settlement system, or on legitimate business activities involving the particular jurisdiction, institution or class of transactions; and (4) the effect of the action on United States national security and foreign policy.

[4] FinCEN Advisory Issue 21 (July 2000).

legislation, that is, adequate procedures for licensing, regulating and supervising its offshore banks. Thus, despite repeated warnings by FATF of its concern with Nauru's practices, and the clear consequences of not amending its practices, Nauru has not shouldered its responsibility to establish a sufficient AML regime.

On the basis of FATF's determination, an evaluation of the factors set forth in section 5318A, and after consulting with the Secretary of State and the Attorney General, the Secretary has determined that reasonable grounds exist for concluding that Nauru is a ''primary money laundering concern.'' Accordingly, Treasury is prepared to subsequently impose by regulation special measure five against Nauru, which would prohibit any U.S. financial institution from opening or maintaining in the United States any correspondent account or a payable-through account for a foreign financial institution if the account involves Nauru or any institution licensed by Nauru. This prohibition would not, however, apply to the Bank of Nauru. Treasury has determined to except the Bank of Nauru, which as noted, serves as the Central Bank, from these prohibitions in order to ensure the people of Nauru can continue to meet their legitimate banking needs. Those U.S. financial institutions currently dealing with the Nauru licensed institutions (Appendix A) should begin considering their compliance obligations in anticipation of the imposition of this measure.

Treasury solicits submissions from any bank located in or licensed by Nauru that would establish its legitimacy for purposes of being granted an exception under any proposed regulation imposing special measure five with respect to Nauru.

B. Ukraine

Ukraine suffers from widespread corruption. On Transparency International's 2002 Corruption Perception Index, Ukraine ranked eighty-fifth out of the 102 listed countries.[5] Prosecutions of corruption are based upon the law ''On Combating Corruption,'' that was passed in October 1995. This law is, however, rarely enforced, and on the rare occasions when it is enforced, it is normally aimed at lower or middle-level state employees. With respect to the economy, the Ukrainian system is primarily a cash-based system, with limited use of non-cash financial instruments. The banking system of Ukraine has only been in existence for approximately ten years and contains several deficiencies, including the lack of any record-keeping requirements for banks. While the current banking legislation prohibits the opening of anonymous accounts, there nonetheless remain within the system thousands of anonymous, coded, or numbered accounts containing a total of more than U.S. $20,000,000. In addition, there is a thriving gray or black market system within Ukraine. With regard to recordkeeping requirements, the secrecy laws in the banking sector of Ukraine provide administrative authorities with limited access to customer account information. Furthermore, although banks in Ukraine are required to report both large-scale and dubious transactions, they are not subject to penalty or sanction for failing to make such reports, thus making the requirement wholly voluntary. In addition, non-bank financial institutions are under no obligation to identify beneficial owners when their clients appear to be acting on behalf of another party.

The FATF identified Ukraine in September 2001 as being non-cooperative in the fight against money laundering and placed Ukraine on the NCCT list. Ukraine was placed on the NCCT list because it lacked an effective anti-money laundering regime, including an efficient and mandatory system for reporting suspicious transactions to a financial intelligence unit, adequate customer identification provisions, and sufficient resources devoted to combating money laundering. Currently, Ukraine does not have a comprehensive anti-money laundering law that meets international standards. On the basis of Ukraine's lack of an adequate anti-money laundering regime, the FATF decided that counter-measures should take effect on December 15, 2002, unless Ukraine enacted comprehensive legislation that meets international standards. On November 28, 2002, Ukraine's Supreme Council (Parliament) passed a Law on Prevention and Counteraction of the Legalization (Laundering) of the Proceeds from Crime, and the President of Ukraine signed the Law on December 7. Notwithstanding this new legislation, the system for reporting suspicious transactions remains so constrained as to be virtually ineffective. Additionally, the statute contains contradictory language regarding the ability of Ukraine's financial intelligence unit to share information with law enforcement. Thus, the unit's authority to fulfill this fundamental responsibility remains very much in doubt. Having analyzed the legislation, FATF has determined it to be inadequate and has called on its members to apply counter-measures.

On the basis of FATF's determination, an evaluation of the factors set forth in section 311 and the appropriate consultations, the Secretary has determined reasonable grounds exist for concluding that Ukraine is a ''primary money laundering concern.'' Furthermore, unless Ukraine demonstrates that it has taken proactive steps to address the concerns giving rise to its designation, Treasury anticipates issuing a notice of proposed rule making, subsequent to this designation, concurrent with an order imposing actions under special measures one through four for a period of 120 days. While this order is in effect, the imposition of a final rule imposing these measures would be evaluated. There are two measures under consideration by Treasury. U.S. financial institutions would be required to identify and record the nominal or beneficial owners of accounts with any one of the following characteristics: (1) The accountholder has an address in Ukraine; (2) $50,000 or more is transferred from a U.S. account into an account in the Ukraine; or (3) $50,000 or more is transferred from an account in the Ukraine into a U.S. account. A broader requirement would require U.S. financial institutions to identify and record the beneficial owners involved in a financial transaction that is captured electronically and that is over $50,000.

V. Designation of Nauru and Ukraine as Primary Money Laundering Concerns

By virtue of the authority vested in me as Under Secretary of the Treasury, including section 5318A of title 31, United States Code, for the foregoing reasons I hereby designate the countries of Nauru and Ukraine as ''primary money laundering concerns'' for purposes of section 5318A of title 31, United States Code.

[5] Transparency International (TI) is an international non-governmental organization devoted to combating corruption. One of its services is to conduct surveys of businesses and analysts (both within and outside the country) in order to determine this annual ranking. Each year, a composite index is compiled and Ukraine has consistently been near the bottom of this ranking. TI's annual Corruption Perceptions Index (''CPI'') is cited by the world's media as the leading index in the field. The CPI ranks countries by perceived levels of corruption among public officials.

Dated: December 20, 2002.

Jimmy Gurulé,

Under Secretary of the Treasury.

Richard S. Carro,

Senior Advisory to the General Counsel, (Regulatory Affairs).

Appendix A

The following is a list of financial institutions believed to be licensed by Nauru. It is not intended to be an exhaustive list, and the requirement to terminate correspondent relationships will apply to all Nauru institutions, not just those on this list.

Certain Nauru institutions on this list are known to bear a name resembling that of an unrelated U.S. regulated institution or of an international organization. In addition, there may be other entities unrelated to the Nauru institutions with similar or identical names. As such, financial institutions should not assume that any institution that they may encounter with a name similar or identical to any entity on this list, is in fact, related to any Nauru entity without additional inquiry.

NAURU-Registered Banks

Access Bank International Ltd.
Adriatica Bank.
Agro Trust Bank, Inc.
Ako Bank (A.K.A. Akobank/Ako-Bank/Akkobank) Corp.
Alliance Bank (possibly A.K.A. European Credit Alliance Bank, Inc.).
Amoko Bank Corporation.
Apollo Bank, Inc.
Ardex International Bank.
Atlantic Capital Trust PLC.
Augusta Bank Corp.
Babylon Bank Corp.
Baltic Pacific Bank.
Bank for International Settlements Corp. (A.K.A. Bis Corp.).
Bank of the Nations.
Bank Thalia.
Bartang Bank and Trust, Inc.
Benmore Union Bank.
Business Mediterranean Bank.
Capital Bank Inc.
Capital International Bank Ltd. Corp.
Caribbean Unified Bank.
Carlton Bank Trust Inc.
Cassaf Bank Corp. (A.K.A. Casaf, Kasaf).
Central Pacific Bank.
Central Pacific National Bank.
Chierici Bank.
City Trading Bank, Inc.
Cometa Bank (A.K.A. Kometa).
Commercial Intercontinental Bank, Inc.
Commex Bank.
Communication Pacific Bank Corp.
Continental Assets, Ltd.
Cortex Bank of London.
CP Bank.
Creditbankinc (A.K.A. Credit Bank Inc.).
Crystal Merchant Bank.
Diffusion (A.K.A. Diffusion Finance) Bank, Inc.
Dom Mitra Bank (A.K.A. Dom Mitra National).
Doris Bank.
East and Central Asian Bankers Trust, Inc.
East Investment Bank Corp.
Eastock Bank (A.K.A. Eastok).
East-West International Bank S.A.
Ecumene Bank, Inc. (A.K.A. Ecumene Bank Ltd.).
Elmstone Bank, Inc.
Energy Capital Bank S.A.
Euro-American Bank.
Euro-Atlantic Bank Corp. (A.K.A. Euro-Atlantik).
Euro Capital Bank Inc.
Euro-Central Investment Bank, Inc.
Euro-Nord Bank Corp.
European Credit Alliance Bank, Inc. (A.K.A. ECAB)(possibly A.K.A. Alliance Bank).
European Overseas Bank Incorporated.
Exchange Bank and Trust.
Export and Import Bank Corp. (A.K.A. EXIM).
Federal Commercial Bank.
Fidelity International Bank, Inc.
Financial Continent Bank, Inc.
First American International Bank.
First Capital Bank.
First Credit and Trade Bank.
First European Charter Bank, Inc.
First Fidelity Bank, Inc.
First Financial Security Bank, Inc.
First International Bank.
First Investment Bank.
First Republic Bank of Nauru.
First Sky Bank Corp.
First Southern Banking Corp.
First Southern Bank of Nauru.
First Trading Bank Corp. (A.K.A. First Trading Bank Inc.).
Founders Bank Ltd.
General Europe Bank Inc.
Global Heritage Bank.
Global Market Development Bank.
Global Specialty Bank.
Greater International Bank of Nauru (A.K.A. Greater International Bank Corp.).
Guardian Bank Corp.
Guardian Banking Corp.
Hampshire Bank and Trust Inc. (A.K.A. H-Bank).
Harmony Investment Bank, Inc.
IMRI Credit Bank, Inc.
Info Assets Management Bank Corp.
Innovation Development Bank.
Intercredit Bank (A.K.A. Interkredit Bank).
Inter Development Bank.
International Bank for Economic Affairs Corp.
International Cassaf Bank.
International Commercial Bank Corp. (A.K.A. International Commercial Banking Corp.) (possibly A.K.A. International Commerce Bank Corp.).
International Exchange Bank.
International Industrial and Investment Bank, Inc.
International Metal Trading Bank (A.K.A. IMTB).
International Overseas Bank, Inc. (A.K.A. Interoverseas Bank).
International Prime Bank Corp.
International Trade and Finance Bank Corp.
International Treasury Banking Corporation, Inc.
Intertrust Credit (A.K.A. Intertrust and Credit) Bank.
Investment Bank of London Inc.
Jefferson Bank and Trust Inc.
Liberty International Bank and Trust.
Maritime Pacific Bank, Inc.
Mars Bank.
MC Bank.
Mediterranean International Bank Corp.
Merchant Deposit Bank Corp.
Meridian Merchants Bank, Inc.
MFC Bank Ltd.
Millenium Bank Corp.
National Commerce Bank Inc.
Nations Bank.
Nations Trust Bank.
Nistru Bank, Inc.
Nord-West Investment Bank, Inc.
Northern Security Bank.
North-West Bank, Inc.
NR Bank.
NTBank.
Pam Bank.
Panacea Bank and Trust.
Panin Bank International.
Pioneer (A.K.A. Pioner) Invest Bank.
Prime International Bank.
Private Finance Bank and Trust, Inc.
Ram Bank.
Reconversion and Development Bank (A.K.A. RDB-Bank).
Republic and Commercial Bank, Inc.
Rockland Bank.
Royal Meridian International Bank Inc.
Russian Clearing and Commercial Bank, Inc.
SCB Bank.
Sinex Bank.
South Pacific Commercial Bank.
Sovereign Allied Bank.
Sprint Bank, Inc.
Standard Capital Bank Corp.
Standard Hellier Bank Inc.
Standard Investments Bank, Inc.
Sterling International Bank, Inc.
Supreme Banking Corporation.
Swiss American Bank.
Swiss Trading Bank, Inc.
Swiss Union Bank Corp.
T-Bank, Inc.
TOCA Bank.
Tower Bank.
Tridal Investment Bank, Inc.
Trust Investment Bank, Inc.
Trust Merchant Bank, Inc.
Unibank International, Inc.
Union Credit Bank, Inc.
Union Lombard Bank and Trust Corp.
United Bank and Trust Company.
United Bank of Industry and Trade (A.K.A. UBIT Bank).
United Industrial Bank, Inc. (A.K.A. Uninbank, A.K.A. Unin Bank).
United West Bank (A.K.A. Unwest Bank), Inc.
Universal Bank.
Universal Baltic Bank Inc.
Universal European Bank, Inc. (A.K.A. Unieurobank).
Veksmarkbank.
Westerhall Private Bank.
Westock (A.K.A. Westok) Bank.
White Knight Merchant Bank.

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BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Interim Guidance Concerning Definition of Insurers, Scope of Insurance Coverage, and Disclosures Mandated by the Terrorism Risk Insurance Act of 2002

AGENCY: Department of the Treasury, Departmental Offices.

ACTION: Notice.

SUMMARY: This notice provides additional interim guidance concerning entities that are ''insurers'' as defined in Title I of the Terrorism Risk Insurance Act of 2002 and, therefore, are required to be participants in the Department of Treasury's Terrorism Risk Insurance Program. This notice also provides interim guidance concerning the scope of insurance coverage under the Program, including guidance to assist participating insurers in estimating their ''insurer deductible,'' prior to the issuance of regulations, based on how they report their ''direct earned premium'' (or comparable format). Additional guidance concerning required disclosures under the Act is also provided by this notice.

DATES: This notice is effective immediately and will remain in effect until superceded by regulations or by subsequent notice.

FOR FURTHER INFORMATION CONTACT: Mario Ugoletti, Deputy Director, Office of Financial Institutions and GSE Policy 202–622–2730; Martha Ellett, Attorney-Advisor, Office of the Assistant General Counsel (Banking and Finance) 202–622–0480.

SUPPLEMENTARY INFORMATION: This notice provides additional interim guidance to assist insurers in ascertaining whether they are covered by, and how they may comply with, certain immediately applicable provisions of Title I of the Terrorism Risk Insurance Act of 2002 (Pub. L. 107–297) (the Act) prior to the issuance of regulations by the Department of the Treasury (Treasury). The interim guidance contained in this notice, along with interim guidance issued previously by Treasury, may be relied upon by insurers in complying with these statutory requirements and is intended to assist insurers prior to the issuance of regulations on these issues. This interim guidance remains in effect until superceded by regulations or subsequent notice.

I. Background

On November 26, 2002, the President signed into law the Terrorism Risk Insurance Act of 2002. The Act became effective immediately. It establishes a temporary federal program of shared public and private compensation for insured commercial property and casualty losses resulting from an ''act of terrorism,'' as defined in the Act. The Terrorism Risk Insurance Program is administered and implemented by Treasury and will sunset on December 31, 2005.

II. Interim Guidance

Treasury will be issuing regulations to administer and implement certain elements of the Terrorism Risk Insurance Program (Program). To assist insurers in complying with certain statutory requirements prior to the issuance of regulations, Treasury issued initial interim guidance at 67 FR 76206 (December 11, 2002) (also located on Treasury's Terrorism Risk Insurance Program web site at *http://www.treasury.gov/trip*). This notice contains additional interim guidance concerning entities within the definition of ''insurer'' in section 102(6) of the Act. This notice also provides interim guidance concerning the scope of insurance coverage based on the definition of ''insured loss'' and guidance to assist insurers in estimating their ''insurer deductible'' under the Program prior to the issuance of regulations by Treasury. This notice also provides additional guidance concerning the Act's disclosure requirements.

A. Insurer Participation in General

What Entities Must Participate in the Program?

Section 103(a)(3) of the Act requires that each entity that meets the definition of insurer in section 102(6) of the Act shall participate in the Program. Under the Act, among other requirements, participation means that insurers must comply with the ''make available'' requirements and the disclosure provisions in section 103, as further described in Treasury's initial interim guidance at 67 FR 76206. In addition, participation in the Program means that an insurer is subject to the policy surcharge (recoupment) provisions of the Act on the insurer's property and casualty insurance policies as provided in section 103(e)(8).

What Entities Are ''Insurers'' for Purposes of the Program?

Section 102(6) of the Act defines the term ''insurer'' for purposes of the Program to mean, any entity, including an affiliate of that entity, that meets the statutory requirements contained in section 102(6)(A),(B) and (C), as described below.

First, to be an insurer, an entity must fall within at least one of the categories in section 102(6)(A):

(i) Licensed or admitted to engage in the business of providing primary or excess insurance in any State (''State'' includes the District of Columbia and territories of the United States);

(ii) Not so licensed or admitted, but is an eligible surplus line carrier listed on the Quarterly Listing of Alien Insurers of the National Association of Insurance Commissioners;

(iii) Approved for the purpose of offering property and casualty insurance by a Federal agency in connection with maritime, energy or aviation activity; or

(iv) A State residual market insurance entity or State workers' compensation fund.

The definition of ''insurer'' in section 102(6)(A)(v) also includes captive and self-insurance arrangements, not otherwise covered in clauses (i)–(iv) above, to the extent provided in rules issued by Treasury under this section 103(f) (emphasis supplied). Treasury has not issued such rules.

In addition to coming within a category in section 102(6)(A), to be an ''insurer'' under the Act, an entity must receive ''direct earned premiums'' on any type of commercial ''property and casualty insurance.'' (Section 102(6)(B) excepts state residual market insurance entities and captives and self-insurance arrangements that do not fall into the categories listed in section 102(6)(A)(i),(ii) or (iii) from this direct earned premium requirement.)

Third, the entity must meet ''any other criteria that the Secretary of the Treasury may reasonably prescribe'' under section 102(6)(C).

May an Affiliate of an Insurer Participate in the Program if the Affiliate Itself Does Not Meet the Requirements for an Insurer in Section 102(6)(A) and (B)?

No. To participate in the Program, an entity, including an affiliate of an insurer, must itself meet all of the requirements of section 102(6)(A)and (B) as well any requirements that may be prescribed under section 102(6)(C).

If a Parent Company Meets the Requirements of section 102(6)(A) and (B), But Not All of the Parent Company's Affiliates Meet the Requirements for an Insurer Under Section 102(6)(A) and (B), How Will These Entities be Treated Purposes of the Program?

Treasury intends to consider the parent company, and all affiliates that meet the requirements of ''insurer'' in

section 102(6)(A) and (B) (and, if issued (C)), to be, collectively one ''insurer'' for purposes of the Program. Any affiliate that does not meet these statutory requirements is not an insurer under the Act, and therefore is not a participant in the Program. For example, if an insurance company is licensed or admitted to engage in the business of providing primary or excess insurance in a State and receives direct earned premiums as required in section 102(6)(B), and three out of four of its affiliate insurance companies also are State licensed and meet the requirements of section 102(6)(B), then the parent company and the three affiliates that meet the requirements of section 102(6)(A) and (B) are collectively, one insurer for purposes of the Program. The affiliate that does not fall within one of the categories in section 102(6)(A) or fails to meet all the requirements to be an ''insurer'' under section 102(6) is not included in the Program.

If an Entity Meets the Definition of Insurer But Its Parent Company Does Not, Is the Entity an Insurer for Purposes of the Act?

Yes. Any entity that meets the requirements of section 102(A) and (B) (and, if issued, (C)), is an ''insurer'' under the Act, and therefore is required to participate in the Program under section 103(a)(3) of the Act. If an entity is ''under common control with the insurer,'' and that entity meets the requirements of section 102(A) and (B) (and if issued (C)) Treasury intends to consider that entity collectively with the other insurer (its affiliate) as one ''insurer'' for purposes of the Program. For example, assume that two insurance companies are licensed to engage in the business of providing primary or excess insurance in any State (either in one State or in separate States) and both receive direct earned premiums as required by section 102(6)(B). Each company, therefore, meets the definition of ''insurer,'' but assume that the common parent of the two companies does not fall into any of the categories in section 102(6)(A). Treasury intends to consider the two affiliated companies to be, collectively, one insurer for purposes of the Program, but their parent company is not an insurer and not included in the Program.

If an Entity Falls Within More Than One Category in Section 102(6)(A), How is it Treated for Purposes of the Program?

An entity that falls within two categories will be considered as falling within the first category it meets under section 102(6)(A)(i)-(v), as described in further detail below in part C of this interim guidance.

Is Reinsurance Included in the Program?

No. Although the legislative history and design of the Act envision reinsurance arrangements as an important component of capacity within the insurance market, the Act excludes reinsurance from the federal loss sharing Program. Section 103(g) of the Act expressly provides that the Act does not limit or prevent ''insurers'' from obtaining reinsurance coverage for ''insurer deductibles'' or ''insured losses'' retained by insurers. For the purposes of this interim guidance, if an entity does not receive direct earned premiums as required by section 102(6)(B), then the entity is not an ''insurer'' under the Act.

B. Scope of Coverage in General

What Is an Insured Loss Under the Program?

The Act defines the term ''insured loss'' for purposes of the Program in section 102(5). An insured loss means any loss resulting from a certified ''act of terrorism'' covered by primary or excess ''property and casualty insurance,'' that is issued by an ''insurer,'' if such loss:

- ''Occurs within the United States'' or
- occurs to an ''air carrier''; a U.S. flag vessel or a vessel ''based principally in the United States on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States, regardless of where the loss occurs'', or
- occurs ''at the premises of any United States mission.''

The Act defines ''United States'' in section 102(15) as the several ''States'' (defined in section 102(14) and including the District of Columbia), as well as the territorial sea and the continental shelf of the United States, as those terms are defined in the Violent Crime Control and Law Enforcement Act of 1994 (18 U.S.C. 2280, 2281).

What Insurance Coverage Is Within the Scope of ''Insured Loss''?

In general, if the property and casualty insurance coverage is provided within the geographic and other statutory parameters of the definition of ''insured loss'' in the Act as described above, and is provided by an ''insurer'' as defined in section 102(6) of the Act (whether or not the insurer is foreign based or owned), then such losses will be covered by the Program, subject to the conditions for payment and other requirements of the Act. However, if insurance coverage is provided by an entity that is not an ''insurer'' under the Act, then, even if a loss occurs within the United States, or otherwise meets the definitional parameters of ''insured loss,'' *e.g.* occurs to an air carrier or vessel or mission as defined in the Act, the loss would not be covered by the Program. In addition, if insurance is provided by a U.S. insurer but the loss does not fall within the definition of ''insured loss'' *e.g.* occurs on foreign soil and not to a U.S. mission or covered air carrier or vessel, then the loss would not be covered by the Program.

C. Categories of Insurers Under Section 102(6)(A)

1. State Licensed or Admitted

Which State Licensed or Admitted Insurance Companies Are Required to Participate in the Program?

For purposes of this interim guidance, this category includes any insurer that

- Is licensed or admitted in any State as defined in the Act,
- And that provides direct property and casualty insurance coverage as defined in the Act and provided in Treasury's previous interim guidance at 67 FR 76206 (December 11, 2002),
- And that reports its direct earned premiums as described in Treasury's previous interim guidance (cited above), or that reports comparable direct earned premium information to any State, *e.g.* county mutual insurance companies.

What Insurance Coverage Provided by State Licensed and Admitted Insurers Is Under the Program?

Treasury has issued interim guidance concerning lines of insurance coverage included in the Program and ''direct earned premiums'' at 67 FR 76206 (December 12, 2002). The direct earned premium income for the lines of coverage included in the Program described in that guidance (direct premiums earned as reported to the NAIC in the Annual Statement in column 2 of the Exhibit of Premiums and Losses—commonly known as Statutory Page 14) primarily covers premiums and associated policies for property and casualty insurance risks in the United States. Thus, this direct earned premium information is generally consistent with scope of ''insured loss'' as defined in the Act. If a State licensed or admitted insurer within this category provides insurance coverage that is not reported in the premium information submitted on Statutory Page 14, (or does not report comparable premium information to its licensing or admitting State, *e.g.* as a county mutual insurance company) then

such insurance coverage will not be considered within the scope of the Program prior to the issuance of regulations. Insurers and other interested parties will have the opportunity to submit formal comments to Treasury on lines of commercial property and casualty insurance coverage that were specified in Treasury's initial interim guidance.

How May a State Licensed and Admitted Insurer Estimate Its Insurer Deductible for Purposes of the Program?

The Act defines an ''Insurer Deductible'' in Section 102(7) for the various ''Program Years'' and other periods covered by the Program. For example, Section 102(7)(B) defines the insurer deductible for Program Year 1 (January 1, 2003 through December 31, 2003) as ''the value of an insurer's direct earned premiums over the calendar year immediately preceding Program Year 1 multiplied by 7 percent.'' Prior to the issuance of regulations, a State licensed or admitted insurer may estimate its insurer deductible by multiplying the applicable percentage (listed in the Act for the Transition Period and each of the Program Years) by the direct earned premium information that the insurer reports on Statutory Page 14, as described in Treasury's previous interim guidance at 67 FR 76206 (or as comparably reported by the insurer to its licensing or admitting State).

If an Entity Is State Licensed or Admitted Within Section 102(6)(A)(i) and Also Is a Self-Insured or Captive Insurance Company (or Risk Retention Group), How Is the Entity Treated For Purposes of the Program?

Any entity that falls within the State ''licensed or admitted'' category 102(6)(A)(i), and receives and reports direct earned premiums in accordance with section 102(6)(B) and Treasury's interim guidance at 67 FR 76206 (or reports comparable information to its licensing or admitting State), will be considered by Treasury as an insurer under section102(6)(A)(i), even if the entity is also in a self-insured or captive arrangement. Such entities are required by section 103(a)(3) to participate in the Program. In contrast, if a captive insurance company or a risk retention group is licensed or admitted by a State, but does not collect direct earned premiums as required by section 102(6)(B), then such entities are not ''insurers'' under section 102(6)(A)(i). These other entities may be addressed under subsequent Treasury regulations, if issued for self-insured or captive entities under section 103(f).

2. Eligible Alien Surplus Line Carriers

What Entities Are Covered by the Eligible Surplus Line Category?

Any eligible alien surplus line carrier listed on the NAIC Quarterly Listing of Alien Insurers (Quarterly Listing) that receives direct earned premiums as required in section 102(6)(B) is an insurer and required to participate under the Program.

What Portion of Insurance Coverage Provided by Eligible Surplus Line Carriers Is Required to Come Under the Terrorism Risk Insurance Program?

The scope of insurance coverage provided by eligible surplus line carriers covered by the Program for policies that are in-force as of the date of enactment or that are entered into prior to January 1, 2003, may be determined by a surplus line carrier with reference to the geographic scope in the definition of ''insured loss,'' and with reference to the covered property and casualty lines of insurance described in Treasury's previous interim guidance at 67 FR 76206, and with reference to premium information collected using a format consistent with Treasury's interim guidance for those entities that report to the NAIC (*i.e.* direct earned premium information reported on Statutory Page 14).

Treasury is coordinating with the NAIC and will be issuing regulations governing the scope of insurance coverage provided by eligible surplus line carriers under the Program for policies issued by them and entered into after January 1, 2003. For purposes of interim guidance, Treasury expects to propose that insurance coverage is within the Program if (i) provided for losses within the geographic scope of the definition of ''insured loss'' and (ii) within the lines of the property and casualty insurance described in Treasury's interim guidance at 67 FR 76206 and (iii) the premium income is calculated using a format consistent with the format referred to in that interim guidance (*i.e.* Statutory Page 14). Treasury also expects to propose that the premium for insurance coverage within the geographic scope of ''insured loss'' must be priced separately by eligible surplus line insurers for policies issued after January 1, 2003.

How May Eligible Surplus Line Carriers Calculate Their Insurer Deductibles?

For purposes of this interim guidance, in calculating an ''Insurer Deductible'' as defined in Section 102(7), eligible surplus line carriers may use the premium base that corresponds to the coverage requirements described in the previous question. In calculating the deductible for Program Year 1, prior to the issuance of regulations, eligible surplus line carriers may use and rely on the same allocation methodologies contained within the NAIC's ''Allocation of Surplus Lines and Independently Procured Insurance Premium Tax on Multi-State Risks Model Regulation'' for allocating premium between coverage within the geographic scope of ''insured loss'' and all other coverage to estimate the appropriate percentage of premium income for such policies that applies to such risks. A similar procedure may be relied upon to calculate an eligible surplus line carrier's deductible for the Transition Period.

3. Insurers Approved by Federal Agencies

Which Federally Approved Insurers Are Required to Participate in the Terrorism Risk Insurance Program?

If an entity does not fall within section 102(6)(A)(i) or (ii), but is approved by a Federal agency to offer property and casualty insurance in connection with maritime, energy or aviation activities and the entity receives direct earned premiums for any type of property and casualty insurance, then, for purposes of this interim guidance, such entity is considered by Treasury to be an ''insurer'' under section 102(6)(A)(iii). This category of federally approved insurers under section 102(6)(A)(iii) will be administered in a manner that is consistent with any other reasonable criteria that may be prescribed at a later date by Treasury pursuant to section 102(6)(C).

Examples of insurers under section 102(6)(A)(iii) are those insurers that do not fall within section 102 (6)(A)(i) or (ii) and are approved or accepted by a Federal agency under the following programs and/or statutes:

- Approval of Underwriters for Marine Hull Insurance (Maritime Administration, U.S. Department of Transportation)
- Aircraft Accident Liability Insurance (U.S. Department of Transportation)
- Oil Spill Financial Responsibility for Offshore Facilities (Minerals Management Service, U.S. Department of the Interior
- Oil Spill Financial Responsibility for Vessels (United States Coast Guard, U.S. Department of Transportation)
- Longshoremen's and Harbor Workers' Compensation Act (Employment Standards Administration, U.S. Department of Labor)

The above list of Federal insurance programs is not exclusive. Any entity that is approved by a U.S. agency to offer property and casualty insurance in connection with maritime, energy or aviation activities by a program that is not listed above is encouraged to notify the designated Treasury contacts in this notice prior to the issuance of Treasury regulations or to submit a comment once regulations are proposed.

Treasury intends to propose regulations providing that scope of insurance coverage under the Program for insurers that are within section 102(6)(A)(iii) is only the insurance coverage approved by the Federal Agency.

How May Insurers Approved by a Federal Agency Calculate Their Deductibles?

In estimating an ''Insurer Deductible'' as defined in Section 102(7), federally approved insurers may use the premium base that corresponds to the coverage approved by the Federal agency. In addition, Treasury expects to propose regulations that treat federally approved insurers in a manner consistent with eligible alien surplus line carriers as described above in the second question under Section C.2.

For the purposes of this interim guidance, because insurers approved by a Federal agency share many of the same characteristics as eligible surplus line carriers on the NAIC's Quarterly Listing of Alien Insurers, this class of insurers may estimate their insured deductible under the Program in a similar manner as described for eligible surplus line carriers. In calculating the deductible for Program Year 1, prior to the issuance of regulations, and because insurance policies issued by federally approved insurers may not have specifically allocated the percentage of premium income that is attributable to risks within the geographic scope of the definition of ''insured loss,'' federally approved insurers may use the same allocation methodologies that are contained within the NAIC's ''Allocation of Surplus Lines and Independently Procured Insurance Premium Tax on Multi-State Risks Model Regulation'' for allocating premiums between coverage within the geographic scope of ''insured loss'' and all other coverage, to estimate the appropriate percentage of premium income for such policies that applies to such risks. A similar procedure may be relied upon to calculate a federally approved insurer's deductible for the Transition Period.

4. State Residual Insurance Market and Workers Compensation Funds

Which State Residual Insurance Market Entities or State Workers' Compensation Funds Are Required to Participate in the Program?

These entities fall within section 102(6)(A)(iv) of the definition of insurer and are required to participate in the Program. For the purposes of this interim guidance, the Treasury, in consultation with the NAIC, has identified a group of entities that fall within this class of insurers (see attached list at the end of this interim guidance). Any state residual insurance market entity or state workers' compensation fund that is not on this list is encouraged to notify Treasury through the designated contacts in this interim guidance.

How Do the Provisions of the Act Apply to State Residual Market Insurance Entities or State Workers Compensation Funds?

Section 102(6)(A)(iv) provides a category for State residual market insurance entities and State workers' compensation funds within the definition of insurer. Section 102(6)(B) provides an exception for such insurers from the requirement that they receive direct earned premiums, but section 103(d) requires Treasury to issue regulations as soon as practicable to apply the provisions of the Act to these types of entities. Treasury is working with the NAIC on a methodology to address a data reporting anomaly that arises when insurers act as servicing carriers for residual market mechanisms. For purposes of interim guidance, insurers within this category that have insufficient information to issue disclosures under section 103(b)(2) are being given a waiver from these disclosure requirements until Treasury issues regulations governing how such requirements can and should be applied to State Residual Market Entities and State Workers Compensation Funds to fulfill the purposes of the Act. Treasury is giving priority consideration to the development and issuance of proposed rules applying provisions of the Act to State residual market insurance entities and State workers compensation funds, as required by section 103(d).

5. Newly Formed Insurers

How Does an Insurer Determine Its Insured Deductible if It Was Not in Business for the Full Calendar Year Prior to the Program Year?

Section 102(7) of the Act defines an ''insurer deductible.'' In general, this is the value of a participating insurer's ''direct earned premium'' over the calendar year immediately preceding the Program Year (as defined). Section 102(7)(E) provides Treasury with authority to determine the appropriate methodology for measuring the direct earned premium if an insurer has not had a full year of operations during the calendar year immediately preceding the Program Year.

Because new companies have only had limited business operations, it is likely that their premium income will be somewhat volatile. Such volatility could persist throughout the life of the three-year Program. Thus, to administer these newly formed insurers in a manner that is consistent with other insurers under the Program and to prevent newly formed insurers from having the unfair advantage of lower relative deductibles, Treasury intends to propose that the deductible measure for new companies formed after the date of enactment (November 26) will be based on contemporaneous data for direct earned premium that corresponds to the current Program Year. If a newly formed insurer does not have a full year of operations within a particular Program year, Treasury intends to propose that insurer's direct earned premium for Program year will be annualized to determine an insurer's deductible.

D. Additional Disclosure Guidance

If an Insurer Chooses To Use the NAIC's Model Disclosure Forms To Satisfy the Disclosure Requirements of Section 103, Does the Insurer Have To Follow the Model Disclosure Form Exactly?

No. As described in previous interim guidance, the NAIC disclosure forms are ''model'' forms. Treasury's previous interim guidance provides a safe harbor to insurers that use such model forms for the purposes described in that guidance, but that guidance states that this is not the exclusive means of complying with the disclosure provisions.

The NAIC's model disclosure forms reflect key information regarding the Terrorism Risk Insurance Program that is required to be disclosed to policyholders as a condition for federal payment under the Program, such as Federal participation in the Program and any premium that is being charged by the insurer for ''insured losses.'' However, insurers may decide to modify such model forms to fit individual circumstances. For example, if an insurer is providing disclosures under Section 103(b) and there is no change in the premium, the signature line on the model form may be unnecessary. In

addition, in complying with the disclosure requirements, an insurer may communicate the price to a policyholder in a manner that is consistent with standard business practice, which, in some cases, may be as percentage of overall policy premium.

Treasury intends to propose regulations that will indicate that compliance with the disclosure provisions may be evidenced by an insurer in a variety of ways, including but not limited to, a proof of mailing process, certificates of mailing, returned forms signed by the policyholders, and other methods consistent with the normal forms of communication with policyholders that demonstrate that the disclosures have been provided.

If Two or More Insurers Participate In Insuring a Single Commercial Risk Through a Joint Underwriting or Risk Sharing Plan, Would Policies Written Under Such Plans Be Under the Program?

Yes, if the insurers meet the definition of insurer and the joint underwriting or risk sharing plans are authorized by the laws of the state where the risk is located and where the policy or policies are issued or delivered. To satisfy the ''make available'' requirement the policy or policies should make available to the insured, coverage for ''insured losses'' that does not differ materially from the terms, amounts and other coverage limitations applicable to losses arising from events other than acts of terrorism.

Are the Property and Casualty Lines of Coverage Described in Treasury's Initial Interim Guidance the Only Lines Covered Under the Program?

Until Treasury proposes and issues regulations concerning the definition of property and casualty insurance for purposes of the Program, insurers should refer to the definition contained within the Act and the guidance provided in Treasury's previous interim guidance. As part of the rulemaking process, interested parties will have a chance to provide comments on Treasury's proposed regulation on this definition.

Are All Types of Insurance Coverage Reported Under the Lines of Coverage Listed Described in Treasury's Initial Interim Guidance Covered Under the Program?

Until Treasury proposes and issues regulations concerning the definition of property and casualty insurance for purposes of the Program, insurers should refer to the definition contained within the Act and the guidance provided in Treasury's previous interim guidance. As part of the rulemaking process, interested parties will have a chance to provide comments on Treasury's proposed regulation on this definition.

Dated: December 18, 2002.

Wayne A. Abernathy,

Assistant Secretary of the Treasury.

Attachment—List of State Residual Market Mechanisms

State	Automobile	Liability	Property	Workers' compensation
Alabama	Assigned Risk Plan			NCCI.
Alaska	Assigned Risk Plan			NCCI.
American Samoa	None.			
Arizona	Assigned Risk Plan	JUA—Liability		NCCI.
Arkansas	Assigned Risk Plan			NCCI-Ark. Service Center.
California	Assigned Risk Plan		Syndicate	State Compensation Insurance Fund.
Colorado	Assigned Risk Plan	JUA—Commercial Lines		Colorado Compensation Insurance Authority.
Connecticut	Assigned Risk Plan		Syndicate	NCCI.
Delaware	Assigned Risk Plan	JUA—Property	Syndicate	Delaware Compensation Rating Bureau.
District of Columbia	D.C. Auto Insurance Plan		Syndicate	NCCI.
Florida	Joint Underwriting Assoc	JUA—Unavailable Lines	Multiple Servicing Carrier	Florida W.C. JUA.
Georgia	Assigned Risk Plan	JUA—Casualty	Syndicate	NCCI.
Guam	None.			
Hawaii	Assigned Risk Plan		Single Servicing Carrier	Hawaii Employers Mutual Insurance Company.
Idaho	Assigned Risk Plan			NCCI.
Illinois	Assigned Risk Plan		Syndicate	NCCI.
Indiana	Assigned Risk Plan		Multiple Servicing Car	Indiana Compensation Rating Bureau.
Iowa	Assigned Risk Plan	JUA—All P/C	Syndicate	NCCI.
Kansas	Assigned Risk Plan	JUA—Liability	Single Servicing Carrier	NCCI.
Kentucky	Insurance Plan		Syndicate	Kentucky Employers' Mutual Insurance Co.
Louisiana	Assigned Risk Plan		Single Servicing Carrier	Louisiana Workers' Compensation Corp.
Maine	Assigned Risk Plan			Maine Employers Mutual Insurance Company.
Maryland	State Fund		Syndicate	Injured Workers' Insurance Fund.
Massachusetts	Assigned Risk Plan & Reinsurance Facility.		Syndicate	WCRIB of Massachusetts.
Michigan	Placement Facility		Syndicate	Michigan Workers' Comp. Placement Facility.
Minnesota	Assigned Risk Plan	JUA—Liability, except Product Liability.	Syndicate	Minnesota Workers' Comp. Insurers' Assoc.
Mississippi	Assigned Risk Plan			NCCI.
Missouri	Joint Underwriting Assoc.		Syndicate	Travelers Insurance Co.
Montana	Assigned Risk Plan			State Compensation Insurance Fund.

State	Automobile	Liability	Property	Workers' compensation
Nebraska	Assigned Risk Plan			Travelers Insurance Co.
Nevada	Assigned Risk Plan	JUA—All Lines		NCCI.
New Hampshire	Insurance Plan & Reinsurance Facility.	JUA—Liability		NCCI.
New Jersey	Assigned Risk Plan		Syndicate	Compensation Rating and Inspection Bureau.
New Mexico	Assigned Risk Plan	JUA—Essential Property	Single Servicing Carrier	NCCI-NM Service Center.
New York	Assigned Risk Plan		Syndicate	NY State Insurance Fund.
North Carolina	Reinsurance Facility	JUA—Essential Property		NC Rate Bureau.
North Dakota	Assigned Risk Plan			ND Workmen's Compensation Bureau.
Ohio	Assigned Risk Plan	JUA—Classes of Commercial Lines Designated by the Commissioner.	Syndicate	Ohio Bureau of Workers' Compensation.
Oklahoma	Assigned Risk Plan	JUA—Liability		OK State Insurance Fund.
Oregon	Assigned Risk Plan	JUA—Liability	Single Servicing Carrier	NCCI.
Pennsylvania	Assigned Risk Plan		Syndicate	State Workmen's Insurance Fund.
Puerto Rico	Assigned Risk Plan			State Insurance Fund Corporation of Puerto Rico.
Rhode Island	Assigned Risk Plan		Syndicate	Beacon Mutual Ins. Co.
South Carolina	JUA [1]/Assigned Risk Plan	JUA—Prof. Liability and Liability for Daycare Providers.		NCCI.
South Dakota	Assigned Risk Plan			NCCI.
Tennessee	Assigned Risk Plan	JUA—Unavailable Lines		Aon Risk Services.
Texas	Assigned Risk Plan	JUA—Non-Profits		Texas Workers' Comp. Insurance Fund.
Utah	Assigned Risk Plan	JUA—Unavailable Lines		Workers' Compensation Fund of Utah.
Vermont	Assigned Risk Plan	JUA—Unavailable Lines, except Pollution.		NCCI.
Virgin Islands	None.			
Virginia	Assigned Risk Plan	JUA—Commercial Line	Syndicate	NCCI.
Washington	Assigned Risk Plan	JUA—Daycare	Single Servicing Carrier	Washington Department of Labor & Industry.
West Virginia	Assigned Risk Plan	JUA—Fire & EC	Syndicate	West Virginia Workmen's Compensation Fund.
Wisconsin	Assigned Risk Plan	JUA—Liability	Syndicate	Wisconsin Compensation Rating Bureau.
Wyoming	Assigned Risk Plan			Wyoming Workers Safety and Compensation.

[1] South Carolina operates a JUA until Feb. 28, 2002 and will convert to an assigned risk plan thereafter.

[FR Doc. 02–32468 Filed 12–24–02; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Extension of Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, 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 a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, Privacy of Consumer Financial Information (12 CFR part 40).

DATES: You should submit written comments by February 24, 2003.

ADDRESSES: You should direct comments to the Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0216, 250 E Street, SW., Washington, DC 20219. Due to delays in paper mail in the Washington area, commenters are encouraged to submit comments by fax or e-mail. Comments may be sent by fax to (202) 874–4448, or by e-mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

A copy of the comments should also be sent to the OMB Desk Officer for the OCC: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or by e-mail to *jlackeyj@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: You can request additional information from Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Privacy of Consumer Financial Information (12 CFR part 40).

OMB Number: 1557–0216.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that OMB extend its approval of the information collection.

These information collection requirements are required under the Gramm-Leach-Bliley Act (Pub. L. 106–102) which required the OCC to issue regulations as necessary to implement notice requirements and restrictions on a financial institution's ability to disclose nonpublic personal information about consumers to nonaffiliated third parties.

The information collection requirements in part 40 are as follows:

Section 40.4(a) requires a bank to provide an initial notice to consumers that accurately reflects its privacy policies and practices.

Section 40.5(a) requires a bank to provide a notice annually to customers during the continuation of the customer relationship that accurately reflects the bank's privacy policies and practices.

Section 40.7(a)(1) requires a bank to provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out. The notice must state that the bank discloses or reserves the right to disclose nonpublic personal information to a nonaffiliated third party; that the consumer has the right to opt out of that disclosure; and a reasonable means by which the consumer may exercise the opt out right. Section 40.10(c) states that a bank may allow a consumer to select certain nonpublic personal information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out (partial opt-out).

Section 40.8(a) requires a bank to provide consumers with a revised notice of the bank's policies and procedures and a new opt out notice, if the bank wishes to disclose information in a way that is inconsistent with the notices previously given to a consumer.

Part 40 also contains affirmative actions that consumers must take to exercise their rights. In order for consumers to prevent banks from sharing their information with nonaffiliated parties, they must opt out (§§ 40.7(a)(2)(ii), 40.10(a)(2) and 40.10(c)).

Consumers also have the right at any time during their continued relationship with the bank to change or update their opt out status with the bank (§§ 40.7(f) and (g)).

These information collection requirements ensure bank compliance with applicable Federal law. The requirements also inform banks of consumers' preference regarding disclosure of their personal information and allow consumers to determine whether they want their personal information disclosed to nonaffiliated parties.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit; individuals.

Estimated Number of Respondents: 2,400.

Estimated Total Annual Responses: 2,400.

Estimated Burden Hours Per Response: 43 hours (disclosure burden, includes initial notice).

