



# Federal Register

---

8-22-03

Vol. 68 No. 163

Friday

Aug. 22, 2003

Pages 50681-50962



The **FEDERAL REGISTER** (ISSN 0097-6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see <http://www.nara.gov/fedreg>.

The seal of the National Archives and Records Administration authenticates the **Federal Register** as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** [www.access.gpo.gov/nara](http://www.access.gpo.gov/nara), available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via email at [gpoaccess@gpo.gov](mailto:gpoaccess@gpo.gov). The Support Team is available between 7:00 a.m. and 5:30 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is \$699, or \$764 for a combined **Federal Register**, **Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is \$264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is \$10.00 for each issue, or \$10.00 for each group of pages as actually bound; or \$2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 40% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, [bookstore@gpo.gov](mailto:bookstore@gpo.gov).

There are no restrictions on the republication of material appearing in the **Federal Register**.

**How To Cite This Publication:** Use the volume number and the page number. Example: 68 FR 12345.

**Postmaster:** Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington DC 20402, along with the entire mailing label from the last issue received.

## SUBSCRIPTIONS AND COPIES

### PUBLIC

#### Subscriptions:

Paper or fiche 202-512-1800  
Assistance with public subscriptions 202-512-1806

**General online information** 202-512-1530; 1-888-293-6498

#### Single copies/back copies:

Paper or fiche 202-512-1800  
Assistance with public single copies 1-866-512-1800  
(Toll-Free)

### FEDERAL AGENCIES

#### Subscriptions:

Paper or fiche 202-741-6005  
Assistance with Federal agency subscriptions 202-741-6005

### What's NEW!

#### Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to <http://listserv.access.gpo.gov> and select:

*Online mailing list archives*

*FEDREGTOC-L*

*Join or leave the list*

Then follow the instructions.

### What's NEW!

#### Special Values on Selected Volumes of the 2002 Code of Federal Regulations

Selected volumes of the 2002 Code of Federal Regulations are now available for sale by the Government Printing Office at special prices.

Go to: <http://bookstore.gpo.gov/values/cfr.html>



# Contents

**Federal Register**

Vol. 68, No. 162

Friday, August 22, 2003

## Agency for Toxic Substances and Disease Registry

### NOTICES

Committees; establishment, renewal, termination, etc.:  
Scientific Counselors Board, 50775

## Agricultural Marketing Service

### RULES

Milk marketing orders:  
Upper Midwest, 50686–50687  
Pistachio nuts in shell and shelled; grade standards, 50681–50686

### NOTICES

Agency information collection activities; proposals, submissions, and approvals, 50742

## Agricultural Research Service

### NOTICES

Meetings:  
Biotechnology and 21st Century Agriculture Advisory Committee, 50742–50743

## Agriculture Department

*See* Agricultural Marketing Service  
*See* Agricultural Research Service  
*See* Farm Service Agency  
*See* Food Safety and Inspection Service  
*See* Forest Service  
*See* Natural Resources Conservation Service

## Air Force Department

### NOTICES

Agency information collection activities; proposals, submissions, and approvals, 50760–50761

## Blind or Severely Disabled, Committee for Purchase From People Who Are

*See* Committee for Purchase From People Who Are Blind or Severely Disabled

## Centers for Disease Control and Prevention

### NOTICES

Agency information collection activities; proposals, submissions, and approvals, 50775–50779  
Grants and cooperative agreements; availability, etc.:  
Injury Control Research Centers, 50778–50782  
Meetings:  
Public Health Service Activities and Research at DOE Sites Citizens Advisory Committee, 50782–50783  
Scientific Counselors Board, 50783  
Vessel sanitation program:  
Cruise ship sanitation inspections; fees, 50783–50784

## Centers for Medicare & Medicaid Services

### RULES

Medicare:  
Cost reports; electronic submission, 50717–50722  
Medicare+Choice program; managed care provisions, 50839–50859  
Standards and certification:  
Laboratory requirements—  
Medicare, Medicaid, and CLIA programs; quality systems and certain personnel qualifications; correction, 50722–50725

## PROPOSED RULES

### Medicare:

Respiratory assist devices with bi-level capacity and back-up rate; payment, 50735–50739

### NOTICES

Agency information collection activities; proposals, submissions, and approvals, 50784  
Grants and cooperative agreements; availability, etc.:  
Medicare—  
State Children's Health Insurance Program; allotments to States, District of Columbia, and U.S. territories and commonwealths, 50784–50790

### Medicaid:

State allotments for payment of Medicare Part B premiums for qualifying individuals (2002 FY), 50790–50793