Estimated Burden Hours Per Response: 2 hours (reporting burden).

Frequency of Response: Annually.

Estimated Total Annual Burden: 108,000 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 18, 2002.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 02–32463 Filed 12–24–02; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Financial Management Service; Fiscal Service

Proposed Collection of Information: Voucher for Payment of Awards

AGENCY: Financial Management Service; Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, 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 a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the form ''Voucher for Payment of Awards.''

DATES: Written comments should be received on or before February 24, 2003.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Staff, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Rose Brewer, Manager, Judgment Fund Branch, Room 630F, 3700 East West Highway, Hyattsville, Maryland 20782, (202) 874–6664.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: Voucher for Payment of Awards.

OMB Number: 1510–0037.

Form Number: TFS 5135.

Abstract: Awards certified to Treasury are paid annually as funds are received from foreign Governments. Vouchers are mailed to awardholders showing payments due. Awardholders sign vouchers certifying that he/she is entitled to payment. Executed vouchers are used as basis for payment.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,400.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 700.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to

enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Judith R. Tillman,

Assistant Commissioner, Financial Operations.

[FR Doc. 02–32182 Filed 12–24–02; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Tuesday, February 4, 2003.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or (954) 423–7977.

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 an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Tuesday, February 4, 2003 from 3 pm EST to 4 pm EST via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: December 19, 2002.

Maryclare Whitehead,

Executive Assistant to the National Taxpayer Advocate.

[FR Doc. 02–32454 Filed 12–24–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open meeting of the Small Business/Self-Employed Payroll Tax Issue Committee for the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self-Employed Payroll Tax Issue Committee for the Taxpayer Advocacy Panel will be conducted.

DATES: The meeting will be held Saturday, January 11, 2003.

FOR FURTHER INFORMATION CONTACT: Mary O'Brien at 1–888–912–1227, or (206) 220–6096.

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 an open meeting of the Small Business/Self-Employed Payroll Tax Issue Committee for the Taxpayer Advocacy Panel will be held Saturday, January 11, 2003 from 8 a.m. Central Time to 2 p.m. Central Time at the Hotel Monaco, 333 St. Charles Avenue, New Orleans, LA 70130. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary O'Brien, TAP Office, 915 Second Avenue MS W–406, Seattle, WA 98174. Due to limited space, notification of intent to participate in the meeting must be made with Mary O'Brien. Ms. O'Brien can be reached at 1–888–912–1227 or (206) 220–6096.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: December 19, 2002.

Maryclare Whitehead,

Executive Assistant to the National Taxpayer Advocate.

[FR Doc. 02–32455 Filed 12–24–02; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Thursday,
December 26, 2002

Part II

Department of Labor

Office of Workers' Compensation Programs

20 CFR Parts 1 and 30

Performance of Functions Under This Chapter; Claims for Compensation Under the Energy Employees Occupational Illness Compensation Program Act of 2000, as Amended; Final Rule

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Parts 1 and 30

RIN 1215–AB32

Performance of Functions Under This Chapter; Claims for Compensation Under the Energy Employees Occupational Illness Compensation Program Act of 2000, as Amended

AGENCY: Office of Workers' Compensation Programs, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: On May 25, 2001, the Department of Labor (DOL) published interim final regulations that governed its responsibilities under the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (EEOICPA or Act). The Act provides lump-sum payments and medical benefits to covered employees and, where applicable, to survivors of such employees, of the Department of Energy (DOE), its predecessor agencies and certain of its vendors, contractors and subcontractors. The Act also provides smaller lump-sum payments and medical benefits to individuals found to be eligible for an award under section 5 of the Radiation Exposure Compensation Act, as amended (RECA), and where applicable, to their survivors.

At the same time the Department published the interim final regulations, it also invited written comments and advice from interested parties regarding possible changes to those regulations. This document amends the interim final regulations based on comments that the Department received, and also includes changes necessary to conform the regulations to several technical amendments to the EEOICPA that Congress enacted after the interim final regulations were published.

DATES: *Effective Date:* This rule will be effective on February 24, 2003, and will apply to all claims filed on or after that date. This rule will also apply to any claims that are pending on February 24, 2003.

Compliance Date: Affected parties do not have to comply with the new information collection requirements in §§ 30.112 and 30.213 until DOL publishes in the **Federal Register** the control number assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control number will notify the public that OMB has approved the new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). It should be noted that OMB approval of the new information collection requirements will be a revision to the currently approved collection in OMB Control No. 1215–197.

Comments: Written comments on the new information collection requirements in §§ 30.112 and 30.213 must be received by January 27, 2003.

ADDRESSES: Written comments on the new information collection requirements in §§ 30.112 and 30.213 should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment Standards Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shelby Hallmark, Director, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Room S–3524, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: 202–693–0036 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department of Labor's interim final regulations implementing its responsibilities under the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (42 U.S.C. 7384 *et seq.*), were published in the **Federal Register** on May 25, 2001 (66 FR 28948). The interim final rule took effect on July 24, 2001 and originally included a 90-day period for comment. On September 12, 2001, the Department retroactively reopened the comment period on the interim final rule and extended the period for comment through September 24, 2001 (66 FR 47382). During this comment period, the Department received 216 timely comments: Six from congressional representatives; 10 from labor organizations; 6 from physicians; seven from attorneys; 13 from advocacy groups; one from a lay representative; one from the City Council of the City of Niagara Falls, New York; one from the Department of Defense; and 171 from individuals. The Department also received untimely comments from two advocacy groups and four individuals; the points they raised were also raised by the timely commenters. A majority of the commenters addressed the issue of survivor benefits (out of the 143 commenters that addressed this issue, 85 commenters addressed this issue alone). Other commenters addressed a range of issues, including coverage for particular illnesses, the administrative claims process, entitlement qualifications, and the extent of medical benefits provided under the program. The Department's section-by-section analysis of the timely comments it received is set forth below (*see* sections I and II).

Some minor changes have been made to the interim final regulations that did not result from any comments. One such change is the addition of new paragraph (b) to § 30.15 to recognize that unpaid lump-sum payments of compensation under the Act may be subject to garnishment to collect overdue alimony and child support. A second change is the addition of a clause in § 30.115(a) that exempts any non-radiogenic cancer listed by the Department of Health and Human Services (HHS) in 42 CFR 81.30 from referral to HHS for dose reconstruction, because that regulation affirmatively directs DOL to ''assign a probability of causation of zero'' to any such cancers (and therefore a referral for dose reconstruction would serve no useful purpose); this exemption replaces the one in former § 30.115(b). In addition, § 30.213 has been divided into two sections to better reflect the two methods the Office of Workers' Compensation Programs (OWCP) uses to develop cancer claims. Similarly, § 30.505 has been divided into two sections to distinguish the pre-payment actions OWCP will take before it pays compensation from the payment mechanisms it will use to make such payments. To accomplish this, paragraphs (b), (c) and (d) from former § 30.505 are retained in final § 30.505, and the remaining paragraphs from former § 30.505 are now in final § 30.506.

This rule also corrects several sections of the interim final regulations to conform the final regulations with the technical amendments to sections 7384l, 7384q, 7384r, 7384s, 7384u, 7385d, and 7385g of the Act made by section 2403(a) of Public Law 107–20, 115 Stat. 155, 175 (July 24, 2001), and by section 3151(a) of Public Law 107–107, 115 Stat. 1012, 1371 (December 28, 2001). As a result of these corrections, § 30.5 now includes both the current list of specified cancers and the current method of establishing chronic silicosis, §§ 30.500 through 30.502 reflect the current statutory provisions on survivors, § 30.603 has been added to reflect the amended attorney fee limitation provision, and §§ 30.615 and 30.616 have been rewritten as §§ 30.615 through 30.619 to properly reflect the amended election of remedies provision. Section 2403(b) of Public Law 107–20 provided that the addition of ''renal cancers'' to the list of specified

cancers took effect on October 1, 2001, and section 3151(a)(4)(D) of Public Law 107–107 provided that the changes to the survivor provisions were retroactive to July 1, 2001. The remainder of the amendments to the Act were effective as of December 28, 2001.

When publishing a final rule following a comment period, it is customary to publish only the changes that have been made to the rule; however, in order to be more user-friendly, the Department is publishing the entire rule, including the parts that have not been changed. By doing so, only one document containing all of the regulations and commentary needs to be consulted rather than multiple documents.

I. Comments on the Interim Final Regulations

The section numbers used in the headings of the following analysis are those that were used in the interim final regulations. Unless otherwise stated, the section numbers in the text of the analysis refer to the numbering used for the final regulations. No comments were received with respect to part 1.

Section 30.2

One advocacy group suggested that OWCP provide EEOICPA claimants with State workers' compensation claim forms in addition to EEOICPA claim forms, as part of OWCP's role in the EEOICPA claim process. This suggestion was not adopted because section 7385o of the EEOICPA names DOE as the Federal entity authorized to enter into an agreement with the chief executive officer of a State, to establish procedures, and to administer the submission and adjudication of such claims. This separation of functions is also found in Executive Order 13179 (''Providing Compensation to America's Nuclear Weapons Workers'') of December 7, 2000 (65 FR 77487). However, DOL and DOE have established joint Resource Centers to provide claimants with assistance, information and the forms necessary for filing both Federal and State claims.

Section 30.5(bb)

One advocacy group suggested that the term ''physician'' should be expanded to specifically include dermatologists and other specialists in skin cancers. The suggestion was not adopted because these medical professionals are already included in the broad, non-exclusive definition of ''physician'' that appears in this section.

Section 30.5(cc)

One physician suggested that the definition of ''qualified physician'' is too broad and should be changed. This suggestion was not adopted because the term in question is only used to distinguish physicians who may provide medical services to covered employees from those who have been excluded from participation in the program in accordance with the procedures described in §§ 30.715 through 30.726 of these regulations. The term does not imply anything regarding the professional qualifications of a physician.

Section 30.5(dd)

One commenter requested that OWCP clarify if lung cancer has a required latency period as one of the specified cancers, while two advocacy groups disagreed with the required latency periods for those cancers designated in section 4(b)(2) of the Radiation Exposure Compensation Act, as amended (42 U.S.C. 2210 note). These two advocacy groups also requested that OWCP add ''renal cancers'' to the list of specified cancers to reflect the amendment to this provision of the Act made by section 2403(a) of Public Law 107–20. This section has been rewritten to clarify that as a specified cancer, lung cancer does not have a required latency period. However, the latency periods that are derived from the RECA are set by statute; OWCP does not have the authority to alter statutory provisions. The rewritten section also reflects the addition of renal cancers to the list of specified cancers, as well as the statutory modification of the provision for leukemia that was made by section 3151(a)(1) of Public Law 107–107.

Section 30.16

Two advocacy groups submitted comments asking that anti-retaliation provisions be included in the final regulations to protect claimants who file claims under the Act from reprisal in the workplace. OWCP does not have authority to implement such provisions by regulation in the absence of statutory authorization supporting such action. Moreover, other workplace discrimination legislation already exists to protect claimants from any retaliatory actions for filing a claim under the Act. The suggestion was therefore not adopted.

Sections 30.100(a) and 30.101(a)

One advocacy group disagreed with the requirement that section 5 RECA claimants must file an actual ''claim'' with OWCP before they can receive the smaller $50,000.00 lump-sum payments available under section 7384u(a) of the Act. However, unless it receives a ''claim'' for benefits under the Act, OWCP has no way of knowing who might be entitled to such benefits since it does not have access to the RECA claims information available to DOJ. Therefore, the suggestion to drop the requirement for filing a claim was not adopted.

One congressional representative asked if there was a time limit for filing claims of July 31, 2001. Although sections 7384s, 7384t and 7384u of the Act did not come into effect until July 31, 2001, there is no time limitation for filing claims in either the Act or the regulations, and claimants need not file their claims with OWCP prior to a particular date in order to be entitled to benefits. However, pursuant to section 7384t(d) of the Act, claimants authorized to receive medical benefits under the Act may only receive those benefits for the period subsequent to the date they submitted a claim.

Sections 30.100(c)(2) and 30.101(d)(2)

Three congressional representatives, seven labor organizations, six advocacy groups, two physicians, and three individuals requested that OWCP, under section 7384v of the Act, provide claimants with assistance in securing medical testing and diagnostic services by paying for or reimbursing for such testing and services. OWCP has made a policy decision to exercise its discretion to provide assistance by providing individual claimants with information and facilitating development of their EEOICPA claims. OWCP will not provide direct financial assistance for medical tests or diagnostic services because doing so would be financially impractical, would not be administratively feasible, and, in some instances, would duplicate services available under programs established by DOE or other employers that provide screening and medical monitoring of substantial numbers of former employees. Furthermore, evaluating numerous requests could substantially delay the program's overall claims adjudication process, thereby delaying payment of benefits in other deserving cases. Administrative difficulties would be particularly acute in regard to the wide variety of possible radiogenic cancers, since appropriate methods of diagnosis for these diseases can be controversial. Thus, the suggestion to pay for medical tests and diagnostic services was not adopted. However, OWCP will pay reasonable and necessary medical expenses, which could include tests and diagnostic services, in those cases that are

accepted, so long as the expenses were incurred subsequent to the filing of the claim. Language indicating that OWCP will provide information on the types and availability of medical testing and diagnostic services has been added to § 30.2(a).

Sections 30.105 and 30.106

Three commenters (one of these in two separate comments) questioned the reliability of the employment data to be provided by DOE in response to an alleged employment history provided in support of a claim, and a fourth commenter inquired about situations where DOE would not be able to verify an alleged employment history due to missing or incomplete records. OWCP anticipates that DOE will be able to fulfill its responsibilities under §§ 30.105 and 30.106 of the regulations in the majority of claims, and will work with DOE in an effort to obtain employment data sufficient to adjudicate those claims for which DOE may not have ready access to work records. To provide further guidance to claimants who may fall into this second group, new § 30.112 has been added to illustrate alternative methods of establishing the requisite period of covered employment in the absence of supporting DOE data. Former § 30.112 from the interim final rule has been renumbered as § 30.113 to accommodate this new section.

Section 30.111

Nine commenters, five labor organizations, seven advocacy groups, one physician and one congressional representative submitted a total of 24 comments on the collection and assessment of employment and medical evidence, as well as the assistance to be given by OWCP in that process. In order to meet its statutory responsibility to provide assistance to claimants, OWCP has held public informational meetings around the country. With DOE, OWCP has also established and staffed ten resource centers near large populations of potential claimants to maximize accessibility, and staff from these resource centers periodically travel to other areas where a significant number of potential claimants might reside. Finally, § 30.111 provides that OWCP will notify claimants of any deficiencies in their claims and provide an opportunity to correct such deficiencies.

In response to various comments received about § 30.111, the regulations have been revised by adding a new § 30.114 and clarifying former § 30.112 (renumbered as § 30.113 in accordance with the revisions noted above) to give additional guidance as to what type of evidence is required and how that evidence will be evaluated. Although the claimant's evidentiary burden of proof has not been changed, the regulations more clearly reflect the flexible standard for considering a claimant's evidence in view of the fact that there may be gaps in the record. As noted in §§ 30.105 and 30.106, covered employment is verified by DOE. It is necessary for DOE to have access to worker records to perform this task, but given the size and scope of the data it is impractical to impose restrictive timeframes on DOE to complete the verification process.

Section 30.115

Three labor organizations, one advocacy group and one commenter suggested that OWCP reconsider the use of dose reconstruction. ''Dose reconstruction'' is the term used to describe the process by which HHS will estimate an employee's radiation exposure history. The estimate produced in the dose reconstruction process is used by OWCP to determine whether an employee's cancer is at least as likely as not related to the employee's exposure to radiation at a covered facility. For claims seeking coverage for cancer based on the Special Exposure Cohort (SEC), no dose reconstruction is performed because coverage is presumed when a member of the SEC sustains a specified cancer after beginning employment at a covered facility. Section 7384n of the Act specifically requires that a determination concerning coverage of any cancer not subject to the SEC provisions be based upon guidelines established to determine the probability that a cancer was caused by exposure to radiation at a covered facility. That section also requires that a determination regarding the probability of causation incorporate the results of the dose reconstruction. Accordingly, since OWCP is not authorized to reconsider the use of dose reconstruction, the suggestion was not adopted. However, and as noted above, § 30.115 has been revised slightly to conform the dose reconstruction referral process with HHS's regulations at 42 CFR part 81.

Section 30.207

One physician, one advocacy group, one labor organization and one individual submitted five comments on the manner of diagnosing covered beryllium illnesses. The suggested changes to § 30.207 were not adopted because § 30.207 mirrors the language of section 7384l(8) and (13) of the Act for establishing beryllium illnesses; OWCP may not vary the requirements of these provisions by regulation.

Section 30.213

As noted above, § 30.213 has been divided for clarity into two sections to reflect the two methods to claim benefits for cancer, and the contents have been rearranged slightly. Section 30.213 in the interim final rule has been renumbered as § 30.214, new § 30.212 now specifically addresses claims for cancer not based on membership in the SEC, and § 30.212 in the interim final rule has been renumbered as § 30.213.

Two advocacy groups, one labor organization, and two commenters disagreed with the specific eligibility cutoff date for the members of the SEC who were exposed to ionizing radiation in the performance of duty related to one of three specified underground nuclear tests on Amchitka Island, Alaska. Five other commenters (one of whom is a physician), the same labor organization, one of the advocacy groups, and one of the two prior commenters also generally questioned the limited definition of who can qualify as a member of the SEC and therefore bypass the entire dose reconstruction process at HHS. The criteria for eligibility of members of the SEC set out in § 30.213 (renumbered as § 30.214 in accordance with the revision noted above) are governed by the explicit terms of section 7384l(14) of the Act, and may not be modified in any manner by regulation.

Section 30.214(b)

Two labor organizations and an advocacy group disagreed with the requirement in § 30.214(b) (renumbered as § 30.215(b) in accordance with the revision noted above) that employees seeking medical benefits for a consequential injury of a covered cancer submit rationalized medical evidence of a causal relationship between the consequential injury and the covered cancer. However, this evidentiary requirement is commonplace among State and Federal workers' compensation systems and does not exceed what is required to obtain these benefits under those other systems. OWCP further notes that under the Act, consequential injuries do not have any explicit diagnostic requirements that must be met (as do the covered occupational illnesses). Therefore, OWCP concludes that the current regulatory requirement for rationalized medical evidence of a causal relationship is reasonable and necessary, and the suggested changes have not been adopted.

Sections 30.215, 30.217 and 30.220

One lay representative suggested that OWCP consider adding a provision for coverage of consequential injuries of the various section 5 RECA illnesses. The interim final rule included regulatory provisions governing consequential injuries of covered cancers and covered beryllium diseases, but did not also specifically reference consequential injuries of either chronic silicosis or the section 5 RECA illnesses in §§ 30.215, 30.217 or 30.220. In order to clarify that medical benefits are available for consequential injuries of all the occupational illnesses covered under the Act, these sections (renumbered as §§ 30.220, 30.222 and 30.225 in accordance with the revisions noted above) have been revised, and new § 30.226 has been added to address the type of medical evidence that will be needed to establish a causal relationship between a consequential injury and a section 5 RECA illness.

Section 30.300

In the absence of any language mandating a particular adjudicatory structure in the Act, the interim final regulations established the current structure. Four congressional representatives, six labor organizations, seven advocacy groups, and two commenters (one of whom is a physician) submitted a total of 28 comments on the current structure for adjudicating claims filed under the EEOICPA. One congressional representative, one labor organization and four advocacy groups asked that OWCP devise a more elaborate administrative review process, while the other three congressional representatives, one of the four advocacy groups, and two other advocacy groups specifically recommended that administrative law judges be part of the adjudication process. Finally, one of the congressional representatives, all six labor organizations, all seven advocacy groups, and both commenters suggested that OWCP should add an independent review body to the adjudicatory process.

At the time that the interim final rule was issued, OWCP decided that it would be most efficient and beneficial to claimants to provide an expeditious administrative claims process that would allow claimants to seek review of adverse final agency decisions on their claims in Federal court without delay. This process provides claimants with an opportunity to challenge a recommended decision before a Final Adjudication Branch (FAB) reviewer, either through an oral hearing or through a review of the written record. Either mechanism allows a claimant to submit additional evidence or arguments to the FAB reviewer in a non-adversarial forum. This is unlike a proceeding before an administrative law judge where an adverse party would have an opportunity to object to the admission of evidence or provide evidence or arguments to refute the claimant's contentions. If the claimant disagrees with the final agency decision, he or she can seek review of the decision from a Federal court without delay. OWCP believes that utilizing administrative law judges or an independent review body would unnecessarily complicate and delay the adjudication process to the detriment of claimants. None of the commenters provided a convincing justification to reverse OWCP's initial decision concerning this adjudicatory structure, and therefore the suggestions were not adopted.

Section 30.305

Four labor organizations, two advocacy groups, one physician, and three individuals suggested that time limits be placed on the claim adjudication process. Time limits are currently in place with respect to recommended decisions pending either a hearing or a review of the written record before the FAB in § 30.316(c). These time limits provide that any recommended decision pending either a hearing or a review of the written record at the FAB for more than a specified period will be deemed to be a final decision of the FAB. Due to the wide range of claim types and the complexities involved in developing and establishing certain of these claims, along with the fact that Federal agencies other than OWCP are involved in the claim process, OWCP has decided against establishing strict time limits to govern the complete adjudicatory process, and did not adopt the suggestion. However, OWCP has established performance goals under the Government Performance and Results Act to monitor the efficiency of the claims adjudication process.

Sections 30.306 and 30.316(b)

Seven labor organizations, three advocacy groups and one physician suggested that the regulations require detailed findings and grounds in all recommended decisions denying a claim and in any final decision issued by the FAB. However, § 30.306 already requires that all recommended decisions contain findings of fact and conclusions of law; this existing requirement provides a claimant with the detailed findings requested by the commenters. Therefore, further descriptions of these requirements for final decisions of the FAB does not appear necessary, and the suggestions were not adopted.

Section 30.310(b)

One congressional representative, three labor organizations, and three advocacy groups voiced concerns about the limited time period for raising objections to findings of fact and/or conclusions of law contained in a recommended decision with the FAB. The 60-day period was designed to expedite the adjudicatory process and thus it has not been deemed necessary to modify this time frame. However, to address the concerns raised by these commenters, OWCP has provided in new § 30.320 a procedure for reopening FAB decisions at any time in the event that new evidence is discovered or circumstances have changed. In addition, OWCP has modified § 30.310(b) by removing the requirement that the claimant raise a specific objection to a particular finding of fact or conclusion of law as this requirement has not proved effective in practice. Sections 30.312 and 30.314(b) have also been revised to remove similar requirements for specific objections in those two sections.

One of these three advocacy groups also recommended that the FAB provide hearings to all claimants automatically. Removing the requirement that a claimant raise a specific objection will allow any claimant who is dissatisfied with a recommended decision to receive a hearing upon a timely request. To date, less than 2% of claimants who have received a recommended decision have requested hearings before the FAB. Therefore, it does not seem reasonable to require OWCP to devote the resources necessary to provide hearings to the vast majority of claimants who either request a review of the written record or do not object to the recommended decision. Accordingly, since the suggestion to provide hearings to every claimant automatically would hamper the ability of the FAB to issue final decisions on claims, especially on claims that have been accepted for the payment of benefits, it was not adopted.

Section 30.311(a)

One congressional representative disagreed with the provision in § 30.311(a) directing the FAB to issue a decision accepting the recommendation of the district office if the claimant did not file timely and specific objections to findings of fact and/or conclusions of law contained in the recommended decision, even if the claimant had

requested a hearing. Consistent with the revision to § 30.310(b), this section has been revised to remove the requirement for a specific objection. As a result, the FAB will now issue a decision that accepts the recommendation of the district office if the claimant neither requests a hearing nor submits a general objection to the recommended decision within the requisite time period.

Sections 30.313 and 30.314(a)

Five labor organizations, four advocacy groups, and one physician suggested that EEOICPA claimants should have the right to a formal adjudicative hearing to challenge findings and build a record for possible judicial review. The administrative claims process within the Department is intended to be non-adversarial and has been structured as an informal, streamlined process allowing for the prompt adjudication of claims. The regulations in §§ 30.313 and 30.314(a) allow claimants to introduce additional written evidence and/or testimony and give FAB reviewers the discretion to conduct hearings in a manner that ensures that a complete record is made sufficient for judicial review. Since there is nothing in the Act that requires formal adjudicative hearings, it does not appear necessary to create a more elaborate and less expeditious administrative claims process, as has been requested.

Section 30.314

Four labor organizations and three advocacy groups (one of these in two separate comments) suggested that § 30.314(a), which provides that the FAB reviewer retains complete discretion to set the time and place of the hearing, also include a requirement that the reviewer shall attempt to schedule the hearing at a location that is convenient for the claimant. The current practice of OWCP is to schedule the FAB hearing, whenever possible, at a location that is within a reasonable distance from the claimant's residence. Based on the above comments, OWCP is persuaded that this policy should be set forth with more specificity in the rule, and § 30.314(a) has been revised accordingly.

One of these four labor organizations, the three advocacy groups, one congressional representative, and a fourth advocacy group also suggested that FAB hearing procedures be spelled out in the regulations. However, § 30.314 is purposefully formulated to permit maximum flexibility and gives the FAB reviewer complete discretion, among other things, to schedule and conduct hearings in a fair and expedient manner. Since the claims adjudication process is non-adversarial and the informal FAB hearing process is working effectively, OWCP sees no reason to revise § 30.314 to create a formal and less flexible hearing process.

Two of the first three advocacy groups questioned the requirement in § 30.314(e) that the claimant must submit his or her comments regarding the hearing transcript to the FAB reviewer within 20 days from the date that the transcript is sent to the claimant. The commenters suggested that this requirement be changed to within 20 days from the date that the transcript is received by the claimant, citing the possibility of slow mail. A clear fixed date set by OWCP is necessary to ensure that no bottlenecks are created in the claims adjudication process, and thus, the above suggestion has not been adopted.

Section 30.316(c)

A congressional representative, a labor organization and an advocacy group expressed concerns about the procedural mechanism by which any recommended decision that is still pending at the FAB for more than one year is deemed to be a final decision of the FAB. The labor organization believed that the FAB could take advantage of the mechanism by intentionally delaying issuing final decisions on claims, thereby rendering the opportunity to raise objections to the recommended decision moot. However, this mechanism actually protects claimants against excessive delay by the FAB because it ensures that claimants receive a final agency decision on their claims within a time certain, and permits them to seek judicial review, within a reasonable time following the issuance of a recommended decision. Further, as noted above, OWCP has established performance goals under the Government Performance and Results Act to monitor the efficiency of the claims adjudication process, and those performance goals also cover the activities of the FAB. There have been no demonstrated incidents of delay and therefore it does not appear necessary to modify this mechanism. Nevertheless, to more accurately reflect the FAB's current performance goals for issuing final decisions and to accommodate the changes regarding specific objections described above, the event that will commence the one-year period has been changed from the receipt of the case file from the district office to the receipt of the written submission described in § 30.310, or the expiration of the 60-day period in that same section in the absence of a written submission.

Section 30.318

Four congressional representatives, six labor organizations, two advocacy groups and one physician suggested that the regulations should permit claimants to challenge the dose reconstruction methodology before the FAB. This suggestion was not adopted because both the development and implementation of the dose reconstruction methodology have been established pursuant to regulations promulgated by HHS (42 CFR part 82) and are outside the scope of the Department's authority under E.O. 13179.

Section 30.320

One congressional representative, six labor organizations, five advocacy groups, and two physicians disagreed with the one-year period for claimants to seek modification set out in § 30.320, noting that it is likely that after the expiration of such period, there will be changes in the science related to dose reconstruction and the disclosure of previously unavailable exposure and employment information that might justify reopening of the claim. In addition, the same six labor organizations, three of the five advocacy groups, and one of the two physicians asserted that reopening of the claim or the filing of a new claim might be warranted where a claimant with a cancer claim is denied benefits but at a later date falls within a class of employees that is added to the SEC, as contemplated by section 7384q(b) of the EEOICPA. OWCP is persuaded by these comments; therefore, § 30.320 has been revised to abandon the one-year modification limitation for claimants. Revised § 30.320(b) allows claimants to ask OWCP to reopen their claims at any time if they submit new and material evidence of covered employment or exposure to radiation, beryllium or silica; or if they identify a material change in the probability of causation guidelines, a material change in the dose reconstruction methods or a material addition of a class of employees to the SEC that occurred after the FAB issued a final decision on their claim. If the required showing of materiality is met, the claim will be reopened and returned to the district office for a new determination on the merits of the claim. OWCP will closely coordinate with HHS and reopen cases on the Director's own authority under revised § 30.320(a) when factors such as changes in HHS methodology or the discovery of new relevant information warrants doing so (in those cases, it will

not be necessary for claimants to take any action to receive a new decision).

Section 30.400

One advocacy group and one commenter suggested that OWCP reimburse employees for medical expenses they incurred due to a covered occupational illness prior to the date they filed a claim for benefits with OWCP, while a lay representative generally urged that a broad scope of medical benefits should be made available to covered employees. The availability of medical benefits is governed by section 7384t of the Act, which explicitly states that eligibility to receive such benefits will commence no earlier than the date on which the claim is filed. Therefore, OWCP cannot alter this statutory limitation through regulation. In addition, § 30.400 already notes the broad scope of medical benefits that are payable under the Act, and provides that a covered employee is entitled to receive all medical treatment prescribed or recommended by a qualified physician that OWCP considers necessary to treat his or her covered illness. In light of this, it does not appear necessary to modify § 30.400 as requested.

Three other commenters suggested that OWCP issue medical benefits identification cards (similar to health insurance identification cards) to covered employees, to make it easier for such employees to obtain medical benefits. Subsequent to the promulgation of the interim final regulations, OWCP decided to utilize such cards. However, because medical benefits are only available for conditions covered by the Act, rather than for almost all conditions as is the case with health insurance, a covered employee's medical benefits identification card only lists the specific condition(s) for which medical benefits are available for that covered employee.

Section 30.403

Four labor organizations, four advocacy groups and one commenter suggested that family members be compensated for providing personal care services. Section 30.403 does not preclude family members from being paid for providing personal care services as long as they have received the necessary training. This will help ensure that covered employees are provided proper care for any medical conditions that are covered by the Act. Therefore, the regulation has not been changed.

Section 30.404

Four labor organizations, one advocacy group, one physician, and four individuals disagreed with the general travel limit of 25 miles set forth in § 30.404, noting that employees who reside in remote geographic areas where medical services are limited, or who require the services of a small number of recognized medical specialists, should not be denied reimbursement for travel of greater distances to obtain appropriate medical treatment. While OWCP's current policy is to take into consideration such demonstrated needs of individual claimants, the above comments indicate that there is a need to clarify the current rule. As modified, § 30.404(a) establishes a roundtrip distance of up to 200 miles as what OWCP will generally consider a reasonable distance to travel. Section 30.404(b) further provides that if travel of more than 200 miles is contemplated, or if air travel or overnight accommodations will be needed, the employee must request prior approval from OWCP demonstrating the circumstances and necessity for such travel.

Three labor organizations stated that § 30.404 should include information on where employees can obtain the standard form for requesting medical travel refunds. Section 30.404(c) indicates that the form can be obtained from OWCP.

One advocacy group and one individual commenter indicated that OWCP should pay the travel expenses of a person who accompanies an employee on a trip to obtain medical treatment. Under § 30.404, OWCP has the discretion to determine what travel expenses are ''reasonable and necessary,'' and prefers to maintain the flexibility to make such determinations on a case-by-case basis. Therefore, no change was made to this section.

One individual asserted that OWCP should compensate employees for any lost wages resulting from absences from work to undergo diagnostic testing, and other persons for any lost wages resulting from absences from work in order to accompany employees on medical visits to obtain diagnostic testing. As set forth in § 30.412 of the regulations, OWCP provides reimbursement for actual wages lost by employees for the time needed to submit to a second opinion or referee examination required by OWCP. As for the lost wages of persons accompanying employees, OWCP has the discretion under § 30.404 to determine if these constitute ''reasonable and necessary'' travel expenses and prefers to maintain the flexibility to make such determinations in individual situations. As a result, no change was made to this section.

Section 30.410

Four labor organizations and two advocacy groups did not believe that OWCP should have the authority to refer claimants to multiple ''second opinion'' medical examinations by physicians of its choosing, even at the government's expense. However, this authority is necessary to enable OWCP to obtain additional medical evidence in situations where a claimant has submitted some medical evidence in support of a claim, but the evidence is of insufficient probative value to allow the claimant to meet his or her burden of proof. If the claimant could not submit the additional evidence necessary to meet this burden, and OWCP could not obtain it through a second opinion examination, OWCP would have to deny the claim. Since it is OWCP's policy to assist claimants in the development of their claims, the authority to refer claimants for second opinion medical examinations is one of the tools OWCP needs to efficiently carry out this policy.

Three of these same four labor organizations and two different advocacy groups also suggested that claimants should be allowed to have someone other than a physician of their choosing present during a second opinion examination. The restriction on who may accompany claimants during these examinations was intended to minimize the possibility of disruptions, but given the nature of the claimant population and the likelihood of this occurring, OWCP is persuaded that the restriction is not necessary for all second opinion referrals. However, OWCP will retain the restriction for use if the person accompanying the claimant disrupts the examination and OWCP has to refer the claimant to a different physician for the requested second opinion examination.

Section 30.411

Three congressional representatives, five labor organizations, four advocacy groups and three commenters (two of whom are physicians) suggested that OWCP utilize a joint naming process whereby the claimant and OWCP would agree on a physician to perform a referee examination needed to resolve a conflict in the medical evidence. OWCP does not see the utility of this suggestion, especially since the EEOICPA claims adjudication process is non-adversarial and OWCP does not oppose a claim for benefits. Furthermore, this more

complex manner of selecting physicians to perform referee examinations would add to the length of time necessary to adjudicate the claim without providing any tangible benefit. Accordingly, the suggestion was not adopted, and OWCP will continue to select all physicians performing referee examinations from a pool of specialists (consisting of both Board-certified physicians and other qualified specialists) who have expressed a willingness to perform these types of examinations. OWCP selects physicians from the pool on a strict rotational basis according to medical specialty and geographic location, and periodically reviews the pool for quality control purposes and to allow other qualified physicians an opportunity to join the pool.

Three of these same five labor organizations and two of the same four advocacy groups also suggested that claimants should be allowed to have someone of their own choosing present during a referee examination. As was the case with second opinion examinations, the restriction against anyone accompanying a claimant during a referee examination was intended to minimize the possibility of disruptions, but given the nature of the claimant population and the likelihood of this occurring, OWCP is persuaded that the restriction is not necessary for all referee examination referrals. However, consistent with its decision regarding the limitation in § 30.410, OWCP will retain the restriction for use if the person accompanying the claimant disrupts the examination and OWCP has to refer the claimant to a different physician for the requested referee examination.

Section 30.412

One advocacy group suggested that OWCP consider paying for a family member to accompany all employees on any directed medical examinations that would necessitate either an overnight stay away from home or air transportation. OWCP does not consider a blanket rule of this sort to be justifiable, since it is clear that while many employees may be so infirm as to require somebody to accompany them to such an examination, it is equally clear that others will not. Therefore, OWCP prefers to maintain the discretion in this section to determine whether such expenses are ''reasonable and necessary,'' and the suggestion has not been adopted.

Sections 30.500, 30.501 and 30.502

A total of 143 comments addressed the description of how survivors are defined and paid in §§ 30.500, 30.501 and 30.502: Three from congressional representatives; eight from labor organizations; 10 from advocacy groups; four from physicians; four from attorneys; one from a lay representative; and 112 from other individuals. However, these comments were rendered moot following the enactment of section 3151(a)(4) of Public Law 107–107, which amended the survivor provisions in sections 7384s(e) and 7384u(e) of the EEOICPA. To conform the final regulations to the amended provisions, §§ 30.500 through 30.502 have been completely rewritten and the prior definition for ''widow or widower'' from § 30.5(gg) of the interim final regulations has been modified and consolidated with the other statutory definitions in § 30.500. As a result of the latter change, former § 30.5(hh) has been renumbered as § 30.5(gg) in the final regulations.

Section 30.505(c)

Two advocacy groups, one attorney and one commenter disagreed with the provision in § 30.505(c) (renumbered as § 30.505(b) in accordance with the revision noted above) for an offset of EEOICPA benefits against any amounts received for an occupational illness in a final judgment or settlement in litigation. This same commenter, and five other commenters, also questioned the justification for any offset of EEOICPA benefits. Section 7385 of the Act requires an offset of EEOICPA benefits if certain other payments have been received, and provides the necessary statutory justification for the offset process. However, section 7385 does not describe how this process should occur, and the above comments indicate the need for a more detailed description of how, and to what extent, OWCP will offset EEOICPA benefits. Therefore, § 30.505(b) now contains a more thorough definition of the type of payment that will necessitate an offset, and how OWCP will determine the value of any such payment. It also provides for deductions from the amount to be offset (for reasonable attorney's fees and itemized costs of suit) in order to arrive at the amount of the required offset of EEOICPA benefits. The regulation also provides that an offset will result in the reduction of an unpaid lump-sum payment first. Finally, this paragraph indicates that OWCP will not offset any EEOICPA benefits if a claimant has already had his or her benefits under section 5 of the RECA reduced to reflect a payment that would otherwise require an offset of EEOICPA benefits.

Section 30.505(d) and (f)

One lay representative inquired whether OWCP would pay survivor benefits in stages, or if it would wait until it was ready to pay all survivors of a single deceased covered employee at the same time. Section 30.505(d) (renumbered as § 30.505(c) in accordance with the revision noted above) provides that ''No payment shall be made until OWCP has made a determination concerning the survivors related to a respective claim for benefits.'' This restriction is necessary to conserve administrative resources and has been retained; however, there is no requirement that OWCP wait to actually pay all the survivors of a deceased covered employee at the same time. Accordingly, a survivor who signs and returns the acceptance form quickly may be paid his or her share of the compensation payment before another survivor who waits the full 60 days before signing and returning the form. In cases with multiple claimants, OWCP will determine the share of the lump-sum amount, if any, to which each survivor is entitled.

The same lay representative also questioned the prohibition in § 30.505(f) (renumbered as § 30.506(c) in accordance with the revision noted above) against distributing rejected shares of compensation payments to other eligible survivors. Sections 7384s(e)(1)(B) and 7384u(e)(1)(B) both require the payment of equal shares of a single compensation payment to ''all children of the covered employee who are living at the time of payment,'' not all children of the covered employee who are living at the time of payment and who do not reject their shares. Therefore, the prohibition against distributing rejected shares of compensation is established by the terms of the Act itself, and no change was made to this section.

Section 30.506

Two physicians, one advocacy group, one labor organization and one commenter had questions regarding the provision of medical benefits to covered employees whose sole occupational illness is beryllium sensitivity. Section 30.506 (renumbered as § 30.507 in accordance with the revision noted above) stated that these employees were not entitled to any medical benefits other than beryllium sensitivity monitoring. However, because section 7384s(a)(2) of the Act only replaces the lump-sum payment provided for under section 7384s(a)(1) with beryllium sensitivity monitoring and is silent with respect to entitlement to medical

benefits, covered employees whose sole occupational illness is beryllium sensitivity should be provided medical benefits for that condition. Therefore, § 30.507 has been revised to be consistent with this interpretation and now states that covered employees whose sole occupational illness is beryllium sensitivity are entitled to the same medical benefits provided to other covered employees. The estimated marginal cost of providing these benefits (which would usually be for low-cost prescription steroid medications) will be negligible from a budgetary standpoint.

Section 30.601

One lay representative commented on this section by asking who would represent mentally incompetent claimants, and if she could represent claimants in the EEOICPA claim process. Serving as a legal representative of a mentally incompetent person is a matter of state law and is thus outside the scope of these regulations. Section 30.601, which addresses the question of who may serve as a representative in the claims process, does not bar lay representatives from providing representation to EEOICPA claimants. On a related issue, three advocacy groups and three individuals submitted comments on the statutory attorney fees cap for representation of EEOICPA claimants. However, following publication of the interim final rule, Congress amended section 7385g of the Act in section 3151(a)(6) of Public Law 107–107. Therefore, new § 30.603 has been added to reflect the current statutory limits on attorney fees in amended section 7385g.

Section 30.609

One advocacy group disagreed with the requirement that claimants report (for possible offset of EEOICPA benefits) awards they receive due to medical malpractice in treating a covered occupational disease. However, since these awards are clearly payments ''made pursuant to a final award or settlement on a claim'' that has its genesis in an occupational illness covered by the Act, no change was made to this requirement so OWCP will be able to fulfill its offset responsibilities under section 7385 of the EEOICPA.

Sections 30.615 and 30.616

Two advocacy groups, two attorneys and three other commenters suggested possible changes to §§ 30.615 and 30.616 (rewritten as §§ 30.615 through 30.619 as noted above). These suggestions were rendered moot by section 3151(a)(5) of Public Law 107–107, which amended the election of remedy provisions in section 7385d of the EEOICPA. To conform the final regulations to these amendments, prior §§ 30.615 and 30.616 have been rewritten as §§ 30.615 through 30.619, and prior § 30.617 has been renumbered as § 30.620 to accommodate these changes.

Section 30.701(c)

One physician and one advocacy group noted that there is no diagnostic code for beryllium sensitivity in the ''International Classification of Disease, 9th Edition, Clinical Modification'' (ICD–9–CM), and that medical providers are required to provide such a code whenever they submit bills to OWCP for payment. To address this, OWCP has designated the V81.4 classification ''Other and unspecified respiratory conditions'' as the appropriate ICD–9–CM classification for beryllium sensitivity. Use of this code will both allow OWCP to track accepted beryllium sensitivity cases, and to pay medical providers for pre-approved diagnostic tests to monitor the employee for signs of chronic beryllium disease.

Sections 30.705 through 30.710

One advocacy group questioned OWCP's decision to base the medical fee schedule for professional medical services and inpatient medical services on cost data supplied by the Centers for Medicare and Medicaid Services (CMS) in light of the increased cost for those services in remote geographical areas. However, § 30.707(b) provides that the ''relative value units'' assigned by CMS to professional medical services will be multiplied by the Geographic Practice Cost Indices for Metropolitan Statistical Areas as devised for CMS, and this adjustment should be sufficient to accommodate increased costs for these services in remote areas. Further, § 30.710 indicates that the fee schedule for inpatient medical services will be based on hospital-specific cost factors that are part of the CMS Prospective Payment System OWCP will use to pay for hospital discharges. In either instance, the fee schedules may be adjusted if OWCP deems it necessary or appropriate. Therefore, the suggestion to use a different set of cost data was not adopted.

II. Miscellaneous Comments

Several of the 216 timely comments the Department received raised issues that either were not addressed in the interim final regulations or involved extraneous matters. The Department's analysis of these miscellaneous comments follows:

The Rulemaking Process

OWCP received comments from two labor organizations, four advocacy groups and one individual commenter on the rulemaking process. The various comments requested that public hearings be held on the regulations and that a formal advisory committee be appointed, and suggested that the interim final regulations be effective for a short time period, to be followed by a notice and comment period prior to publication of the final rule. Because of the time constraints set forth in E.O. 13179, which required publication of regulations by May 31, 2001 and the establishment of a functioning program by July 31, 2001, OWCP chose to publish an interim final rule without first publishing a notice of proposed rulemaking. However, because OWCP both understands and appreciates the importance of public input in the rulemaking process, it provided an extensive comment period of 120 days to receive input from the public on the regulations. Also, OWCP staff members participated in numerous public meetings across the United States to publicize and explain the Act and the regulations. All comments received during the comment period have been thoroughly reviewed and taken into consideration for purposes of the rulemaking process and publication of this final rule.

Unlike the requirements in 42 U.S.C. 7384n(c)(2) and (d)(2) that the regulations promulgated by HHS pursuant to section 7384n(b) and (d)(1) be reviewed by the Advisory Board on Radiation and Worker Health that was established as directed by section 7384o, there is no requirement in section 7384d that the regulations promulgated by DOL for the administration of the program be reviewed by any advisory board. As noted above, a lengthy period for public comments was provided in connection with the Interim Final Regulations, and regular and frequent communications occur with HHS and DOE. DOL also attends and participates in the public meetings of the Advisory Board on Radiation and Worker Health. Under these circumstances, DOL does not see the utility in adding an advisory committee to this rulemaking process.

Coordination of Benefits

Three individuals submitted comments suggesting that there be no coordination of benefits for claimants with beryllium illnesses, and three other individuals submitted general questions regarding coordination of benefits with State workers' compensation program

benefits. These comments involve the operation of section 7385h of the Act, which deals with the interplay between the Act, State law and private insurance contracts; however, OWCP did not address this issue in the interim final rule, nor does it do so in this final rule.

Designating Facilities

One attorney (in two separate comments), the City Council of the City of Niagara Falls, and eight individuals requested that the time frames indicated by DOE for certain facilities be expanded and/or that specific new facilities be included on the list of covered facilities maintained by DOE. These recommendations have been forwarded to DOE, which is actively soliciting information from the public as it continues its research efforts regarding facility time frames and additions or deletions to the covered facilities list.

Benefit Levels

One lay representative and eight other commenters made suggestions about the level of benefits to be provided to successful claimants. However, since the benefit levels are set by the terms of the Act, the regulations cannot adopt a different level of benefits unless the Act itself is amended. Accordingly, the suggested changes were not adopted.

Coverage

One congressional representative, two physicians, the Department of Defense, five advocacy groups, and 31 commenters made suggestions about which workers should be covered by the Act. However, the Act mandates the categories of workers covered and the regulations cannot be changed to either expand or restrict the categories of covered workers unless the Act is amended. Therefore, the suggested changes have not been made.

Covered Illnesses

Two advocacy groups, a physician, an attorney and 19 individuals suggested that the occupational illnesses covered by the Department's program be expanded to include additional illnesses that may have resulted from the exposure of employees to harmful substances while in the performance of duty at covered facilities under the Act. However, OWCP has no authority to implement any such changes in the absence of legislative changes to the Act. Furthermore, Part D of the Act already provides the opportunity for claimants to obtain assistance from DOE in filing for benefits under appropriate State workers compensation programs in connection with the exposure of DOE contractor employees to toxic substances at DOE facilities.

III. Publication in Final

The Department of Labor has determined, pursuant to 5 U.S.C. 553(b)(B), that good cause exists for waiving public comment on this final rule with respect to the following changes: (1) Those needed to conform the regulations to the sections of the EEOICPA that were amended by Public Laws 107–20 and 107–107; (2) those needed to conform the regulations to the probability of causation guidelines issued by HHS; (3) corrections of typographical errors; and (4) minor wording changes and clarifications that do not affect the substance of the regulations. For these changes, publication of a proposed rule and solicitation of comments would be neither necessary nor fruitful.

IV. Statutory Authority

Section 7384d of the EEOICPA provides the general statutory authority, which E.O. 13179 allocates to the Secretary, to prescribe rules and regulations necessary for the administration and enforcement of the Act. Sections 7384t and 7384u of the EEOICPA provide specific authority regarding medical treatment and care, including determining the appropriateness of charges. The Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701 *et seq.*), authorizes imposition of interest charges and collection of debts by withholding funds due the debtor.

V. Paperwork Reduction Act

This final rule contains information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA). The information collection requirements set out in §§ 30.401, 30.404, 30.420, 30.421, 30.700, 30.701 and 30.702(a) of this rule were submitted to and approved by OMB under the PRA, and the currently approved collections in OMB Control Nos. 1215–0054 (expires June 30, 2004), 1215–0055 (expires November 30, 2003), 1215–0137 (expires February 28, 2005), 1215–0176 (expires December 31, 2003), and 1215–0194 (expires January 31, 2004) were revised to include the added EEOICPA respondents. No public comments were received regarding this group of information collection requirements, and they were not affected by any of the substantive changes that have been made in this final rule.

The information collection requirements in §§ 30.100, 30.101, 30.102, 30.111, 30.113, 30.114, 30.206, 30.207, 30.212, 30.214, 30.215, 30.221, 30.222, 30.226, 30.415, 30.416, 30.417, 30.505, 30.620 and 30.702(b) of this rule were also submitted to and approved by OMB under the PRA and were assigned OMB Control No. 1215–0197 (expires July 31, 2004). No public comments were received regarding this second group of information collection requirements, and they were not affected by any of the substantive changes that have been made in this final rule. However, this final rule revises the currently approved collection in OMB Control No. 1215–0197 by adding three new information collection requirements, and this revision of a currently approved collection will be submitted to OMB for review under the PRA upon publication of the rule. No person is required to respond to a collection of information request unless the collection of information displays a valid OMB control number. The new information collection requirements are in §§ 30.112 and 30.213, and they relate to information required to be submitted by claimants as part of the EEOICPA claims adjudication process. One of the new collections will be implemented without any specific form (see section A below). The Department is proposing to create two new forms to implement the other new collections (see sections B and C below).

A. Supplemental Employment Evidence (§ 30.112)

Summary: Employees and/or survivors claiming benefits under the EEOICPA must establish, among other things, an employment history that includes at least one period of covered employment. To do so, claimants submit either a Form EE–3 listing periods of alleged covered employment, or a Form EE–4 containing basic employment information in situations where specific employment information is not available. If the employment history provided on Form EE–3 or EE–4 cannot be verified, OWCP may ask the claimant to provide supplemental employment evidence in support of the alleged history. After it reviews the evidence of record on this point, OWCP will determine whether a period of covered employment has been established by a preponderance of the evidence.

Need: Documentation of a history of covered employment is one of the elements that must be met to establish entitlement to benefits under the EEOICPA.

Respondents and proposed frequency of response: It is estimated that 3,870

respondents annually will submit this collection of information once.

Estimated total annual burden: The time required to review instructions, search existing data sources, gather the data needed, and complete and review each collection of this information is estimated to take an average of 30 minutes per response for a total annual burden of 1,935 hours.

B. Lung Cancer Information: Form EE/EN–8 (§ 30.213)

Summary: Guidelines issued by HHS require OWCP to ask claimants for information regarding the employee's smoking history before OWCP can determine the probability of causation for lung cancer (the disease classified as ''lung cancer'' includes primary cancer of both the trachea and bronchus). This information is not requested if the employee is a member of the Special Exposure Cohort. If the claim is for lung cancer (or a secondary cancer for which lung cancer is a likely primary cancer), OWCP will send the claimant a Form EE/EN–8. Form EE/EN–8 informs the claimant that to determine the probability of causation of the claimed cancer, OWCP needs to know the employee's smoking history, and requests that the claimant submit the necessary information. All respondents will be required to certify that the information provided on Form EE/EN–8 is accurate and true.

Need: OWCP cannot determine the probability of causation for lung cancer without this information.

Respondents and proposed frequency of response: It is estimated that 3,021 respondents annually will file one Form EE/EN–8.

Estimated total annual burden: The time required to review instructions, search existing data sources, gather the data needed, and complete and review each Form EE/EN–8 is estimated to take an average of 5 minutes per response for a total annual burden of 252 hours.

C. Skin Cancer Information: Form EE/EN–9 (§ 30.213)

Summary: Guidelines issued by HHS require OWCP to ask claimants for information regarding the employee's race/ethnicity before OWCP can determine the probability of causation for skin cancer. If the claim involves skin cancer (or a secondary cancer for which skin cancer is a likely primary cancer), OWCP will send the claimant a Form EE/EN–9. Form EE/EN–9 informs the claimant that in order to determine the probability of causation of the claimed cancer, OWCP needs to know the employee's race/ethnicity, and requests that the claimant submit the necessary information. All respondents will be required to certify that the information provided on Form EE/EN–9 is accurate and true.

Need: OWCP cannot determine the probability of causation for skin cancer without this information.

Respondents and proposed frequency of response: It is estimated that 1,057 respondents annually will file one Form EE/EN–9.

Estimated total annual burden: The time required to review instructions, search existing data sources, gather the data needed, and complete and review each Form EE/EN–9 is estimated to take an average of 5 minutes per response for a total annual burden of 88 hours.

D. Total Annual Burden and Request for Comments

Total public burden: The new information collection requirements being added to OMB Control No. 1215–0197 have a total public burden hour estimate of 2,275. Using the current National average hourly earnings of $14.00, the total annual public cost for these new information collection requirements is estimated to be $31,850.00. There are no recordkeeping or collection costs associated with the new information collection requirements described above. The only operation and maintenance cost will be for postage and mailing. An estimated annual total of 7,948 mailed responses to these new information collection requirements at $0.37 (postage) + $0.03 (envelope) per response would be $3,179.20.

Request for comments: The public is invited to provide comments on the above-noted revision to the currently approved collection in OMB Control No. 1215–0197 so that the Department may:

(1) Evaluate whether the proposed collections of information are 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 estimates of the burdens of the collections 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 collections 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.

Send comments regarding this burden estimate, or any other aspect of this revision to the currently approved collection in OMB Control No. 1215–0197, including suggestions for reducing this burden, to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment Standards Administration, Washington, DC 20503 no later than January 27, 2003.

VI. Executive Order 12866

This rule is being treated as a ''significant regulatory action'' within the meaning of E.O. 12866 because it is economically significant, as defined in section 3(f)(1) of that Order. The payment of the benefits provided for by the EEOICPA, through the program administered pursuant to this regulatory action, will have an annual effect on the economy of $100 million or more. However, the final rule will not adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or State, local, or tribal governments or communities, as required by section 3(f)(1) of E.O. 12866. The proposed rule is also a ''significant regulatory action'' because it meets the criteria of section 3(f)(4) of that Order in that it raises novel or legal policy issues arising out of the legal mandate established by the EEOICPA. The Department has also concluded that this final rule constitutes a ''major rule,'' as that term is defined in the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 804(2)), because of the effect on the economy noted above.

Based upon the factors and assumptions set forth below, the Department's estimate of the aggregate cost of benefits and administrative expenses of this final regulatory action implementing the EEOICPA is, in millions of dollars (estimates for FY2004, FY2005 and FY2006 are preliminary and will be reviewed during the budget formulation process):

	FY2002	FY2003	FY2004	FY2005	FY2006
Admin	$136	$100	$55	$50	$33
Benefits	769	758	578	353	250

The Department's estimate of the benefits to be paid pursuant to the EEOICPA and of its administrative costs of providing those benefits is based on data collected from other Federal agencies, assumptions regarding the incidence of cancer, beryllium disease and silicosis in the covered population, life expectancy tables, and its experience in estimating administrative and medical costs of workers' compensation programs. Specifically, benefit estimates for cancer claims are based on figures provided by DOE concerning the number of DOE/contractor employees, known cancer incidence and survival rates in the general population obtained from the National Cancer Institute. Based on the number of claims likely to be accepted, the cost of lump-sum payments to these claimants is easily determined. These benefit estimates further reflect contemplated medical costs of $1,500 per year for 90% of the covered claimants, while the remaining 10% will incur $125,000 in medical costs for the year because they are undergoing intensive in-hospital medical treatment.

Benefits estimates for beryllium exposure are based on known incidence rates, known numbers of claimants with beryllium disease, exposed population figures (all of which were obtained from DOE), and medical costs of $3,000 per year for beryllium sensitivity, $4,000 per year for mild chronic beryllium disease, and $9,000 per year for more severe chronic beryllium disease. Benefit estimates for silicosis are based on figures obtained from DOE concerning the number of exposed employees and the expected incidence of silicosis, and medical costs of $4,000 per year. Benefit estimates for the claims based on the receipt of an award pursuant to section 5 of the RECA are based on figures for the number of claims provided by DOJ, and $4,000 per year in medical costs.

Because the statute provides benefits for covered workers and their survivors who were exposed to radiation, beryllium and silica during a period of almost 60 years, an assumption was made that DOL would receive thousands of claims in the initial few years after the effective date of the statute, and that the number of claims would decrease substantially after the first few years. Administrative cost estimates were developed based upon DOL's experience in administering other workers' compensation programs, using calculations of the number of incoming claims and forecasting the necessary full-time equivalents and other resources necessary to efficiently administer the program.

No more extensive economic impact analysis is necessary because this regulatory action only addresses the transfer of funds from the Federal government to individuals who qualify under the EEOICPA and to providers of medical services in that program. As noted above, this regulatory action has no affect on the functioning of the economy and private markets, on the health and safety of the general population, or on the natural environment. In addition, because this regulation implements a statutory mandate, there are no feasible alternatives to this regulatory action. Finally, to the extent that policy choices have been made in interpreting statutory terms, those choices have no significant impact on the cost of this regulatory action because they do not involve either the number of eligible recipients or the level of benefits to which they are entitled.

OMB has reviewed this final rule for consistency with the President's priorities and the principles set forth in E.O. 12866.

VII. Small Business Regulatory Enforcement Fairness Act

As required by Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the Department will report to Congress promulgation of this final rule prior to its effective date. The report will state that the Department has concluded that this final rule is a ''major rule'' because it will likely result in an annual effect on the economy of $100 million or more.

VIII. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) directs agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector, ''other than to the extent that such regulations incorporate requirements specifically set forth in law.'' For purposes of the Unfunded Mandates Reform Act, this final rule does not include any Federal mandate that may result in increased annual expenditures in excess of $100 million by State, local or tribal governments in the aggregate, or by the private sector.

IX. Regulatory Flexibility Act

The Department believes that this final rule will have ''no significant economic impact upon a substantial number of small entities'' within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The provisions of this rule applying cost control measures to payments for medical expenses are the only ones that may have a monetary effect on small businesses. That effect will not be significant for a substantial number of those businesses, however, for no single business will bill a significant amount to OWCP for EEOICPA-related services, and the effect on those bills which are submitted, while a worthwhile savings for the Government in the aggregate, will not be significant for individual businesses affected.

The cost containment provisions are: (1) A set schedule of maximum allowable fees for professional medical services; (2) a set schedule for payment of pharmacy bills; and (3) a prospective payment system for hospital inpatient services. The first two of these provisions essentially adopt payment systems that are commonplace in the industry. Their adoption by OWCP for use in connection with its administration of the EEOICPA program will therefore result in efficiencies for both the Government and providers. The Government will benefit because OWCP did not have to develop new cost containment measures, but rather adopted existing and well-recognized measures that were already in place. The providers benefit because submitting a bill and receiving a payment will be almost the same as submitting it to Medicare, a program with which providers are already familiar and have existing systems in place for billing—they will not have to incur unnecessary administrative costs to learn a new process because the EEOICPA bill process will not be readily distinguishable from the Medicare process. Similarly, pharmacies are used to billing through clearing houses and having their charges subject to limits by private insurers. By adopting the uniform billing statement and a familiar cost control methodology, OWCP has

kept close to the billing environment with which pharmacies are already familiar. The methods chosen, therefore, represent systems that are familiar to the providers. The third of these three provisions will not have an effect on a substantial number of ''small entities'' under Small Business Administration standards, since most hospitals providing services for EEOICPA-covered conditions will have annual receipts that exceed the set maximum.

The implementation of these cost containment methods will have no significant effect on any single medical professional or pharmacy since they are already used by Medicare, CHAMPUS, and the Departments of Labor and Veterans Affairs, among Government entities, and by private insurance carriers. In actual terms, the amount by which these provider bills might be reduced will not have a significant impact on any one small entity since these charges are currently being processed by other payers applying similar cost containment provisions. The costs to providers whose charges may be reduced also will be relatively small because EEOICPA bills simply will not represent a large share of any single provider's total business. Since the small universe of potential claimants is spread across the United States and this bill processing system will cover only those employees who have sustained a covered illness and require medical treatment on or after July 31, 2001 (out of the projected total of 19,479 claims OWCP estimates it will accept over the first five years of the program, only approximately 5,727 of these will involve payment for medical treatment), the number of bills submitted by any one small entity which may be subject to these provisions is likely to be very small. Therefore, the ''cost'' of this rule to any one pharmacy or medical professional will be negligible. On the other hand, OWCP will see substantial aggregate cost savings that will benefit both OWCP (by strengthening the integrity of the program) and the taxpayers to whom the ultimate costs of the program are eventually charged through appropriations.

The Assistant Secretary for Employment Standards has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant impact on a substantial number of small entities. The factual basis for this certification has been provided above. Accordingly, no regulatory impact analysis is required.

X. Executive Order 12988 (Civil Justice Reform)

This final rule has been drafted and reviewed in accordance with E.O. 12988 and will not unduly burden the Federal court system. While the EEOICPA does not provide any specific procedures claimants must follow in order to seek review of decisions on their claims, substantial numbers of claimants will likely seek review of adverse decisions in the United States district courts pursuant to the Administrative Procedure Act. This rule should minimize the burden placed upon the courts by litigation seeking to challenge decisions under EEOICPA by providing claimants an opportunity to seek administrative review of adverse decisions and by providing a clear legal standard for affected conduct. It has been reviewed carefully to eliminate drafting errors and ambiguities.

XI. Executive Order 13045 (Protection of Children From Environmental, Health Risks and Safety Risks)

In accordance with E.O. 13045, the Department has evaluated the environmental health and safety effects of this rule on children. The Department has determined that the final rule will have no effect on children.

XII. Executive Order 13132 (Federalism)

The Department has reviewed this final rule in accordance with E.O. 13132 and has determined that it does not have any ''federalism implications.'' The final rule 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.''

XIII. Executive Order 13211 (Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use)

In accordance with E.O. 13211, the Department has evaluated the effects of this final rule on energy supply, distribution or use, and has determined that this rule is not likely to have a significant adverse effect on them.

XIV. Submission to Congress and the General Accounting Office

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the Department will submit to each House of the Congress and to the Comptroller General a report regarding the issuance of this final rule prior to the effective date set forth at the outset of this notice. The report will note that this rule constitutes a ''major rule'' as defined by 5 U.S.C. 804(2).

XV. Catalog of Federal Domestic Assistance Number

This program is not listed in the Catalog of Federal Domestic Assistance.

List of Subjects

20 CFR Part 1

Organization and functions (Government agencies).

20 CFR Part 30

Administrative practice and procedure, Cancer, Claims, Kidney Diseases, Leukemia, Lung Diseases, Miners, Radioactive Materials, Tort claims, Underground mining, Uranium, Workers' Compensation.

Text of the Rule

For the reasons set forth in the preamble, 20 CFR Chapter 1 is amended as follows:

Subchapter A—Organization and Procedures

1. Part 1 is revised to read as follows:

PART 1—PERFORMANCE OF FUNCTIONS UNDER THIS CHAPTER

Sec.
1.1 Under what authority was the Office of Workers' Compensation Programs established?
1.2 What functions are assigned to OWCP?
1.3 What rules are contained in this chapter?
1.4 Where are other rules concerning OWCP functions found?
1.5 When was the former Bureau of Employees' Compensation abolished?
1.6 How were many of OWCP's current functions administered in the past?

Authority: 5 U.S.C. 301, 8145 and 8149 (Reorganization Plan No. 6 of 1950, 15 FR 3174, 3 CFR, 1949–1953 Comp., p. 1004, 64 Stat. 1263); 42 U.S.C. 7384d; Executive Order 13179, 65 FR 77487, 3 CFR, 2000 Comp., p. 321; Secretary of Labor's Order No. 13–71, 36 FR 8155; Employment Standards Order No. 2–74, 39 FR 34722.

§ 1.1 Under what authority was the Office of Workers' Compensation Programs established?

The Assistant Secretary of Labor for Employment Standards, by authority vested in him by the Secretary of Labor in Secretary's Order No. 13–71, 36 FR 8755, established in the Employment Standards Administration an Office of Workers' Compensation Programs (OWCP) by Employment Standards Order No. 2–74, 39 FR 34722. The Assistant Secretary subsequently designated as the head thereof a Director who, under the general supervision of

the Assistant Secretary, administers the programs assigned to OWCP by the Assistant Secretary.

§ 1.2 What functions are assigned to OWCP?

The Assistant Secretary of Labor for Employment Standards has delegated authority and assigned responsibility to the Director of OWCP for the Department of Labor's programs under the following statutes:

(a) The Federal Employees' Compensation Act, as amended and extended (5 U.S.C. 8101 *et seq.*), except 5 U.S.C. 8149 as it pertains to the Employees' Compensation Appeals Board.

(b) The War Hazards Compensation Act (42 U.S.C. 1701 *et seq.*).

(c) The War Claims Act (50 U.S.C. App. 2003).

(d) The Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (42 U.S.C. 7384 *et seq.*), except activities, pursuant to Executive Order 13179 (''Providing Compensation to America's Nuclear Weapons Workers'') of December 7, 2000, assigned to the Secretary of Health and Human Services, the Secretary of Energy and the Attorney General.

(e) The Longshore and Harbor Workers' Compensation Act, as amended and extended (33 U.S.C. 901 *et seq.*), except: 33 U.S.C. 919(d) with respect to administrative law judges in the Office of Administrative Law Judges; 33 U.S.C. 921(b) as it pertains to the Benefits Review Board; and activities, pursuant to 33 U.S.C. 941, assigned to the Assistant Secretary of Labor for Occupational Safety and Health.

(f) The Black Lung Benefits Act, as amended (30 U.S.C. 901 *et seq.*).

§ 1.3 What rules are contained in this chapter?

The rules in this chapter are those governing the OWCP functions under the Federal Employees' Compensation Act, the War Hazards Compensation Act, the War Claims Act and the Energy Employees Occupational Illness Compensation Program Act of 2000.

§ 1.4 Where are other rules concerning OWCP functions found?

(a) The rules of the OWCP governing its functions under the Longshore and Harbor Workers' Compensation Act and its extensions are set forth in subchapter A of chapter VI of this title.

(b) The rules of the OWCP governing its functions under the Black Lung Benefits Act program are set forth in subchapter B of chapter VI of this title.

(c) The rules and regulations of the Employees' Compensation Appeals Board are set forth in chapter IV of this title.

(d) The rules and regulations of the Benefits Review Board are set forth in chapter VII of this title.

§ 1.5 When was the former Bureau of Employees' Compensation abolished?

By Secretary of Labor's Order issued September 23, 1974, 39 FR 34723, issued concurrently with Employment Standards Order 2–74, 39 FR 34722, the Secretary revoked the prior Secretary's Order No. 18–67, 32 FR 12979, which had delegated authority and assigned responsibility for the various workers' compensation programs enumerated in § 1.2, except the Black Lung Benefits Program and the Energy Employees Occupational Illness Compensation Program not then in existence, to the Director of the former Bureau of Employees' Compensation.

§ 1.6 How were many of OWCP's current functions administered in the past?

(a) Administration of the Federal Employees' Compensation Act and the Longshore and Harbor Workers' Compensation Act was initially vested in an independent establishment known as the U.S. Employees' Compensation Commission. By Reorganization Plan No. 2 of 1946 (3 CFR, 1943–1949 Comp., p. 1064; 60 Stat. 1095, effective July 16, 1946), the Commission was abolished and its functions were transferred to the Federal Security Agency to be performed by a newly created Bureau of Employees' Compensation within such Agency. By Reorganization Plan No. 19 of 1950 (15 FR 3178, 3 CFR, 1949–1954 Comp., page 1010, 64 Stat. 1271), said Bureau was transferred to the Department of Labor (DOL), and the authority formerly vested in the Administrator, Federal Security Agency, was vested in the Secretary of Labor. By Reorganization Plan No. 6 of 1950 (15 FR 3174, 3 CFR, 1949–1953 Comp., page 1004, 64 Stat. 1263), the Secretary of Labor was authorized to make from time to time such provisions as he shall deem appropriate, authorizing the performance of any of his functions by any other officer, agency, or employee of the DOL.

(b) In 1972, two separate organizational units were established within the Bureau: an Office of Workmen's Compensation Programs (37 FR 20533) and an Office of Federal Employees' Compensation (37 FR 22979). In 1974, these two units were abolished and one organizational unit, the Office of Workers' Compensation Programs, was established in lieu of the Bureau of Employees' Compensation (39 FR 34722).

2. Subchapter C consisting of Part 30 is revised to read as follows:

Subchapter C—Energy Employees Occupational Illness Compensation Program Act of 2000

PART 30–CLAIMS FOR COMPENSATION UNDER THE ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT OF 2000, AS AMENDED

Subpart A—General Provisions

Introduction

Sec.
30.0 What are the provisions of the EEOICPA, in general?
30.1 What rules govern the administration of the EEOICPA and this chapter?
30.2 In general, how have the tasks associated with the administration of the EEOICPA claims process been assigned?
30.3 What do these regulations contain?

Definitions

30.5 What are the definitions used in this part?

Information in Program Records

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30.11 Who maintains custody and control of claim records?
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30.16 What penalties may be imposed in connection with a claim under the Act?
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Subpart B—Filing Claims; Evidence and Burden of Proof; Special Procedures for Certain Cancer Claims

Claims for Occupational Illness—Employee or Survivor's Actions

30.100 In general, how does an employee file for benefits?
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30.102 How does a claimant make sure that OWCP has the evidence necessary to process the claim?

Claims for Occupational Illness—Actions of DOE

30.105 What must DOE do after an employee files a claim for an occupational illness?
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Evidence and Burden of Proof

30.110 Who is entitled to compensation under the Act?

30.111 What is the claimant's responsibility with respect to burden of proof, production of documents, presumptions, and affidavits?
30.112 What kind of evidence is needed to establish covered employment and how will that evidence be evaluated?
30.113 What are the requirements for written medical documentation, contemporaneous records, and other records or documents?
30.114 What kind of evidence is needed to establish a covered medical condition and how will that evidence be evaluated?

Special Procedures for Certain Cancer Claims

30.115 For those claims that do not seek benefits pursuant to the Special Exposure Cohort provisions, what will OWCP do once it determines that a covered employee (or a survivor of such an employee) has established that he or she contracted cancer under § 30.211?

Subpart C—Eligibility Criteria

General Provisions

30.200 What is the scope of this subpart?

Eligibility Criteria for Claims Relating to Covered Beryllium Illness

30.205 What are the criteria for eligibility for benefits relating to covered beryllium illness?
30.206 How does a claimant prove that the employee was a ''covered beryllium employee'' exposed to beryllium dust, particles or vapor in the performance of duty?
30.207 How does a claimant prove a diagnosis of a covered beryllium disease?

Eligibility Criteria for Claims Relating to Cancer

30.210 What are the criteria for eligibility for benefits relating to cancer?
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30.212 How does a claimant establish that the employee contracted cancer after beginning employment at a DOE facility or an atomic weapons employer facility?
30.213 How does a claimant establish that the cancer was at least as likely as not related to the employment at the DOE facility or the atomic weapons employer facility?
30.214 How does a claimant establish that the employee is a member of the Special Exposure Cohort?
30.215 How does a claimant establish that the employee has been diagnosed with cancer or has sustained a consequential injury, illness or disease?

Eligibility Criteria for Claims Relating to Chronic Silicosis

30.220 What are the criteria for eligibility for benefits relating to chronic silicosis?
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Eligibility Criteria for Certain Uranium Employees

30.225 What are the criteria for eligibility for benefits for certain uranium employees?
30.226 How does a claimant establish that a covered uranium employee has sustained a consequential injury, illness or disease?

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30.310 What must the claimant do if he or she objects to the recommended decision or wants to request a hearing?
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30.312 What will the FAB do if the claimant objects to the recommended decision but does not request a hearing?
30.313 How is a review of the written record conducted?
30.314 How is a hearing conducted?
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30.320 Can a claim be reopened after the FAB has issued a final decision?

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Medical Treatment and Related Issues

30.400 What are the basic rules for obtaining medical care?
30.401 What are the special rules for the services of chiropractors?
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30.403 Will OWCP pay for the services of an attendant?
30.404 Will OWCP pay for transportation to obtain medical treatment?
30.405 After selecting a treating physician, may an employee choose to be treated by another physician instead?
30.406 Are there any exceptions to these procedures for obtaining medical care?

Directed Medical Examinations

30.410 Can OWCP require an employee to be examined by another physician?
30.411 What happens if the opinion of the physician selected by OWCP differs from the opinion of the physician selected by the employee?
30.412 Who pays for second opinion and referee examinations?

Medical Reports

30.415 What are the requirements for medical reports?
30.416 How and when should medical reports be submitted?
30.417 What additional medical information may OWCP require to support continuing payment of benefits?

Medical Bills

30.420 How are medical bills submitted?
30.421 What are the time frames for submitting bills?
30.422 If OWCP reimburses an employee only partially for a medical expense, must the provider refund the balance of the amount paid to the employee?

Subpart F—Survivors; Payments and Offsets; Overpayments

Survivors

30.500 What special statutory definitions apply to survivors under the EEOICPA?
30.501 What order of precedence will OWCP use to determine which survivors are entitled to receive compensation under the EEOICPA?
30.502 When is entitlement for survivors determined for purposes of the EEOICPA?

Payment of Claims and Offset for Certain Payments

30.505 What procedures will OWCP follow before it pays any compensation?
30.506 To whom and in what manner will OWCP pay compensation?
30.507 What compensation will be provided to covered employees who only establish beryllium sensitivity?
30.508 What is beryllium sensitivity monitoring?

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30.510 How does OWCP notify an individual of a payment made on a claim?
30.511 What is an ''overpayment'' for purposes of the EEOICPA?
30.512 How does OWCP determine that a beneficiary owes a debt as the result of the creation of an overpayment?
30.513 How are overpayments collected?

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30.600 May a claimant designate a representative?
30.601 Who may serve as a representative?
30.602 Who is responsible for paying the representative's fee?
30.603 Are there any limitations on what the representative may charge the claimant for his or her services?

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30.605 What rights does the United States have upon payment of compensation under the EEOICPA?
30.606 Under what circumstances must a recovery of money or other property in

connection with an illness for which benefits are payable under the EEOICPA be reported to OWCP?
30.607 How is a structured settlement (that is, a settlement providing for receipt of funds over a specified period of time) treated for purposes of reporting the recovery?
30.608 How does the United States calculate the amount to which it is subrogated?
30.609 Is a settlement or judgment received as a result of allegations of medical malpractice in treating an illness covered by the EEOICPA a recovery that must be reported to OWCP?
30.610 Are payments to an employee or eligible surviving beneficiary as a result of an insurance policy which the employee or eligible surviving beneficiary has purchased a recovery that must be reported to OWCP?
30.611 If a settlement or judgment is received for more than one medical condition, can the amount paid on a single EEOICPA claim be attributed to different conditions for purposes of calculating the amount to which the United States is subrogated?

Effect of Tort Suits Against Beryllium Vendors and Atomic Weapons Employers

30.615 What type of tort suits filed against beryllium vendors or atomic weapons employers may disqualify certain claimants from receiving benefits under EEOICPA?
30.616 What happens if this type of tort suit was filed prior to October 30, 2000?
30.617 What happens if this type of tort suit was filed during the period from October 30, 2000 through December 28, 2001?
30.618 What happens if this type of tort suit is filed after December 28, 2001?
30.619 Do all the parties to this type of tort suit have to take these actions?
30.620 How will OWCP ascertain whether a claimant filed this type of tort suit and if he or she has been disqualified from receiving any benefits under the EEOICPA?

Subpart H—Information for Medical Providers

Medical Records and Bills

30.700 What kind of medical records must providers keep?
30.701 How are medical bills to be submitted?
30.702 How should an employee prepare and submit requests for reimbursement for medical expenses, transportation costs, loss of wages, and incidental expenses?
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30.705 What services are covered by the OWCP fee schedule?
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30.707 How are payments for particular services calculated?
30.708 Does the fee schedule apply to every kind of procedure?
30.709 How are payments for medicinal drugs determined?
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30.711 When and how are fees reduced?
30.712 If OWCP reduces a fee, may a provider request reconsideration of the reduction?
30.713 If OWCP reduces a fee, may a provider bill the employee for the balance?

Exclusion of Providers

30.715 What are the grounds for excluding a provider for payment under this part?
30.716 What will cause OWCP to automatically exclude a physician or other provider of medical services and supplies?
30.717 When are OWCP's exclusion procedures initiated?
30.718 How is a provider notified of OWCP's intent to exclude him or her?
30.719 What requirements must the provider's reply and OWCP's decision meet?
30.720 How can an excluded provider request a hearing?
30.721 How are hearings assigned and scheduled?
30.722 How are advisory opinions obtained?
30.723 How will the administrative law judge conduct the hearing and issue the recommended decision?
30.724 How can a party request review by OWCP of the administrative law judge's recommended decision?
30.725 What are the effects of non-automatic exclusion?
30.726 How can an excluded provider be reinstated?

Authority: 5 U.S.C. 301; 31 U.S.C. 3716 and 3717; 42 U.S.C. 7384d, 7384t and 7384u; Executive Order 13179, 65 FR 77487, 3 CFR, 2000 Comp., p. 321; Secretary of Labor's Order No. 4–2001, 66 FR 29656.

Subpart A—General Provisions

Introduction

§ 30.0 What are the provisions of the EEOICPA, in general?

The Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (EEOICPA or Act), 42 U.S.C. 7384 *et seq.*, provides for the payment of compensation benefits to covered employees and, where applicable, survivors of such employees, of the United States Department of Energy (DOE), its predecessor agencies and certain of its contractors and subcontractors. It also provides for the payment of compensation to certain persons already found eligible for benefits under section 5 of the Radiation Exposure Compensation Act, as amended (RECA), 42 U.S.C. 2210 note, and where applicable, survivors of such employees. The regulations in this part describe the rules for filing, processing, and paying claims for benefits under the EEOICPA.

(a) The EEOICPA provides for the payment of either monetary compensation for the disability of a covered employee due to an occupational illness or for monitoring for beryllium sensitivity, as well as for medical and related benefits for such illness.

(b) All types of benefits and conditions of eligibility listed in this section are subject to the provisions of the EEOICPA and of this part.

§ 30.1 What rules govern the administration of the EEOICPA and this chapter?

In accordance with the EEOICPA, Executive Order 13179 and Secretary's Order No. 4–2001, the primary responsibility for administering the Act, except for those activities assigned to the Secretary of Health and Human Services, the Secretary of Energy and the Attorney General, has been delegated to the Assistant Secretary of Labor for Employment Standards. The Assistant Secretary, in turn, has delegated the responsibility for administering the Act to the Director of the Office of Workers' Compensation Programs (OWCP). Except as otherwise provided by law, the Director of OWCP and his or her designees have the exclusive authority to administer, interpret and enforce the provisions of the Act.

§ 30.2 In general, how have the tasks associated with the administration of the EEOICPA claims process been assigned?

(a) In E.O. 13179, the President assigned various tasks associated with the administration of the EEOICPA claims process among the Secretaries of Labor, Health and Human Services and Energy, and the Attorney General. In light of the fact that the Secretary of Labor has been assigned primary responsibility for administering the EEOICPA, almost the entire claims process is within the exclusive control of OWCP. This means that claimants file their claims with OWCP, and OWCP is responsible for granting or denying compensation under the Act (see §§ 30.100, 30.101, and 30.505 through 30.513). OWCP also provides assistance to claimants and potential claimants by providing information regarding eligibility and other program requirements, including information on completing claim forms and the types and availability of medical testing and diagnostic services related to covered illnesses. In addition, OWCP provides an administrative review process for claimants who disagree with its recommended and final adverse

decisions (see §§ 30.300 through 30.320).

(b) However, HHS has exclusive control of a portion of the claims process involving certain cancer claims, and is therefore responsible for providing reconstructed doses for these claims (see § 30.115). HHS has also promulgated regulations at 42 CFR part 81 establishing the guidelines that OWCP must follow to assess the likelihood that an individual with cancer sustained the cancer in the performance of duty (see § 30.210). DOE and DOJ are responsible for, among other tasks, notifying potential claimants and submitting evidence that OWCP deems necessary for its adjudication of claims under the EEOICPA (see §§ 30.105, 30.106, and 30.111).

§ 30.3 What do these regulations contain?

This part 30 sets forth the regulations governing administration of all claims that are filed with OWCP, except to the extent specified in certain provisions. Its provisions are intended to assist persons seeking benefits under the EEOICPA, as well as personnel in the various federal agencies and DOL who process claims filed under the EEOICPA or who perform administrative functions with respect to the EEOICPA. The various subparts of this part contain the following:

(a) Subpart A: the general statutory and administrative framework for processing claims under the EEOICPA. It contains a statement of purpose and scope, together with definitions of terms, information regarding the disclosure of OWCP records, and a description of rights and penalties under the EEOICPA, including convictions for fraud.

(b) Subpart B: the rules for filing claims for benefits under the EEOICPA. It also addresses general standards regarding necessary evidence and the burden of proof, descriptions of basic forms and special procedures for certain cancer claims.

(c) Subpart C: the eligibility criteria for conditions covered by the EEOICPA.

(d) Subpart D: the rules governing the adjudication process leading from recommended to final decisions made on claims filed under the EEOICPA. It also describes the hearing and reopening processes.

(e) Subpart E: the rules governing medical care, second opinion and referee medical examinations directed by OWCP, and medical reports and records in general. It also addresses the kinds of treatment that may be authorized and how medical bills are paid.

(f) Subpart F: the rules relating to the payment of monetary compensation. It includes the provisions for identifying and processing overpayments of compensation.

(g) Subpart G: the rules concerning legal representation of claimants before OWCP, subrogation of the United States, and the effect of tort suits against beryllium vendors and atomic weapons employers.

(h) Subpart H: information for medical providers. It includes rules for medical reports, medical bills, and the OWCP medical fee schedule, as well as the provisions for exclusion of medical providers.

Definitions

§ 30.5 What are the definitions used in this part?

(a) *Act or EEOICPA* means the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (42 U.S.C. 7384 *et seq.*).

(b) *Atomic weapon* means any device utilizing atomic energy, exclusive of the means for transporting or propelling the device (where such means is a separable and divisible part of the device), the principle purpose of which is for use as, or for development of, a weapon, a weapon prototype, or a weapon test device.

(c) *Atomic weapons employee* means an individual employed by an atomic weapons employer during a period when the employer was processing or producing, for the use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling.

(d) *Atomic weapons employer* means any entity, other than the United States, that:

(1) Processed or produced, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling; and

(2) Is designated by the Secretary of Energy as an atomic weapons employer for purposes of the compensation program.

(e) *Atomic weapons employer facility* means any facility, owned by an atomic weapons employer, that:

(1) Is or was used to process or produce, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining or milling; and

(2) Is designated as such in the list periodically published in the **Federal Register** by DOE.

(f) *Attorney General* means the Attorney General of the United States or the United States Department of Justice (DOJ).

(g) *Benefit or Compensation* means the money the Department pays to or on behalf of a covered employee from the Energy Employees Occupational Illness Compensation Fund. However, the term ''compensation'' used in section 7385f(b) of the EEOICPA (with respect to entitlement to only one payment of compensation) means only the payments specified in section 7384s(a)(1) ($150,000 lump sum payment) and in section 7384u(a) ($50,000 payment to beneficiaries under section 5 of the RECA). Except as used in section 7385f(b), these two terms also include any other amounts paid out of the Fund for such things as medical treatment, monitoring, examinations, services, appliances and supplies as well as for transportation and expenses incident to the securing of such medical treatment, monitoring, examinations, services, appliances, and supplies.

(h) *Beryllium sensitization or sensitivity* means that the individual has an abnormal beryllium lymphocyte proliferation test (LPT) performed on either blood or lung lavage cells.

(i) *Beryllium vendor* means the specific corporations and named predecessor corporations listed in section 7384l(6) of the Act and any of the facilities designated as such in the list periodically published in the **Federal Register** by DOE.

(j) *Chronic silicosis* means a non-malignant lung disease if:

(1) The initial occupational exposure to silica dust preceded the onset of silicosis by at least 10 years; and

(2) A written diagnosis of silicosis is made by a medical doctor and is accompanied by:

(i) A chest radiograph, interpreted by an individual certified by the National Institute for Occupational Safety and Health as a B reader, classifying the existence of pneumoconioses of category 1/0 or higher; or

(ii) Results from a computer assisted tomograph or other imaging technique that are consistent with silicosis; or

(iii) Lung biopsy findings consistent with silicosis.

(k) *Claim* means a written assertion of an individual's entitlement to benefits under the EEOICPA, submitted in a manner authorized by this part.

(l) *Claimant* means the individual who is alleged to satisfy the criteria for compensation under the Act.

(m) *Compensation fund* or fund means the fund established on the books of the Treasury for payment of benefits and compensation under the Act.

(n) *Contemporaneous record* means any document created at or around the time of the event that is recorded in the document.

(o) *Covered beryllium illness* means any of the following:

(1) Beryllium sensitivity as established by an abnormal LPT performed on either blood or lung lavage cells.

(2) Established chronic beryllium disease (see § 30.207(c)).

(3) Any injury, illness, impairment, or disability sustained as a consequence of a covered beryllium illness referred to in paragraphs (o)(1) or (2) of this section.

(p) *Covered employee* means a covered beryllium employee (see § 30.205), a covered employee with cancer (*see* § 30.210), a covered employee with chronic silicosis (see § 30.220), or a covered uranium employee (see paragraph (q) of this section).

(q) *Covered uranium employee* means an individual who has been determined by DOJ to be entitled to an award under section 5 of the RECA, regardless of whether the individual was the employee or the deceased employee's survivor.

(r) *Current or former employee as defined in 5 U.S.C. 8101(1)* as used in § 30.205(a)(1) means an individual who fits within one of the following listed groups:

(1) A civil officer or employee in any branch of the Government of the United States, including an officer or employee of an instrumentality wholly owned by the United States;

(2) An individual rendering personal service to the United States similar to the service of a civil officer or employee of the United States, without pay or for nominal pay, when a statute authorizes the acceptance or use of the service, or authorizes payment of travel or other expenses of the individual;

(3) An individual, other than an independent contractor or individual employed by an independent contractor, employed on the Menominee Indian Reservation in Wisconsin in operations conducted under a statute relating to tribal timber and logging operations on that reservation;

(4) An individual appointed to a position on the office staff of a former President; or

(5) An individual selected and serving as a Federal petit or grand juror.

(s) *Department* means the United States Department of Labor (DOL).

(t) *Department of Energy or DOE* includes the predecessor agencies of the DOE, including the Manhattan Engineering District.

(u) *Department of Energy contractor employee* means any of the following:

(1) An individual who is or was in residence at a DOE facility as a researcher for one or more periods aggregating at least 24 months.

(2) An individual who is or was employed at a DOE facility by:

(i) An entity that contracted with the DOE to provide management and operating, management and integration, or environmental remediation at the facility; or

(ii) A contractor or subcontractor that provided services, including construction and maintenance, at the facility.

(v) *Department of Energy facility* means any building, structure, or premise, including the grounds upon which such building, structure, or premise is located:

(1) In which operations are, or have been, conducted by, or on behalf of, the DOE (except for buildings, structures, premises, grounds, or operations covered by E.O. 12344, dated February 1, 1982, pertaining to the Naval Nuclear Propulsion Program); and

(2) With regard to which the DOE has or had:

(i) A proprietary interest; or

(ii) Entered into a contract with an entity to provide management and operation, management and integration, environmental remediation services, construction, or maintenance services.

(w) *Disability* means, for purposes of determining entitlement to payment under section 7384s(a)(1) of the Act, having been determined by OWCP to have or have had established chronic beryllium disease, cancer, or chronic silicosis.

(x) *Eligible surviving beneficiary* means any individual who is entitled under sections 7384s(e) or 7384u(e) of the Act to receive a payment on behalf of a deceased covered employee.

(y) *Employee* means either a current or former employee.

(z) *Occupational illness* means a covered beryllium illness, cancer sustained in the performance of duty as defined in § 30.210(b), specified cancer, or chronic silicosis.

(aa) *OWCP* means the Office of Workers' Compensation Programs, United States Department of Labor.

(bb) *Physician* includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. The term ''physician'' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.

(cc) *Qualified physician* means any physician who has not been excluded under the provisions of subpart H of this part. Except as otherwise provided by regulation, a qualified physician shall be deemed to be designated or approved by OWCP.

(dd) *Specified cancer* (as defined in section 4(b)(2) of the RECA and in the Act) means:

(1) Leukemia (other than chronic lymphocytic leukemia) provided that the onset of the disease was at least 2 years after first exposure;

(2) Lung cancer (other than in situ lung cancer that is discovered during or after a post-mortem exam);

(3) Bone cancer;

(4) Renal cancers; or

(5) The following diseases, provided onset was at least 5 years after first exposure:

(i) Multiple myeloma;

(ii) Lymphomas (other than Hodgkin's disease); and

(iii) Primary cancer of the:

(A) Thyroid;

(B) Male or female breast;

(C) Esophagus;

(D) Stomach;

(E) Pharynx;

(F) Small intestine;

(G) Pancreas;

(H) Bile ducts;

(I) Gall bladder;

(J) Salivary gland;

(K) Urinary bladder;

(L) Brain;

(M) Colon;

(N) Ovary; or

(O) Liver (except if cirrhosis or hepatitis B is indicated).

(6) The specified diseases designated in this section mean the physiological condition or conditions that are recognized by the National Cancer Institute under those names or nomenclature, or under any previously accepted or commonly used names or nomenclature.

(ee) *Survivor* means:

(1) Subject to paragraph (ee)(2) of this section, a surviving spouse, child, parent, grandchild and grandparent of a deceased covered employee.