### Meetings:

Medicare Education Advisory Panel, 50793–50794  
Practicing Physicians Advisory Council, 50794–50795

### Privacy Act:

Systems of records, 50795–50804

## Coast Guard

### RULES

Ports and waterways safety:  
Suisun Bay, CA; security zone, 50711–50713

## Commerce Department

*See* Industry and Security Bureau  
*See* International Trade Administration

## Committee for Purchase From People Who Are Blind or Severely Disabled

### NOTICES

Procurement list; additions and deletions, 50748–50750

## Committee for the Implementation of Textile Agreements

### NOTICES

Cotton, wool, and man-made textiles:  
Indonesia, 50755–50756  
Nepal, 50756

## Customs and Border Protection Bureau

### RULES

Air commerce:  
User fee airports, 50697–50698  
Drawback:  
Manufacturing substitution drawback; duty apportionment, 50700–50703  
Public international organizations, designated; list update, 50698–50700

### PROPOSED RULES

### Merchandise entry:

Anticounterfeiting Consumer Protection Act; Customs entry documentation; withdrawn, 50733–50734

## Defense Department

*See* Air Force Department

### PROPOSED RULES

Munitions Response Site Prioritization Protocol, 50899–50941

**NOTICES**

Environmental statements; availability, etc.:  
Airborne Laser Program, 50756–50760

**Education Department****NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 50761–50762  
Grants and cooperative agreements; availability, etc.:  
Postsecondary education—  
Upward Bound Program Participant Expansion Initiative, 50957–50962

**Employment Standards Administration****NOTICES**

Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 50809–50810

**Energy Department**

See Federal Energy Regulatory Commission

**NOTICES**

Meetings:  
Environmental Management Advisory Board, 50762  
High Energy Physics Advisory Panel, 50762–50763

**Environmental Protection Agency****RULES**

Superfund program:  
National oil and hazardous substances contingency plan—  
National priorities list update, 50714–50717

**PROPOSED RULES**

Superfund program:  
National oil and hazardous substances contingency plan—  
National priorities list update, 50735

**NOTICES**

Committees; establishment, renewal, termination, etc.:  
Environmental Laboratory Advisory Board, 50766–50767  
Environmental statements; availability, etc.:  
Agency statements—  
Comment availability, 50767–50768  
Weekly receipts, 50768–50769  
Meetings:  
Scientific Counselors Board Executive Committee, 50769  
Water pollution control:  
Marine sanitation device standard; petitions—  
Connecticut, 50769–50770

**Farm Service Agency****NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 50743–50745

**Federal Aviation Administration****RULES**

Airworthiness directives:  
Piaggio Aero Industries S.p.A., 50693–50696  
Short Brothers & Harland Ltd., 50689–50693

**PROPOSED RULES**

Airworthiness directives:  
Bombardier, 50729–50731  
Eurocopter France, 50731–50733  
Restricted areas; correction, 50838

**Federal Communications Commission****RULES**

Radio stations; table of assignments:  
Washington, 50725

Television broadcasting:

Cable television systems—  
Consumer electronics equipment and cable systems; compatibility; effective date, 50725

**PROPOSED RULES**

Radio stations; table of assignments:

Oklahoma, 50740–50741

Television broadcasting:

Public safety services; Channel 16 utilization by New York Police Department and New York Metropolitan Advisory Committee, 50739–50740

**NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 50770–50771  
*Applications, hearings, determinations, etc.:*  
Zawila, William L., et al., 50771–50774

**Federal Election Commission****RULES**

Federal Election Campaign Act of 1971; deposition transcripts in nonpublic investigations; policy statement, 50688–50689

**Federal Energy Regulatory Commission****RULES**

Filing fees; annual update, 50696–50697

**NOTICES**

Hydroelectric applications, 50764–50766  
*Applications, hearings, determinations, etc.:*  
Virginia Electric & Power Co. et al., 50763–50764

**Federal Highway Administration****RULES**

Grants:

Operation of motor vehicles by intoxicated persons; withholding of Federal-aid highway funds, 50703–50710

**Federal Maritime Commission****NOTICES**

Investigations, hearings, petitions, etc.:  
National Customs Brokers and Forwarders Association of America, Inc., 50774  
United Parcel Service, Inc., 50774

**Federal Reserve System****NOTICES**

Banks and bank holding companies:  
Formations, acquisitions, and mergers, 50774–50775  
Federal Open Market Committee:  
Domestic policy directives, 50774