(2) Those individuals listed in paragraph (ee)(1) of this section do not include any individuals not living as of the time OWCP makes a lump-sum payment or payments to an eligible surviving beneficiary or beneficiaries.

(ff) *Time of injury* means:

(1) In regard to a claim arising out of exposure to beryllium or silica, the last date on which a covered employee was exposed to such substance in the

performance of duty in accordance with sections 7384n(a) or 7384r(c) of the Act; or

(2) In regard to a claim arising out of exposure to radiation, the last date on which a covered employee was exposed to radiation in the performance of duty in accordance with section 7384n(b) of the Act or, in the case of a member of the Special Exposure Cohort, the last date on which the member of the Special Exposure Cohort was employed at the Department of Energy facility or the atomic weapons employer facility at which the member was exposed to radiation.

(gg) *Workday* means a single workshift whether or not it occurred on more than one calendar day.

Information in Program Records

§ 30.10 Are all OWCP records relating to claims filed under the EEOICPA considered confidential?

All OWCP records relating to claims for benefits under the EEOICPA are considered confidential and may not be released, inspected, copied or otherwise disclosed except as provided in the Freedom of Information Act and the Privacy Act of 1974.

§ 30.11 Who maintains custody and control of claim records?

All OWCP records relating to claims for benefits filed under the Act are covered by the Privacy Act system of records entitled DOL/ESA–49 (Office of Workers' Compensation Programs, Energy Employees Occupational Illness Compensation Program Act File). This system of records is maintained by and under the control of OWCP, and, as such, all records covered by DOL/ESA–49 are official records of OWCP. The protection, release, inspection and copying of records covered by DOL/ESA–49 shall be accomplished in accordance with the rules, guidelines and provisions of this part, as well as those contained in 29 CFR parts 70 and 71, and with the notice of the system of records and routine uses published in the **Federal Register**. All questions relating to access, disclosure, and/or amendment of claims records maintained by OWCP are to be resolved in accordance with this section.

§ 30.12 What process is used by a person who wants to obtain copies of or amend EEOICPA claim records?

(a) A claimant seeking copies of his or her official EEOICPA file should address a request to the District Director of the OWCP district office having custody of the file.

(b) Any request to amend a record covered by DOL/ESA–49 should be directed to the district office having custody of the official file.

(c) Any administrative appeal taken from a denial issued by OWCP under this section shall be filed with the Solicitor of Labor in accordance with 29 CFR 71.7 and 71.9.

Rights and Penalties

§ 30.15 May EEOICPA benefits be assigned, transferred or garnished?

(a) Pursuant to section 7385f(a) of the Act, no claim for EEOICPA benefits may be assigned or transferred.

(b) Provisions of the Social Security Act (42 U.S.C. 659) and regulations issued by the Office of Personnel Management at 5 CFR part 581 permit the garnishment of lump-sum payments of EEOICPA benefits to collect overdue alimony and child support. A request to garnish a lump-sum payment for either of these purposes should be submitted to the district office that is handling the EEOICPA claim, and must be accompanied by a copy of the pertinent State agency or court order.

§ 30.16 What penalties may be imposed in connection with a claim under the Act?

(a) Other statutory provisions make it a crime to file a false or fraudulent claim or statement with the Federal government in connection with a claim under the Act. Included among these provisions is 18 U.S.C. 1001. Enforcement of criminal provisions that may apply to claims under the Act is within the jurisdiction of the Department of Justice.

(b) In addition, administrative proceedings may be initiated under the Program Fraud Civil Remedies Act of 1986 (PFCRA), 31 U.S.C. 3801 *et seq.*, to impose civil penalties and assessments against persons or entities who make, submit or present, or cause to be made, submitted or presented, false, fictitious or fraudulent claims or written statements to OWCP in connection with a claim under the EEOICPA. The Department's regulations implementing the PFCRA are found at 29 CFR part 22.

§ 30.17 Is a beneficiary who defrauds the government in connection with a claim for benefits still entitled to those benefits?

When a beneficiary either pleads guilty to or is found guilty on either Federal or State criminal charges of defrauding the Federal or a State government in connection with a claim for benefits under the Act or any other Federal or State workers' compensation law, the beneficiary's entitlement to any further benefits will terminate effective the date either the guilty plea is accepted or a verdict of guilty is returned after trial, for any occupational disease for which the time of injury was on or before the date of such guilty plea or verdict. Any subsequent change in or recurrence of the beneficiary's medical condition does not affect termination of entitlement under this section.

Subpart B—Filing Claims; Evidence and Burden of Proof; Special Procedures for Certain Cancer Claims

Claims for Occupational Illness—Employee or Survivor's Actions

§ 30.100 In general, how does an employee file for benefits?

(a) To claim benefits under the EEOICPA, an employee must file a claim in writing on or after July 31, 2001. Form EE–1 should be used for this purpose, but any written communication that requests benefits under the EEOICPA will be considered a claim. It will, however, be necessary for an employee to submit a Form EE–1 for OWCP to fully develop the claim. Copies of Form EE–1 may be obtained from OWCP, from DOE, or on the Internet at *www.dol.gov/esa/regs/compliance/owcp/eeoicp/main.htm.* The employee must file his or her claim with OWCP, or another person may do so on the employee's behalf.

(b) The employee may withdraw his or her claim by so requesting in writing to OWCP at any time before OWCP determines eligibility for benefits.

(c) A claim is considered to be ''filed'' on the date that the employee mails his or her claim to OWCP, as determined by postmark, or on the date that the claim is received by OWCP or DOE, whichever is the earliest determinable date, but in no event earlier than July 31, 2001.

(1) The employee, or the person filing the claim on behalf of the employee, shall affirm that the information provided on the Form EE–1 is true, and must inform OWCP of any subsequent changes to that information.

(2) Except for a covered uranium employee, the employee is responsible for submitting, or arranging for the submission of, medical evidence to OWCP that establishes that he or she sustained an occupational illness.

§ 30.101 In general, how is a survivor's claim filed?

(a) A survivor of an employee who sustained an occupational illness may file a claim for compensation in writing on or after July 31, 2001. Form EE–2 should be used for this purpose, but any written communication that requests benefits under the Act will be considered a claim. It will, however, be necessary for a survivor to submit a Form EE–2 for OWCP to fully develop the claim. Copies of Form EE–2 may be

obtained from OWCP, from DOE, or on the Internet at *www.dol.gov/esa/regs/compliance/owcp/eeoicp/main.htm.* The claiming survivor must file his or her claim with OWCP, or another person may do so on the survivor's behalf. Although only one survivor need file a claim under this section to initiate the development process, OWCP will distribute any monetary benefits paid among all eligible surviving beneficiaries pursuant to the terms of § 30.501.

(b) A survivor may withdraw his or her claim by so requesting in writing to OWCP at any time before OWCP determines eligibility for benefits.

(c) A survivor must be alive to receive any payment; there is no vested right to such payment.

(d) A survivor's claim is considered to be ''filed'' on the date that the survivor mails his or her claim to OWCP, as determined by postmark, or the date that the claim is received by OWCP or DOE, whichever is the earliest determinable date, but in no event earlier than July 31, 2001.

(1) The survivor, or the person filing the claim on behalf of the survivor, shall affirm that the information provided on the Form EE–2 is true, and must inform OWCP of any subsequent changes to that information.

(2) Except for the survivor of a covered uranium employee, the survivor is responsible for submitting, or arranging for the submission of, evidence to OWCP that establishes that the employee upon whom the survivor's claim is based was eligible for such benefits, including medical evidence that establishes that the employee sustained an occupational illness.

§ 30.102 How does a claimant make sure that OWCP has the evidence necessary to process the claim?

(a) Claims and certain required submissions should be made on forms prescribed by OWCP. Persons submitting forms shall not modify these forms or use substitute forms. DOE is expected to maintain an adequate supply of the basic forms needed for filing claims under the EEOICPA.

Form No.	Title
(1) EE–1	Claim for Benefits Under Energy Employees Occupational Illness Compensation Program Act.
(2) EE–2	Claim for Survivor Benefits Under Energy Employees Occupational Illness Compensation Program Act.
(3) EE–3	Employment History for Claim Under Energy Employees Occupational Illness Compensation Program Act.
(4) EE–4	Employment History Affidavit for Claim Under the Energy Employees Occupational Illness Compensation Program Act.
(5) EE–5	Department of Energy's Response to Employment History for Claim Under the Energy Employees Occupational Illness Compensation Program Act.
(6) EE–7	Medical Requirements Under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

(b) Copies of the forms listed in this section are available for public inspection at the Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. They may also be obtained from OWCP district offices, from DOE, and on the Internet at *www.dol.gov/esa/regs/compliance/owcp/eeoicp/main.htm.*

Claims for Occupational Illness—Actions of DOE

§ 30.105 What must DOE do after an employee files a claim for an occupational illness?

(a) DOE shall complete Form EE–5 as soon as possible and transmit the completed form to OWCP. On this form, DOE shall certify that it concurs with the employment information provided by the employee, or that it disagrees with such information, or that it can neither concur nor disagree after making a reasonable search of its records and also making a reasonable effort to locate pertinent records not already in its possession.

(b) Upon request of a claimant, DOE shall also assist such claimant in completing Form EE–4 and transmit the completed form to OWCP.

(c) DOE should not wait for the employee to submit the necessary supporting medical evidence before it forwards any Form EE–1 (or other document containing an employee's claim) it has received to OWCP.

§ 30.106 What should DOE do when an employee with a claim for an occupational illness dies?

(a) When possible, DOE shall furnish a Form EE–2 to all survivors likely to be entitled to compensation after the death of an employee. DOE should also supply information about completing and filing the form.

(b) DOE shall complete Form EE–5 as soon as possible and transmit the completed form to OWCP. On this form, DOE shall certify that it concurs with the employment information provided by the survivor, or that it disagrees with such information, or that it can neither concur nor disagree after making a reasonable search of its records and also making a reasonable effort to locate pertinent records not already in its possession.

(c) Upon request of a survivor, DOE shall also assist such survivor in completing Form EE–4 and transmit the completed form to OWCP.

(d) DOE should not wait for the claiming survivor to submit the necessary supporting medical evidence before it forwards any Form EE–2 (or other document containing a survivor's claim) it has received to OWCP.

Evidence and Burden of Proof

§ 30.110 Who is entitled to compensation under the Act?

(a) Compensation is payable to the following covered employees, or their survivors:

(1) A ''covered beryllium employee'' (as described in § 30.205(a)) who has been diagnosed with a covered beryllium illness (as defined in § 30.5(o)) and was exposed to beryllium in the performance of duty (in accordance with § 30.206).

(2) A ''covered employee with cancer'' (as described in § 30.210).

(3) A ''covered employee with chronic silicosis'' (as described in § 30.220).

(4) A ''covered uranium employee'' (as defined in § 30.5(q)).

(b) Any claim that does not meet all of the criteria for at least one of these categories, as set forth in these regulations, must be denied.

(c) All claims for benefits under the Act must comply with the claims procedures and requirements set forth in subpart B of this part before any payment can be made from the Fund.

§ 30.111 What is the claimant's responsibility with respect to burden of proof, production of documents, presumptions, and affidavits?

(a) Except where otherwise provided in the Act and these regulations, the claimant bears the burden of proving by a preponderance of the evidence the existence of each and every criterion necessary to establish eligibility under any compensable claim category set forth in § 30.110. Proof by a preponderance of the evidence means that it is more likely than not that the proposition to be proved is true. Subject

to the exceptions expressly provided in the Act and these regulations, the claimant also bears the burden of providing to OWCP all written medical documentation, contemporaneous records, or other records and documents necessary to establish any and all criteria for benefits set forth in these regulations.

(b) In the event that the claim lacks required information or supporting documentation, OWCP will notify the employee, survivor, and/or DOE of the deficiencies and provide an opportunity for correction of the deficiencies.

(c) Written affidavits or declarations, subject to penalty for perjury, by the employee, survivor or any other person, will be accepted as evidence of employment history and survivor relationship for purposes of establishing eligibility and may be relied on in determining whether a claim meets the requirements of the Act for benefits if, and only if, such person attests that due diligence was used to obtain records in support of the claim, but that no records exist.

(d) A claimant will not be entitled to any presumption otherwise provided for in these regulations if substantial evidence exists that rebuts the existence of the fact that is the subject of the presumption. Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. When such evidence exists, the covered employee or his or her survivor shall be notified and afforded the opportunity to submit additional written medical documentation or records.

§ 30.112 What kind of evidence is needed to establish covered employment and how will that evidence be evaluated?

(a) Evidence of covered employment may include: employment records; pay stubs; tax returns; social security records; and written affidavits or declarations, subject to penalty of perjury, by the employee, survivor or any other person. However, no one document is required to establish covered employment and a claimant is not required to submit all of the evidence listed above. A claimant may submit other evidence not listed above to establish covered employment. To be acceptable as evidence, all documents and records must be legible. OWCP will accept photocopies, certified copies, and original documents and records.

(b) DOE shall certify that it concurs with the employment information provided by the claimant, that it disagrees with the information provided by the claimant, or, after a reasonable search of its records and a reasonable effort to locate pertinent records not already in its possession, it can neither concur nor disagree with the information provided by the claimant.

(1) If DOE certifies that it concurs with the employment information provided by the claimant, then the criterion for covered employment will be established.

(2) If DOE certifies that it disagrees with the information provided by the claimant or that after a reasonable search of its records and a reasonable effort to locate pertinent records not already in its possession it can neither concur nor disagree with the information provided by the claimant, OWCP will evaluate the evidence submitted by the claimant to determine whether the claimant has established covered employment by a preponderance of the evidence. OWCP may request additional evidence from the claimant to demonstrate that the claimant has met the criterion for covered employment. Nothing in this section shall be construed to limit OWCP's ability to require additional documentation.

(3) If the only evidence of covered employment is a self-serving affidavit and DOE either disagrees with the assertion of covered employment or cannot concur or disagree with the assertion of covered employment, then OWCP may reject the claim based upon a lack of evidence of covered employment.

§ 30.113 What are the requirements for written medical documentation, contemporaneous records, and other records or documents?

(a) All written medical documentation, contemporaneous records, and other records or documents submitted by an employee or his or her survivor to prove any criteria provided for in these regulations must be legible. OWCP will accept photocopies, certified copies, and original documents and records.

(b) To establish eligibility, the employee or his or her survivor may be required to provide, where appropriate, additional contemporaneous records to the extent they exist or an authorization to release additional contemporaneous records or a statement by the custodian(s) of the record(s) certifying that the requested record(s) no longer exist. Nothing in this section shall be construed to limit OWCP's ability to require additional documentation.

(c) If a claimant submits a certified statement, by a person with knowledge of the facts, that the medical records containing a diagnosis and date of diagnosis of a covered medical condition no longer exist, then OWCP may consider other evidence to establish a diagnosis and date of diagnosis of a covered medical condition. However, if the certified statement is a self-serving document, OWCP may reject the claim based upon a lack of evidence of a covered medical condition.

§ 30.114 What kind of evidence is needed to establish a covered medical condition and how will that evidence be evaluated?

(a) Evidence of a covered medical condition may include: A physician's report, laboratory reports, hospital records, death certificates, x-rays, magnetic resonance images or reports, computer axial tomography or other imaging reports, lymphocyte proliferation testings, beryllium patch tests, pulmonary function or exercise testing results, pathology reports including biopsy results and other medical records. A claimant is not required to submit all of the evidence listed in this paragraph. A claimant may submit other evidence that is not listed in this paragraph to establish a covered medical condition. Nothing in this section shall be construed to limit OWCP's ability to require additional documentation.

(b) The medical evidence submitted will be used to establish the diagnosis and the date of diagnosis of the covered medical condition.

(1) For covered beryllium illnesses, additional medical evidence, as set forth in § 30.207, is required to establish a beryllium illness.

(2) For chronic silicosis, additional medical evidence, as set forth in § 30.222, is required to establish chronic silicosis.

(3) For consequential injuries or illnesses, the claimant must also submit a physician's fully rationalized medical report showing the causal relationship between the resulting illness or injury and the covered medical condition.

(c) OWCP will evaluate the medical evidence in accordance with recognized and accepted diagnostic criteria used by physicians to determine whether the claimant has established the medical condition for which compensation is sought in accordance with the requirements of the Act.

Special Procedures for Certain Cancer Claims

§ 30.115 For those claims that do not seek benefits pursuant to the Special Exposure Cohort provisions, what will OWCP do once it determines that a covered employee (or a survivor of such an employee) has established that he or she contracted cancer under § 30.211?

(a) Other than claims solely for a non-radiogenic cancer listed by HHS at 42 CFR 81.30, OWCP will forward any such claimant's application package (including, but not limited to, Forms EE–1, EE–2, EE–3, EE–4 and EE–5, as appropriate) to HHS for dose reconstruction. At that point in time, development of the claim by OWCP is suspended.

(1) This package will include OWCP's initial findings in regard to the covered employee's diagnosis and date of diagnosis, as well as any employment history compiled by OWCP (including information such as dates and locations worked, and job titles). The package, however, does not constitute a recommended or final decision by OWCP on the claim.

(2) HHS will then reconstruct the covered employee's radiation dose, following such further development of the employment history as it may deem necessary, and provide OWCP, DOE and the claimant with the final dose reconstruction report. The final dose reconstruction record will be delivered to OWCP with the final dose reconstruction report and to the claimant upon request.

(b) Following its receipt of the reconstructed dose from HHS, OWCP will consider whether the claimant has met the eligibility criteria set forth in subpart C of this part.

Subpart C—Eligibility Criteria

General Provisions

§ 30.200 What is the scope of this subpart?

The regulations in this subpart describe the criteria for eligibility for benefits for claims relating to covered beryllium illness under sections 7384l, 7384n, 7384s and 7384t of the Act; for claims relating to employees with cancer under sections 7384l, 7384n, 7384q and 7384t of the Act; for claims relating to chronic silicosis under sections 7384l, 7384r, 7384s and 7384t; and for claims relating to covered uranium employees under sections 7384t and 7384u. This subpart describes the type and extent of evidence that will be accepted as evidence of the various criteria for eligibility for compensation for each of these illnesses.

Eligibility Criteria for Claims Relating to Covered Beryllium Illness

§ 30.205 What are the criteria for eligibility for benefits relating to covered beryllium illness?

To establish eligibility for benefits under this section, the claimant must establish the criteria set forth in both paragraphs (a) and (b) of this section:

(a) The employee is a covered beryllium employee by establishing:

(1) The employee is a ''current or former employee as defined in 5 U.S.C. 8101(1)'' (see § 30.5(r) of this part) who may have been exposed to beryllium at a DOE facility or at a facility owned, operated, or occupied by a beryllium vendor; or

(2) The employee is a current or former employee of:

(i) Any entity that contracted with the DOE to provide management and operation, management and integration, or environmental remediation of a DOE facility; or

(ii) Any contractor or subcontractor that provided services, including construction and maintenance, at such a facility; or

(iii) A beryllium vendor, or of a contractor or subcontractor of a beryllium vendor, during a period when the vendor was engaged in activities related to the production or processing of beryllium for sale to, or use by, the DOE; and

(3) The employee was exposed to beryllium in the performance of duty by establishing that he or she was, during a period when beryllium dust, particles, or vapor may have been present at such a facility:

(i) Employed at a DOE facility (as defined in § 30.5(v) of this part); or

(ii) Present at a DOE facility, or at a facility owned, operated, or occupied by a beryllium vendor, because of his or her employment by the United States, a beryllium vendor, or a contractor or subcontractor of the DOE. Under this paragraph, exposure to beryllium in the performance of duty can be established whether or not the beryllium that may have been present at such facility was produced or processed for sale to, or use by, DOE.

(b) The employee has one of the following:

(1) Beryllium sensitivity as established by an abnormal beryllium LPT performed on either blood or lung lavage cells.

(2) Established chronic beryllium disease.

(3) Any injury, illness, impairment, or disability sustained as a consequence of the conditions specified in paragraphs (b)(1) and (2) of this section.

§ 30.206 How does a claimant prove that the employee was a ''covered beryllium employee'' exposed to beryllium dust, particles or vapor in the performance of duty?

(a) Proof of employment at or physical presence at a DOE facility, or a facility owned, operated, or occupied by a beryllium vendor, because of employment by the United States, a beryllium vendor, or a contractor or subcontractor of a beryllium vendor during a period when beryllium dust, particles, or vapor may have been present at such a facility, may be made by the submission of any trustworthy records that, on their face or in conjunction with other such records, establish that the employee was employed or present at a covered facility and the time period of such employment or presence.

(b) If the evidence shows that exposure occurred while the employee was employed or present at a facility during a time frame that is outside the relevant time frame indicated for that facility by DOE, OWCP may request that DOE provide additional information on the facility. OWCP will determine whether the evidence of record supports enlarging the relevant time frame for that facility.

(c) If the evidence shows that exposure occurred while the employee was employed or present at a facility that would have to be designated by DOE as a beryllium vendor under section 7384m of the Act to be a covered facility, and that the facility has not been so designated, OWCP will deny the claim on the ground that the facility is not a covered facility.

(d) Records from the following sources may be considered as evidence for purposes of establishing employment or presence at a covered facility:

(1) Records or documents created by any Federal government agency (including verified information submitted for security clearance), any tribal government, or any State, county, city or local government office, agency, department, board or other entity, or other public agency or office.

(2) Records or documents created by any vendor, processor, or producer of beryllium or related products designated as a beryllium vendor by the DOE in accordance with section 7384m of the Act.

(3) Records or documents created by any regularly conducted business activity or entity that acted as a contractor or subcontractor to the DOE.

§ 30.207 How does a claimant prove a diagnosis of a covered beryllium disease?

(a) Written medical documentation is required in all cases to prove that the employee developed a covered beryllium illness. Proof that the employee developed a covered beryllium illness must be made by using the procedures outlined in paragraphs (b), (c), or (d) of this section.

(b) Beryllium sensitivity or sensitization is established with an abnormal LPT performed on either blood or lung lavage cells.

(c) Chronic beryllium disease is established in the following manner:

(1) For diagnoses on or after January 1, 1993, beryllium sensitivity (as established in accordance with paragraph (b) of this section), together with lung pathology consistent with chronic beryllium disease, including the following:

(i) A lung biopsy showing granulomas or a lymphocytic process consistent with chronic beryllium disease;

(ii) A computerized axial tomography scan showing changes consistent with chronic beryllium disease; or

(iii) Pulmonary function or exercise testing showing pulmonary deficits consistent with chronic beryllium disease.

(2) For diagnoses before January 1, 1993, the presence of the following:

(i) Occupational or environmental history, or epidemiologic evidence of beryllium exposure; and

(ii) Any three of the following criteria:

(A) Characteristic chest radiographic (or computed tomography (CT)) abnormalities.

(B) Restrictive or obstructive lung physiology testing or diffusing lung capacity defect.

(C) Lung pathology consistent with chronic beryllium disease.

(D) Clinical course consistent with a chronic respiratory disorder.

(E) Immunologic tests showing beryllium sensitivity (skin patch test or beryllium blood test preferred).

(d) An injury, illness, impairment or disability sustained as a consequence of beryllium sensitivity or established chronic beryllium disease must be established with a fully rationalized medical report by a physician that shows the relationship between the injury, illness, impairment or disability and the beryllium sensitivity or established chronic beryllium disease. Neither the fact that the injury, illness, impairment or disability manifests itself after a diagnosis of beryllium sensitivity or established chronic beryllium disease, nor the belief of the claimant that the injury, illness, impairment or disability was caused by the beryllium sensitivity or established chronic beryllium disease is sufficient in itself to prove a causal relationship.

Eligibility Criteria for Claims Relating to Cancer

§ 30.210 What are the criteria for eligibility for benefits relating to cancer?

To establish eligibility for benefits for cancer, an employee or his or her survivor must show that:

(a) The employee has been diagnosed with one of the forms of cancer specified in § 30.5(dd) of this part; and

(1) Is a member of the Special Exposure Cohort (as described in § 30.214(a) of this subpart) who, as a DOE employee or DOE contractor employee, contracted the specified cancer after beginning employment at a DOE facility; or

(2) Is a member of the Special Exposure Cohort (as described in § 30.214(a) of this subpart) who, as an atomic weapons employee, contracted the specified cancer after beginning employment at an atomic weapons employer facility (as defined in § 30.5(e)); or

(b) The employee has been diagnosed with cancer; and

(1)(i) Is/was a DOE employee who contracted that cancer after beginning employment at a DOE facility; or

(ii) Is/was a DOE contractor employee who contracted that cancer after beginning employment at a DOE facility; or

(iii) Is/was an atomic weapons employee who contracted that cancer after beginning employment at an atomic weapons employer facility; and

(2) The cancer was at least as likely as not related to the employment at the DOE facility or atomic weapons employer facility; or

(c) The employee has been diagnosed with an illness or disease that arose as a consequence of the accepted cancer.

§ 30.211 How does a claimant establish that the employee has or had contracted cancer?

A claimant establishes that the employee has or had contracted cancer with medical evidence that sets forth the diagnosis of cancer and the date on which that diagnosis was made.

§ 30.212 How does a claimant establish that the employee contracted cancer after beginning employment at a DOE facility or an atomic weapons employer facility?

(a) Proof of employment by the DOE or a DOE contractor at a DOE facility, or by an atomic weapons employer at an atomic weapons employer facility, may be made by the submission of any trustworthy records that, on their face or in conjunction with other such records, establish that the employee was so employed and the time period(s) of such employment.

(b) If the evidence shows that exposure occurred while the employee was employed at a facility during a time frame that is outside the relevant time frame indicated for that facility by DOE, OWCP may request that DOE provide additional information on the facility. OWCP will determine whether the evidence of record supports enlarging the relevant time frame for that facility.

(c) If the evidence shows that exposure occurred while the employee was employed by an employer that would have to be designated by DOE as an atomic weapons employer under section 7384l(4) of the Act to be a covered employer, and that the employer has not been so designated, OWCP will deny the claim on the ground that the employer is not a covered atomic weapons employer.

(d) Records from the following sources may be considered as evidence for purposes of establishing employment or presence at a covered facility:

(1) Records or documents created by any Federal government agency (including verified information submitted for security clearance), any tribal government, or any State, county, city or local government office, agency, department, board or other entity, or other public agency or office.

(2) Records or documents created as a byproduct of any regularly conducted business activity or by an entity that acted as a contractor or subcontractor to the DOE.

§ 30.213 How does a claimant establish that the cancer was at least as likely as not related to the employment at the DOE facility or the atomic weapons employer facility?

HHS, with the advice of the Advisory Board on Radiation and Worker Health, has issued guidelines for making the determination whether cancer was at least as likely as not related to the employment at the DOE facility or the atomic weapons employer facility at 42 CFR part 81. Claimants should consult those guidelines for information regarding the type of evidence that will be considered by OWCP, in addition to the employee's radiation dose reconstruction that will be provided by HHS, in making this determination.

§ 30.214 How does a claimant establish that the employee is a member of the Special Exposure Cohort?

(a) For purposes of establishing eligibility as a member of the Special Exposure Cohort (SEC) under

§ 30.210(a), the employee must have been a DOE employee, a DOE contractor employee, or an atomic weapons employee who meets any of the following requirements:

(1) The employee was so employed for a number of workdays aggregating at least 250 workdays before February 1, 1992, at a gaseous diffusion plant located in Paducah, Kentucky; Portsmouth, Ohio; or Oak Ridge, Tennessee; and during such employment:

(i) Was monitored through the use of dosimetry badges for exposure at the plant of the external parts of the employee's body to radiation; or

(ii) Worked in a job that had exposures comparable to a job that is or was monitored through the use of dosimetry badges.

(2) The employee was so employed before January 1, 1974, by DOE or a DOE contractor or subcontractor on Amchitka Island, Alaska, and was exposed to ionizing radiation in the performance of duty related to the Long Shot, Milrow, or Cannikin underground nuclear tests.

(3) The employee is a member of a group or class of employees subsequently designated as additional members of the SEC by HHS.

(b) For purposes of satisfying the 250 workday requirement of paragraph (a)(1) of this section, the claimant may aggregate the days of service at more than one gaseous diffusion plant.

(c) Proof of employment by the DOE or a DOE contractor, or an atomic weapons employer, for the requisite time periods set forth in paragraph (a) of this section, may be made by the submission of any trustworthy records that, on their face or in conjunction with other such records, establish that the employee was so employed and the time period(s) of such employment. If the evidence shows that exposure occurred while the employee was employed by an employer that would have to be designated by DOE as an atomic weapons employer under section 7384l(4) of the Act to be a covered employer, and that the employer has not been so designated, OWCP will deny the claim on the ground that the employer is not a covered atomic weapons employer.

(d) Records from the following sources may be considered as evidence for purposes of establishing employment or presence at a covered facility:

(1) Records or documents created by any Federal government agency (including verified information submitted for security clearance), any tribal government, or any State, county, city or local government office, agency, department, board or other entity, or other public agency or office.

(2) Records or documents created as a byproduct of any regularly conducted business activity or by an entity that acted as a contractor or subcontractor to the DOE.

§ 30.215 How does a claimant establish that the employee has been diagnosed with cancer or has sustained a consequential injury, illness or disease?

(a) Evidence that the employee contracted a specified cancer (in the case of SEC members) or other cancer should include a written medical document that contains an explicit statement of diagnosis and the date on which that diagnosis was first made.

(b) An injury, illness, impairment or disability sustained as a consequence of a diagnosed cancer covered by the provisions of § 30.210(a) and (b) must be established with a fully rationalized medical report by a physician that shows the relationship between the injury, illness, impairment or disability and the covered cancer. Neither the fact that the injury, illness, impairment or disability manifests itself after a diagnosis of a covered cancer, nor the belief of the claimant that the injury, illness, impairment or disability was caused by the covered cancer is sufficient in itself to prove a causal relationship.

Eligibility Criteria for Claims Relating to Chronic Silicosis

§ 30.220 What are the criteria for eligibility for benefits relating to chronic silicosis?

To establish eligibility for benefits for chronic silicosis, an employee or his or her survivor must show that:

(a) The employee is a DOE employee, or a DOE contractor employee, who was present for a number of workdays aggregating at least 250 workdays during the mining of tunnels at a DOE facility (as defined in § 30.5(v)) located in Nevada or Alaska for tests or experiments related to an atomic weapon, and has been diagnosed with chronic silicosis (as defined in § 30.5(j)); or

(b) The employee has been diagnosed with an illness or disease that arose as a consequence of the accepted chronic silicosis.

§ 30.221 How does a claimant prove exposure to silica in the performance of duty?

(a) Proof of the employee's employment and presence for the requisite days during the mining of tunnels at a DOE facility located in Nevada or Alaska for tests or experiments related to an atomic weapon may be made by the submission of any trustworthy records that, on their face or in conjunction with other such records, establish that the employee was so employed and present at these sites and the time period(s) of such employment and presence.

(b) If the evidence shows that exposure occurred while the employee was employed and present at a facility during a time frame that is outside the relevant time frame indicated for that facility by DOE, OWCP may request that DOE provide additional information on the facility. OWCP will determine whether the evidence of record supports enlarging the relevant time frame for that facility.

(c) Records from the following sources may be considered as evidence for purposes of establishing proof of employment or presence at a covered facility:

(1) Records or documents created by any Federal government agency (including verified information submitted for security clearance), any tribal government, or any State, county, city or local government office, agency, department, board or other entity, or other public agency or office.

(2) Records or documents created as a byproduct of any regularly conducted business activity or by an entity that acted as a contractor or subcontractor to the DOE.

(d) For purposes of satisfying the 250 workday requirement of § 30.220(a), the claimant may aggregate the days of service at more than one qualifying site.

§ 30.222 How does a claimant establish that the employee has been diagnosed with chronic silicosis or has sustained a consequential injury, illness or disease?

(a) A written diagnosis of the employee's chronic silicosis (as defined in § 30.5(j)) shall be made by a medical doctor and accompanied by one of the following:

(1) A chest radiograph, interpreted by an individual certified by the National Institute for Occupational Safety and Health as a B reader, classifying the existence of pneumoconioses of category 1/0 or higher; or

(2) Results from a computer assisted tomograph or other imaging technique that are consistent with silicosis; or

(3) Lung biopsy findings consistent with silicosis.

(b) An injury, illness, impairment or disability sustained as a consequence of accepted chronic silicosis covered by the provisions of § 30.220(a) must be established with a fully rationalized medical report by a physician that shows the relationship between the injury, illness, impairment or disability

and the accepted chronic silicosis. Neither the fact that the injury, illness, impairment or disability manifests itself after a diagnosis of accepted chronic silicosis, nor the belief of the claimant that the injury, illness, impairment or disability was caused by the accepted chronic silicosis, is sufficient in itself to prove a causal relationship.

Eligibility Criteria for Certain Uranium Employees

§ 30.225 What are the criteria for eligibility for benefits for certain uranium employees?

In order to be eligible for benefits under this section, the claimant must establish the criteria set forth in either paragraph (a) or paragraph (b) of this section:

(a) The Attorney General has determined that the claimant is a covered uranium employee who is entitled to payment of $100,000 as compensation due under section 5 of the RECA for a claim made under that statute (there is, however, no requirement that the claimant or surviving eligible beneficiary has actually received payment pursuant to the RECA). If a deceased employee's survivor has been determined to be entitled to such an award, his or her survivor(s), if any, will only be entitled to EEOICPA compensation in accordance with section 7384u(e) of the Act.

(b) The covered uranium employee has been diagnosed with an illness or disease that arose as a consequence of the medical condition for which he or she was determined to be entitled to payment of $100,000 as compensation due under section 5 of the RECA.

§ 30.226 How does a claimant establish that a covered uranium employee has sustained a consequential injury, illness or disease?

An injury, illness, impairment or disability sustained as a consequence of a medical condition covered by the provisions of § 30.225(a) must be established with a fully rationalized medical report by a physician that shows the relationship between the injury, illness, impairment or disability and the accepted medical condition. Neither the fact that the injury, illness, impairment or disability manifests itself after a diagnosis of a medical condition covered by the provisions of § 30.225(a), nor the belief of the claimant that the injury, illness, impairment or disability was caused by such a condition, is sufficient in itself to prove a causal relationship.

Subpart D—Adjudicatory Process

§ 30.300 What process will OWCP use to decide claims and to provide for administrative review of those decisions?

OWCP district offices will issue recommended decisions with respect to claims. All recommended decisions, including those granting and denying benefits under the Act, will be forwarded to the Final Adjudication Branch (FAB). Claimants will be given an opportunity to object to all or part of the recommended decision before the FAB. The FAB will consider any objections filed by a claimant and conduct a hearing, if requested to do so by the claimant, before issuing a final decision on the claim.

Recommended Decisions on Claims

§ 30.305 How does OWCP determine entitlement to EEOICPA compensation?

(a) In reaching a recommended decision with respect to EEOICPA compensation, OWCP considers the claim presented by the claimant, the factual and medical evidence of record, the dose reconstruction report calculated by HHS (if any), any report submitted by DOE and the results of such investigation as OWCP may deem necessary.

(b) The OWCP claims staff applies the law, the regulations and its procedures to the facts as reported or obtained upon investigation.

§ 30.306 What does the recommended decision contain?

The recommended decision shall contain findings of fact and conclusions of law. The recommended decision may accept or reject the claim in its entirety, or it may accept or reject a portion of the claim presented. It is accompanied by a notice of the claimant's right to file objections with, and request a hearing before, the FAB.

§ 30.307 To whom is the recommended decision sent?

(a) A copy of the recommended decision will be mailed to the claimant's last known address. However, if the claimant has a designated representative before OWCP, the copy of the recommended decision will be mailed to the representative. Notification to either the claimant or the representative will be considered notification to both parties.

(b) At the same time it issues a recommended decision on a claim, the OWCP district office will forward the record of such claim to the FAB. Any new evidence submitted to the district office following the issuance of the recommended decision will also be forwarded to the FAB for consideration.

Hearings and Final Decisions on Claims

§ 30.310 What must the claimant do if he or she objects to the recommended decision or wants to request a hearing?

(a) Within 60 days from the date the recommended decision is issued, the claimant must state, in writing, whether he or she objects to any of the findings of fact and/or conclusions of law contained in such decision, including HHS's reconstruction of the radiation dose to which the employee was exposed (if any), and whether a hearing is desired. This written statement should be filed with the FAB at the address indicated in the notice accompanying the recommended decision.

(b) For purposes of determining whether the written statement referred to in paragraph (a) of this section has been timely filed with the FAB, the statement will be considered to be ''filed'' on the date that the claimant mails it to the FAB, as determined by postmark, or on the date that such written statement is actually received by the FAB, whichever is the earliest determinable date.

§ 30.311 What happens if the claimant does not object to the recommended decision or request a hearing within 60 days?

(a) If the claimant does not file a written statement that objects to the recommended decision and/or requests a hearing within the period of time allotted in § 30.310, the FAB may issue a final decision accepting the recommendation of the district office as provided in § 30.316.

(b) If the recommended decision accepts all or part of a claim for compensation, the FAB may issue a final decision at any time after receiving written notice from the claimant that he or she waives any objection to all or part of the recommended decision.

§ 30.312 What will the FAB do if the claimant objects to the recommended decision but does not request a hearing?

If the claimant files a written statement that objects to the recommended decision within the period of time allotted in § 30.310 but does not request a hearing, the FAB will consider any objections by means of a review of the written record. If the claimant only objects to part of the recommended decision, the FAB may issue a final decision accepting the remaining part of the recommendation of the district office without first reviewing the written record (see § 30.316).

§ 30.313 How is a review of the written record conducted?

(a) The FAB reviewer will consider the written record forwarded by the district office and any additional evidence and/or argument submitted by the claimant. The reviewer may also conduct whatever investigation is deemed necessary.

(b) The claimant should submit, with his or her written statement that objects to the recommended decision, all evidence or argument that he or she wants to present to the reviewer. However, evidence or argument may be submitted at any time up to the date specified by the reviewer for the submission of such evidence or argument.

(c) Any objection that is not presented to the FAB reviewer, including any objection to HHS's reconstruction of the radiation dose to which the employee was exposed (if any), whether or not the pertinent issue was previously presented to the district office, is deemed waived for all purposes.

§ 30.314 How is a hearing conducted?

(a) The FAB reviewer retains complete discretion to set the time and place of the hearing, including the amount of time allotted for the hearing, considering the issues to be resolved. At the discretion of the reviewer, the hearing may be conducted by telephone or teleconference. As part of the hearing process, the FAB reviewer will consider the written record forwarded by the district office and any additional evidence and/or argument submitted by the claimant. The reviewer may also conduct whatever investigation is deemed necessary.

(1) The FAB reviewer will try to set the hearing at a place that is within commuting distance of the claimant's residence, but will not be able to do so in all cases. Therefore, for reasons of economy, the claimant may be required to travel a roundtrip distance of up to 200 miles to attend the hearing.

(2) In unusual circumstances, the FAB reviewer may set a place for the hearing that is more than 200 miles roundtrip from the claimant's residence. However, in that situation, OWCP will reimburse the claimant for reasonable and necessary travel expenses incurred to attend the hearing if he or she submits a written reimbursement request that documents such expenses.

(b) Unless otherwise directed in writing by the claimant, the FAB reviewer will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled hearing date. If the claimant only objects to part of the recommended decision, the FAB reviewer may issue a final decision accepting the remaining part of the recommendation of the district office without first holding a hearing (see § 30.316). Any objection that is not presented to the FAB reviewer, including any objection to HHS's reconstruction of the radiation dose to which the employee was exposed (if any), whether or not the pertinent issue was previously presented to the district office, is deemed waived for all purposes.

(c) The hearing is an informal process, and the reviewer is not bound by common law or statutory rules of evidence, or by technical or formal rules of procedure. The reviewer may conduct the hearing in such manner as to best ascertain the rights of the claimant. During the hearing process, the claimant may state his or her arguments and present new written evidence and/or testimony in support of the claim.

(d) Testimony at hearings is recorded, then transcribed and placed in the record. Oral testimony shall be made under oath.

(e) The FAB reviewer will furnish a transcript of the hearing to the claimant, who has 20 days from the date it is sent to submit any comments to the reviewer.

(f) The claimant will have 30 days after the hearing is held to submit additional evidence or argument, unless the reviewer, in his or her sole discretion, grants an extension. Only one such extension may be granted.

(g) The reviewer determines the conduct of the hearing and may terminate the hearing at any time he or she determines that all relevant evidence has been obtained, or because of misbehavior on the part of the claimant and/or representative at or near the place of the oral presentation.

§ 30.315 May a claimant postpone a hearing?

(a) The FAB will entertain any reasonable request for scheduling the hearing, but such requests should be made at the time the hearing is requested. Scheduling is at the sole discretion of the FAB reviewer, and is not reviewable. Once the hearing is scheduled and appropriate written notice has been mailed, it cannot be postponed at the claimant's request for any reason except those stated in paragraph (b) of this section, unless the FAB reviewer can reschedule the hearing on the same docket (that is, during the same hearing trip). When the request to postpone a scheduled hearing does not meet one of the tests of paragraph (b) of this section and cannot be accommodated on the same docket, no further opportunity for a hearing will be provided. Instead, the FAB will consider the claimant's objections by means of a review of the written record. In the alternative, a teleconference may be substituted for the hearing at the discretion of the reviewer.

(b) Where the claimant is hospitalized for a reason which is not elective, or where the death of the claimant's parent, spouse, or child prevents attendance at the hearing, a postponement may be granted upon proper documentation.

(c) At any time after requesting a hearing, the claimant can request a change to a review of the written record by making a written request to the FAB. Once such a change is made, no further opportunity for a hearing will be provided.

§ 30.316 How does the FAB issue a final decision on a claim?

(a) If the claimant does not file a written statement that objects to the recommended decision and/or requests a hearing within the period of time allotted in § 30.310, or if the claimant waives any objections to all or part of the recommended decision, the FAB may issue a final decision accepting the recommendation of the district office, either in whole or in part (see §§ 30.311, 30.312 and 30.314(b)).

(b) If the claimant objects to all or part of the recommended decision, the FAB reviewer will issue a final decision on the claim after either the hearing or the review of the written record, and after completing such further development of the case as he or she may deem necessary.

(c) Any recommended decision (or part thereof) that is pending either a hearing or a review of the written record for more than one year from the date the FAB received the written statement that objected to the recommended decision and/or requested a hearing shall be considered a final decision of the FAB on the one-year anniversary of such date. Any recommended decision described in § 30.311 that is pending at the FAB for more than one year from the date that the period of time described in § 30.310 expired shall be considered a final decision of the FAB on the one-year anniversary of such date.

(d) The decision of the FAB, whether issued pursuant to paragraph (a), (b) or (c) of this section, shall be final upon the date of issuance of such decision, unless a timely request for reconsideration under § 30.319 has been filed.

(e) A copy of the final decision of the FAB will be mailed to the claimant's

last known address. However, if the claimant has a designated representative before OWCP, the copy of the final decision will be mailed to the representative. Notification to either the claimant or the representative will be considered notification to both parties.

§ 30.317 Can the FAB request a further response from the claimant or remand a claim to the district office?

At any time before the issuance of its final decision, the FAB may request that the claimant submit additional evidence or argument, or remand the claim to the district office for further development without issuing a final decision, whether or not requested to do so by the claimant.

§ 30.318 Can the FAB consider an objection to a determination by HHS with respect to an employee's dose reconstruction?

(a) If the claimant objects to HHS's reconstruction of the radiation dose to which the employee was exposed, the FAB will evaluate the factual findings upon which HHS based its dose reconstruction. If these factual findings do not appear to be supported by substantial evidence, the claim will be remanded to the district office for referral to HHS for further consideration.

(b) The methodology used by HHS in arriving at reasonable estimates of the radiation doses received by an employee, established by regulations issued by HHS at 42 CFR part 82, is binding on the FAB. The FAB reviewer may determine, however, that arguments concerning the application of that methodology should be considered by HHS and may remand the case to the district office for referral to HHS for such consideration.

§ 30.319 May a claimant request reconsideration of a final decision of the FAB?

(a) A claimant may request reconsideration of a final decision of the FAB by filing a written request with the FAB within 30 days from the date of issuance of such decision. If a timely request for reconsideration is made, the decision in question will no longer be considered ''final'' under § 30.316(d).

(b) For purposes of determining whether the written request referred to in paragraph (a) of this section has been timely filed with the FAB, the request will be considered to be ''filed'' on the date that the claimant mails it to the FAB, as determined by postmark, or on the date that such written request is actually received by the FAB, whichever is the earliest determinable date.

(c) If the FAB grants the request for reconsideration, it will consider the written record of the claim again and issue a new final decision on the claim. A hearing is not available as part of the reconsideration process. If the FAB denies the request for reconsideration, the decision in question shall be considered ''final'' on the date the request is denied.

(d) A claimant may not seek judicial review of a decision on his or her claim under the EEOICPA until OWCP's decision on the claim is final pursuant to § 30.316(d).

Reopening Claims

§ 30.320 Can a claim be reopened after the FAB has issued a final decision?

(a) At any time after the FAB has issued a final decision pursuant to § 30.316, and without regard to whether new evidence or information is presented or obtained, the Director for Energy Employees Occupational Illness Compensation may reopen a claim and return it to the district office for such further development as may be necessary, to be followed by a new recommended decision. The Director may also vacate any other type of decision issued by the FAB.

(b) At any time after the FAB has issued a final decision pursuant to § 30.316, a claimant may file a written request that the Director for Energy Employees Occupational Illness Compensation reopen his or her claim, provided that the claimant also submits new evidence of either covered employment or exposure to radiation, beryllium or silica, or identifies either a change in the probability of causation guidelines, a change in the dose reconstruction methods or an addition of a class of employees to the Special Exposure Cohort.

(1) If the Director concludes that the evidence submitted or matter identified in support of the claimant's request is material to the claim, the Director will reopen the claim and return it to the district office for such further development as may be necessary, to be followed by a new recommended decision.

(2) New evidence of a medical condition described in subpart C of these regulations is not sufficient to support a written request to reopen a claim for such a condition under paragraph (b) of this section.

(c) The decision whether or not to reopen a claim under this section is solely within the discretion of the Director for Energy Employees Occupational Illness Compensation and is not reviewable. If the Director reopens a claim pursuant to paragraphs (a) or (b) of this section, the resulting new recommended decision will be subject to the adjudicatory process described in this subpart. However, neither the district office nor the FAB can consider any objection concerning the Director's decision to reopen a claim under this section.

Subpart E—Medical and Related Benefits

Medical Treatment and Related Issues

§ 30.400 What are the basic rules for obtaining medical care?

(a) A covered employee who fits into at least one of the compensable claim categories is entitled to receive all medical services, appliances or supplies that a qualified physician prescribes or recommends and that OWCP considers necessary to treat his or her occupational illness, retroactive to the date the employee filed a claim for benefits under the EEOICPA (see § 30.100(c)). The employee need not be disabled to receive such treatment. When a survivor receives payment, OWCP will pay for such treatment if the covered employee died before the claim was paid. If there is any doubt as to whether a specific service, appliance or supply is necessary to treat the occupational illness, the employee should consult OWCP prior to obtaining it.

(b) Any qualified physician or qualified hospital may provide such services, appliances and supplies. A qualified provider of medical support services may also furnish appropriate services, appliances, and supplies. OWCP may apply a test of cost-effectiveness to appliances and supplies. With respect to prescribed medications, OWCP may require the use of generic equivalents where they are available.

§ 30.401 What are the special rules for the services of chiropractors?

(a) The services of chiropractors that may be reimbursed by OWCP are limited to treatment to correct a spinal subluxation. The costs of physical and related laboratory tests performed by or required by a chiropractor to diagnose such a subluxation are also payable.

(b) A diagnosis of spinal subluxation as demonstrated by x-ray to exist must appear in the chiropractor's report before OWCP can consider payment of a chiropractor's bill.

(c) A chiropractor may interpret his or her x-rays to the same extent as any other physician. To be given any weight, the medical report must state that x-rays support the finding of spinal

subluxation. OWCP will not necessarily require submission of the x-ray, or a report of the x-ray, but the report must be available for submission on request.

(d) A chiropractor may also provide services in the nature of physical therapy under the direction of a qualified physician.

§ 30.402 What are the special rules for the services of clinical psychologists?

A clinical psychologist may serve as a physician within the scope of his or her practice as defined by State law. Therefore, a clinical psychologist may not serve as a physician for conditions that include a physical component unless the applicable State law allows clinical psychologists to treat physical conditions. A clinical psychologist may also perform testing, evaluation, and other services under the direction of a qualified physician.

§ 30.403 Will OWCP pay for the services of an attendant?

OWCP will authorize payment for personal care services under section 7384t of the Act, whether or not such care includes medical services, so long as the personal care services have been determined to be medically necessary and are provided by a home health aide, licensed practical nurse, or similarly trained individual.

§ 30.404 Will OWCP pay for transportation to obtain medical treatment?

(a) The employee is entitled to reimbursement of reasonable and necessary expenses, including transportation needed to obtain authorized medical services, appliances or supplies. To determine what is a reasonable distance to travel, OWCP will consider the availability of services, the employee's condition, and the means of transportation. Generally, a roundtrip distance of up to 200 miles is considered a reasonable distance to travel.

(b) If travel of more than 200 miles is contemplated, or air transportation or overnight accommodations will be needed, the employee must submit a written request to OWCP for prior approval with information describing the circumstances and necessity for such travel expenses. OWCP will approve the request if it determines that the travel expenses are reasonable and necessary. Requests for travel expenses that are often approved include those resulting from referrals to a specialist for further medical treatment, and those involving air transportation of an employee who lives in a remote geographical area with limited local medical services.

(c) The standard form designated for medical travel refund requests is Form OWCP–957 and should be used to seek reimbursement under this section. This form can be obtained from OWCP.

§ 30.405 After selecting a treating physician, may an employee choose to be treated by another physician instead?

(a) OWCP will provide the employee with an opportunity to designate a treating physician when it accepts the claim. When the physician originally selected to provide treatment for an occupational illness refers the employee to a specialist for further medical care, the employee need not consult OWCP for approval. In all other instances, however, the employee must submit a written request to OWCP with his or her reasons for desiring a change of physician.

(b) OWCP will approve the request if it determines that the reasons submitted are sufficient. Requests that are often approved include those for transfer of care from a general practitioner to a physician who specializes in treating the occupational illnesses covered by the EEOICPA, or the need for a new physician when an employee has moved.

§ 30.406 Are there any exceptions to these procedures for obtaining medical care?

In cases involving emergencies or unusual circumstances, OWCP may authorize treatment in a manner other than as stated in this subpart.

Directed Medical Examinations

§ 30.410 Can OWCP require an employee to be examined by another physician?

(a) OWCP sometimes needs a second opinion from a medical specialist. The employee must submit to examination by a qualified physician as often and at such times and places as OWCP considers reasonably necessary. Also, OWCP may send a case file for second opinion review where an actual examination is not needed, or where the employee is deceased.

(b) If the initial examination is disrupted by someone accompanying the employee, OWCP will schedule another examination with a different qualified physician. The employee will not be entitled to have anyone else present at the subsequent examination unless OWCP decides that exceptional circumstances exist. For example, where a hearing-impaired employee needs an interpreter, the presence of an interpreter would be allowed.

§ 30.411 What happens if the opinion of the physician selected by OWCP differs from the opinion of the physician selected by the employee?

(a) If one medical opinion holds more probative value, OWCP will base its determination of entitlement on that medical conclusion. A difference in medical opinion sufficient to be considered a conflict occurs when two reports of virtually equal weight and rationale reach opposing conclusions.

(b) If a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser or consultant, OWCP shall appoint a third physician to make an examination. This is called a referee examination. OWCP will select a physician who is qualified in the appropriate specialty and who has had no prior connection with the case. Also, a case file may be sent for referee medical review where there is no need for an actual examination, or where the employee is deceased.

(c) If the initial referee examination is disrupted by someone accompanying the employee, OWCP will schedule another examination with a different qualified physician. The employee will not be entitled to have anyone else present at the subsequent referee examination unless OWCP decides that exceptional circumstances exist. For example, where a hearing-impaired employee needs an interpreter, the presence of an interpreter would be allowed.

§ 30.412 Who pays for second opinion and referee examinations?

OWCP will pay second opinion and referee medical specialists directly. OWCP will also reimburse the employee all necessary and reasonable expenses incident to such an examination, including transportation costs and actual wages lost for the time needed to submit to an examination required by OWCP.

Medical Reports

§ 30.415 What are the requirements for medical reports?

In general, medical reports from the employee's attending physician should include the following:

(a) Dates of examination and treatment;

(b) History given by the employee;

(c) Physical findings;

(d) Results of diagnostic tests;

(e) Diagnosis;

(f) Course of treatment;

(g) A description of any other conditions found due to the claimed occupational illness;

(h) The treatment given or recommended for the claimed occupational illness; and

(i) All other material findings.

§ 30.416 How and when should medical reports be submitted?

(a) The initial medical report (and any subsequent reports) should be made in narrative form on the physician's letterhead stationery. The physician should use the EE–7 as a guide for the preparation of his or her initial medical report. The report should bear the physician's signature or signature stamp. OWCP may require an original signature on the report.

(b) The report shall be submitted directly to OWCP as soon as possible after medical examination or treatment is received, either by the employee or the physician.

§ 30.417 What additional medical information may OWCP require to support continuing payment of benefits?

In all cases requiring hospital treatment or prolonged care, OWCP will request detailed narrative reports from the attending physician at periodic intervals. The physician will be asked to describe continuing medical treatment for the occupational illness accepted by OWCP, a prognosis, and the physician's opinion as to the continuing causal relationship between the need for additional treatment and the covered occupational illness.

Medical Bills

§ 30.420 How are medical bills submitted?

Usually, medical providers submit bills directly for processing. The rules for submitting and processing bills are stated in subpart H of this part. An employee claiming reimbursement of medical expenses should submit an itemized bill as described in § 30.702.

§ 30.421 What are the time frames for submitting bills?

To be considered for payment, bills must be submitted by the end of the calendar year after the year when the expense was incurred, or by the end of the calendar year after the year when OWCP first accepted the claim as compensable, whichever is later.

§ 30.422 If OWCP reimburses an employee only partially for a medical expense, must the provider refund the balance of the amount paid to the employee?

(a) The OWCP fee schedule sets maximum limits on the amounts payable for many services. The employee may be only partially reimbursed for medical expenses because the amount he or she paid to the medical provider for a service exceeds the maximum allowable charge set by the OWCP fee schedule.

(b) If this happens, OWCP shall advise the employee of the maximum allowable charge for the service in question and of his or her responsibility to ask the provider to refund to the employee, or credit to the employee's account, the amount he or she paid that exceeds the maximum allowable charge. The provider may request reconsideration of the fee determination as set forth in § 30.712.

(c) If the provider does not refund to the employee or credit to his or her account the amount of money paid in excess of the charge that OWCP allows, the employee should submit documentation of the attempt to obtain such refund or credit to OWCP. OWCP may authorize reasonable reimbursement to the employee after reviewing the facts and circumstances of the case.

Subpart F—Survivors; Payments and Offsets; Overpayments

Survivors

§ 30.500 What special statutory definitions apply to survivors under the EEOICPA?

For the purposes of paying compensation to survivors, EEOICPA applies the following definitions:

(a) *Surviving spouse* means the wife or husband of a deceased covered employee who was married to that individual for at least one year immediately before the death of that individual.

(b) *Child or children* includes a recognized natural child of a deceased covered employee, a stepchild who lived with that individual in a regular parent-child relationship, and an adopted child of that individual.

(c) *Parent* includes fathers and mothers of a deceased covered employee through adoption.

(d) *Grandchild* means a child of a child of a deceased covered employee.

(e) *Grandparent* means a parent of a parent of a deceased covered employee.

§ 30.501 What order of precedence will OWCP use to determine which survivors are entitled to receive compensation under the EEOICPA?

If OWCP determines that a survivor or survivors are entitled to receive compensation under the EEOICPA because a covered employee who would otherwise have been entitled to benefits is deceased, that compensation will be disbursed as follows, subject to the qualifications set forth in § 30.5(ee)(2) of these regulations:

(a) If there is a surviving spouse, the compensation shall be paid to that individual.

(b) If there is no surviving spouse, the compensation shall be paid in equal shares to all children of the deceased covered employee.

(c) If there is no surviving spouse and no children, the compensation shall be paid in equal shares to the parents of the deceased covered employee.

(d) If there is no surviving spouse, no children and no parents, the compensation shall be paid in equal shares to all grandchildren of the deceased covered employee.

(e) If there is no surviving spouse, no children, no parents and no grandchildren, the compensation shall be paid in equal shares to the grandparents of the deceased covered employee.

(f) Notwithstanding the other paragraphs of this section, if there is a surviving spouse and at least one child of the deceased covered employee who is a minor at the time of payment and who is not a recognized natural child or adopted child of such surviving spouse, half of the compensation shall be paid to the surviving spouse, and the other half of the compensation shall be paid in equal shares to each child of the deceased covered employee who is a minor at the time of payment.

§ 30.502 When is entitlement for survivors determined for purposes of the EEOICPA?

Entitlement to any lump-sum payment for survivors under the EEOICPA will be determined as of the time OWCP makes such a payment.

Payment of Claims and Offset for Certain Payments

§ 30.505 What procedures will OWCP follow before it pays any compensation?

(a) In cases involving the approval of a claim, OWCP shall take all necessary steps to determine the amount of any offset of EEOICPA benefits, and to verify the identity of the covered employee or the eligible surviving beneficiary or beneficiaries. To perform these tasks, OWCP may conduct any investigation, require any claimant to provide or execute any affidavit, record or document, or authorize the release of any information as OWCP deems necessary to ensure that the compensation payment is made in the correct amount and to the correct person or persons. OWCP shall also require every claimant to execute and provide any necessary affidavit described in § 30.620 of these regulations. Should a claimant fail or refuse to execute an affidavit or release of information, or fail or refuse to provide a requested record or document or to provide access to information, such failure or refusal may be deemed to be a rejection of the

payment, unless the claimant does not have and cannot obtain the legal authority to provide, release, or authorize access to the required information, records, or documents.

(b) To determine the amount of any offset, OWCP shall require the covered employee or each eligible surviving beneficiary filing a claim under this part to execute and provide an affidavit (or declaration made under oath on Form EE–1 or EE–2) reporting the amount of any payment made pursuant to a final judgment or settlement in litigation (other than litigation for workers' compensation) seeking damages for any occupational illnesses covered by the EEOICPA. Even if someone other than the covered employee receives a payment pursuant to a final judgment or settlement in litigation seeking damages for any occupational illness covered by the EEOICPA (*e.g.*, the surviving spouse of a deceased covered employee), the receipt of any such payment must be reported since it constitutes a payment solely for an occupational illness covered by the EEOICPA.

(1) For the purposes of this paragraph only, ''litigation seeking damages'' refers to any request or demand for money by the covered employee, or by another individual if the covered employee is deceased, made or sought in a civil action or in anticipation of the filing of a civil action, solely for any occupational illness covered by the EEOICPA. This term does not also include any request or demand for money made or sought pursuant to a life insurance or health insurance contract, or any request or demand for money made or sought by an individual other than the covered employee in that individual's own right (*e.g.*, a spouse's claim for loss of consortium), or any request or demand for money made or sought by the covered employee or the estate of a deceased covered employee not for any occupational illness covered by the EEOICPA (*e.g.*, a covered employee's claim for damage to real or personal property).

(2) If a payment has been made pursuant to a final judgment or settlement in litigation seeking damages, OWCP shall subtract a portion of the dollar amount of such payment from the benefit payments to be made under the EEOICPA. OWCP will calculate the amount to be subtracted from the benefit payments in the following manner:

(i) OWCP will first determine the value of the payment made pursuant to either a final judgment or settlement in litigation seeking damages by adding the dollar amount of any monetary damages (other than contingent awards) and any medical expenses for treatment provided on or after the date the covered employee filed a claim for EEOICPA benefits that were paid for under the final judgment or settlement. In the event that these payments include a ''structured'' settlement (where a party makes an initial cash payment and also arranges, usually through the purchase of an annuity, for payments in the future), OWCP will usually accept the cost of the annuity to the purchaser as the dollar amount of the right to receive the future payments.

(ii) OWCP will then make certain deductions from the above dollar amount to arrive at the dollar amount to be subtracted from any unpaid EEOICPA benefits. Allowable deductions consist of attorney's fees OWCP deems reasonable, and itemized costs of suit (out-of-pocket expenditures not part of the normal overhead of a law firm's operation like filing fees, travel expenses, witness fees, and court reporter costs for transcripts) provided that adequate supporting documentation is submitted to OWCP.

(iii) The EEOICPA benefits that will be reduced will consist of any unpaid lump-sum payments and medical benefits payable in the future. In those cases where it has not yet paid EEOICPA benefits, OWCP will reduce such benefits on a dollar-for-dollar basis, beginning with the lump-sum payment first. If the amount to be subtracted exceeds the lump-sum payment, OWCP will reduce ongoing EEOICPA medical benefits payable in the future by the amount of any remaining surplus. This means that OWCP will apply the amount it would otherwise pay to reimburse the covered employee for any ongoing EEOICPA medical treatment to the remaining surplus until it is absorbed. In addition to this reduction of ongoing EEOICPA medical benefits, OWCP will not be the first payer for any medical expenses that are the responsibility of another party (who will instead be the first payer) as part of a final judgment or settlement in litigation seeking damages.

(3) The above reduction of EEOICPA benefits will not occur if an EEOICPA claimant has had his or her award under section 5 of the RECA reduced by the full amount of a payment made pursuant to a final judgment or settlement in litigation seeking damages. In that case, OWCP will not reduce EEOICPA benefits by the same amount (but will reduce EEOICPA benefits by the amount of any surplus final judgment or settlement payment that remains).

(c) Except as provided in § 30.506(b) of these regulations, when OWCP has verified the identity of every claimant who is entitled to the compensation payment, or to a share of the compensation payment, and has determined the correct amount of the payment or the share of the payment, OWCP shall notify every claimant, or every person with power of attorney for a claimant, and require such person or persons to sign a Form EE–20 indicating acceptance of the payment. Such form shall be signed and returned to OWCP within sixty days of the date of the form or within such greater period as may be allowed by OWCP. Failure to sign and return the form within the required time may be deemed to be a rejection of the payment. Signing and returning the form within the required time shall constitute acceptance of the payment, unless the individual who has signed the form dies prior to receiving the payment, in which case the person who then receives the payment shall return it to OWCP for redetermination of the correct disbursement of the payment. No payment shall be made until OWCP has made a determination concerning the survivors related to a respective claim for benefits.

§ 30.506 To whom and in what manner will OWCP pay compensation?

(a) Except with respect to claims related to beryllium sensitivity, payment shall be made to the covered employee, or to the person with power of attorney for the covered employee, unless the covered employee is deceased at the time of the payment. In all cases involving a deceased covered employee, payment shall be made to the eligible surviving beneficiary or beneficiaries, or to every person with power of attorney for an eligible surviving beneficiary, in accordance with the terms and conditions specified in sections 7384s(e) and 7384u(e) of the EEOICPA.

(b) Compensation for any consequential illness or disease is limited to payment of medical benefits for that illness or disease.

(c) Rejected compensation payments, or shares of compensation payments, shall not be distributed to other eligible surviving beneficiaries, but shall be returned to the Fund.

(d) No covered employee may receive more than one lump-sum payment under these regulations for any occupational illnesses he or she contracted. However, any individual, including a covered employee who has received a lump-sum payment for his or her own occupational illness, may receive one lump-sum payment for each deceased covered employee for whom he or she qualifies as an eligible surviving beneficiary.

§ 30.507 What compensation will be provided to covered employees who only establish beryllium sensitivity?

The establishment of beryllium sensitivity does not entitle a covered employee, or the eligible surviving beneficiary or beneficiaries of a deceased covered employee, to any lump-sum payment provided for under the EEOICPA. Instead, a covered employee whose sole occupational illness is beryllium sensitivity shall receive beryllium sensitivity monitoring, as well as medical benefits for the treatment of this occupational illness in accordance with § 30.400 of these regulations.

§ 30.508 What is beryllium sensitivity monitoring?

Beryllium sensitivity monitoring shall consist of medical examinations to confirm and monitor the extent and nature of a covered employee's beryllium sensitivity. Monitoring shall also include regular medical examinations, with diagnostic testing, to determine if the covered employee has established chronic beryllium disease.

Overpayments

§ 30.510 How does OWCP notify an individual of a payment made on a claim?

(a) In addition to providing narrative descriptions to recipients of benefits paid or payable, OWCP includes on each check a clear indication of the reason the payment is being made. For payments sent by electronic funds transfer, a notification of the date and amount of payment appears on the statement from the recipient's financial institution.

(b) By these means, OWCP puts the recipient on notice that a payment was made and the amount of the payment. If the amount received differs from the amount indicated on the written notice or bank statement, the recipient is responsible for notifying OWCP of the difference. Absent affirmative evidence to the contrary, the beneficiary will be presumed to have received the notice of payment, whether mailed or transmitted electronically.

§ 30.511 What is an ''overpayment'' for purposes of the EEOICPA?

An ''overpayment'' is any amount of compensation paid under sections 7384s or 7384u of the EEOICPA to a recipient that constitutes:

(a) Payment where no amount is payable under this part; or

(b) Payment in excess of the correct amount determined by OWCP.

§ 30.512 How does OWCP determine that a beneficiary owes a debt as the result of the creation of an overpayment?

OWCP will notify the beneficiary of the existence and amount of any overpayment, and request the beneficiary to voluntarily return the overpaid amount or provide OWCP with evidence and/or argument contesting the existence or amount of an overpayment. Within 30 days of the issuance of such notification, a beneficiary who believes that OWCP made a mistake in determining the fact or amount of an overpayment may submit written comments and documentation in support of his or her position contesting the existence or amount of such overpayment to OWCP. After considering any written documentation or argument submitted to OWCP within the 30-day period, OWCP will issue a determination on the question of whether a debt is owed to OWCP. If OWCP determines that a debt is owed by the beneficiary, it will forward a copy of that determination to the beneficiary and advise him or her that unless the debt is voluntarily repaid it will pursue collection of the overpayment through DOL's debt collection procedures found at 29 CFR part 20.

§ 30.513 How are overpayments collected?

The overpaid individual shall refund to OWCP the amount of the overpayment as soon as possible. The overpayment is subject to the provisions of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701 *et seq.*), and may be reported to the Internal Revenue Service as income. If the individual fails to make such refund, OWCP may recover the same through any available means, including offset of salary, annuity benefits, or other Federal payments, including tax refunds as authorized by the Tax Refund Offset Program, or referral of the debt to a collection agency or to the Department of Justice.

Subpart G—Special Provisions

Representation

§ 30.600 May a claimant designate a representative?

(a) The claims process under this part is informal, and OWCP acts as an impartial evaluator of the evidence. A claimant need not be represented to file a claim or receive a payment. Nevertheless, a claimant may appoint one individual to represent his or her interests, but the appointment must be in writing.

(b) There can be only one representative at any one time, so after one representative has been properly appointed, OWCP will not recognize another individual as a representative until the claimant withdraws the authorization of the first individual. In addition, OWCP will recognize only certain types of individuals (see § 30.601).

(c) A properly appointed representative who is recognized by OWCP may make a request or give direction to OWCP regarding the claims process, including a hearing. This authority includes presenting or eliciting evidence, making arguments on facts or the law, and obtaining information from the case file, to the same extent as the claimant.

(1) Any notice requirement contained in this part or the EEOICPA is fully satisfied if served on the representative, and has the same force and effect as if sent to the claimant.

(2) A representative does not have authority to sign the Form EE–20, described in § 30.505(c) of these regulations, which indicates acceptance of a compensation payment.

§ 30.601 Who may serve as a representative?

A claimant may authorize any individual to represent him or her in regard to a claim under the EEOICPA, unless that individual's service as a representative would violate any applicable provision of law (such as 18 U.S.C. 205 and 208). A federal employee may act as a representative only:

(a) On behalf of immediate family members, defined as a spouse, children, parents, and siblings of the representative, provided no fee or gratuity is charged; or

(b) While acting as a union representative, defined as any officially sanctioned union official, and no fee or gratuity is charged.

§ 30.602 Who is responsible for paying the representative's fee?

A representative may charge the claimant a fee for services and for costs associated with the representation before OWCP. The claimant is solely responsible for paying the fee and other costs. OWCP will not reimburse the claimant, nor is it in any way liable for the amount of the fee and costs.

§ 30.603 Are there any limitations on what the representative may charge the claimant for his or her services?

(a) Notwithstanding any contract, the representative may not receive, for services rendered in connection with the claim, more than the percentages of the lump-sum payment made to the claimant set out in paragraph (b) of this section.

(b) The percentages referred to in paragraph (a) of this section are:

(1) 2 percent for the filing of an initial claim with OWCP; plus

(2) 10 percent with respect to objections to a recommended decision denying payment of lump-sum compensation.

(c) Any representative who violates this section shall be fined not more than $5,000.

(d) The fee limitations described in this section shall not apply with

respect to representative services that are not rendered in connection with a claim pending before OWCP.

Third Party Liability

§ 30.605 What rights does the United States have upon payment of compensation under the EEOICPA?

If an illness for which compensation is payable under the EEOICPA is caused, wholly or partially, by someone other than a federal employee acting within the scope of his or her employment, a DOE contractor or subcontractor, a beryllium vendor or atomic weapons employer, the United States is subrogated for the full amount of any payment of compensation under the EEOICPA to any right or claim that the individual to whom the payment was made may have against any person or entity on account of such illness.

§ 30.606 Under what circumstances must a recovery of money or other property in connection with an illness for which benefits are payable under the EEOICPA be reported to OWCP?

Any person who has filed an EEOICPA claim that has been accepted by OWCP (whether or not compensation has been paid), or who has received EEOICPA benefits in connection with a claim filed by another, is required to notify OWCP of the receipt of money or other property as a result of a settlement or judgment in connection with the circumstances of that claim.

§ 30.607 How is a structured settlement (that is, a settlement providing for receipt of funds over a specified period of time) treated for purposes of reporting the recovery?

In this situation, the recovery to be reported is the present value of the right to receive all of the payments included in the structured settlement, allocated in the case of multiple recipients in the same manner as single payment recoveries.

§ 30.608 How does the United States calculate the amount to which it is subrogated?

The subrogated amount of a specific claim consists of the total money paid by OWCP from the Energy Employees Occupational Illness Compensation Fund with respect to that claim to or on behalf of an employee or eligible surviving beneficiary, less charges for any medical file review (*i.e.*, the physician does not examine the employee) done at the request of OWCP. Charges for medical examinations also may be subtracted if the employee or eligible surviving beneficiary establishes that the examinations were required to be made available to the employee under a statute other than the EEOICPA.

§ 30.609 Is a settlement or judgment received as a result of allegations of medical malpractice in treating an illness covered by the EEOICPA a recovery that must be reported to OWCP?

Since an injury caused by medical malpractice in treating an illness covered by the EEOICPA is also covered under the EEOICPA, any recovery in a suit alleging such an injury is treated as a recovery that must be reported to OWCP.

§ 30.610 Are payments to an employee or eligible surviving beneficiary as a result of an insurance policy which the employee or eligible surviving beneficiary has purchased a recovery that must be reported to OWCP?

Since payments received by an employee or eligible surviving beneficiary pursuant to an insurance policy purchased by someone other than a liable third party are not payments in satisfaction of liability for causing an illness covered by the Act, they are not considered a recovery that must be reported to OWCP.

§ 30.611 If a settlement or judgment is received for more than one medical condition, can the amount paid on a single EEOICPA claim be attributed to different conditions for purposes of calculating the amount to which the United States is subrogated?

(a) All medical conditions accepted by OWCP in connection with a single claim are treated as the same illness for the purpose of computing the amount which the United States is entitled to offset in connection with the receipt of a recovery from a third party, except that an injury caused by medical malpractice in treating an illness covered under the EEOICPA will be treated as a separate injury.

(b) If an illness covered under the EEOICPA is caused under circumstances creating a legal liability in more than one person, other than the United States, a DOE contractor or subcontractor, a beryllium vendor or an atomic weapons employer, to pay damages, OWCP will determine whether recoveries received from one or more third parties should be attributed to separate conditions for which compensation is payable in connection with a single EEOICPA claim. If such an attribution is both practicable and equitable, as determined by OWCP, in its discretion, the conditions will be treated as separate injuries for purposes of calculating the amount to which the United States is subrogated.

Effect of Tort Suits Against Beryllium Vendors and Atomic Weapons Employers

§ 30.615 What type of tort suits filed against beryllium vendors or atomic weapons employers may disqualify certain claimants from receiving benefits under EEOICPA?

Section 7385d of the EEOICPA provides that a tort suit (other than an administrative or judicial proceeding for workers' compensation) solely for injuries arising out of an exposure to beryllium or radiation covered by the EEOICPA, filed against a beryllium vendor or an atomic weapons employer, by a covered employee, or an eligible surviving beneficiary or beneficiaries of a deceased covered employee without an independent cause of action, will disqualify that individual or individuals from receiving benefits under the EEOICPA unless the suit is terminated in accordance with the requirements of §§ 30.616 through 30.619 of these regulations.

§ 30.616 What happens if this type of tort suit was filed prior to October 30, 2000?

(a) If a tort suit described in § 30.615 was filed prior to October 30, 2000, the claimant or claimants will not be disqualified from receiving any EEOICPA benefits to which they may be found entitled if the tort suit was terminated in any manner prior to December 28, 2001.

(b) If a tort suit described in § 30.615 was filed prior to October 30, 2000 and was pending as of December 28, 2001, the claimant or claimants will be disqualified from receiving any EEOICPA benefits unless they dismiss the tort suit prior to December 31, 2003.

§ 30.617 What happens if this type of tort suit was filed during the period from October 30, 2000 through December 28, 2001?

(a) If a tort suit described in § 30.615 was filed during the period from October 30, 2000 through December 28, 2001, the claimant or claimants will be disqualified from receiving any EEOICPA benefits unless they dismiss the tort suit on or before the last permissible date described in paragraph (b) of this section.

(b) The last permissible date is the later of:

(1) April 30, 2003; or

(2) The date that is 30 months after the date the claimant or claimants first became aware that an illness of the covered employee may be connected to his or her exposure to beryllium or radiation covered by the EEOICPA. For purposes of determining when this 30-month period begins, ''the date the claimant or claimants first became aware'' will be deemed to be the date they received either a reconstructed dose from HHS, or a diagnosis of a covered beryllium illness, as applicable.

§ 30.618 What happens if this type of tort suit is filed after December 28, 2001?

(a) If a tort suit described in § 30.615 is filed after December 28, 2001, the claimant or claimants will be disqualified from receiving any EEOICPA benefits if a final court decision is entered against them.

(b) If a tort suit described in § 30.615 is filed after December 28, 2001 and a final court decision has not yet been entered against the claimant or claimants, they will also be disqualified from receiving any EEOICPA benefits unless they dismiss the tort suit on or before the last permissible date described in paragraph (c) of this section.

(c) The last permissible date is the later of:

(1) April 30, 2003; or

(2) The date that is 30 months after the date the claimant or claimants first became aware that an illness of the covered employee may be connected to his or her exposure to beryllium or radiation covered by the EEOICPA. For purposes of determining when this 30-month period begins, ''the date the claimant or claimants first became aware'' will be deemed to be the date they received either a reconstructed dose from HHS, or a diagnosis of a covered beryllium illness, as applicable.

§ 30.619 Do all the parties to this type of tort suit have to take these actions?

The type of tort suits described in § 30.615 may be filed by more than one individual, each with a different cause of action. For example, a tort suit may be filed against a beryllium vendor by both a covered employee and his or her spouse, with the covered employee filing for chronic beryllium disease and the spouse filing for loss of consortium due to the covered employee's exposure to beryllium. However, since the spouse of a living covered employee could not be an eligible surviving beneficiary under the EEOICPA, the spouse would not have to comply with the termination requirements of §§ 30.616 through 30.618. A similar result would occur if a tort suit were filed by both the spouse of a deceased covered employee and other family members (such as children of the deceased covered employee). In this case, the spouse would be the only eligible surviving beneficiary of the deceased covered employee under the EEOICPA because the other family members could not be eligible for benefits while he or she was alive. As a result, the spouse would be the only party to the tort suit who would have to comply with the termination requirements of §§ 30.616 through 30.618.

§ 30.620 How will OWCP ascertain whether a claimant filed this type of tort suit and if he or she has been disqualified from receiving any benefits under the EEOICPA?

Prior to authorizing payment on a claim, OWCP will require each claimant to execute and provide an affidavit stating if he or she filed a tort suit (other than an administrative or judicial proceeding for workers' compensation) against either a beryllium vendor or an atomic weapons employer, solely for injuries arising out of an exposure to beryllium or radiation covered by the EEOICPA, and if so, the current status of such tort suit. OWCP may also require the submission of any supporting evidence necessary to confirm the particulars of any affidavit provided under this section.

Subpart H—Information for Medical Providers

Medical Records and Bills

§ 30.700 What kinds of medical records must providers keep?

Federal government medical officers, private physicians and hospitals are required to keep records of all cases treated by them under the EEOICPA so they can supply OWCP with a history of the claimed occupational illness, a description of the nature and extent of the claimed occupational illness, the results of any diagnostic studies performed, and the nature of the treatment rendered.

§ 30.701 How are medical bills to be submitted?

(a) All charges for medical and surgical treatment, appliances or supplies furnished to employees, except for treatment and supplies provided by nursing homes, shall be supported by medical evidence as provided in § 30.700. The physician or provider shall itemize the charges on Form OWCP–1500 or CMS–1500 (for professional charges), Form OWCP–92 or UB–92 (for hospitals), Form 79–1A (for pharmacies), or other form as warranted, and submit the form promptly for processing.

(b) The provider shall identify each service performed using the Physician's Current Procedural Terminology (CPT) code, the Centers for Medicare and Medicaid Services Common Procedure Coding System (CCPCS) code, the National Drug Code (NDC), or the Revenue Center Code (RCC), with a brief narrative description. Where no code is applicable, a detailed description of services performed should be provided.

(c) The provider shall also state each diagnosed condition and furnish the corresponding diagnostic code using the ''International Classification of Disease, 9th Edition, Clinical Modification'' (ICD–9–CM), or as revised. A separate bill shall be submitted when the employee is discharged from treatment or monthly, if treatment for the occupational illness is necessary for more than 30 days.

(1)(i) Hospitals shall submit charges for medical and surgical treatment or supplies promptly on Form OWCP–92 or UB–92. The provider shall identify each outpatient radiology service, outpatient pathology service and physical therapy service performed, using CCPCS/CPT codes with a brief narrative description. The charge for each individual service, or the total charge for all identical services, should also appear on the form.

(ii) Other outpatient hospital services for which CCPCS/CPT codes exist shall also be coded individually using the coding scheme noted in this section. Services for which there are no CCPCS/CPT codes available can be presented using the RCCs described in the ''National Uniform Billing Data Elements Specifications,'' current edition. The provider shall also furnish the diagnostic code using the ICD–9–CM. If the outpatient hospital services include surgical and/or invasive procedures, the provider shall code each procedure using the proper CCPCS/CPT codes and furnishing the corresponding diagnostic codes using the ICD–9–CM.

(2) Pharmacies shall itemize charges for prescription medications, appliances, or supplies on Form 79–1A and submit them promptly for processing. Bills for prescription medications must include the NDC assigned to the product, the generic or trade name of the drug provided, the prescription number, the quantity provided, and the date the prescription was filled.

(3) Nursing homes shall itemize charges for appliances, supplies or services on the provider's billhead

stationery and submit them promptly for processing.

(d) By submitting a bill and/or accepting payment, the provider signifies that the service for which reimbursement is sought was performed as described and was necessary. In addition, the provider thereby agrees to comply with all regulations set forth in this subpart concerning the rendering of treatment and/or the process for seeking reimbursement for medical services, including the limitation imposed on the amount to be paid for such services.

(e) In summary, bills submitted by providers must: be itemized on Form OWCP–1500 or CMS–1500 (for physicians), Form OWCP–92 or UB–92 (for hospitals), or Form 79–1A (for pharmacies); contain the signature or signature stamp of the provider; and identify the procedures using CCPCS/CPT codes, RCCs, or NDCs. Otherwise, the bill may be returned to the provider for correction and resubmission.

§ 30.702 How should an employee prepare and submit requests for reimbursement for medical expenses, transportation costs, loss of wages, and incidental expenses?

(a) If an employee has paid bills for medical, surgical or other services, supplies or appliances due to an occupational illness, he or she may submit an itemized bill on Form OWCP–1500 or CMS–1500, together with a medical report as provided in § 30.700, for consideration.

(1) The provider of such service shall state each diagnosed condition and furnish the applicable ICD–9–CM code and identify each service performed using the applicable CCPCS/CPT code, with a brief narrative description of the service performed, or, where no code is applicable, a detailed description of that service.

(2) The bill must be accompanied by evidence that the provider received payment for the service from the employee and a statement of the amount paid. Acceptable evidence that payment was received includes, but is not limited to, a signed statement by the provider, a mechanical stamp or other device showing receipt of payment, a copy of the employee's canceled check (both front and back) or a copy of the employee's credit card receipt.

(b) If a hospital, pharmacy or nursing home provided services, the employee should submit the bill in accordance with the provisions of § 30.701(a). Any request for reimbursement must be accompanied by evidence, as described in paragraph (a) of this section, that the provider received payment for the service from the employee and a statement of the amount paid.

(c) The requirements of paragraphs (a) and (b) of this section may be waived if extensive delays in the filing or the adjudication of a claim make it unusually difficult for the employee to obtain the required information.

(d) Copies of bills submitted for reimbursement will not be accepted unless they bear the original signature of the provider, with evidence of payment. Payment for medical and surgical treatment, appliances or supplies shall in general be no greater than the maximum allowable charge for such service determined by OWCP, as set forth in § 30.705.

(e) An employee will be only partially reimbursed for a medical expense if the amount he or she paid to a provider for the service exceeds the maximum allowable charge set by OWCP's schedule. If this happens, OWCP will advise the employee of the maximum allowable charge for the service in question and of his or her responsibility to ask the provider to refund to the employee, or credit to the employee's account, the amount he or she paid which exceeds the maximum allowable charge. The provider may request reconsideration of the fee determination as set forth in § 30.712.

(f) If the provider fails to make appropriate refund to the employee, or to credit the employee's account, within 60 days after the employee requests a refund of any excess amount, or the date of a subsequent reconsideration decision which continues to disallow all or a portion of the appealed amount, OWCP will initiate exclusion procedures as provided by § 30.715.

(g) If the provider does not refund to the employee or credit to his or her account the amount of money paid in excess of the allowed charge, the employee should submit documentation of the attempt to obtain such refund or credit to OWCP. OWCP may authorize reasonable reimbursement to the employee after reviewing the facts and circumstances of the case.

§ 30.703 What are the time limitations on OWCP's payment of bills?

OWCP will pay providers and reimburse employees promptly for all bills received on an approved form and in a timely manner. However, no bill will be paid for expenses incurred if the bill is submitted more than one year beyond the end of the calendar year in which the expense was incurred or the service or supply was provided, or more than one year beyond the end of the calendar year in which the claim was first accepted as compensable by OWCP, whichever is later.

Medical Fee Schedule

§ 30.705 What services are covered by the OWCP fee schedule?

(a) Payment for medical and other health services furnished by physicians, hospitals and other providers for occupational illnesses shall not exceed a maximum allowable charge for such service as determined by OWCP, except as provided in this section.

(b) The schedule of maximum allowable charges does not apply to charges for services provided in nursing homes, but it does apply to charges for treatment furnished in a nursing home by a physician or other medical professional.

(c) The schedule of maximum allowable charges also does not apply to charges for appliances, supplies, services or treatment furnished by medical facilities of the U.S. Public Health Service or the Departments of the Army, Navy, Air Force and Veterans Affairs.

§ 30.706 How are the maximum fees defined?

For professional medical services, OWCP shall maintain a schedule of maximum allowable fees for procedures performed in a given locality. The schedule shall consist of: an assignment of a value to procedures identified by CCPCS/CPT code which represents the relative skill, effort, risk and time required to perform the procedure, as compared to other procedures of the same general class; an index based on a relative value scale that considers skill, labor, overhead, malpractice insurance and other related costs; and a monetary value assignment (conversion factor) for one unit of value in each of the categories of service.

§ 30.707 How are payments for particular services calculated?

Payment for a procedure identified by a CCPCS/CPT code shall not exceed the amount derived by multiplying the relative values for that procedure by the geographic indices for services in that area and by the dollar amount assigned to one unit in that category of service.

(a) The ''locality'' which serves as a basis for the determination of average cost is defined by the Bureau of Census Metropolitan Statistical Areas. OWCP shall base the determination of the relative per capita cost of medical care in a locality using information about enrollment and medical cost per county, provided by the Centers for Medicare and Medicaid Services (CMS).

(b) OWCP shall assign the relative value units (RVUs) published by CMS to all services for which CMS has made assignments, using the most recent

revision. Where there are no RVUs assigned to a procedure, OWCP may develop and assign any RVUs considered appropriate. The geographic adjustment factor shall be that designated by Geographic Practice Cost Indices for Metropolitan Statistical Areas as devised for CMS and as updated or revised by CMS from time to time. OWCP will devise conversion factors for each category of service, and in doing so may adapt CMS conversion factors as appropriate using OWCP's processing experience and internal data.

(c) For example, if the unit values for a particular surgical procedure are 2.48 for physician's work (W), 3.63 for practice expense (PE), and 0.48 for malpractice insurance (M), and the dollar value assigned to one unit in that category of service (surgery) is $61.20, then the maximum allowable charge for one performance of that procedure is the product of the three RVUs times the corresponding geographical indices for the locality times the conversion factor. If the geographic indices for the locality are 0.988(W), 0.948 (PE), and 1.174 (M), then the maximum payment calculation is:

$$[(2.48)(0.988) + (3.63)(0.948) + (0.48)(1.174)] \times \$61.20$$
$$[2.45 + 3.44 + .56] \times \$61.20$$
$$6.45 \times \$61.20 = \$394.74$$

§ 30.708 Does the fee schedule apply to every kind of procedure?

Where the time, effort and skill required to perform a particular procedure vary widely from one occasion to the next, OWCP may choose not to assign a relative value to that procedure. In this case the allowable charge for the procedure will be set individually based on consideration of a detailed medical report and other evidence. At its discretion, OWCP may set fees without regard to schedule limits for specially authorized consultant examinations, for directed medical examinations, and for other specially authorized services.

§ 30.709 How are payments for medicinal drugs determined?

Payment for medicinal drugs prescribed by physicians shall not exceed the amount derived by multiplying the average wholesale price of the medication by the quantity or amount provided, plus a dispensing fee.

(a) All prescription medications identified by NDC will be assigned an average wholesale price representing the product's nationally recognized wholesale price as determined by surveys of manufacturers and wholesalers. OWCP will establish the dispensing fee.

(b) The NDCs, the average wholesale prices, and the dispensing fee shall be reviewed from time to time and updated as necessary.

§ 30.710 How are payments for inpatient medical services determined?

(a) OWCP will pay for inpatient medical services according to pre-determined, condition-specific rates based on the Prospective Payment System (PPS) devised by CMS (42 CFR parts 412, 413, 424, 485, and 489). Using this system, payment is derived by multiplying the diagnosis-related group (DRG) weight assigned to the hospital discharge by the provider-specific factors.

(1) All hospital discharges will be classified according to the DRGs prescribed by CMS in the form of the DRG Grouper software program. On this list, each DRG represents the average resources necessary to provide care in a case in that DRG relative to the national average of resources consumed per case.

(2) The provider-specific factors will be provided by CMS in the form of their PPS Pricer software program. The software takes into consideration the type of facility, census division, actual geographic location of the hospital, case mix cost per discharge, number of hospital beds, intern/beds ratio, operating cost to charge ratio, and other factors used by CMS to determine the specific rate for a hospital discharge under their PPS. OWCP may devise price adjustment factors as appropriate using OWCP's processing experience and internal data.

(3) OWCP will base payments to facilities excluded from CMS's PPS on consideration of detailed medical reports and other evidence.

(4) OWCP shall review the pre-determined hospital rates at least once a year, and may adjust any or all components when OWCP deems it necessary or appropriate.

(b) OWCP shall review the schedule of fees at least once a year, and may adjust the schedule or any of its components when OWCP deems it necessary or appropriate.

§ 30.711 When and how are fees reduced?

(a) OWCP shall accept a provider's designation of the code to identify a billed procedure or service if the code is consistent with medical reports and other evidence. Where no code is supplied, OWCP may determine the code based on the narrative description of the procedure on the billing form and in associated medical reports. OWCP will pay no more than the maximum allowable fee for that procedure.

(b) If the charge submitted for a service supplied to an employee exceeds the maximum amount determined to be reasonable according to the schedule, OWCP shall pay the amount allowed by the schedule for that service and shall notify the provider in writing that payment was reduced for that service in accordance with the schedule. OWCP shall also notify the provider of the method for requesting reconsideration of the balance of the charge.