**Federal Transit Administration****NOTICES**

Environmental statements; notice of intent:  
Sonoma and Marin Counties, CA; commuter rail project, 50827–50829

**Fish and Wildlife Service****NOTICES**

Endangered and threatened species and marine mammal permit applications, 50804–50805

**Food and Drug Administration****NOTICES**

Reports and guidance documents; availability, etc.:  
Nucleic acid testing of pooled plasma; current status authority application; guidance withdrawn, 50804

**Food Safety and Inspection Service****RULES**

Meat and poultry inspection:  
 Ready-to-eat meat and poultry products; listeria monocytogenes workshops for small and very small plants, 50687–50688

**Forest Service****NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 50745–50746  
 Environmental statements; notice of intent:  
 Beaverhead and Deerlodge National Forests, MT, 50746  
 Medicine Bow-Routt National Forests, CO, 50746–50747

**Health and Human Services Department**

See Agency for Toxic Substances and Disease Registry  
 See Centers for Disease Control and Prevention  
 See Centers for Medicare & Medicaid Services  
 See Food and Drug Administration

**NOTICES**

Meetings:  
 Bioethics, President's Council, 50775

**Homeland Security Department**

See Coast Guard  
 See Customs and Border Protection Bureau

**Housing and Urban Development Department****NOTICES**

Grants and cooperative agreements; availability, etc.:  
 Facilities to assist homeless—  
 Excess and surplus Federal property, 50861–50898

**Industry and Security Bureau****NOTICES**

Meetings:  
 Regulations and Procedures Technical Advisory Committee, 50750

**Interior Department**

See Fish and Wildlife Service  
 See Land Management Bureau  
 See Minerals Management Service  
 See Surface Mining Reclamation and Enforcement Office

**Internal Revenue Service****RULES**

Income taxes:  
 Tax attributes reduction due to discharge of indebtedness  
 Correction, 50710–50711

**PROPOSED RULES**

Income taxes:  
 Statutory stock options  
 Hearing cancellation, 50734

**NOTICES**

Meetings:  
 Taxpayer Advocacy Panels, 50836

**International Trade Administration****NOTICES**

Antidumping and countervailing duties:  
 Administrative review requests, 50750–50753  
 Committees; establishment, renewal, termination, etc.:  
 District Export Councils, 50753  
 Export trade certificates of review, 50754–50755

**International Trade Commission****NOTICES**

Import investigations:  
 U.S.-Dominican Republic Free Trade Agreements; advice concerning probable economic effect, 50808–50809

**Labor Department**

See Employment Standards Administration

**NOTICES**

Grants and cooperative agreements; availability, etc.:  
 Central America; strengthening labor systems; correction, 50809  
 Moroccan Labor Ministry; strengthening labor capacity; correction, 50809  
 Southern Africa; strengthening labor systems; correction, 50809

**Land Management Bureau****NOTICES**

Environmental statements; availability, etc.:  
 Pittsburg & Midway Coal Mining Co. Exchange, WY, 50805–50807

**Minerals Management Service****NOTICES**

Environmental statements; availability, etc.:  
 Pacific OCS—  
 Oil and gas leases, 50807–50808

**National Highway Traffic Safety Administration****RULES**

Grants:  
 Operation of motor vehicles by intoxicated persons; withholding of Federal-aid highway funds, 50703–50710

**National Science Foundation****NOTICES**

Antarctic Conservation Act of 1978; permit applications, etc., 50810–50811

**Natural Resources Conservation Service****NOTICES**

Environmental statements; availability, etc.:  
 Conrad Creek, OR, 50748  
 East Fork above Lavon Watershed, Trinity Watershed, TX, 50748

**Nuclear Regulatory Commission****NOTICES**

Environmental statements; availability, etc.:  
 Nuclear power plant operating license renewal; review process, 50811  
 Meetings:  
 Reactor Safeguards Advisory Committee, 50811–50812

**Personnel Management Office****PROPOSED RULES**

Intergovernmental Personnel Act Mobility Programs:  
 Federal Government and State, local, and Indian Tribal governments, higher education institutions, etc.; temporary employee assignments, 50726–50727  
 Prevailing rate systems, 50727–50729

**NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 50812–50813

**Securities and Exchange Commission****RULES**

Practice and procedure:

Filing fee account rule adoption, 50953–50955

**NOTICES**

Self-regulatory organizations; proposed rule changes:

Boston Stock Exchange, Inc., 50813–50819

Pacific Exchange, Inc., 50820–50825

**Surface Mining Reclamation and Enforcement Office****RULES**

Permanent program and abandoned mine land reclamation plan submissions:

Missouri, 50943–50949

**PROPOSED RULES**

Permanent program and abandoned mine land reclamation plan submissions:

Missouri, 50949–50951

**Surface Transportation Board****NOTICES**

Environmental statements; availability, etc.:

Tongue River Railroad Co., 50829–50833

Railroad operation, acquisition, construction, etc.:

Omaha Public Power District, 50833–50834

**Tennessee Valley Authority****NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 50825

**Textile Agreements Implementation Committee**

See Committee for the Implementation of Textile Agreements

**Toxic Substances and Disease Registry Agency**

See Agency for Toxic Substances and Disease Registry

**Transportation Department**

See Federal Aviation Administration

See Federal Highway Administration

See Federal Transit Administration

See National Highway Traffic Safety Administration

See Surface Transportation Board

**NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 50825–50826

Meetings:

Electronic Transmission and Storage of Drug Testing Information Federal Advisory Committee, 50826–50827

**Treasury Department**

See Internal Revenue Service

**NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 50834–50836

**Veterans Affairs Department****NOTICES**

Privacy Act:

Computer matching programs, 50836–50837

**Separate Parts In This Issue****Part II**

Health and Human Services Department, Centers for Medicare & Medicaid Services, 50839–50859

**Part III**

Housing and Urban Development Department, 50861–50898

**Part IV**

Defense Department, 50899–50941

**Part V**

Interior Department, Surface Mining Reclamation and Enforcement Office, 50943–50951

**Part VI**

Securities and Exchange Commission, 50953–50955

**Part VII**

Education Department, 50957–50962

**Reader Aids**

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to <http://listserv.access.gpo.gov> and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

**CFR PARTS AFFECTED IN THIS ISSUE**

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**5 CFR****Proposed Rules:**

334.....50726  
532.....50727

**7 CFR**

51.....50681  
1030.....50686

**9 CFR**

430.....50687

**11 CFR**

111.....50688

**14 CFR**

39 (2 documents) .....50689,  
50693

**Proposed Rules:**

39 (2 documents) .....50729,  
50731  
73.....50838

**17 CFR**

200.....50954  
202.....50954

**18 CFR**

381.....50696

**19 CFR**

122.....50697  
148.....50698  
191.....50700

**Proposed Rules:**

141.....50733

**23 CFR**

1225.....50703

**26 CFR**

1.....50710

**Proposed Rules:**

1.....50734  
14a.....50734

**30 CFR**

925.....50944

**Proposed Rules:**

925.....50950

**32 CFR****Proposed Rules:**

179.....50900

**33 CFR**

165.....50711

**40 CFR**

300.....50714

**Proposed Rules:**

300.....50735

**42 CFR**

409.....50840  
413.....50717  
417.....50840  
422.....50840  
493.....50722

**Proposed Rules:**

414.....50735

**47 CFR**

15.....50725  
73.....50725

**Proposed Rules:**

2.....50739  
73.....50740

# Rules and Regulations

Federal Register

Vol. 68, No. 163

Friday, August 22, 2003

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

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 51

[Docket Number FV-98-304]

#### United States Standards for Grades of Pistachio Nuts in the Shell, and United States Standards for Grades of Shelled Pistachio Nuts

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule revises the United States Standards for Grades of Pistachio Nuts in the Shell and the United States Standards for Grades of Shelled Pistachio Nuts. The revisions will modify the standards to more closely align grade names with other tree-nut commodities and current industry-recognized marketing terms, reduce the tolerance for internal defects for the purpose of providing a higher degree of quality assurance, relax tolerances of the level of light stain on the shell in the various grade levels based on consumer preferences, more objectively define when nuts are damaged by various factors, and include two in-shell grade specifications which reflect the industry's byproduct. These standards are issued under the Agricultural Marketing Act of 1946. These changes will promote greater uniformity and consistency in the standards, as well as provide consistency with current marketing practices.

**EFFECTIVE DATE:** September 22, 2003.

**FOR FURTHER INFORMATION CONTACT:** David L. Priester, Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1661, South Building, STOP 0240, Washington, DC

20250-0240, fax (202) 720-8871, e-mail [David.Priester@usda.gov](mailto:David.Priester@usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Executive Orders 12988 and 12866

This rule 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 the rule. The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

##### Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Accordingly, AMS has prepared this initial regulatory flexibility analysis. Interested parties are invited to submit information on the regulatory and informational impacts of this action on small businesses.