§ 30.712 If OWCP reduces a fee, may a provider request reconsideration of the reduction?

(a) A physician or other provider whose charge for service is only partially paid because it exceeds a maximum allowable amount set by OWCP may, within 30 days, request reconsideration of the fee determination.

(1) The provider should make such a request to the district office with jurisdiction over the employee's claim. The request must be accompanied by documentary evidence that the procedure performed was incorrectly identified by the original code, that the presence of a severe or concomitant medical condition made treatment especially difficult, or that the provider possessed unusual qualifications. In itself, board certification in a specialty is not sufficient evidence of unusual qualifications to justify an exception. These are the only three circumstances that will justify reevaluation of the paid amount.

(2) A list of district offices and their respective areas of jurisdiction is available upon request from the U.S. Department of Labor, Office of Workers' Compensation Programs, Washington, DC 20210, or on the Internet at *www.dol.gov/esa/regs/compliance/owcp/eeoicp/main.htm.* Within 30 days of receiving the request for reconsideration, the district office shall respond in writing stating whether or not an additional amount will be allowed as reasonable, considering the evidence submitted.

(b) If the district office issues a decision that continues to disallow a contested amount, the provider may apply to the Regional Director of the region with jurisdiction over the district office. The application must be filed within 30 days of the date of such decision, and it may be accompanied by additional evidence. Within 60 days of receipt of such application, the Regional Director shall issue a decision in writing stating whether or not an additional amount will be allowed as reasonable, considering the evidence submitted.

§ 30.713 If OWCP reduces a fee, may a provider bill the employee for the balance?

A provider whose fee for service is partially paid by OWCP as a result of the application of its fee schedule or other tests for reasonableness in accordance with this part shall not request reimbursement from the employee for additional amounts.

(a) Where a provider's fee for a particular service or procedure is lower to the general public than as provided by the schedule of maximum allowable charges, the provider shall bill at the lower rate. A fee for a particular service or procedure which is higher than the provider's fee to the general public for that same service or procedure will be considered a charge ''substantially in excess of such provider's customary charges'' for the purposes of § 30.715(d).

(b) A provider whose fee for service is partially paid by OWCP as the result of the application of the schedule of maximum allowable charges and who collects or attempts to collect from the employee, either directly or through a collection agent, any amount in excess of the charge allowed by OWCP, and who does not cease such action or make appropriate refund to the employee within 60 days of the date of the decision of OWCP, shall be subject to the exclusion procedures provided by § 30.715(h).

Exclusion of Providers

§ 30.715 What are the grounds for excluding a provider from payment under this part?

A physician, hospital, or provider of medical services or supplies shall be excluded from payment under this part if such physician, hospital or provider has:

(a) Been convicted under any criminal statute of fraudulent activities in connection with any Federal or State program for which payments are made to providers for similar medical, surgical or hospital services, appliances or supplies;

(b) Been excluded or suspended, or has resigned in lieu of exclusion or suspension, from participation in any Federal or State program referred to in paragraph (a) of this section;

(c) Knowingly made, or caused to be made, any false statement or misrepresentation of a material fact in connection with a determination of the right to reimbursement under this part, or in connection with a request for payment;

(d) Submitted, or caused to be submitted, three or more bills or requests for payment within a 12-month period under this subpart containing charges which OWCP finds to be substantially in excess of such provider's customary charges, unless OWCP finds there is good cause for the bills or requests containing such charges;

(e) Knowingly failed to timely reimburse employees for treatment, services or supplies furnished under this subpart and paid for by OWCP;

(f) Failed, neglected or refused on three or more occasions during a 12-month period to submit full and accurate medical reports, or to respond to requests by OWCP for additional reports or information, as required by § 30.700 of this part;

(g) Knowingly furnished treatment, services or supplies which are substantially in excess of the employee's needs, or of a quality which fails to meet professionally recognized standards; or

(h) Collected or attempted to collect from the employee, either directly or through a collection agent, an amount in excess of the charge allowed by OWCP for the procedure performed, and has failed or refused to make appropriate refund to the employee, or to cease such collection attempts, within 60 days of the date of the decision of OWCP.

§ 30.716 What will cause OWCP to automatically exclude a physician or other provider of medical services and supplies?

(a) OWCP shall automatically exclude a physician, hospital, or provider of medical services or supplies who has been convicted of a crime described in § 30.715(a), or has been excluded or suspended, or has resigned in lieu of exclusion or suspension, from participation in any program as described in § 30.715(b).

(b) The exclusion applies to participating in the program and to seeking payment under this part for services performed after the date of the entry of the judgment of conviction or order of exclusion, suspension or resignation, as the case may be, by the court or agency concerned. Proof of the conviction, exclusion, suspension or resignation may consist of a copy thereof authenticated by the seal of the court or agency concerned.

§ 30.717 When are OWCP's exclusion procedures initiated?

Upon receipt of information indicating that a physician, hospital or provider of medical services or supplies (hereinafter the provider) has engaged in activities enumerated in paragraphs (c) through (h) of § 30.715, the Regional Director, after completion of inquiries he or she deems appropriate, may initiate procedures to exclude the provider from participation in the EEOICPA program. For the purposes of these procedures, ''Regional Director'' may include any officer designated to act on his or her behalf.

§ 30.718 How is a provider notified of OWCP's intent to exclude him or her?

The Regional Director shall initiate the exclusion process by sending the provider a letter, by certified mail and with return receipt requested, which shall contain the following:

(a) A concise statement of the grounds upon which exclusion shall be based;

(b) A summary of the information, with supporting documentation, upon which the Regional Director has relied in reaching an initial decision that exclusion proceedings should begin;

(c) An invitation to the provider to:

(1) Resign voluntarily from participation in the EEOICPA program without admitting or denying the allegations presented in the letter; or

(2) Request that the decision on exclusion be based upon the existing record and any additional documentary information the provider may wish to furnish;

(d) A notice of the provider's right, in the event of an adverse ruling by the Regional Director, to request a formal hearing before an administrative law judge;

(e) A notice that should the provider fail to answer (as described in § 30.719) the letter of intent within 30 calendar days of receipt, the Regional Director may deem the allegations made therein to be true and may order exclusion of the provider without conducting any further proceedings; and

(f) The name and address of the OWCP representative who shall be responsible for receiving the answer from the provider.

§ 30.719 What requirements must the provider's reply and OWCP's decision meet?

(a) The provider's answer shall be in writing and shall include an answer to OWCP's invitation to resign voluntarily. If the provider does not offer to resign, he or she shall request that a determination be made upon the existing record and any additional information provided.

(b) Should the provider fail to answer the letter of intent within 30 calendar days of receipt, the Regional Director may deem the allegations made therein to be true and may order exclusion of the provider.

(c) By arrangement with the OWCP representative, the provider may inspect or request copies of information in the record at any time prior to the Regional Director's decision.

(d) The Regional Director shall issue his or her decision in writing, and shall

send a copy of the decision to the provider by certified mail, return receipt requested. The decision shall advise the provider of his or her right to request, within 30 days of the date of the adverse decision, a formal hearing before an administrative law judge under the procedures set forth in § 30.720. The filing of a request for a hearing within the time specified shall stay the effectiveness of the decision to exclude.

§ 30.720 How can an excluded provider request a hearing?

A request for a hearing shall be sent to the OWCP representative named pursuant to § 30.718(f) and shall contain:

(a) A concise notice of the issues on which the provider desires to give evidence at the hearing;

(b) Any request for a more definite statement by OWCP;

(c) Any request for the presentation of oral argument or evidence; and

(d) Any request for a certification of questions concerning professional medical standards, medical ethics or medical regulation for an advisory opinion from a competent recognized professional organization or Federal, State or local regulatory body.

§ 30.721 How are hearings assigned and scheduled?

(a) If the designated OWCP representative receives a timely request for hearing, the OWCP representative shall refer the matter to the Chief Administrative Law Judge of the Department of Labor, who shall assign it for an expedited hearing. The administrative law judge assigned to the matter shall consider the request for hearing, act on all requests therein, and issue a Notice of Hearing and Hearing Schedule for the conduct of the hearing. A copy of the hearing notice shall be served on the provider by certified mail, return receipt requested. The Notice of Hearing and Hearing Schedule shall include:

(1) A ruling on each item raised in the request for hearing;

(2) A schedule for the prompt disposition of all preliminary matters, including requests for more definite statements and for the certification of questions to advisory bodies; and

(3) A scheduled hearing date not less than 30 days after the date the schedule is issued, and not less than 15 days after the scheduled conclusion of preliminary matters, provided that the specific time and place of the hearing may be set on 10 days' notice.

(b) The purpose of the designation of issues is to provide for an effective hearing process. The provider is entitled to be heard on any matter placed in issue by his or her response to the Notice of Intent to Exclude, and may designate ''all issues'' for purposes of hearing. However, a specific designation of issues is required if the provider wishes to interpose affirmative defenses or request the certification of questions for an advisory opinion.

§ 30.722 How are advisory opinions obtained?

A certification of a request for an advisory opinion concerning professional medical standards, medical ethics or medical regulation to a competent recognized or professional organization or Federal, State or local regulatory agency may be made:

(a) As to an issue properly designated by the provider, in the sound discretion of the administrative law judge, provided that the request will not unduly delay the proceedings;

(b) By OWCP on its own motion either before or after the institution of proceedings, and the results thereof shall be made available to the provider at the time that proceedings are instituted or, if after the proceedings are instituted, within a reasonable time after receipt. The opinion, if rendered by the organization or agency, is advisory only and not binding on the administrative law judge.

§ 30.723 How will the administrative law judge conduct the hearing and issue the recommended decision?

(a) To the extent appropriate, proceedings before the administrative law judge shall be governed by 29 CFR part 18.

(b) The administrative law judge shall receive such relevant evidence as may be adduced at the hearing. Evidence shall be presented under oath, orally or in the form of written statements. The administrative law judge shall consider the Notice and Response, including all pertinent documents accompanying them, and may also consider any evidence which refers to the provider or to any claim with respect to which the provider has provided medical services, hospital services, or medical services and supplies, and such other evidence as the administrative law judge may determine to be necessary or useful in evaluating the matter.

(c) All hearings shall be recorded and the original of the complete transcript shall become a permanent part of the official record of the proceedings.

(d) In conjunction with the hearing, the administrative law judge may:

(1) Administer oaths; and

(2) Examine witnesses.

(e) At the conclusion of the hearing, the administrative law judge shall issue a written decision and cause it to be served on all parties to the proceeding, their representatives and OWCP.

§ 30.724 How can a party request review by OWCP of the administrative law judge's recommended decision?

(a) Any party adversely affected or aggrieved by the decision of the administrative law judge may file a petition for discretionary review with the Director for Energy Employees Occupational Illness Compensation within 30 days after issuance of such decision. The administrative law judge's decision, however, shall be effective on the date issued and shall not be stayed except upon order of the Director.

(b) Review by the Director for Energy Employees Occupational Illness Compensation shall not be a matter of right but of the sound discretion of the Director.

(c) Petitions for discretionary review shall be filed only upon one or more of the following grounds:

(1) A finding or conclusion of material fact is not supported by substantial evidence;

(2) A necessary legal conclusion is erroneous;

(3) The decision is contrary to law or to the duly promulgated rules or decisions of OWCP;

(4) A substantial question of law, policy, or discretion is involved; or

(5) A prejudicial error of procedure was committed.

(d) Each issue shall be separately numbered and plainly and concisely stated, and shall be supported by detailed citations to the record when assignments of error are based on the record, and by statutes, regulations or principal authorities relied upon. Except for good cause shown, no assignment of error by any party shall rely on any question of fact or law upon which the administrative law judge had not been afforded an opportunity to pass.

(e) A statement in opposition to the petition for discretionary review may be filed, but such filing shall in no way delay action on the petition.

(f) If a petition is granted, review shall be limited to the questions raised by the petition.

(g) A petition not granted within 20 days after receipt of the petition is deemed denied.

§ 30.725 What are the effects of non-automatic exclusion?

(a) OWCP shall give notice of the exclusion of a physician, hospital or provider of medical services or supplies to:

(1) All OWCP district offices;

(2) CMS; and

(3) All employees who are known to have had treatment, services or supplies from the excluded provider within the six-month period immediately preceding the order of exclusion.

(b) Notwithstanding any exclusion of a physician, hospital, or provider of medical services or supplies under this subpart, OWCP shall not refuse an employee reimbursement for any otherwise reimbursable medical treatment, service or supply if:

(1) Such treatment, service or supply was rendered in an emergency by an excluded physician; or

(2) The employee could not reasonably have been expected to know of such exclusion.

(c) An employee who is notified that his or her attending physician has been excluded shall have a new right to select a qualified physician.

§ 30.726 How can an excluded provider be reinstated?

(a) If a physician, hospital, or provider of medical services or supplies has been automatically excluded pursuant to § 30.716, the provider excluded will automatically be reinstated upon notice to OWCP that the conviction or exclusion which formed the basis of the automatic exclusion has been reversed or withdrawn. However, an automatic reinstatement shall not preclude OWCP from instituting exclusion proceedings based upon the underlying facts of the matter.

(b) A physician, hospital, or provider of medical services or supplies excluded from participation as a result of an order issued pursuant to this subpart may apply for reinstatement one year after the entry of the order of exclusion, unless the order expressly provides for a shorter period. An application for reinstatement shall be addressed to the Director for Energy Employees Occupational Illness Compensation, and shall contain a concise statement of the basis for the application. The application should be accompanied by supporting documents and affidavits.

(c) A request for reinstatement may be accompanied by a request for oral argument. Oral argument will be allowed only in unusual circumstances where it will materially aid the decision process.

(d) The Director for Energy Employees Occupational Illness Compensation shall order reinstatement only in instances where such reinstatement is clearly consistent with the goal of this subpart to protect the EEOICPA program against fraud and abuse. To satisfy this requirement the provider must provide reasonable assurances that the basis for the exclusion will not be repeated.

Signed at Washington, DC, this 13th day of December, 2002.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 02–31841 Filed 12–24–02; 8:45 am]

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Federal Register

Thursday,
December 26, 2002

Part III

Department of Defense

Department of the Army, Corps of Engineers

33 CFR Part 334

United States Navy Restricted Area, Cooper River and Tributaries, Naval Weapons Station Charleston, Charleston, SC; Proposed Rule

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

United States Navy Restricted Area, Cooper River and Tributaries, Naval Weapons Station Charleston, Charleston, SC

AGENCY: United States Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Corps of Engineers is proposing to amend existing regulations to expand the authority of the Commander, Naval Weapons Station Charleston, to restrict passage of watercraft and vessels within currently designated restricted areas in the Cooper River and its tributaries in the vicinity of the Naval Weapons Station in Charleston, South Carolina. The purpose of the proposed change is to provide effective security in the area of the Naval Weapons Station.

DATES: Written comments must be received on or before January 27, 2003.

ADDRESSES: Send comments to U. S. Army Corps of Engineers, ATTN: CECW–OR, 441 G Street, NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Torbett, Headquarters Regulatory Branch, Washington, DC at (202) 761–4618, or Mr. Nathaniel Ball, Corps of Engineers, Charleston District, at (843) 329–8044.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX, of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3) the Corps proposes to modify restricted area regulations in 33 CFR 334.460(b)(6) to expand the authority to restrict the passage of watercraft and vessels within one of the currently designated restricted areas in the Cooper River and its tributaries in the vicinity of the Naval Weapons Station in Charleston, South Carolina. The boundaries of restricted areas and danger zones identified in 33 CFR 334.460(a) are unchanged. The regulation at 33 CFR 334.460(b)(6) would be modified to include restricted area (a)(8) of section 334.460. The new regulation will allow this area to be closed in the interest of national security at the discretion of the Commanding Officer of the Naval Weapons Station, until such time as he/she determines such restrictions may be terminated.

Procedural Requirements

a. Review Under Executive Order 12866

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review Under the Regulatory Flexibility Act

These proposed rules have been reviewed under the Regulatory Flexibility Act (Public Law 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small Governments). The Corps expects that the economic impact of the establishment of this restricted area would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal if adopted, will have no significant economic impact on small entities.

c. Review Under the National Environmental Policy Act

An environmental assessment has been prepared for this action. We have concluded, based on the minor nature of the proposed additional restricted area regulations, that this action, if adopted, will not have a significant impact to the quality of the human environment, and preparation of an environmental impact statement is not required. The environmental assessment may be reviewed at the District office listed at the end of **FOR FURTHER INFORMATION CONTACT**, above.

d. Unfunded Mandates Act

This proposed rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps of Engineers proposes to amend 33 CFR part 334, as follows:

PART 334—DANGER ZONES AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

2. Amend §334.460 by revising paragraph (b)(6) to read as follows:

§ 334.460 Cooper River and tributaries at Charleston, SC.

* * * * *

(b) * * *

(6) In the interest of National Security, Commanding Officer, U.S. Naval Weapons Station, Charleston, SC may, at his/her discretion, restrict passage of persons, watercraft, and vessels in the areas described in paragraphs (a)(7), (a)(8), and (a)(11) of this section until such time as he/she determines such restriction may be terminated.

* * * * *

Dated: December 17, 2002.

Lawrence A. Lang,

Acting Chief, Operations Division, Directorate of Civil Works.

[FR Doc. 02–32458 Filed 12–24–02; 8:45 am]

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Thursday,
December 26, 2002

Part IV

Department of Education

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Final Priority on Alternative Financing Program Technical Assistance (AFPTA) and Notice Inviting Applications for Fiscal Year 2003; Notices

DEPARTMENT OF EDUCATION

Final Priority on Alternative Financing Program Technical Assistance (AFPTA) under Title III of the Assistive Technology Act of 1998

AGENCY: National Institute on Disability and Rehabilitation Research (NIDRR), Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a final priority on Alternative Financing Program Technical Assistance (AFPTA) under title III of the Assistive Technology Act (AT Act) of 1998 that is administered by the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use this priority for competitions in FY 2003 and in later years. We take this action to focus research attention on an identified national need. We intend this priority to provide information and technical assistance to States and outlying areas participating in or interested in participating in the AFP.

EFFECTIVE DATE: This priority is effective January 27, 2003.

FOR FURTHER INFORMATION CONTACT: Carol Cohen, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3420, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5666 or via the Internet: *carol.cohen@ed.gov.*

If you use a telecommunications device for the deaf (TTY), you may call the TTY number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Description of the Alternative Financing Program Technical Assistance Program (AFPTA)

Title III of the AT Act established an Alternative Financing Program (AFP), which pays part of the cost for the States and outlying areas to establish or maintain alternative financing projects to increase access to assistive technology (AT) for individuals with disabilities. The purpose of the AFPTA is to provide information and technical assistance to States and outlying areas participating in the AFP. Public or private agencies and organizations, including institutions of higher education, are the entities eligible for an AFPTA grant award.

This priority reflects issues discussed in the New Freedom Initiative (NFI) and NIDRR's Long-Range Plan (the Plan). The NFI can be accessed on the Internet at: *http://www.whitehouse.gov/news/freedominitiative/freedominiative.html.*

The Plan can be accessed on the Internet at: *http://www.ed.gov/offices/OSERS/NIDRR/Products.*

We published a notice of proposed priority (NPP) for the Alternative Financing Mechanisms Program (AFP) in the **Federal Register** on August 8, 2002 (67 FR 51744). Except for minor revisions there are no differences between the notice of proposed priority (NFP) and this notice of final priority (NFP).

Analysis of Comments and Changes

In response to our invitation in the NPP, no parties submitted comments on the proposed priority.

The background for the priority was published in the NPP.

Note: This notice does not solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Statutory Priority

As required by section 306(a) of the AT Act, the AFPTA project must:

(a) Provide assistance to States preparing applications for the AFP;

(b) Assist States to develop and implement the AFP; and

(c) Provide any other information and technical assistance (TA) the Assistant Secretary determines to be appropriate to assist States to achieve the objectives of AFP.

Priority

In addition to the statutory priority, NIDRR is particularly interested in having the AFPTA collect, analyze, compile, and report data provided by the AFP projects. AFP projects currently report data using an instrument that was developed and implemented to assist the State grantees with their data collection obligations. NIDRR will provide this instrument to the grantee upon receipt of award. The AFPTA must:

(1) Collect data from the AFP projects and assist the projects in this effort;

(2) Propose strategies for reviewing the AFP data collection instrument to determine what modifications should be made to improve its usability, reliability and validity and suggest strategies to facilitate and expedite the collection of uniform annual data from the AFP projects;

(3) Provide technical assistance to the State grantees on the data collection instrument that will support and improve the data collection efforts of the States;

(4) Provide technical assistance and training to State grantees on data collection strategies that will improve the quality of the data collected; and

(5) Through the technical assistance activities conducted under this priority, the project shall prepare a report on the activities funded under this Title. The report shall include the following: (a) The type of alternative financing mechanisms used by each State and the community-based organization with which each State entered into a contract, under the program; and (b) the amount of assistance given to consumers through the program. Additionally, the consumers should be classified by age, gender, type of disability, type of assistive technology device or assistive technology service financed through the program, geographic distribution within the State, and whether the consumers are part of an underrepresented population or rural population. An executive summary should be prepared which includes a description of data collection procedures utilized, an analysis of the aggregated States' data and a discussion of trends.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

You may review 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 the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 29 U.S.C. 3056.

(Catalog of Federal Domestic Assistance Number 84.224C, Alternative Financing Program.)

Dated: December 19, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–32575 Filed 12–24–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.224C]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research-Alternative Financing Program Technical Assistance (AFPTA); Notice Inviting Applications for Fiscal Year (FY) 2003

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions you need to apply for a grant under this competition.

Purpose of the Program: The purpose of the AFPTA is to award a grant to a public or private agency or organization to provide information and technical assistance to States participating in or interested in participating in the Alternative Financing Program (AFP).

For FY 2003, the competition for one new award focuses on projects designed to meet the priority described in the PRIORITY section of this application notice. We intend this priority to provide technical assistance to the States and outlying areas to establish or maintain alternative financing projects to increase access to assistive technology (AT) services and devices for individuals with disabilities of all ages.

Eligible Applicants: Parties eligible to apply for this grant are States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations with sufficient documented experience, expertise, and capacity to assist States in the development and implementation of the Alternative Financing Program carried out under Title III of the AT Act.

Applications Available: December 26, 2002.

Deadline for Transmittal of Applications: January 27, 2003.

Maximum Award Amount: $727,000 for year one; $304,000 for year two and, $304,000 for year three based on the availability of future appropriations.

Note: We will reject any application that proposes a budget exceeding the maximum amount for each of the three 12 month budget periods.

Estimated Number of Awards: 1.

Project Period: Up to 36 months.

Note: The Department is not bound by any estimates in this notice. Years two and three are subject to the availability of appropriation for this program.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 80, 81, 82, 85, 86 and 97.

Priority

This competition focuses on projects designed to meet the Alternative Financing Program Technical Assistance (AFPTA) priority in the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

For FY 2003, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

Selection Criteria

We use the following selection criteria to evaluate applications under this program (See 34 CFR 75.210). The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

(a) *Significance* (10 points total).

(1) The Secretary considers the significance of the proposed project; and

(2) In determining the significance of the proposed project, the Secretary considers the extent to which the results of the proposed project are to be disseminated in ways that will enable others to use the information or strategies.

(b) *Quality of the project design* (25 points total).

(1) The Secretary considers the quality of the design of the proposed project; and

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable (8 points).

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs (8 points).

(iii)The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition (6 points).

(iv) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources (3 points).

(c) *Quality of project services* (15 points total).

(1) The Secretary considers the quality of the services to be provided by the proposed project;

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible proposed project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (5 points); and

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services (5 points).

(ii) The extent to which the technical assistance services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources (5 points).

(d) *Quality of project personnel* (15 points total).

(1) The Secretary considers the quality of the personnel who will carry out the proposed project;

(2) In determining the quality of proposed project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (5 points); and

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator (5 points).

(ii) The qualifications, including relevant training and experience, of key project personnel (5 points).

(e) *Adequacy of resources* (15 points total).

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization (8 points).

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project (7 points).

(f) *Quality of the management plan* (10 points total).

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, time lines, and milestones for accomplishing project tasks (5 points).

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project (5 points).

(g) *Quality of the project evaluation* (10 points total).

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project (5 points).

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible (5 points).

Application Forms and Instructions

The Appendix to this notice contains forms and instructions, a statement regarding estimated public reporting burden, and various assurances and certifications. Please organize the parts and additional materials in the following order:

- Part I: Application for Federal Assistance (ED 424 (Exp. 11/30/2004)) and instructions.
- Part II: Budget Form—Non-Construction Programs (ED 524) and instructions and definitions.
- Part III: Application Narrative.
- Part IV: Additional Materials
- Estimated Public Reporting Burden.
- Assurances—Non-Construction Programs (Standard Form 424B).
- Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free Work-Place Requirements (ED Form 80–0013).
- Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions.

Note: ED Form GCS–014 is intended for the use of primary participants and should not be transmitted to the Department.

- Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL–A).

If you apply in paper format, you may submit information on a photocopy copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. We will not award a grant unless we have received a completed application form.

Application Procedures

You have a choice of submitting your applications either in a paper copy or electronic copy.

The Secretary may reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

The Secretary strongly recommends the following:

(1) A one-page abstract;

(2) An Application Narrative (*i.e.*, Part III that addresses the selection criteria that will be used by reviewers in evaluating individual proposals) of no more 75 numbered, double-spaced (no more than 3 lines per vertical inch) 8.5′ × 11″ pages (on one side only) with one inch margins (top, bottom, and sides). The application narrative page limit recommendation does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications; and

(3) A font no smaller than a 12-point font and an average character density no greater than 14 characters per inch.

If you want to apply for a grant and be considered for funding, you must meet the following deadline requirements:

Instructions for Transmittal of Applications

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553 (b) (A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In Fiscal Year 2003, the U.S. Department of Education is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Alternative Financing Program Technical Assistance (AFPTA) (CFDA No. 84.224C) is one of the programs included in the pilot project. If you are an applicant under the AFPTA, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application) portion of the Grant Administration and Payment System (GAPS). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application

electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You may submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

(1) Print ED 424 from the e-Application system.

(2) The institution's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- *Closing Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the AFPTA and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

(1) You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

(2)(a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 and 3:30 p.m., Washington, DC time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the AFPTA at: *http://e-grants.ed.gov*.

We have included additional information about the e-Application pilot project (see Parity Guidelines between Paper and Electronic Applications) elsewhere in this notice.

If you want to apply for a grant and be considered for funding, you must meet the following deadline requirements:

(A) *If You Send Your Application by Mail:* You must mail the original and two copies of the application on or before the deadline date. To help expedite our review of your application, we would appreciate your voluntarily including an additional seven copies of your application. Mail your application to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.224C), 7th & D Streets, SW., Room 3671, Regional Office Building 3, Washington, DC 20202–4725.

You must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If you mail an application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

(B) *If You Deliver Your Application by Hand:* You or your courier must hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date. To help expedite our review of your application, we would appreciate your voluntarily including an additional seven copies of your application. Deliver your application to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.224C), 7th & D Streets, SW., Room 3671, Regional Office Building 3, Washington, DC 20202–4725.

The Application Control Center accepts application deliveries daily between 8:00 a.m. and 4:30 p.m. (Washington, DC time), except Saturdays, Sundays, and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A person delivering an application must show identification to enter the building.

(C) *If You Submit Your Application Electronically:* You must submit your grant application through the Internet using the software provided on the e-Grants Web site (*http://e-grants.ed.gov*) by 4:30 p.m. (Washington, DC time) on the deadline date.

The regular hours of operation of the e-Grants Web site are 6:00 a.m. until 12:00 midnight (Washington, DC time) Monday-Friday and 6:00 a.m. until 7:00 p.m. Saturdays. The system is unavailable on the second Saturday of every month, Sundays, and Federal holidays. Please note that on Wednesdays the Web site is closed for maintenance at 7:00 p.m. (Washington, DC time).

Notes:

(1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

(2) If you send your application by mail or if you or your courier deliver it by hand, the Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 days from the date of mailing the application, you should call the U.S. Department of Education Application Control Center at (202) 708–9493.

(3) If your application is late, we will notify you that we will not consider the application.

(4) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424 (exp. 11/30/2004)) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(5) If you submit your application through the Internet via the e-Grants Web site, you will receive an automatic acknowledgment when we receive your application.

For Further Information Contact: Carol Cohen, U.S. Department of Education, 400 Maryland Avenue, SW., room 3420, Switzer Building,

Washington, DC 20202–2645. Telephone: (202) 205–5666 or via the Internet: *carol.cohen@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

Program Authority: 29 U.S.C. 3056.

Dated: December 19, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, you are not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this collection of information is 1820–0634. Expiration date: 10/31/2003. We estimate the time required to complete this collection of information to average 30 hours per response, including the time to review instructions, search existing data sources, gather the data needed, and complete and review the collection of information. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

If you have comments or concerns regarding the status of your submission of this form, write directly to: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645.

Parity Guidelines Between Paper and Electronic Applications

In FY 2003, the U.S. Department of Education is continuing to expand the pilot project that allows applicants to use an Internet-based electronic system for submitting applications. This competition is among those that have an electronic submission option available to all applicants. The system, called e-APPLICATION, allows an applicant to submit a grant application to us electronically, using a current version of the applicant's Internet browser. To see e-APPLICATION visit the following address: *http://e-grants.ed.gov*.

Users of e-APPLICATION, a data driven system, will be entering data on-line while completing their applications. This will be more interactive than just e-mailing a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will go into a database and ultimately will be accessible in electronic form to our reviewers.

This pilot project continues the Department's transition to an electronic grant award process. In addition to e-APPLICATION, the Department plans to expand the number of discretionary programs using the electronic peer review (e-READER) system and to increase the participation of discretionary programs offering grantees the use of the electronic annual performance reporting (e-REPORTS) system. To help ensure parity and a similar look between electronic and paper copies of grant applications, we are asking each applicant that submits a paper application to adhere to the following guidelines:

- Submit your application on 8½″ by 11″ paper.
- Leave a 1-inch margin on all sides.
- Use consistent font throughout your document. You may also use boldface type, underlining, and italics. However, please do not use colored text.
- Please use black and white, also, for illustrations, including charts, tables, graphs and pictures.
- For the narrative component, your application should consist of the number and text of each selection criterion followed by the narrative. The text of the selection criterion, if included, does not count against any page limitation.
- Place a page number at the bottom right of each page beginning with 1; and number your pages consecutively throughout your document.

Application Forms and Instructions

Paper applicants are advised to reproduce and complete the application forms in this section. Paper applicants are required to submit an original and two copies of each application as provided in this section. However, paper applicants are encouraged to submit an additional seven copies of each application in order to facilitate the peer review process and minimize copying errors.

Frequent Questions

1. Can I Get an Extension of the Due Date?

No. On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants except as noted for unavailability of the e-APPLICATION system.

2. What Should Be Included in the Application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is not useful to include general letters of support or endorsement in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What Format Should Be Used for the Application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program,

and are contained in this Consolidated Application Package.

4. May I Submit Applications to More Than One NIDRR Program Competition or More Than One Application to a Program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. No, you may not submit more than one application to this competition.

5. What is the Allowable Indirect Cost Rate?

The limits on indirect costs vary according to the program and the type of application. The AFPTA does not place any limit on indirect costs.

6. Can Profitmaking Businesses Apply for Grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant.

7. Can Individuals Apply for Grants?

No. Only organizations are eligible to apply for grants under the AFPTA program.

8. Can I Call NIDRR to Find Out if My Application is Being Funded?

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

9. If My Application is Successful, Can I Assume I Will Get the Requested Budget Amount in Subsequent Years?

No. Funding in subsequent years is subject to availability of funds and project performance.

10. Will All Approved Applications be Funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000–01–P

Application for Federal Education Assistance (ED 424)

U.S. Department of Education

Form Approved
OMB No. 1875-0106
Exp. 11/30/2004

Applicant Information

1. Name and Address
Legal Name: _____

Organizational Unit

Address: _____

_____

_____ City _____ State _____ County _____ ZIP Code + 4

2. Applicant's D-U-N-S Number |__|__|__|__|__|__|__|__|__|

3. Applicant's T-I-N |__|__| - |__|__|__|__|__|__|__|

4. Catalog of Federal Domestic Assistance #: **84.**__|__|__|__|

Title: _____

_____

5. Project Director: _____

Address: _____

_____ City _____ State _____ Zip code + 4
Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____

E-Mail Address: _____

6. Novice Applicant ___Yes ___No

7. Is the applicant delinquent on any Federal debt? ___Yes ___No
(If "Yes," attach an explanation.)

8. Type of Applicant *(Enter appropriate letter in the box.)* |____|

A - State	F - Independent School District
B - Local	G - Public College or University
C - Special District	H - Private, Non-profit College or University
D - Indian Tribe	I - Non-profit Organization
E - Individual	J - Private, Profit-Making Organization

K - Other (*Specify*): _____

Application Information

9. Type of Submission:

-PreApplication	*-Application*
___ Construction	___ Construction
___ Non-Construction	___ Non-Construction

10. Is application subject to review by Executive Order 12372 process?
___ Yes (*Date made available to the Executive Order 12372 process for review):* ____/____/_____

___ No *(If "No," check appropriate box below.)*
___ Program is not covered by E.O. 12372.
___ Program has not been selected by State for review.

11. Proposed Project Dates: ____/____/_____ ____/____/_____
Start Date: **End Date:**

12. Are any research activities involving human subjects planned at any time during the proposed project period?
___ Yes (Go to 12a.) ___ No (Go to item 13.)

12a. Are **all** the research activities proposed designated to be exempt from the regulations?
___ Yes (Provide Exemption(s) #): _____

___ No (Provide Assurance #): _____

13. Descriptive Title of Applicant's Project:

_____

_____

Estimated Funding

14a. Federal	$ _____	**.00**
b. Applicant	$ _____	**.00**
c. State	$ _____	**.00**
d. Local	$ _____	**.00**
e. Other	$ _____	**.00**
f. Program Income	$ _____	**.00**
g. TOTAL	$ _____	**.00**

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Authorized Representative (*Please type or print name clearly.*)

_____

b. Title: _____

c. Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____

d. E-Mail Address: _____

e. Signature of Authorized Representative

_____ **Date:** __/__/____

Instructions for Form ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com.**

3. **Tax Identification Number.** Enter the taxpayer's identification number as assigned by the Internal Revenue Service.

4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested. The CFDA number can be found in the federal register notice and the application package.

5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. **Novice Applicant.** Check **"Yes"** or "**No**" only if assistance is being requested under a program that gives special consideration to novice applicants. Otherwise, **leave blank.**

   Check "**Yes"** if you meet the requirements for novice applicants specified in the regulations in 34 CFR 75.225 and included on the attached page entitled "Definitions for Form ED 424." By checking "Yes" the applicant certifies that it meets these novice applicant requirements. Check "**No**" if you do not meet the requirements for novice applicants.

7. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

8. **Type of Applicant.** Enter the appropriate letter in the box provided.

9. **Type of Submission.** See "Definitions for Form ED 424" attached.

10. **Executive Order 12372.** See "Definitions for Form ED 424" attached. Check **"Yes"** if the application is subject to review by E.O. 12372. Also, please enter the month, day, and four (4) digit year (e.g., 12/12/2001). Otherwise, check **"No."**

11. **Proposed Project Dates.** Please enter the month, day, and four (4) digit year (e.g., 12/12/2001).

12. **Human Subjects Research.** (See I.A. "Definitions" in attached page entitled "Definitions for Form ED 424.")

    If Not Human Subjects Research. Check "**No**" if research activities involving human subjects are not planned at any time during the proposed project period. The remaining parts of Item 12 are then not applicable.

    If Human Subjects Research. Check "**Yes**" if research activities involving human subjects are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution. Check "**Yes**" even if the research is exempt from the regulations for the protection of human subjects. (See I.B. "Exemptions" in attached page entitled "Definitions for Form ED 424.")

12a. **If Human Subjects Research is Exempt from the Human Subjects Regulations.** Check "**Yes**" if all the research activities proposed are designated to be exempt from the regulations. Insert the exemption number(s) corresponding to one or more of the six exemption categories listed in I.B. "Exemptions." In addition, follow the instructions in II.A. "Exempt Research Narrative" in the attached page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. **If Human Subjects Research is Not Exempt from Human Subjects Regulations.** Check "**No**" if some or all of the planned research activities are covered (not exempt). In addition, follow the instructions in II.B. "Nonexempt Research Narrative" in the page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. **Human Subjects Assurance Number.** If the applicant has an approved Federal Wide (FWA) or Multiple Project Assurance (MPA) with the Office for Human Research Protections (OHRP), U.S. Department of Health and Human Services, that covers the specific activity, insert the number in the space provided. If the applicant does not have an approved assurance on file with OHRP, enter "None." In this case, the applicant, by signature on the face page, is declaring that it will comply with 34 CFR 97 and proceed to obtain the human subjects assurance upon request by the designated ED official. If the application is recommended/selected for funding, the designated ED official will request that the applicant obtain the assurance within 30 days after the specific formal request.

Note about Institutional Review Board Approval. ED does not require certification of Institutional Review Board approval with the application. However, if an application that involves non-exempt human subjects research is recommended/selected for funding, the designated ED official will request that the applicant obtain and send the certification to ED within 30 days after the formal request.

13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate **only** the amount of the change. For decreases, enclose the amounts in

parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, day, and four (4) digit year (e.g., 12/12/2001) in the date signed field.

Paperwork Burden Statement. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1875-0106. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725

Definitions for Form ED 424

Novice Applicant (See 34 CFR 75.225). For discretionary grant programs under which the Secretary gives special consideration to novice applications, a novice applicant means any applicant for a grant from ED that—

- Has never received a grant or subgrant under the program from which it seeks funding;
- Has never been a member of a group application, submitted in accordance with 34 CFR 75.127-75.129, that received a grant under the program from which it seeks funding; and
- Has not had an active discretionary grant from the Federal government in the five years before the deadline date for applications under the program. For the purposes of this requirement, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

In the case of a group application submitted in accordance with 34 CFR 75.127-75.129, a group includes only parties that meet the requirements listed above.

Type of Submission. "Construction" includes construction of new buildings and acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings, or any combination of such activities (including architects' fees and the cost of acquisition of land). "Construction" also includes remodeling to meet standards, remodeling designed to conserve energy, renovation or remodeling to accommodate new technologies, and the purchase of existing historic buildings for conversion to public libraries. For the purposes of this paragraph, the term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them; and such term includes all other items necessary for the functioning of a particular facility as a facility for the provision of library services.

Executive Order 12372. The purpose of Executive Order 12372 is to foster an intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The application notice, as published in the Federal Register, informs the applicant as to whether the program is subject to the requirements of E.O. 12372. In addition, the application package contains information on the State Single Point of Contact. An applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a State Single Point of Contact. For additional information on E.O. 12372 go to http://www.cfda.gov/public/eo12372.htm.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH

I. Definitions and Exemptions

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Research

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Human Subject

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the **only** involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, exemption 2 applies only to research involving educational tests and observations of public behavior when the investigator(s) do not participate in the activities being observed. Exemption 2 does not apply if children are surveyed or***

interviewed or if the research involves observation of public behavior and the investigator(s) participate in the activities being observed. [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public - office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

II. Instructions for Exempt and Nonexempt Human Subjects Research Narratives

If the applicant marked "Yes" for Item 12 on the ED 424, the applicant must provide a human subjects "exempt research" or "nonexempt research" narrative and insert it immediately following the ED 424 face page.

A. Exempt Research Narrative.

If you marked "Yes" for item 12 a. and designated exemption numbers(s), provide the "exempt research" narrative. The narrative must contain sufficient information about the involvement of human subjects in the proposed research to allow a determination by ED that the designated exemption(s) are appropriate. The narrative must be succinct.

B. Nonexempt Research Narrative.

If you marked "No" for item 12 a. you must provide the "nonexempt research" narrative. The narrative must address the following seven points. Although no specific page limitation applies to this section of the application, be succinct.

(1) **Human Subjects Involvement and Characteristics**: Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable

(2) **Sources of Materials**: Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) **Recruitment and Informed Consent**: Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) **Potential Risks**: Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) **Protection Against Risk**: Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) **Importance of the Knowledge to be Gained**: Discuss the importance of the knowledge gained or to be gained as a result of the proposed research. Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

(7) **Collaborating Site(s)**: If research involving human subjects will take place at collaborating site(s) or other performance site(s), name the sites and briefly describe their involvement or role in the research.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff, Office of the Chief Financial Officer, U.S. Department of Education, Washington, D.C. 20202-4248, telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://www.ed.gov/offices/OCFO/humansub.html

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control Number: 1890-0004

Expiration Date: 02/28/2003

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED Form No. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. ɜɜ4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. ɜɜ1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. ɜ794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. ɜɜ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) ɜɜ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. ɜɜ 290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. ɜ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. ɜɜ1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. ∋∋276a to 276a-7), the Copeland Act (40 U.S.C. ∋276c and 18 U.S.C. ∋∋874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. ∋∋ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. ∋∋1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. ∋∋7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12 Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. ∋∋1721 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. ∋470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. ∋∋469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. ∋∋2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. ∋∋4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, AAudits of States, Local Governments, and Non-Profit Organizations.≅

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013 12/98

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

Approved by OMB
0348-0046

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

1. Type of Federal Action: a. contract ____ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	**2. Status of Federal Action:** a. bid/offer/application _____ b. initial award c. post-award	**3. Report Type:** a. initial filing _____ b. material change **For material change only:** Year _____ quarter _____ Date of last report_____
4. Name and Address of Reporting Entity: ____ Prime _____ Subawardee Tier_____, if Known: **Congressional District, if known:**	**5. If Reporting Entity in No. 4 is Subawardee,** Enter Name and Address of Prime: **Congressional District, if known:**	
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____	
7. **Federal Action Number,** *if known:*	**9. Award Amount,** *if known:* **$**	
10. a. Name and Address of Lobbying Registrant *(if individual, last name, first name, MI):*	**b. Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____	
Federal Use Only	**Authorized for Local Reproduction** **Standard Form - LLL (Rev. 7-97)**	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

[FR Doc. 02–32576 Filed 12–24–02; 8:45 am]
BILLING CODE 4000–01–C

Federal Register

Thursday,
December 26, 2002

Part V

Department of the Treasury

Fiscal Service

31 CFR Part 285

Centralized Offset of Federal Payments to Collect Nontax Debts Owed to the United States; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 285

RIN 1510–AA65

Centralized Offset of Federal Payments to Collect Nontax Debts Owed to the United States

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule describes the general rules and procedures applicable to the centralized offset of Federal payments to collect delinquent, nontax debts owed to Federal agencies. The Department of the Treasury's Financial Management Service has established the Treasury Offset Program (TOP) in order to centralize the process by which Federal payments are withheld or reduced (in other words, offset) to collect delinquent debts. This interim rule specifically applies to the centralized offset of all types of Federal payments by Federal disbursing officials to collect delinquent, nontax debts owed to the United States. Therefore, this interim rule affects persons who owe delinquent, nontax debts to the United States and who receive Federal payments. It also affects Federal agencies that are owed delinquent debts and that disburse and certify Federal payments. This rule does not apply to collection of child support debts and other debts owed to States.

DATES: This rule is effective December 26, 2002. Comments must be received by January 27, 2003.

ADDRESSES: All comments should be addressed to Gerry Isenberg, Financial Program Specialist, Debt Management Services, Financial Management Service, Department of the Treasury, 401 14th Street, SW., Room 151, Washington, DC 20227. A copy of this interim rule is being made available for downloading from the Financial Management Service Web site at the following address: *http://www.fms.treas.gov/debt.* Comments may also be received via the internet as directed on the Web site.

FOR FURTHER INFORMATION CONTACT: Gerry Isenberg, Financial Program Specialist, at (202) 874–6660; Tricia Long, Attorney-Advisor at (202) 874–6680.

SUPPLEMENTARY INFORMATION:

Background

A major goal of the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104–134, 110 Stat. 1321–358 *et seq.* (April 26, 1996), is to increase the collection of delinquent, nontax debts owed to the Federal Government. Among other things, the DCIA established a centralized process for withholding or reducing eligible Federal payments to pay the payee's delinquent debt owed to the United States. *See* 31 U.S.C. 3716(c), 31 U.S.C. 3720A(h), and 31 CFR 901.3. This process is known as ''centralized offset'' or ''offset''.

The Financial Management Service (FMS), a bureau of the Department of the Treasury (Treasury), disburses almost 900 million payments annually for the Federal government and is responsible for the implementation of centralized offset of Federal payments for the collection of delinquent, nontax debt. To meet this and other debt collection responsibilities, FMS has established TOP. By centralizing offset through TOP, FMS has consolidated and simplified debt collection procedures for the Federal Government. TOP allows agencies to submit debts to one centralized location for offset of all eligible Federal payments. By submitting debts to TOP to comply with 31 U.S.C. 3716(c)(6) (for offset of nontax payments), agencies simultaneously will meet the requirement to submit past-due, legally enforceable debts to Treasury for purposes of tax refund offset. *See* 31 U.S.C. 3720A(a). TOP also provides a mechanism for Federal agencies to collect debt through the centralized offset of the salaries of Federal employees. *See* 31 CFR 285.7.

TOP works as follows. Creditor agencies submit information about delinquent debts to FMS, which maintains the information in its delinquent debtor database. Payment agencies prepare and certify payment vouchers to FMS and disbursing officials at other Federal agencies (such as Department of Defense or the United States Postal Service), who then disburse payments. The payment vouchers contain information about the payment including the name and taxpayer identifying number (TIN) of the recipient. Before an eligible Federal payment is disbursed to a payee, FMS compares the payment information with debtor information in FMS' delinquent debtor database. If the payee's name and TIN match the name and TIN of a debtor, the disbursing official offsets the payment, in whole or in part, to satisfy the debt, to the extent legally allowed.

FMS transmits amounts collected through offset to the appropriate creditor agencies after deducting fees, which FMS charges the creditor agencies in order to cover the cost of operating the offset program. The authority to charge fees is found at 31 U.S.C. 3716(c)(4) and 3720A(d). If not otherwise prohibited by law, creditor agencies may add the fees to the debts as administrative costs, pursuant to 31 U.S.C. 3717(e).

FMS maintains information about a delinquent debt in TOP delinquent debtor database and continues to offset eligible Federal payments until the creditor agency suspends or terminates debt collection or offset activity for the debt. A creditor agency will suspend collection if the debt is subject to a bankruptcy stay or if other reasons justify suspension. *See* 31 CFR 903.2. A creditor agency will terminate collection of a debt if it is paid in full, compromised, discharged, or if other reasons justify termination. *See* 31 CFR 903.3.

FMS has published rules that govern the offset of specific payment types to collect delinquent, nontax debts owed to the United States. These rules address: (1) Offset of tax refund payments to collect delinquent, nontax debts owed to Federal agencies (31 CFR 285.2); (2) offset of Federal benefit payments to collect delinquent, nontax debts owed to Federal agencies (31 CFR 285.4); and (3) offset of Federal salary payments to collect debts owed to Federal agencies (31 CFR 285.7). Nothing in this rule is intended to contradict any provision of these more specific sections. Rather, this rule only describes requirements and procedures which are common to the centralized offset of all Federal payments to collect debts owed to Federal agencies. To the extent any provision of this rule is inconsistent with a more specific provision of sections 285.2, 285.4 or 285.7 of this Part, the more specific provision shall apply.

Section Analysis

(a) Scope

Paragraph (a) describes the scope of this section, which governs the centralized offset of Federal payments to collect delinquent, nontax debts owed to Federal agencies in accordance with the requirements of 31 U.S.C. 3716(c)(6), 3720A(a), 26 U.S.C. 6402, and all applicable regulations.

This regulation only applies to the extent that it does not conflict with the more specific provisions of the rules for tax refund offsets (*see* 31 CFR 285.2), salary payment offsets (*see* 31 CFR 285.7) and benefit payment offsets (*see* 31 CFR 285.4).

This section does not apply to administrative offsets that occur outside of TOP (known as ''non-centralized offsets''). Non-centralized offsets are governed by the Federal Claims Collection Standards (*see* 31 CFR 901.3(c)) and agency-specific regulations.

This section does not apply to the offset of payments to collect debts owed to States (*see* 31 CFR 285.8) or to collect delinquent child support payments (*see* 31 CFR 285.1 and 285.3).

This section does not apply to garnishments or Internal Revenue Service levies of Federal payments. Offsets are not garnishments. An offset occurs when the Federal government withholds money owed to a person to satisfy a claim owed by that same person to the government. Garnishment is a process whereby a creditor attaches wages or other property belonging to a debtor which is in the possession of a third party. A levy is the means by which the Internal Revenue Service or other tax collecting authority seizes the delinquent taxpayer's property. *See* 26 U.S.C. 6331. Regulations governing garnishments and levies do not apply to offsets under this section. For example, regulations which exclude travel reimbursements from court-ordered, commercial garnishments on Federal pay (*see* 5 CFR 582.102) do not preclude offsets under this section. Therefore, payments which reimburse Federal employees for travel or other employment-related expenditures are subject to offset under this section, regardless of whether they may be garnished to collect debts owed to third parties.

This section applies only to payments that a payment certifying agency has certified to a disbursing official for disbursement. It therefore does not apply to payments made directly with a government credit card.

Lastly, the receipt of collections pursuant to this section does not preclude a Federal agency from pursuing all other available debt collection remedies simultaneously, provided that collections do not exceed the amount of the debt, including any interest, penalties, and administrative costs.

(b) Definitions

Paragraph (b) of this section sets forth definitions applicable to this rule. It is important to note that the terms used in this section are defined for purposes of this section only. For example, whether a debt is ''legally enforceable'' for purposes of centralized offset pursuant to this section has no bearing on whether the debt is legally enforceable for purposes of placing a lien on the debtor's property or for some other debt collection purpose.

(c) General Rule

Paragraph (c) of this section sets forth the general rule that creditor agencies must submit their delinquent debts to FMS for offset, and that disbursing officials must offset payments to collect those debts. *See* 31 U.S.C. 3716(c).

(d) Requirements for Creditor Agencies

Paragraph (d) sets forth the requirements for Federal creditor agencies with regard to centralized offset. As noted above, creditor agencies will meet the requirement to submit debts to Treasury for purposes of tax refund offset by submitting debts to FMS pursuant to this section. *See* 31 U.S.C. 3720A(a). The requirements of this section take into account the provisions of various statutes and regulations which apply to the offset of Federal payments in general, as well as to specific types of Federal payments.

Paragraph (d)(1) restates the statutory requirement that creditor agencies notify FMS of all past-due, legally enforceable, nontax debt which is delinquent for more than 180 days, for purposes of collection by centralized offset. *See* 31 U.S.C. 3716(c)(6). Paragraph (d)(1) also provides a creditor agency with 30 days following a decision on an appeal within which to submit a debt that is more than 180 days delinquent. This rule allows for an additional 30 days, because immediate transfer of a debt to FMS following a decision on an appeal might be impractical. The 30-day period provides debtors with an opportunity to pay the debt or to enter into a repayment plan with the creditor agency before offset action is taken. When a creditor agency determines that a debtor is unlikely to pay the debt or enter into a repayment plan within the 30-day period, it should submit the debt to FMS immediately following a decision on an appeal.

Paragraph (d)(2) provides that creditor agencies may notify FMS of debts delinquent for less than 180 days for purposes of offset. FMS encourages agencies to submit debts to TOP as soon as they become eligible, in order to maximize collections.

Paragraph (d)(3) describes the requirements for a debt to be eligible for centralized offset. For a creditor agency to submit a debt to FMS for offset, the debt must be past due and legally enforceable in the amount stated by the creditor agency, be less than 10 years delinquent (unless the debt may be collected by offset legally if more than ten years delinquent, as is the case with judgment debts and education loans), have a balance greater than $25, and not be secured by collateral subject to foreclosure. Generally, the debt should not be secured by collateral subject to a pending foreclosure action unless the creditor agency certifies that offset will not affect the government's rights to the secured collateral. Additionally, the creditor agency must certify that the debt is eligible for collection by offset, as required in paragraph (d)(6) of this section.

Debts owed by foreign sovereigns are excluded from the mandatory requirement under paragraph (d)(1) that creditor agencies notify FMS of all past-due, legally enforceable, nontax debt which is delinquent for more than 180 days, for purposes of collection by centralized offset. This exclusion applies only to debts owed by foreign sovereigns and does not apply to debts owed by privately owned foreign corporations or by foreign individuals. This exclusion does not preclude a creditor agency from voluntarily notifying Treasury of debt owed by foreign sovereigns for the purpose of offset to the extent allowed by law. FMS has excluded debts owed by foreign sovereigns from the requirement described in paragraph (d)(1) pursuant to 31 U.S.C. 3716(c)(5). Section 3716(c)(5) authorizes the Secretary of the Treasury to prescribe such rules, regulations, and procedures as the Secretary considers necessary to carry out centralized offset under section 3716(c). The Secretary deems it necessary to exclude debts owed by foreign sovereigns because mandatory notification of such debts to Treasury for collection by offset could interfere with important foreign policy goals.

Paragraph (d)(3)(iv) describes creditor agencies' responsibilities to report certain debt information to Treasury on a report known as Treasury Report on Receivables (TROR). When reporting amounts eligible for TOP, agencies must report amounts that have been excluded from TOP and state the reasons for the exclusions consistent with this paragraph. Detailed instructions on completing the TROR can be found at *http://www.fms.treas.gov/debt/dmrpts.*

For purposes of this section, a debt is generally deemed past due or delinquent if it is not paid when due, whether that be the date specified in an initial notice or a date specified in a contract or other applicable agreement. Creditor agencies determine when a debt is delinquent based on applicable statutes, regulations and policies. Nothing in this section is intended to define when a debt is delinquent or legally enforceable for purposes of

anything other than when a debt may be submitted to FMS for purposes of centralized offset. A debt is legally enforceable if there has been a final agency determination that the debt is due in the amount stated, and there are no legal bars to collection by offset. A debt is legally enforceable for purposes of this section as long as the 10-year limitation (or other applicable time limitation on offset) has not been exceeded, regardless of any limitation on when a claim may be brought in a civil action. Creditor agencies should consult with their agency counsel to determine the legal enforceability of debts for purposes of this section.

Paragraph (d)(4) describes the requirements for creditor agencies to publish regulations regarding offset. Creditor agencies must promulgate regulations governing offset in accordance with 31 U.S.C. 3716(b)(administrative offset), 3720A(a)(tax refund offset), and 31 CFR 901.3(b)(4)(Federal Claims Collection Standards) prior to submitting debts for offset. Additionally, creditor agencies must promulgate regulations in accordance with 5 U.S.C. 5514, 31 CFR 285.7(d)(2), and 5 CFR 550.1104 in order to collect debts through the centralized offset of Federal salary payments. Creditor agencies must comply with the prerequisites for the offset of all types of Federal payments in order to participate fully in the centralized offset through TOP. If, for example, a creditor agency has not published regulations concerning the offset of Federal salary payments, then disbursing officials cannot offset salary payments to collect that creditor agency's debts.

Paragraph (d)(5) sets forth the information required for each delinquent debt submitted to FMS for offset. All of the information is necessary for the successful operation of TOP.

Paragraph (d)(6) describes the certification that creditor agencies must provide to FMS for each debt. Creditor agencies must certify to FMS that the requirements of 31 U.S.C. 3716(a), 3720A, 26 U.S.C. 6402, and applicable agency-specific statutes and regulations related to offset have been met. The creditor agency must certify the following for each debt: (1) the debt meets the requirements set forth in paragraph (d)(3) of this section, regarding debt eligibility; (2) the creditor agency has given the debtor due process pursuant to 31 U.S.C. 3716, 3720A and 26 U.S.C. 6402; and (3) the creditor agency has complied with 31 U.S.C. 3717 with respect to the assessment of interest, penalties and administrative costs. The certification must be executed by the head of the agency or by a person with delegated authority to make such certification on behalf of the head of the agency.

With respect to the certification that the creditor agency has provided due process, neither the DCIA nor this rule changes the existing requirement that agencies provide due process prior to offset. Such due process requirements are set forth in 31 U.S.C. 3716(a), 3720A, and any agency-specific statutes and regulations applicable to the debt. Creditor agencies must inform debtors by written notice that the creditor agencies intend to offset eligible payments and that the debtor has an opportunity to review applicable agency records and to seek a review of the determination of the debt. In accordance with the creditor agency's policies and procedures, the debtor may provide evidence to the creditor agency that collection of the debt by administrative offset would result in a financial hardship. The debtor may also make alternative payment arrangements, which are acceptable to the creditor agency. There is an additional due process requirement when the creditor agency has submitted the debt for offset of the debtor's Federal salary. Prior to offsetting a Federal salary, the creditor agency must notify the debtor that she or he has an opportunity for a hearing pursuant to 5 U.S.C. 5514, 5 CFR 550.1104, and applicable creditor agency regulations. Such notification may be combined with any other due process notices or may be sent separately.

As noted in paragraph (d)(13), nothing in this section requires agencies to duplicate any notice, review or hearing previously provided to the debtor. For example, if the agency has provided the debtor with a hearing concerning the existence of a debt, this section does not require an agency to provide a second hearing concerning the same issue in order to submit the debt for offset. In such circumstance, however, the debtor may be entitled to a review (or hearing, if a Federal employee and the agency seeks to offset his or her Federal salary) concerning any other issues not addressed in the previous hearing. In this example, the debtor may contest the accuracy of the current debt balance (*i.e.*, whether the agency had properly credited payments made subsequent to the hearing).

Paragraph (d)(7) explains that creditor agencies will be asked to update the certifications of debts maintained by FMS in order to ensure that the debts continue to meet the requirements of paragraph (d)(6), including that the creditor agency has properly applied credits to the debt balance (other than collections through centralized offset). Periodic updates are required to ensure that information about the debts is current and accurate.

Paragraph (d)(8) also explains that the certification required by paragraphs (d)(6) and (d)(7) of this section, and any other information regarding delinquent debts transmitted to FMS, will be made in a form and manner as prescribed by FMS. The form may include, but is not limited to, electronic data transmission. In order to submit certifications electronically, a creditor agency must sign an agreement with FMS agreeing that the creditor agency will certify debts in accordance with instructions from FMS, that any person who the creditor agency allows to certify debts electronically will have the delegated authority to certify the debts on behalf of the head of the agency, and that such person knows that they are certifying to all of the requirements of paragraph (d)(6) of this section and any other terms of the certification as set forth in the agreement. FMS will require any agreement regarding electronic certification to be re-executed periodically, usually on an annual basis. This periodic execution will ensure that creditor agency personnel remain aware of their responsibilities and authorities when certifying debts for centralized offset.

Paragraph (d)(9) explains that agencies which designate disbursing officials pursuant to 31 U.S.C. 3321(c) are not required to certify debts arising out of their own operations for purposes of centralized offset under this section prior to collecting such claims by offset. For example, if the Department of Defense (DOD) is about to disburse a payment to a person who also owes a delinquent debt to it, DOD may offset such payment, in accordance with applicable law, without first certifying the debt to FMS for purposes of centralized offset.

Paragraph (d)(10) describes the creditor agencies' responsibility to correct and update information contained in delinquent debt records. While information about a debt is maintained in TOP's delinquent debtor database, the creditor agency remains responsible for administering the debt. This means that the creditor agency remains responsible for answering inquiries about the debts, negotiating agreements with the debtor, maintaining records applicable to the debt, and applying any amounts received with respect to the debt other than amounts collected through centralized offset. Creditor agencies make all decisions

concerning their debts. Creditor agencies determine whether debts are eligible for offset and whether offset funds should be returned to debtors who claim that the debts were not eligible for offset.

If creditor agencies receive funds from any source other than centralized offset, they must submit the updated balance information to FMS; however, FMS will apply any funds received through centralized offset to the debt balances within TOP and notify creditor agencies of such collections.

Creditor agencies are also responsible for notifying FMS immediately if there is a change in the status of the legal enforceability of any debt. For example, if a creditor agency learns that a debtor has filed for bankruptcy protection and the automatic stay is in effect, that creditor agency must notify FMS, in the manner prescribed by FMS, that the debt is no longer legally enforceable. Likewise, if the bankruptcy is dismissed, the debt has not been discharged, and there are no other legal obstacles to collection, the creditor agency should notify FMS immediately that the debt is once again legally enforceable. As a practical matter, this means that creditor agencies must have procedures in place to track the status of their debts which are in bankruptcy and to update FMS promptly. Creditor agencies should seek legal advice from their agency counsel concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 106, 362, and 553, on pending, contemplated or completed collections by offset.

If a debt is being collected and serviced by FMS or another debt collection center, pursuant to 31 U.S.C. 3711(g), FMS, or the applicable debt collection center, will manage the creditor agency's responsibilities under paragraph (d)(10) of this section.

Paragraph (d)(11) addresses debts which have been transferred to FMS or a Treasury-designated debt collection center for purposes of collection pursuant to 31 U.S.C. 3711(g) (known as ''cross-servicing'') or which have been referred to the Department of Justice (DOJ) for enforced collection. A debt collection center will also be responsible for submitting debts it is servicing to TOP on behalf of the creditor agencies. FMS, on behalf of the creditor agencies, will submit debts in its cross-servicing program to TOP in accordance with the requirements of this section. *See* 31 CFR 285.11 for certification requirements when transferring debts to FMS for debt collection purposes. DOJ will submit debts to FMS for centralized offset on behalf of the creditor agency, as DOJ deems appropriate, for all debts which have been referred to DOJ for collection enforcement.

Paragraph (d)(12) explains that if a creditor agency has determined that the offset amount allowed by law would result in financial hardship to the debtor, and that a lesser offset amount is reasonable and appropriate based upon the debtor's financial circumstances, then the creditor agency may specify that the disbursing official offset a lesser amount.

(e) Payments Made By the United States

Paragraph (e) discusses the rules applicable to Federal payments covered by this section. This section generally applies to all Federal payments (regardless of the payment mechanism used, *e.g.*, check or electronic funds transfer), unless offset against such type of payment is expressly prohibited under the DCIA or other Federal statute. *See* 31 U.S.C. 3716(e)(2).

Paragraph (e)(1) notes that judgments paid pursuant to 31 U.S.C. 1304 (Judgments, awards and compromise settlements) are eligible for centralized offset pursuant to 31 U.S.C. 3716(c). Nothing in this rule affects the setoff of amounts to be paid pursuant to such a judgment in accordance with 31 U.S.C. 3728 (Setoff against judgments), which authorizes the Secretary of the Treasury to withhold amounts to be paid on a judgment to offset a debt. Setoff under section 3728 occurs before the Secretary certifies the payment for disbursement. This rule, however, only addresses centralized offset of such payments after the Secretary has certified them for disbursement. *See* volume I, part 6, chapter 3100 of the Treasury Financial Manual for information on the setoff and certification of judgment fund payments.

Paragraph (e)(2) provides a list of payment types that are excluded from offset. In addition to payments exempt by law, this rule exempts from offset all Federal loan payments other than payments for travel advances pursuant to 31 U.S.C. 3716(c)(5). Section 3716(c)(5) authorizes the Secretary of the Treasury to prescribe such rules, regulations, and procedures as the Secretary considers necessary to carry out centralized offset under section 3716(c). The Secretary deems it necessary to exempt Federal loan payments other than travel advances from centralized offset. If a loan payment is offset, the debtor/payee pays off one agency by creating a debt owed to another agency. The government's interests in debt collection through offset are not advanced by paying off a debt owed to one agency by creating a debt owed to another. Therefore, pursuant to 31 U.S.C. 3716(c)(5), the Secretary exempts Federal loan payments other than travel advances from centralized offset.

Although travel advance payments to Federal employees are considered loans, except in limited circumstances (*see* 54 Comp. Gen. 190, 191 (B–180672, September 5, 1974) and 1994 WL 158116 (B–251865, April 28, 1994)), the Secretary does not deem it necessary to exempt travel advances from centralized offset under this section for three reasons. First and foremost, Federal employees are ethically obligated to ''satisfy in good faith their obligations as citizens, including all just financial obligations, especially those such as Federal, State, or local taxes that are imposed by law.'' *See* 5 CFR 2635.101(b)(12). If the Federal employee is unable to pay a debt, the employee should contact the creditor agency to make satisfactory repayment arrangements in order to avoid offsets of travel advances under this section. Absent such action by the Federal employee, any travel advances made to that employee should be offset to pay an employee's delinquent debts. The employee remains responsible for traveling, if required for the performance of his or her duties. Second, unlike traditional Federal loan programs, travel advances are short-term debts, which are repaid as soon as the employee travels. Third, delinquent debtors are barred from receiving Federal loans (*see* 31 U.S.C. 3720B), yet agencies generally do not access employees' credit reports or other sources of information to verify whether an employee owes a delinquent Federal debt prior to issuing a travel advance. Failing a bar by the agency issuing the travel advance, it is appropriate for the Government to offset the travel advance payment to satisfy the employee's delinquent debts.

Paragraph (e)(3) explains that specific rules apply to the centralized offset of tax refunds, certain benefit payments and Federal salary payments. *See* 31 CFR 285.2, 285.4, and 285.7, respectively. This section applies only to the extent that it is not inconsistent with the provisions of the rules that apply to each payment type.

Paragraph (e)(4) states that a payment made jointly to two or more persons (*i.e.*, ''joint payees''), may be offset in its entirety to satisfy the debt of any one of the joint payees. FMS assumes that joint payments are made to persons who each own an undivided interest in the whole payment. A joint payee who believes that he or she is entitled to a portion of the monies that have been offset must

contact the payment agency which issued the payment. The payment agency must determine, based upon applicable laws and policies, if a refund of any portion of the offset amount is appropriate. If a couple files a joint Federal income tax return, and a resulting refund is offset to collect a debt which is owed by only one of the spouses, the spouse that does not owe the debt (*i.e.*, the ''injured spouse'') must contact the Internal Revenue Service to claim the portion of the tax refund to which he or she is entitled. The IRS Web site, found at *www.irs.gov,* contains instructions for the injured spouse to make a claim for his or her portion of the tax refund. At the time of writing, such claims are processed on IRS Form 8379.

Paragraph (e)(5) states that payments made to representative payees (*i.e.*, the named payee is receiving the payment solely in the person's capacity as a representative for the beneficiary of the payment) will only be offset to collect delinquent debt owed by the payment beneficiary. For example, if a payment is made to an attorney solely for the benefit of his or her client, FMS will offset such payment only to collect a debt owed by the client. FMS will not offset the payment to collect a debt owed by the named payee attorney. Payment agencies are responsible for properly identifying representative payees.

Paragraph (e)(6) addresses the offset of payments which have been assigned to a third party (known as ''assigned payments''). In certain circumstances, FMS may offset an assigned payment to collect debts owed by either the assignor or the assignee. *See* 31 U.S.C. 3716(e)(2) (offset permissible if not prohibited). For example, if a Federal contractor has assigned the right to receive payment under a Federal contract to a financial institution, FMS may offset the payment to collect a debt owed by either the contractor or the financial institution. FMS will offset assigned payments made to Federal contractors within the limits of 41 U.S.C. 15, 31 U.S.C. 3727 and implementing regulations (including, as applicable, the Federal Acquisition Regulation (48 CFR Chapter 1)). This rule does not address the validity of any assignment of payments. At the time of the publication of this regulation, FMS has not yet fully implemented offset of assigned payments. FMS will provide guidance to payment agencies prior to implementation.

Paragraph (e)(7) describes how payment agencies may request that the Secretary exempt payment types from centralized offset and how the Secretary will evaluate and respond to such requests. The DCIA requires the Secretary to exempt from centralized offset payments made under means-tested programs when the head of the payment agency requests such exemption in writing. The DCIA also authorizes the Secretary to exempt payments made under non-means-tested programs at the written request of the head of the payment agency. *See* 31 U.S.C. 3716(c)(3)(B). FMS has published and made available on its Web site (*www.fms.treas.gov/debt*) standards and procedures for the exemption of classes of payments from centralized offset. Paragraph (e)(7)(i) explains when an exemption request for means-tested payments will be granted. Paragraph (e)(7)(ii) explains that the Secretary may exempt non-means-tested payments in accordance with the published standards. Paragraph (e)(7)(iii) explains that the requests for exemptions must be made in writing following guidance issued by FMS pursuant to 31 U.S.C. 3716(c)(3)(B). Exemptions apply to classes of payments and not to individual payments. A list of payments exempt from offset may be found on the FMS Web site at *www.fms.treas.gov/debt.*

Consistent with the foregoing paragraph, contracting officials at Federal agencies do not have the authority to exempt contract payments from centralized offset. Payments are exempt from centralized offset only if expressly made exempt by statute or if the Secretary grants an exemption. Therefore, contract clauses prohibiting a Federal agency from offsetting a payment generally do not apply to centralized offset pursuant to this section, regardless of whether such clauses may be effective as to offsets made by the contracting agency pursuant to other authorities.

Paragraph (e)(8) explains that payment agencies must prepare and submit payment vouchers in the manner prescribed by FMS or other disbursing official, in order to maximize the number of legally-eligible offsets. Also, payment agencies are responsible for notifying the Secretary of any legal bars to offset of payments which the agency certifies for payment.

Paragraph (e)(9) explains that when a payment is offset, both the disbursing official and the payment agency have met their obligations with respect to making the payment. Neither the payment agency nor the disbursing official is liable for any portion of the payment which was offset. *See* 31 U.S.C. 3716(c)(2). For example, if an agency certifies a payment to a Federal contractor for work completed, and that payment is offset to collect a delinquent debt that the contractor owes to another Federal agency, the contractor has been paid in full for its services. When the creditor agency credits the offset amount to the contractor's delinquent debt, the contractor has received full value for the services performed under the contract. Payment agencies should be careful not to issue an overpayment to a contractor who claims non-receipt of payment after the initial payment is offset to pay the contractor's debt. Contractors should contact the creditor agency to which the debt is owed for questions about the debt or to make repayment arrangements.

(f) Offset

Paragraph (f) describes the offset process, including amounts to be offset and the priority of how offsets are applied when it is determined that a payee owes more than one delinquent debt. Generally, a payment will be offset by the lesser of the amount of the payment, or the amount of the delinquent debt, including associated interest, penalties, and administrative costs. The offset amount is limited for certain Federal payments. *See for example,* 31 CFR 285.4 and 285.7 for limitations on offsets of certain Federal benefit payments and Federal salaries. Creditor agencies may specify that a lesser amount be offset based on a written agreement between the creditor agency and the debtor, or based upon the creditor agency's determination that the amount allowed by law would create a financial hardship.

Paragraph (f)(2) establishes that a recurring Federal retirement annuity payment made by the Office of Personnel Management (OPM) will be offset up to a maximum of 25 percent to collect a delinquent debt under this section. For example, if an OPM annuity payment is $850.00, the amount offset would be no more than $212.50. Although the DCIA did not expressly provide for any such limitation on OPM recurring retirement annuity payments, limitations apply to other types of payments considered income. For example, the Consumer Credit Protection Act limits the amount of pay subject to garnishment by a private creditor to 25% under most circumstances. Limitations on other types of Federal payments, such as Federal salary and social security payments apply. Therefore, as authorized by 31 U.S.C. 3716(c)(5), the Secretary has determined that a limitation on the offsets of OPM retirement payments is necessary to carry out the centralized offset program. After balancing the Government's

interest in collecting large dollar debts within a reasonable time frame with the interest of the debtor/payee in receiving some retirement income, FMS has determined that a 25% limitation should be applied.

Paragraph (f)(3) describes the order in which deductions will be applied when more than one delinquent debt is submitted to FMS for the same payee. If the Internal Revenue Service has served a tax levy through TOP, amounts deducted will first be applied to such tax levy. Deductions for tax levies are not governed by this section, but have a higher legal priority. *See* 31 U.S.C. 3716(c)(8). Remaining amounts will be applied in the following order; first, to debts for past-due support assigned to a State pursuant to sections 402(a)(26) and 471(a)(17) of the Social Security Act; second, to debts owed to Federal agencies; third, to any qualifying past due support debts not assigned to a State; and fourth, to debts owed to States for obligations other than past-due support.

Paragraph (f)(3) also explains what happens when a recurring payment is being offset to collect a debt, and a debt with a higher legal priority is submitted to TOP. The debtor may not, in all such cases, receive an additional warning notice when the offsets are applied to the higher priority debt. *See* paragraph (g)(2) of this section. For example, FMS collects delinquent tax debts through TOP when the Internal Revenue Service serves a levy. Levies to collect delinquent tax debts have a higher legal priority than offsets to collect nontax debts. *See* 31 U.S.C. 3716(c)(8). If a recurring payment is being offset under this section to collect a nontax debt when the Internal Revenue Service serves a levy to collect a tax debt, offsets may be interrupted until the tax levy is satisfied or released. In this case, immediately upon satisfaction of the tax debt, FMS may resume offsetting the payment to collect the Federal nontax debt without further warning notice to the debtor. As with all offsets, the disbursing official (or FMS, on behalf of the disbursing official) will send an offset notice (*see* paragraph (g)(3)) at the time of the offset.

(g) Notices

Paragraph (g) describes the two types of notices that disbursing officials will provide to the debtor/payee—warning notices and offset notices. Where the payment offset is a recurring payment, the disbursing official (or FMS, on behalf of the disbursing official) will send a warning notice prior to the first offset. The warning notice will state when the offsets will begin and the anticipated amount of the offset. When the offset will begin may be stated as a certain number of days or number of payments from the date of the warning notice. If appropriate, the anticipated amount of the offset may be stated as a percentage of the payment. Recipients of recurring payments also will receive offset notices at the time the disbursing official offsets the payments. Where the payment offset represents a one-time payment or non-recurring payment, the disbursing official will not send a warning notice. The disbursing official (or FMS on behalf of the disbursing official) will send an offset notice at the time the offset occurs. Offset notices identify the payment, the amount offset, the creditor agency that requested the offset, and the name of a contact within the creditor agency. Pursuant to 31 U.S.C. 3716(c)(7)(B), the failure of the debtor to receive an offset notice shall not impair the legality of the offset.

(h) Notification to Creditor and Payment Agencies

Paragraph (h) explains the information that creditor and payment agencies will receive when an offset occurs.

(i) Disposition of Amounts Collected

Paragraph 285.5(i) describes the process for disposition of amounts collected by means of offset. After offsetting a payment, FMS will normally deduct any fees charged in accordance with paragraph 285.5(j) before transmitting the remaining amount to the appropriate creditor agency. Alternatively, FMS may bill the creditor agency.

If FMS learns that an offset has been taken erroneously, FMS will notify the creditor agency of the erroneous offset, and will collect the amount paid under the erroneous offset by deducting the amount from future amounts payable to the creditor agency. An erroneous offset occurs when the payee was not entitled to the payment or there was another error in the payment or offset process. Erroneous offsets do not include offsets which occurred because the creditor agency should not have certified the debt. If a debt should not have been certified for offset, the creditor agency will resolve the matter directly with the debtor. Generally, a disbursing official is not responsible for refunding money to debtors if a debt should not have been collected by offset.

(j) Fees

Paragraph (j) describes the fee that FMS will charge for its services under this section. The fee may include administrative fees charged by salary paying agencies that match their salary payments with debts in the TOP database and conduct the offset of, or calculate the correct amount to be offset from, Federal salary payments on behalf of disbursing officials. Under 31 U.S.C. 3716(c)(4), FMS' fee may cover the full cost of implementing centralized offset, including certain costs incurred by non-Treasury disbursing officials performing offsets. In accordance with 31 U.S.C. 3711(g)(7), FMS may reimburse non-Treasury disbursing officials for certain expenses associated with governmentwide debt collection unless otherwise prohibited by law.

(k) Waiver of Certain Provisions Under the Computer Matching Privacy and Protection Act of 1988

The DCIA includes provisions intended to simplify the matching process involving delinquent debtor records certified by creditor agencies and payment records certified by payment agencies for purposes of offsetting payments other than tax refunds. In particular, where a creditor agency certifies that the due process requirements of 31 U.S.C. 3716(a) have been met, the DCIA authorizes the Secretary to waive provisions of the Computer Matching and Privacy Protection Act of 1988 (CMPPA), Pub. L. No. 100–503, as amended, that require matching agreements, as well as post match notice and verification of the results of individual matches. *See* 5 U.S.C. 552a(o) and (p). Once a waiver has been granted by the Secretary, the DCIA also simplifies the CMPPA review and reporting requirements codified at 5 U.S.C. 552a(u) by placing all such responsibility with the data integrity board of the Department of the Treasury. Paragraph (k) of this section provides notice that this waiver authority has been delegated to FMS, and clarifies that FMS has granted a general waiver for all agencies that certify to FMS that the requirements of paragraph (d)(6) of this section have been met. A waiver is not required for matching debts for purposes of tax refund offset. *See* 5 U.S.C. 552a(a)(8)(B).

Special Analysis

FMS is promulgating this interim rule without opportunity for prior public comment pursuant to the Administrative Procedure Act, 5 U.S.C. 553 (the ''APA''), because FMS has determined that a comment period would be unnecessary, impracticable, and contrary to the public interest. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

The public is invited to submit comments on the interim rule which will be taken into account before a final rule is issued.

FMS has determined that good cause exists to make this interim rule effective upon publication without providing the 30-day period between publication and the effective date contemplated by 5 U.S.C. 553(d). The purpose of a delayed effective date is to afford persons affected by a rule a reasonable time to prepare for compliance. However, in this case, as required by the DCIA, agencies already participate in TOP. Inasmuch as this interim rule provides important guidance that is expected to facilitate implementation of the authority contained in the law, FMS believes that good cause exists to make the rule effective upon publication.

Regulatory Analysis

This interim rule is not a significant regulatory action as defined in Executive Order 12866. It is hereby certified that this rule will not have a significant impact on a substantial number of small entities. Therefore a regulatory flexibility analysis is not required. This regulation will not impose significant costs on small businesses, because this regulation only impacts small businesses who receive payments from Federal agencies and who are delinquent on debts owed to the Federal government.

List of Subjects in 31 CFR Part 285

Administrative practice and procedure, Black lung benefits, Child Support, Claims, Credit, Debts, Disability benefits, Federal employees, Garnishment of wages, Hearing and appeal procedures, Loan programs, Privacy, Railroad retirement, Railroad unemployment insurance, Salaries, Social Security benefits, Supplemental Security Income (SSI), Taxes, Veteran's benefits, Wages.

Authority and Issuance

For the reasons set forth in the preamble, 31 CFR part 285 is amended as follows:

PART 285—DEBT COLLECTION AUTHORITIES UNDER THE DEBT COLLECTION IMPROVEMENT ACT OF 1996

1. The authority citation for part 285 continues to read as follows:

Authority: 5 U.S.C. 5514; 26 U.S.C. 6402; 31 U.S.C. 321, 3701, 3711, 3716, 3719, 3720A, 3720D; E.O. 13019; 3 CFR, 1996 Comp., p. 216.

2. Section 285.5 is added to Part 285, Subpart A, to read as follows:

§ 285.5 Offset of Federal payments to collect nontax debt owed to the United States.

(a) Scope. (1) This section governs the centralized offset of Federal payments to collect delinquent, nontax debts owed to Federal agencies in accordance with 31 U.S.C. 3716, 3720A and 26 U.S.C. 6402 and applicable regulations. The Department of the Treasury's Financial Management Service (FMS) administers centralized offset through the Treasury Offset Program. Offset occurs when the Federal government withholds part or all of a debtor's Federal payment to satisfy the debtor's delinquent debt owed to the government.

(2) Special rules apply to the collection of delinquent, nontax debts through the centralized offset of certain types of Federal payments, including tax refunds (31 CFR 285.2), Federal benefit payments (31 CFR 285.4), and Federal salary payments (31 CFR 285.7). While this rule applies to such payments, nothing in this rule is intended to contradict any provision of those more specific sections. To the extent any provision of this rule is inconsistent with a more specific provision of §§ 285.2, 285.4 or 285.7 of this part, the more specific provision shall apply.

(3) The receipt of collections pursuant to this section does not preclude a Federal agency from pursuing other debt collection remedies in conjunction with centralized offset. Nothing in this section precludes an agency from pursuing all available debt collection remedies simultaneously, provided that collections do not exceed the amount of the debt, including any interest, penalties, and administrative costs.

(b) *Definitions.* As used in this section:

Agency or *Federal agency* means a department, agency or subagency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Federal Government, including government corporations.

Centralized offset means the offset of Federal payments through the Treasury Offset Program to collect debts which creditor agencies have certified pursuant to 31 U.S.C. 3716(c), 3720A(a) and applicable regulations. The term ''centralized offset'' includes the Treasury Offset Program's processing of offsets of Federal payments disbursed by disbursing officials other than FMS.

Creditor agency has the same meaning as found at 31 U.S.C. 3701(e)(1) and means any Federal agency that is owed a claim or debt that seeks to collect that claim or debt through offset of Federal payments.

Debt or *claim* has the meaning contained in 31 U.S.C. 3701(b) and means any amount of money, funds, or property that has been determined by an appropriate official of the Federal government to be owed to the United States by a person, organization, or entity, except another Federal agency. The terms ''debt'' and ''claim'' are synonymous and include debt administered by a third party acting as an agent for the Federal Government. For purposes of this section, the term ''debt'' does not include debts arising under the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*), the tariff laws of the United States, or the Social Security Act (42 U.S.C. 301 *et seq.*), except to the extent provided in sections 204(f) and 1631(b)(4) of such Act (42 U.S.C. 404(f) and 1383(b)(4)(A), respectively) and 31 U.S.C. 3716(c).

Debt collection center means a Federal agency or a unit or subagency within a Federal agency that has been designated by the Secretary to collect debt owed to the United States.

Debtor means a person who owes a debt to the United States.

Delinquent or *past-due* refers to the status of a debt and means a debt has not been paid by the date specified in the agency's initial written demand for payment, or applicable agreement or instrument (including a post-delinquency payment agreement), unless other payment arrangements satisfactory to the creditor agency have been made. Nothing in this section is intended to define whether a debt is delinquent or past-due for purposes other than offset under this section.

Delinquent debt record means information about a past-due, legally enforceable debt submitted by a creditor agency to FMS for purposes of offset in accordance with the provisions of this section. Information about a past-due, legally enforceable debt includes, but is not limited to, the amount of the debt and the debtor's name, address, and taxpayer identifying number.

Disbursing official means an official who has authority to disburse public money pursuant to 31 U.S.C. 3321 or another law, including an official of the Department of the Treasury, the Department of Defense, the United States Postal Service, or any other government corporation, or any official of the United States designated by the Secretary of the Treasury to disburse public money.

FMS means the Financial Management Service, a bureau of the Department of the Treasury and its disbursing office. FMS is responsible for administering centralized offset.

Legally enforceable refers to a characteristic of a debt and means there has been a final agency determination that the debt, in the amount stated, is due, and there are no legal bars to collection by offset. Debts that are not legally enforceable for purposes of this section include, but are not limited to, debts subject to the automatic stay in bankruptcy proceedings or debts covered by a statute that prohibits collection of such debt by offset. For example, if a delinquent debt is the subject of a pending administrative review process required by statute or regulation, and if collection action during the review process is prohibited, the debt is not considered legally enforceable for purposes of this section. Nothing in this section is intended to define whether a debt is legally enforceable for purposes other than offset under this section.

Match means the taxpayer identifying number and name (or derivative thereof) of the payee on a payment record are the same as the taxpayer identifying number and name of the debtor on a delinquent debt record.

Offset means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a debt owed by the payee.

Past-due has the same meaning as ''delinquent'', as defined above.

Payee means a person who is due a payment from a disbursing official as certified by the payment agency. For purposes of this section, a ''payee'' is a person who is entitled to the benefit of all or part of a payment from a disbursing official.

Payment agency means any agency that transmits payment requests, in the form of certified payment vouchers or other similar forms, to a disbursing official for disbursement.

Payment record means information contained on a payment request, in the form of a certified payment voucher or other similar form, that has been transmitted to a disbursing official for disbursement in accordance with the provisions of 31 U.S.C. 3325 and 3528 or other applicable law. For purposes of matching, ''payment record'' may include information extracted from a payment request. Such information could include, but is not limited to, the amount and type of payment and the payee's name, address, and taxpayer identifying number.

Person means an individual, corporation, partnership, association, organization, State or local government, or any other type of entity other than a Federal agency.

Recurring payment means a payment to an individual that is expected to be payable to a payee at regular intervals, at least four times annually. The term ''recurring payment'' does not include payments made pursuant to a Federal contract, grant or cooperative agreement.

Representative payee means a person named as payee on the payment voucher certified by the payment agency who is acting on behalf of a person entitled to receive the benefit of all or part of the payment.

Secretary means the Secretary of the Treasury.

Taxpayer identifying number means the identifying number described under section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109). For an individual, the taxpayer identifying number is generally the individual's social security number.

(c) *General rule.* (1) Creditor agencies shall submit delinquent debts to FMS for purposes of offset in accordance with paragraph (d) of this section.

(2) Disbursing officials shall compare payment records with delinquent debt records submitted to FMS for collection by offset. When a match occurs, and all other requirements for offset have been met, the disbursing official shall offset the payment to satisfy, in whole or part, the payee's debt to the extent allowed by law. The disbursing official shall pay any amounts not offset to the payee. *See* paragraphs (e), (f), (g), and (h) of this section.

(d) *Requirements for creditor agencies*—(1) *Mandatory notification of delinquent debts.* As required by 31 U.S.C. 3716(c)(6), and in accordance with the provisions of this section, a creditor agency shall notify FMS of all legally enforceable debts over 180 days delinquent that are owed to the creditor agency. By complying with this requirement, creditor agencies will satisfy the requirement of 31 U.S.C. 3720A(a) to notify the Secretary of past due, legally enforceable debt for purposes of tax refund offset. If a debt which is over 180 days delinquent is considered not legally enforceable solely because it is under review as described in paragraph (d)(6)(ii)(C) of this section, the agency must submit the debt to FMS for collection by offset within 30 days of completing the review.

(2) *Discretionary notification of delinquent debts.* Creditor agencies may notify FMS of any debt that is less than 180 days delinquent, so long as the requirements of paragraph (d)(3) of this section are met.

(3) *Debt eligibility.* (i) A debt submitted to FMS for collection by centralized offset must be:

(A) Past-due in the amount stated by the creditor agency;

(B) Legally enforceable;

(C) Less than 10 years delinquent, unless the debt legally may be offset if more than 10 years delinquent;

(D) More than $25, or such other amount as FMS may prescribe; and

(E) Not secured by collateral subject to a pending foreclosure action, unless the creditor agency certifies that offset will not affect the Government's rights to the secured collateral.

(ii) The creditor agency must certify that the debt is eligible for collection by offset, as required in paragraph (d)(6) of this section.

(iii) Debts owed by foreign sovereigns may be referred to Treasury Offset Program at the discretion of the creditor agency to the extent allowed by law, but are excluded from mandatory referral under paragraph (d)(1) of this section.

(iv) In accordance with 31 U.S.C. 3719 and the procedures promulgated thereunder, creditor agencies must report to Treasury the amount of debt over 180 days delinquent eligible for the Treasury Offset Program. The procedures require that such report include the amount of debt over 180 days delinquent that the creditor agency has determined is not eligible for the Treasury Offset Program and the reasons for such determination.

(4) *Creditor agency regulations.* Prior to submitting a debt to FMS for purposes of offset, Federal agencies shall prescribe regulations in accordance with the requirements of 31 U.S.C. 3716(b), 31 CFR 901.3(b)(4), 31 U.S.C. 3720A(a), and 31 CFR 285.2(c). Before submitting debts to FMS for purposes of offsetting Federal salary payments, creditor agencies must also publish regulations pursuant to 5 U.S.C. 5514, 31 CFR 285.7(d)(2), and 5 CFR 550.1104.

(5) *Delinquent debt information requirements.* For each debt submitted to FMS for offset, the creditor agency shall provide the following information:

(i) Name and taxpayer identifying number of the person who owes the debt;

(ii) Debtor's address last known to the creditor agency;

(iii) The amount of the debt (including, as applicable, interest, penalties and administrative costs) and the date on which the debt became delinquent;

(iv) The contact within the creditor agency who will handle questions, concerns or communications regarding the debt;

(v) Written certification as required in paragraph (d)(6) of this section; and

(vi) Other information as may be requested by FMS.

(6) *Creditor agency certification.* At the time the creditor agency notifies FMS of a debt for purposes of collection by offset, the creditor agency shall provide, in the manner required by FMS, written certification to FMS that:

(i) The debt meets the requirements described in paragraph (d)(3)(i) of this section;

(ii) In compliance with 31 U.S.C. 3716, 3720A, 26 U.S.C. 6402, and applicable regulations, the creditor agency has made a reasonable attempt to provide each debtor with:

(A) Written notification, at least sixty days prior to submitting the debt and at the debtor's most current address known to the agency, of the nature and the amount of the debt, the intention of the creditor agency to collect the debt through offset, and an explanation of the rights of the debtor;

(B) An opportunity to inspect and copy the records of the creditor agency with respect to the debt;

(C) An opportunity for a review within the creditor agency of the determination of indebtedness, including the opportunity to present evidence that all or part of the debt is not past-due or legally enforceable;

(D) An opportunity to enter into a written repayment agreement with the creditor agency; and

(E) In the case of Federal employees, an opportunity for a hearing prior to submitting the debt for Federal salary offset. *See* 5 U.S.C. 5514 and 5 CFR 550.1104. (*See* 31 CFR 285.7(d), which describes the authority to waive the salary offset certification as a prerequisite to referring the debt for other types of offsets.)

(iii) The creditor agency has complied with all statutes, regulations, and policies applicable to the creditor agency's assessment of interest, penalties and administrative costs (including, as applicable, 31 U.S.C. 3717), and that the creditor agency has provided a written notice to debtors explaining the creditor agency's requirements concerning any such charges assessed against those debtors;

(iv) The individual signing the certification has the delegated authority to execute the certification on behalf of the head of the creditor agency; and

(v) such additional information that FMS may from time to time require in compliance with law, regulation or policy.

(7) *Updating Certification.* After a debt has been submitted to FMS for purposes of collection by offset, the creditor agency shall provide, at least annually, in the manner and time frames required by FMS, written certification to FMS that:

(i) The debt continues to meet the requirements described in paragraph (d)(3) of this section; and

(ii) The creditor agency has properly credited all collections to the debt balance (other than collections received through centralized offset).

(8) *FMS instructions to creditor agencies.* Agencies will provide the certification in a form and manner prescribed by FMS. FMS will instruct agencies as to the form such written certifications will take and how certifications can be delivered to FMS, including, but not limited to, the use of electronic data transmission.

(9) *Agencies which are both creditor and disbursing officials.* A creditor agency that also designates disbursing officials pursuant to 31 U.S.C. 3321(c) is not required to certify debts arising out of its operations to FMS before such agency's disbursing officials offset to collect such claims. This paragraph (d)(9) does not apply to FMS when it submits debts which it is servicing pursuant to 31 U.S.C. 3711(g).

(10) *Correcting and updating debt information.* (i) When submitting debts for offset, the creditor agency must properly credit all collections, other than collections received from centralized offset.

(ii) The creditor agency shall update delinquent debt records, in the manner and time frames required by FMS, to reflect any amounts credited by the creditor agency to the debtor's account after submission of the debt to FMS (other than credits for amounts collected by centralized offset).

(iii) The creditor agency may update delinquent debt records to reflect any increases in the amount of the debt submitted to FMS for collection by offset provided that the creditor agency has complied with the requirements of paragraph (d)(6) of this section with regard to the increased amounts.

(iv) The creditor agency shall notify FMS immediately of any change in the status of the legal enforceability of the debt—for example, if the creditor agency receives notice that the debtor has filed for bankruptcy protection.

(v) The creditor agency shall notify FMS if it has returned any moneys to the debtor/payee because of an offset that should not have occurred, as described in paragraph (i)(2) of this section.

(11) *Debts at FMS, a debt collection center, or the Department of Justice.* If a creditor agency has transferred a debt to FMS or a Treasury-designated debt collection center pursuant to 31 U.S.C. 3711(g) and 31 CFR 285.12, or if a creditor agency has referred a debt to the Department of Justice for enforced collection, then FMS, the debt collection center, or the Department of Justice, as the case may be, is responsible for submitting the debt information to FMS to satisfy the creditor agency's obligations under 31 U.S.C. 3716(c)(6) and this section.

(12) *Certification of amount to be offset if different than maximum allowed by law.* Generally, the amount of an offset will be calculated as set forth in paragraph (f)(2) of this section. If the creditor agency certifies to FMS that the creditor agency has determined the offset amount allowed by law would result in financial hardship to the debtor and that a lesser offset amount (specified either in dollar amount or as a percentage of the payment) is reasonable and appropriate based on the debtor's financial circumstances, then the disbursing official shall offset such lesser amount specified by the creditor agency.

(13) *Duplication of notices not required.* Nothing in this section requires any creditor agency to duplicate any notice or opportunity for hearing or review provided to the debtor prior to offset.

(e) *Payments made by the United States*—(1) *Payments eligible for offset.* Except as set forth in paragraph (e)(2) of this section, all Federal payments are eligible for offset under this section. Eligible Federal payments include, but are not limited to, Federal wage, salary, and retirement payments, vendor and expense reimbursement payments, certain benefit payments, travel advances and reimbursements, grants, fees, refunds, judgments (including those certified for payment pursuant to 31 U.S.C. 1304), tax refunds, and other payments made by Federal agencies.

(2) *Payments excluded from offset under this section.* This section does not apply to the following payments:

(i) Black Lung Part C benefit payments, or Railroad Retirement tier 2 payments;

(ii) Payments made under the tariff laws of the United States;

(iii) Veterans Affairs benefit payments to the extent such payments are exempt from offset pursuant to 38 U.S.C. 5301;

(iv) Payments made under any program administered by the Secretary of Education under title IV of the Higher Education Act of 1965 for which payments are certified by the Department of Education;

(v) Payments made under any other Federal law if offset is expressly prohibited by Federal statute;

(vi) Payments made under any program for which the Secretary has

granted an exemption in accordance with the provisions of 31 U.S.C. 3716(c)(3)(B) and paragraph (e)(7) of this section; and

(vii) Federal loan payments other than travel advances.

(3) *Specific rules for certain payment types.* (i) Specific rules apply with respect to the offset of the following types of payments:

(A) Social Security benefit payments (excluding Supplemental Security Income payments), Black Lung (part B) payments, and Railroad Retirement (other than tier 2) payments to the extent such payments are subject to offset under 31 U.S.C. 3716(c)(3)(A) (*see* 31 CFR 285.4);

(B) Federal salary payments (*see* 31 CFR 285.7; 5 CFR 550.1101 through 550.1108); and

(C) Tax refund payments (*see* 31 CFR 285.2).

(ii) This section governs the offset of such payments to the extent that this section is not inconsistent with the special rules that apply for a particular type of payment.

(4) *Payments made to joint payees.* If a payment is certified to more than one payee (*i.e.*, joint payees), the entire payment (including a tax refund payment) will be subject to offset for a debt of either payee, unless otherwise prohibited by law or regulation. *See* 31 CFR 285.2(g) regarding offset of joint tax refunds and claims to return offset funds to the non-debtor, joint payee.

(5) *Payments made to representative payees.* If a payment is made to a person solely in that person's capacity as a representative payee for another person having the beneficial interest in a payment, the disbursing official shall offset that payment only to collect debts owed by the person having the beneficial interest in the payment. Payment agencies are responsible for identifying representative payees.

(6) *Assigned payments.* (i) If a person, including a Federal contractor, assigns the right to receive a Federal payment to a third party (the ''assignee''), the assigned payment will be subject to offset to collect a delinquent debt owed by the assignee.

(ii) An assigned payment will also be subject to offset to collect delinquent debts owed by the assignor unless:

(A) In accordance with 41 U.S.C. 15(e)–(f), the payment has been properly assigned to a financial institution pursuant to a Federal contract, the contract contains provisions prohibiting the payment from being reduced or offset for debts owed by the contractor, and the debt arose independently of the contract; or

(B) pursuant to 31 U.S.C. 3727, the payment is being made to the assignee as settlement or satisfaction of a claim brought by the assignee against the creditor agency based upon the contract, and the debt of the contractor arises independently of the contract; or

(C) the debtor has properly assigned the right to such payments and the debt arose after the effective date of the assignment.

(7) *Payment agency requests for exemptions from centralized offset pursuant to 31 U.S.C. 3716(c)(3)(B)*—(i) *Means-tested payments.* The Secretary will exempt from centralized offset payments made under means-tested programs when requested by the head of the agency making such payments. For purposes of this section ''means-tested programs'' are those which base eligibility on a determination that the income and/or assets of the beneficiary are inadequate to provide the beneficiary with an adequate standard of living without program assistance.

(ii) *Payments made under programs which are not means-tested.* Upon written request from the payment agency, the Secretary may exempt classes of payments which are not means-tested. Payment agencies may request that the Secretary exempt 100% of each payment in a payment class or that the Secretary exempt a specific lesser percentage. The Secretary will consider such requests under standards prescribed by the Secretary and published on the FMS Web site. *See www.fms.treas.gov/debt.*

(iii) *Procedures for requesting exemptions.* The head of the payment agency must make a request for exemption in writing. The request must comply with the procedures published by FMS and made available at its Web site. *See www.fms.treas.gov/debt.*

(iv) *Exemptions apply to classes of payments.* The Secretary will only exempt classes of payments. Requests for exemption of individual payments will not be considered.

(8) *Payment agency responsibilities.* (i) Payment agencies shall prepare and submit payment vouchers in the manner prescribed by the disbursing official to ensure that all payments legally eligible for offset will be offset and all payments not eligible will not be offset. Payment agencies shall notify the disbursing agency, in the manner prescribed by FMS, that a payment is a recurring payment.

(ii) Payment agencies shall also review the nature of payments the agency certifies and notify FMS of any legal bars to centralized offset of payments.

(9) *Payment and disbursing officials have satisfied the obligation underlying the payment.* When an offset occurs, the debtor has received payment in full for the underlying obligation represented by the payment. Pursuant to 31 U.S.C. 3716(c)(2)(A), neither the disbursing official nor the payment agency shall be liable for the amount of the offset on the basis that the underlying obligation was not satisfied. For example, if an agency certifies a payment to a Federal contractor for work completed or services provided, and that payment is offset to collect a delinquent debt that the contractor owes to another Federal agency, the contractor has been paid in full for its services. When the creditor agency credits the offset amount to the contractor's delinquent debt, the contractor has received full value for the services performed under the contract.

(f) *Offset*—(1) *When offset occurs.* When a match occurs and all other requirements for offset under 31 U.S.C. 3716(c), 3720A, and applicable regulations have been met, the disbursing official shall offset the payee's Federal payment to satisfy, in whole or part, the debt owed by the debtor. Offsets will continue until the debt, including any interest, penalties, and administrative costs, is paid in full or otherwise resolved to the satisfaction of the creditor agency.

(2) *Offset amount.* (i) Except as otherwise provided in 31 CFR 285.4(e) and 285.7(g) (addressing centralized offset of certain Federal benefit payments and salary payments, respectively), the disbursing official shall offset the lesser of:

(A) The amount of the payment as shown on the payment record; or

(B) The amount of the debt, including any interest, penalties and administrative costs; or

(C) In the case of retirement annuity payments certified by the Office of Personnel Management, up to twenty-five percent of the amount of the payment as shown on the payment record.

(ii) Notwithstanding paragraph (f)(2)(i) of this section, if a creditor agency has specified another amount, either in dollars or as a percentage of the payment, pursuant to paragraph (d)(15) of this section, the disbursing official shall offset the amount specified by the creditor agency.

(3) *Priorities for collecting multiple debts owed by the payee.* (i) A levy pursuant to the Internal Revenue Code of 1986 shall take precedence over deductions under this section.

(ii) When a payment may be offset to collect more than one debt under this section, amounts offset will be applied:

(A) First, to satisfy any past due support debts assigned to a State pursuant to sections 402(a)(26) and 471(a)(17) of the Social Security Act (*see* 26 U.S.C. 6402(c) and sections 285.1 and 285.3 of this part);

(B) Second, to satisfy any debts owed to Federal agencies;

(C) Third, to satisfy any qualifying past-due support claims not assigned to a State (*see* 26 U.S.C. 6402(c) and sections 285.1 and 285.3 of this part); and

(D) Fourth, to any debts owed to States for debts other than past-due support (*see* § 285.8 of this part).

(iii) If a recurring payment is being offset to collect a debt when another debt owed by the payee with a higher priority is submitted to FMS, and if the amount that may be legally offset from such payment is insufficient to satisfy both debts, then collections for the first, lower-priority debt will be suspended or reduced until the debt with the higher priority is satisfied or is otherwise uncollectible.

(g) *Notices*—(1) *Warning notice by disbursing official to payee/debtor.* Before offsetting a recurring payment, the disbursing official, or FMS on behalf of the disbursing official, will notify the payee in writing when offsets will begin (which may be stated as a number of days or number of payments from the time of the notice) and the anticipated amount of such offset (which may be stated as a percentage of the payment). Such notice shall also provide the information contained in paragraph(g)(3) of this section.

(2) *No additional warning notice when collections are suspended and resumed.* As described in paragraph (f)(3)(iii) of this section, FMS may suspend or reduce the application of collections from a recurring payment for one debt when another debt, which is owed by the same debtor and has a higher legal priority, is submitted to FMS for collection. The disbursing official is not required to send additional warning notices when collections for the lower priority debt resume; however, pursuant to paragraph (g)(3) of this section, each offset will be accompanied by an offset notice, which explains how the offset amounts were applied.

(3) *Offset notice.* When an offset occurs under this section, the disbursing official, or FMS on behalf of the disbursing official, shall notify the payee in writing that an offset has occurred including:

(i) A description of the payment and the amount of offset taken;

(ii) The identity of the creditor agency requesting the offset; and

(iii) A contact point within the creditor agency who will handle concerns regarding the offset.

(h) *Notification to creditor and payment agencies.* (1) FMS will notify the creditor agency of all offsets made to collect the creditor agency's debts. Such notification shall include the complete name and taxpayer identifying number of each debtor/payee, the total amounts collected from each debtor/payee's payment, and the amount of any fees charged by FMS and any other disbursing official conducting offsets. FMS will not advise the creditor agency of the source of payment from which such amounts were collected.

(2) When a non-Treasury disbursing official conducts the offset, that disbursing official will transmit to FMS all of the information necessary for FMS to send notification under paragraph (h)(1) of this section, including the amount of any fees that the creditor agency is responsible for paying.

(3) FMS will make available to the payment agency the information contained in the notification of offset, so that the payment agency may direct any questions concerning the claim to the appropriate contact person in the creditor agency.

(i) *Disposition of amounts collected.* (1) FMS will transmit amounts collected for debts, less fees charged pursuant to paragraph (j) of this section, to the appropriate creditor agency or agencies. Alternatively, FMS may bill the creditor agency for any fees charged pursuant to paragraph (j) of this section.

(2) If FMS learns from a paying agency that a payment should not have been made, and thus not offset, FMS will notify the creditor agency. FMS may deduct the offset amount from future amounts payable to the creditor agency. Alternatively, upon FMS's request, the creditor agency shall return promptly to the disbursing official an amount equal to the amount of the offset (without regard to whether any other amounts payable to such disbursing official have been paid).

(3) Generally, the disbursing official is not responsible for refunding money to debtors. The creditor agency shall notify FMS any time the creditor agency returns all or any part of an offset payment to an affected payee. FMS and the creditor agency shall adjust the debtor records appropriately.

(j) *Fees.* FMS may charge a fee sufficient to cover the full cost of implementing the centralized offset program, including the amount of any fees charged by other disbursing officials conducting an offset under this section. FMS may deduct the fees from amounts collected by offset or may bill the creditor agencies. FMS will charge fees only for actual offsets collected.

(k) *Waiver of certain provisions under the Computer Matching Privacy and Protection Act of 1988.* As authorized by 31 U.S.C. 3716(f), FMS, under a delegation of authority from the Secretary, has waived certain requirements of the Computer Matching and Privacy Protection Act of 1988, Pub. L. No. 100–503, as amended, for matches between delinquent debt records and payment records for offset purposes upon written certification by the head of the creditor agency that the requirements of 31 U.S.C. 3716(a) have been met. Specifically, for administrative offset of Federal payments other than tax refunds, FMS has waived the requirements for a computer matching agreement contained in 5 U.S.C. 552a(o) and for post-match notice and verification contained in 5 U.S.C. 552a(p) so long as the creditor agency provides certification to FMS in accordance with the provisions of paragraph (d)(6) of this section. Such waiver is not necessary for offset of Federal tax refunds, pursuant to 5 U.S.C. 552a(a)(8)(B). The Data Integrity Board of the Department of the Treasury shall review and include in reports under 5 U.S.C. 552a(u)(3)(D) a description of the matching activities conducted for centralized offset under this section. No other Data Integrity Board is required to take any action under 5 U.S.C. 552a(u) concerning these computerized comparisons.

Dated: December 19, 2002.

Richard L. Gregg,

Commissioner.

[FR Doc. 02–32572 Filed 12–24–02; 8:45 am]

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Federal Register

Thursday,
December 26, 2002

Part VI

Environmental Protection Agency

40 CFR Part 125

National Pollutant Discharge Elimination System—Amendment of Final Regulations Addressing Cooling Water Intake Structures for New Facilities; Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 125

[FRL–7430–4]

National Pollutant Discharge Elimination System—Amendment of Final Regulations Addressing Cooling Water Intake Structures for New Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Today's direct final rule makes minor changes to EPA's final rule published December 18, 2001 implementing section 316(b) of the Clean Water Act (CWA) for new facilities that use water withdrawn from rivers, streams, lakes, reservoirs, estuaries, oceans or other waters of the United States for cooling. The December 2001 rule established national technology-based performance requirements applicable to the location, design, construction, and capacity of cooling water intake structures at new facilities. The national requirements establish the best technology available for minimizing adverse environmental impact associated with the use of these structures. EPA is making several minor changes to the December 2001 rule because, in several instances, the final rule text does not reflect the Agency's intent.

DATES: This direct final rule is effective on March 26, 2003 without further notice, unless EPA receives adverse written comment by January 27, 2003. If EPA receives such comment, it will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.B. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Martha Segall, USEPA Office of Water by phone at (202) 566–1041 or by e-mail at *rule.316b@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Regulated Entities

This direct final rule applies to new greenfield and stand-alone facilities that use cooling water intake structures to withdraw water from waters of the U.S. and that have or require a National Pollutant Discharge Elimination System (NPDES) permit issued under section 402 of the CWA. New facilities subject to this regulation include those that have a design intake flow of greater than two (2) million gallons per day (MGD) and that use at least twenty-five (25) percent of water withdrawn for cooling purposes. Today's rule does not apply to existing facilities, major modifications to existing facilities that would be ''new sources'' under 40 CFR 122.29(b) as that term is used in the effluent guidelines and standards program, or facilities that employ cooling water intake structures in the offshore oil and gas extraction point source category as defined under 40 CFR 435.10 and 40 CFR 435.40.

The following table is not intended to be exhaustive; rather, it provides a guide for readers regarding entities likely to be regulated by this action. The table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria at 40 CFR 125.81. If you have questions about the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Category	Examples of Regulated Entities	Standard Industrial Classification Codes	North American INdustry Codes (NAIC)
Federal, State and Local Government.	Operators of steam electric generatingpoint source dischargers that employ cooling water intake structures.	4911 and 493	221111, 221112, 221113, 221119, 221121, 221122, 221111, 221112, 221113, 221119, 221121, 221122
Industry	Operators of industrial point source dischargers that employ cooling water intake structures..	See below	See below
	Steam electric generating	4911 and 493	221111, 221112, 221113, 221119, 221121, 221122, 221111, 221112, 221113, 221119, 221121, 221122
	Agricultural production	0133	111991, 11193
	Metal mining	1011	21221
	Oil and gas extraction (Excluding offshore and coastal subcategories).	1311, 1321	211111, 211112
	Mining and quarrying of nonmetallic minerals	1474	212391
	Food and kindred products	2046, 2061, 2062, 2063, 2075, 2085.	311221, 311311, 311312, 311313, 311222, 311225, 31214
	Tobacco products	2141	312229, 31221
	Textile mill products	2211	31321
	Lumber and wood products, except furniture	2415, 2421, 2436, 2493.	321912, 321113, 321918, 321999, 321212, 321219
	Paper and allied products	2611, 2621, 2631, 2676.	3221, 322121, 32213, 322121, 322122, 32213, 322291
	Chemical and allied products	28 (except 2895, 2893, 2851, and 2879).	325 (except products 325182, 32591, 32551, 32532)
	Petroleum refining and related industries	2911, 2999	32411, 324199
	Rubber and miscellaneous plastics products	3011, 3069	326211, 31332, 326192, 326299
	Stone, clay, glass, and concrete products	3241	32731

Category	Examples of Regulated Entities	Standard Industrial Classification Codes	North American INdustry Codes (NAIC)
	Primary metal industries	3312, 3313, 3315, 3316, 3317, 3334, 3339, 3353, 3363, 3365, 3366.	324199, 331111, 331112, 331492, 331222, 332618, 331221, 22121, 331312, 331419, 331315, 331521, 331524, 331525
	Fabricated metal products, except machinery and transportation equipment.	3421, 3499	332211, 337215, 332117, 332439, 33251, 332919, 339914, 332999
	Industrial and commercial machinery and computer equipment.	3523, 3531	333111, 332323, 332212, 333922, 22651, 333923, 33312
	Transportation equipment	3724, 3743, 3764	336412, 333911, 33651, 336416
	Measuring, analyzing, and controlling instruments; photographic, medical, and optical goods; watches and clocks.	3861	333315, 325992
	Electric, gas, and sanitary services	4911, 4931, 4939, 4961.	221111, 221112, 221113, 221119, 221121, 221122, 22121, 22133
	Educational services	8221	61131
	Engineering, accounting, research, management and related services.	8731	54171

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 ID No. OW–2002–0052. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. 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 Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

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. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as confidential business information (CBI) and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. 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.A.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or *see* 67 FR 38102, May 31, 2002.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. Please submit with your comments any references cited in your comments. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments; however, late comments may be considered if time permits. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.C. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact

information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. OW–2002–0052. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *OW-Docket@epa.gov*, Attention Docket ID No. OW–2002–0052. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit 1.B.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send an original and three (3) copies of your comments to the ''Water Docket,'' U.S. Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OW–2002–0052.

3. *By Hand Delivery or Courier.* Deliver your comments to: Water Docket, EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC, Attention Docket ID No. OW–2002–0052. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit 1.A.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send information identified as CBI by mail only to the following address: Office of Science and Technology, Mailcode 4303T, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention: Martha Segall/ Docket ID No. OW–2002–0052.

You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

II. Legal Authority, Purpose and Scope of Today's Direct Final Rule

On December 18, 2001, EPA published a final rule implementing section 316(b) of the Clean Water Act (CWA) for new facilities that use water withdrawn from rivers, streams, lakes, reservoirs, estuaries, oceans or other waters of the United States for cooling purposes. EPA often refers to the final rule implementing section 316(b) for new facilities as the ''Phase I rule'' (this term is used to avoid confusion with other phases of the section 316(b) rulemaking that cover existing facilities). The legal authority, background, and basis for the Phase I rule are discussed in the **Federal Register** notice and in the record for the rule. *See* 66 FR 65256, December 18, 2001. EPA reviewed the final rule text and believes that the regulatory language did not correctly reflect its intent with respect to three issues. EPA is, therefore, making several minor changes to the regulatory text. This document does not reopen the final rule in any respect other than the changes discussed here. EPA does not solicit comment on any issues except for the three discrete ones discussed here.

III. Discussion of Direct Final Rulemaking

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment since we are correcting technical errors and not otherwise amending the regulatory text of the December 2001 Phase I final rule. However, in the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to amend the Phase I final rule if adverse comments are filed. This rule will be effective on March 26, 2003 without further notice unless we receive adverse comment by January 27, 2003. If EPA receives adverse comment on one or more distinct amendment(s), paragraph(s), or section(s) of this rulemaking, the Agency will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn due to adverse comment. Any distinct amendment, paragraph, or section of today's rulemaking for which we do not receive adverse comment will become effective on the date set in this direct final rule, notwithstanding any adverse comment on any other distinct amendment, paragraph or section of today's rule. If adverse comment is received, we will address all public comments in a subsequent final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Corrections to Regulatory Text

A. Velocity Monitoring

The first revision to the regulatory text relates to velocity monitoring. In the final rule for cooling water intake

structures at new facilities, EPA required monitoring velocity at cooling water intake structures at least once per quarter. In monitoring velocity, facilities that employ surface intake screens are required to monitor head loss across the intake screens at the ''minimum ambient source water surface elevation.'' EPA qualified that language in the requirement by adding a parenthetical phrase that would allow the minimum ambient source water surface elevation to be determined using the Director's best professional judgment based on available hydrological data. *See* 40 CFR 125.87(b). However, EPA also defined ''minimum ambient source water surface elevation'' at 40 CFR 125.83 to mean ''the elevation of the 7Q10 flow for freshwater streams or rivers; the conservation pool level for lakes or reservoirs; or the mean low tidal water level for estuaries or oceans.'' EPA further defined each of these low flows in terms of a temporal and hydrological basis. *See* 66 FR 65339, December 18, 2001.

EPA understands that ambient source water surface elevations fluctuate through time, and it would be difficult, if not unfeasible, to coordinate the measurements of head loss to the time when these minimum ambient source water surface elevations were occurring in the waterbody. It was EPA's intent that the velocity be measured at a time that is predicted, based on knowledge of the hydrology of the waterbody, to be a time of reasonable low flow representative of the low surface elevations that might occur during the months that comprise each quarter. For example, in tidal waters the velocity measurement should be taken at a low tide. If tide tables and/or other records indicate that the surface elevations in a particular month are typically lower than in other months, the facility should measure intake velocity at one of the lowest predicted tides during that particular month. In reservoirs where water levels are drawn down at certain parts of the year, the facility should measure intake velocity immediately after a drawdown or release has occurred. In freshwater rivers and streams, the facility should measure intake velocity during the month that typically has the lowest flows. Such monitoring should occur at a time when flows are not temporarily elevated due to recent storm events. The Director should determine and specify the appropriate time of measurement in the facility's NPDES permit based on available existing hydrological information and information submitted by the owner of the facility with its permit application. Accordingly, to conform the regulatory text to EPA's intent, EPA believes that the regulatory language at 40 CFR 125.87 is sufficient and that the definition of ''minimum ambient source water surface elevation'' is no longer needed. Therefore, today's action will only delete the definition of ''minimum ambient source water surface elevation'' at 40 CFR 125.83.

B. Director's Authority To Require Additional Design and Construction Technologies or Operational Measures in Track I

The second set of revisions to the regulatory text relate to the Director's authority to require additional design and construction technologies or operational measures in Track I. There are five provisions at issue: 40 CFR 125.84(b)(4)(ii), (b)(4)(iii), (b)(5)(ii), (c)(3)(ii), and (c)(3)(iii). Four of these provisions specify circumstances where design and construction technologies or operational measures for minimizing impingement mortality of fish and shellfish are required. At 40 CFR 125.84(b)(4)(ii) and (c)(3)(ii), facilities are required to select and implement design and construction technologies or operational measures for minimizing impingement mortality of fish and shellfish if ''There are migratory and /or sport or commercial species of impingement concern to the Director or any fishery management agency(ies), which pass through the hydraulic zone of influence of the cooling water intake structure.'' The language should have read, ''Based on information submitted by any fishery management agency(ies) or other relevant information, there are migratory and/or sport or commercial species of impingement concern to the Director that pass through the hydraulic zone of influence of the cooling water intake structure.'' Paragraphs (b)(4)(iii) and (c)(3)(iii) require a facility to select and implement design and construction technologies or operational measures for minimizing impingement mortality if ''It is determined by the Director or any fishery management agency(ies)...'' The language should have read, ''It is determined by the Director, based on information submitted by any fishery management agency(ies) or other relevant information, that....'' The fifth provision, paragraph (b)(5)(ii), addresses circumstances where design and construction technologies or operational measures are required for minimizing entrainment of entrainable life stages of fish and shellfish. The language used in this provision was similar to that in paragraphs (b)(4)(ii), (b)(4)(iii), (c)(3)(ii), and (c)(3)(iii) and therefore requires similar corrections.

All of these revisions are necessary because the decision of what to require under section 316(b) of the CWA belongs to the Director. Although EPA did not intend to delegate the decisionmaking to another agency, the Director may obtain information from another agency to make a decision. Therefore, today's action amends the requirements at 40 CFR 125.84(b)(4)(ii), (b)(4)(iii), (b)(5)(ii), (c)(3)(ii), and (c)(3)(iii) to reflect the intent that the information of another agency informs the decision of the Director.

C. Deletion of Inappropriate Cross Reference in the Alternative Requirements Section

The third issue relates to drafting errors in the alternative requirements section of the rule. The regulation at 40 CFR 125.85 in paragraphs (a)(2) and (3) currently refers to local water resources ''not addressed under § 125.84(d)(1)(i)'' intending to refer to local water resource issues other than impingement or entrainment. Cross-referencing this other section of the regulations is not technically correct, however, because subsection (d) of § 125.84 is part of Track II while the alternative requirements provision applies to either Track I or Track II. Therefore, this action deletes the reference to 40 CFR 125.84(d)(1)(i) and substitutes language referencing ''significant adverse impacts on local water resources other than impingement or entrainment.'' Similarly, to eliminate any uncertainty regarding applicability of the alternative requirements provision at § 125.85 to the Track II performance requirements at § 125.84(d), this action deletes § 125.84(d)(ii) because it is unnecessary and confusing.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Reviews

Under Executive Order 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector or the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations 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.''

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and therefore is not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This rule merely makes three minor technical revisions to the December 2001 Phase I final regulations for cooling water intake structures. These minor changes will clarify the Agency's intent on velocity monitoring, authority to require additional design and construction technologies, and procedures for seeking less stringent alternative requirements. It would affect the same facilities as the December 2001 rule, would have no additional costs or benefits beyond those already projected, and would not reduce the level of environmental protection projected.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandates that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector, in any one year. This rule merely makes three minor technical revisions to the December 2001 Phase I final regulations for cooling water intake structures. These minor changes will clarify the Agency's intent on velocity monitoring, authority to require additional design and construction technologies, and procedures for seeking less stringent alternative requirements. It would affect the same facilities as the December 2001 rule, would have no additional costs or benefits beyond those already projected, and would not reduce the level of environmental protection projected. Thus, today's rule is not subject to the requirements of section 202 and 205 of the UMRA. For the same reasons, EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's rule is not subject to the requirements of section 203 of the UMRA.

D. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business based on the Small Business Administration's size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This direct final rule does not substantively change the December 18, 2001 Phase I final rule (66 FR 65256), nor does it impose a significant economic impact on a substantial number of small entities. This rule merely makes three minor technical revisions to the December 2001 rule for cooling water intake structures. These minor changes will clarify the Agency's intent on velocity monitoring, authority to require additional design and construction technologies, and procedures for seeking less stringent alternative requirements. It would affect the same facilities as the December 2001 rule, would have no additional costs or benefits beyond those already projected, and would not reduce the level of environmental protection projected.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure

''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule merely makes three minor technical revisions to the December 2001 Phase I final regulations for cooling water intake structures. These minor changes will clarify the Agency's intent on velocity monitoring, authority to require additional design and construction technologies, and procedures for seeking less stringent alternative requirements. It would affect the same facilities as the December 2001 rule, would have no additional costs or benefits beyond those already projected, and would not reduce the level of environmental protection projected. Thus Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' ''Policies that have Tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes.''

This direct final rule does not have Tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175. This rule merely makes three minor technical revisions to the final regulations for cooling water intake structures. These minor changes will clarify the Agency's intent on velocity monitoring, authority to require additional design and construction technologies, and procedures for seeking less stringent alternative requirements. It would affect the same facilities as the December 2001 rule, would have no additional costs or benefits beyond those already projected, and would not reduce the level of environmental protection projected. This rule does not affect Tribes in any way in the foreseeable future. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe might have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not economically significant as defined under Executive Order 12866 and does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. This rule merely makes three minor technical revisions to the final regulations for cooling water intake structures. These minor changes will clarify the Agency's intent on velocity monitoring, authority to require additional design and construction technologies, and procedures for seeking less stringent alternative requirements. It would affect the same facilities as the December 2001 rule, would have no additional costs or benefits beyond those already projected, and would not reduce the level of environmental protection projected. Therefore, it is not subject to Executive Order 13045.

H. Executive Order 13211: Energy Effects

This direct final rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (''NTTAA'') of 1995 (Public Law 104–113, section 12(d), 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This direct final rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 provides that each Federal agency must conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin.

EPA does not expect that this final rule would have an exclusionary effect, deny persons the benefit of the NPDES program or subject persons to discrimination because of their race, color, or national origin. This rule merely makes three minor technical revisions to the final regulations for cooling water intake structures. These minor changes will clarify the Agency's intent on velocity monitoring, authority to require additional design and construction technologies, and procedures for seeking less stringent alternative requirements. It would affect

the same facilities as the December 2001 rule, would have no additional costs or benefits beyond those already projected, and would not reduce the level of environmental protection projected.

K. Executive Order 13158: Marine Protected Areas

Executive Order 13158 (65 FR 34909, May 31, 2000) requires EPA to ''expeditiously propose new science-based regulations, as necessary, to ensure appropriate levels of protection for the marine environment.'' EPA may take action to enhance or expand protection of existing marine protected areas and to establish or recommend, as appropriate, new marine protected areas. The purpose of the Executive Order is to protect the significant natural and cultural resources within the marine environment, which means ''those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands thereunder, over which the United States exercises jurisdiction, consistent with international law.''

Today's direct final rule will not enhance or expand protection nor reduce the level of environmental protection of existing marine protected areas. This rule merely makes three minor technical revisions to the December 2001 Phase I final regulations for cooling water intake structures. These minor changes will clarify the Agency's intent on velocity monitoring, authority to require additional design and construction technologies, and procedures for seeking less stringent alternative requirements. It would affect the same facilities as the December 2001 rule, would have no additional costs or benefits beyond those already projected, and would not reduce the level of environmental protection projected.

L. Plain Language Directive

Executive Order 12866 encourages agencies to write all rules in plain language. EPA has written this direct final rule in plain language to make this rule and the final rule at 66 FR 65256, December 18, 2001 easier to understand.

M. Congressional Review Act

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). This rule will be effective March 26, 2003.

List of Subjects in 40 CFR Part 125

Environmental protection, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: December 19, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

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

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*, unless otherwise noted.

2. In § 125.83, remove the definition for ''Minimum ambient source water surface elevation.''

3. Section 125.84 is amended by revising paragraphs (b)(4)(ii), (b)(4)(iii), (b)(5)(ii), (c)(3)(ii), (c)(3)(iii), and (d)(1) to read as follows:

§ 125.84 As an owner or operator of a new facility, what must I do to comply with this subpart?

* * * * *

(b) * * *

(4) * * *

(ii) Based on information submitted by any fishery management agency(ies) or other relevant information, there are migratory and/or sport or commercial species of impingement concern to the Director that pass through the hydraulic zone of influence of the cooling water intake structure; or

(iii) It is determined by the Director, based on information submitted by any fishery management agency(ies) or other relevant information, that the proposed facility, after meeting the technology-based performance requirements in paragraphs (b)(1), (2), and (3) of this section, would still contribute unacceptable stress to the protected species, critical habitat of those species, or species of concern;

(5) * * *

(ii) Based on information submitted by any fishery management agency(ies) or other relevant information, there are or would be undesirable cumulative stressors affecting entrainable life stages of species of concern to the Director and the Director determines that the proposed facility, after meeting the technology-based performance requirements in paragraphs (b)(1), (2), and (3) of this section, would contribute unacceptable stress to these species of concern;

* * * * *

(c) * * *

(3) * * *

(ii) Based on information submitted by any fishery management agency(ies) or other relevant information, there are migratory and/or sport or commercial species of impingement concern to the Director that pass through the hydraulic zone of influence of the cooling water intake structure; or

(iii) It is determined by the Director, based on information submitted by any fishery management agency(ies) or other relevant information, that the proposed facility, after meeting the technology-based performance requirements in paragraphs (c)(1) and (2) of this section, would contribute unacceptable stress to the protected species, critical habitat of those species, or species of concern;

* * * * *

(d) * * *

(1) You must demonstrate to the Director that the technologies employed will reduce the level of adverse environmental impact from your cooling water intake structures to a comparable level to that which you would achieve were you to implement the requirements of paragraphs (b)(1) and (2) of this section. This demonstration must include a showing that the impacts to fish and shellfish, including important forage and predator species, within the watershed will be comparable to those which would result if you were to implement the requirements of paragraphs (b)(1) and (2) of this section. This showing may include consideration of impacts other than impingement mortality and entrainment, including measures that will result in increases in fish and shellfish, but it must demonstrate comparable performance for species that the Director identifies as species of concern. In identifying such species, the Director may consider information provided by national, state, or tribal fishery management agencies with responsibility for fisheries potentially affected by your cooling water intake structure along with data and information from other sources.

* * * * *

4. Section 125.85 is amended by revising paragraphs (a)(2) and (3) to read as follows:

§ 125.85 May alternative requirements be authorized?

(a) * * *

(2) The Director determines that data specific to the facility indicate that compliance with the requirement at issue would result in compliance costs wholly out of proportion to the costs EPA considered in establishing the requirement at issue or would result in significant adverse impacts on local air quality, significant adverse impacts on local water resources other than impingement or entrainment, or significant adverse impacts on local energy markets;

(3) The alternative requirement requested is no less stringent than justified by the wholly out of proportion cost or the significant adverse impacts on local air quality, significant adverse impacts on local water resources other than impingement or entrainment, or significant adverse impacts on local energy markets; and

* * * * *

5. Section 125.89 is amended by revising paragraph (b)(2) to read as follows:

§ 125.89 As the Director, what must I do to comply with the requirements of this subpart?

* * * * *

(b) * * *

(2) *Monitoring conditions.* At a minimum, the permit must require the permittee to perform the monitoring required in § 125.87. [For facilities required to perform the velocity monitoring in § 125.87(b), you should determine and specify the appropriate time of measurement in the permit based on available existing hydrological information and information submitted by the owner of the facility with its permit application.] You may modify the monitoring program when the permit is reissued and during the term of the permit based on changes in physical or biological conditions in the vicinity of the cooling water intake structure. The Director may require continued monitoring based on the results of the Verification Monitoring Plan in § 125.86(c)(2)(iv)(D).

* * * * *

[FR Doc. 02–32610 Filed 12–24–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 125

[FRL–7430–3]

National Pollutant Discharge Elimination System—Amendment of Final Regulations Addressing Cooling Water Intake Structures for New Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing minor changes to EPA's final rule implementing section 316(b) of the Clean Water Act (CWA) for new facilities that use water withdrawn from rivers, streams, lakes, reservoirs, estuaries, oceans or other waters of the United States for cooling purposes published December 18, 2001. The December 2001 rule established national technology-based performance requirements applicable to the location, design, construction, and capacity of cooling water intake structures at new facilities. The national requirements establish the best technology available for minimizing adverse environmental impact associated with the use of these structures. EPA is proposing several minor changes to the December 2001 rule because, in several instances, the Phase I final rule text does not reflect the Agency's intent.

DATES: Written comments must be received by January 27, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.B. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Martha Segall, USEPA Office of Water by phone at (202) 566–1041 or by e-mail at *rule.316b@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Regulated Entities

This proposed rule applies to new greenfield and stand-alone facilities that use cooling water intake structures to withdraw water from waters of the U.S. and that have or require a National Pollutant Discharge Elimination System (NPDES) permit issued under section 402 of the CWA. New facilities subject to this regulation would include those that have a design intake flow of greater than two (2) million gallons per day (MGD) and that use at least twenty-five (25) percent of water withdrawn for cooling purposes. Today's proposed rule would not apply to existing facilities, major modifications to existing facilities that would be ''new sources'' under 40 CFR 122.29(b) as that term is used in the effluent guidelines and standards program, or facilities that employ cooling water intake structures in the offshore oil and gas extraction point source category as defined under 40 CFR 435.10 and 40 CFR 435.40.

The following table is not intended to be exhaustive; rather, it provides a guide for readers regarding entities likely to be regulated by this action. The table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility would be regulated by this action, you should carefully examine the applicability criteria at 40 CFR 125.81. If you have questions about the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Category	Examples of Regulated Entities	Standard Industrial Classification Codes	North American Industry Codes (NAIC)
Federal, State and Local Government.	Operators of steam electric generating point source dischargers that employ cooling water intake structures.	4911 and 493	221111, 221112, 221113, 221119, 221121, 221122, 221111, 221112, 221113, 221119, 221121, 221122
Industry	Operators of industrial point source dischargers that employ cooling water intake structures.	See below	See below
	Steam electric generating	4911 and 493	221111, 221112, 221113, 221119, 221121, 221122, 221111, 221112, 221113, 221119, 221121, 221122
	Agricultural production	0133	111991, 11193
	Metal mining	1011	21221
	Oil and gas extraction (Excluding offshore and coastal subcategories).	1311, 1321	211111, 211112
	Mining and quarrying of nonmetallic minerals	1474	212391
	Food and kindred products	2046, 2061, 2062, 2063, 2075, 2085.	311221, 311311, 311312, 311313, 311222, 311225, 31214
	Tobacco products	2141	312229, 31221
	Textile mill products	2211	31321
	Lumber and wood products, except furniture	2415, 2421, 2436, 2493.	321912, 321113, 321918, 321999, 321212, 321219
	Paper and allied products	2611, 2621, 2631, 2676.	3221, 322121, 32213, 322121, 322122, 32213, 322291
	Chemical and allied products	28 (except 2895, 2893, 2851, and 2879).	325 (except products 325182, 32591, 32551, 32532)
	Petroleum refining and related industries	2911, 2999	32411, 324199
	Rubber and miscellaneous plastics products	3011, 3069	326211, 31332, 326192, 326299
	Stone, clay, glass, and concrete products	3241	32731
	Primary metal industries	3312, 3313, 3315, 3316, 3317, 3334, 3339, 3353, 3363, 3365, 3366.	324199, 331111, 331112, 331492, 331222, 332618, 331221, 22121, 331312, 331419, 331315, 331521, 331524, 331525

Category	Examples of Regulated Entities	Standard Industrial Classification Codes	North American Industry Codes (NAIC)
	Fabricated metal products, except machinery and transportation equipment.	3421, 3499	332211, 337215, 332117, 332439, 33251, 332919, 339914, 332999
	Industrial and commercial machinery and computer equipment.	3523, 3531	333111, 332323, 332212, 333922, 22651, 333923, 33312
	Transportation equipment	3724, 3743, 3764	336412, 333911, 33651, 336416
	Measuring, analyzing, and controlling instruments; photographic, medical, and optical goods; watches and clocks.	3861	333315, 325992
	Electric, gas, and sanitary services	4911, 4931, 4939, 4961.	221111, 221112, 221113, 221119, 221121, 221122, 22121, 22133
	Educational services	8221	61131
	Engineering, accounting, research, management and related services.	8731	54171

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 ID No. OW–2002–0052. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. 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 Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

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. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as confidential business information (CBI) and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. 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.A.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. Please submit with your comments any references cited in your comments. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments; however, late comments may be considered if time permits. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.C. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will

be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. OW–2002–0052. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to OW–Docket@epa.gov, Attention Docket ID No. OW–2002–0052. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit 1.B.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send an original and three (3) copies of your comments to the ''Water Docket,'' U.S. Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OW–2002–0052.

3. *By Hand Delivery or Courier.* Deliver your comments to: Water Docket, EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OW–2002–0052. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit 1.A.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send information identified as CBI by mail only to the following address: Office of Science and Technology, Mailcode 4303T, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention: Martha Segall/ Docket ID No. OW–2002–0056.

You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

II. Discussion of Direct Final Rulemaking

EPA is proposing to make several minor revisions to the final regulations addressing cooling water intake structures for new facilities, published December 18, 2001. In the ''Rules and Regulations'' section of today's **Federal Register**, we are approving these revisions as a direct final rule without prior proposal because we view these as noncontroversial revisions and anticipate no adverse comment. We have described the revisions and our rationale for them in the direct final rule. If EPA receives no adverse comment, the Agency will not take further action on this proposed rule. If EPA receives adverse comment on one or more distinct amendments, paragraphs, or sections of this rulemaking, the Agency will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn due to adverse comment. Any distinct amendment(s), paragraph(s), or section(s) of today's rulemaking for which we do not receive adverse comment will become effective on the date set in the direct final rule, not withstanding any adverse comment on any other distinct amendment, paragraph or section of today's rule. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

For the various statutes and Executive Orders that require findings for each rulemaking, EPA incorporates the findings from the direct final rulemaking into this companion notice for the purpose of providing public notice and opportunity for comment

List of Subjects in 40 CFR Part 125

Environmental protection, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: December 19, 2002.

Christine Todd Whitman,

Administrator.

[FR Doc. 02–32611 Filed 12–24–02; 8:45 am]

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Note: The List of Public Laws for the second session of the 107th Congress has been completed. It will resume when bills are enacted into public law during the next session of Congress. A cumulative List of Public Laws for the second session of the 107th Congress will appear in the issue of January 31, 2003.

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