Available information provided by the California Pistachio Commission (CPC) show that there are 647 California pistachio producers and 19 California handlers of pistachio nuts, most of which are also growers or have grower members. Additional information provided by CPC show that 445 California pistachio producers (69% of the total) produce less than 100,000 pounds per year; 100 producers (15%) produce more than 100,000 and less than 250,000 pounds; 43 growers (7%) produce more than 250,000 and less than 500,000 pounds; and 59 producers (9%) grow more than 500,000 pounds. U.S. grade standards for pistachios would normally be used at the sales level of marketing, which is ordinarily carried out at the processor/packer level or after processing has been completed. Pistachio nuts may be marketed by multiple commodity marketing firms.

The California Department of Food and Agriculture Resource Directory 2002, reports that California accounted

for more than 99 percent of domestic pistachio production. More current information available to the Department indicates that California has 97 percent of domestic production with Arizona at 2 percent and New Mexico with less than 1 percent.

Small agricultural service firms, which include handlers (packers, brokers, distributors, importers, etc.), have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than \$5,000,000 and small agricultural producers are defined as those having annual receipts of less than \$750,000. The pistachio industry is characterized by growers that produce from .1 to more than 500 acres. Approximately 9 percent of the California pistachio growers receive more than \$550,000 annually. Only a portion of these producers would meet SBA's definition of a small agricultural producer. At least 12 of the California pistachio handlers (or 63 percent of the total) could be considered small businesses under SBA's definition. We would expect that similar size determinations would hold for the remainder of domestic production.

This rule will: More closely align the grade names with other tree nut commodities and current industry recognized marketing terms, reduce the tolerance for internal defects for the purpose of providing a higher degree of quality assurance to consumers, relax the level of light stain on the shell, more objectively define when nuts are damaged by various factors, and establish two additional grades which reflect the industry's marketing of in-shell byproducts. The benefits of this rule are not expected to be disproportionately greater or smaller for small handlers or producers than for large entities.

This action will make the standards more consistent and uniform with current industry terms and practices. This action would not impose substantial direct economic cost, record keeping, or personnel workload changes on small entities, and it would not alter the market share or competitive position of these entities relative to large businesses. USDA has not identified any Federal rules that currently duplicate, overlap, or conflict with this rule. In addition, under the Agricultural

Marketing Act of 1946, the use of these standards is voluntary.

Alternatives were considered for this action. One alternative would be to not issue a rule. However, the need for revisions have increased as a result of changing marketing characteristics by industry, several years of work with the industry to assess market and grower implications, and other input from all sectors of the pistachio industry and government. Since the purpose of these standards is to expedite the marketing of pistachio nuts in the U.S., not revising the standards would result in disuse of national standards and confusion in terms of industry marketing and the proper application of the grade standards.

The proposed rule, the United States Standards for Grades of Pistachio Nuts in the Shell and the United States Standards for Grades of Shelled Pistachio Nuts was published in the **Federal Register** on May 23, 2003 (68 FR 28141). A comment period of thirty days was issued which closed on June 23, 2003.

#### Final Rule and Comments

One e-mail comment was received. The commenter stated that the United States Standards for Grades of Pistachio Nuts in the Shell contain a tolerance for "damage by other means," but do not contain a definition for "damage by other means." However, "damage by other means" is not a specific defect. This tolerance is provided for all defects that are not specifically covered by other tolerances. Therefore, a definition for "damage by other means" is not necessary.

This rule would revise the United States Standards for Grades of Pistachio Nuts in the Shell and the United States Standards for Grades of Shelled Pistachio Nuts that were issued under the Agricultural Marketing Act of 1946. These standards are voluntarily used by industry as a common trading language to market pistachio nuts under established and known specifications. In some transactions, the buyer and seller may establish their own specifications for the sale, use portions of the U.S. standards while altering other portions to fit the sale and needs of the parties, or use the U.S. standards as written.

At the time of its 1998 request to AMS, the CPC issued "industry standards" based on the requested changes and encouraged California pistachio nuts to be marketed under those standards. The use of the voluntary "industry standards" for national and international marketing with official certification by USDA

inspectors based on these standards has continued for three marketing seasons. The changes herein are based on the standards currently being used by the industry to market U.S. grown pistachio nuts nationally and internationally.

#### Background

The United States Standards for Grades of Pistachio Nuts in the Shell and the United States Standards for Grades of Shelled Pistachio Nuts were developed in 1986 and 1990, respectively. At that time, the U.S. pistachio industry was beginning to compete in a global market. As the industry has grown in numbers of growers and processors and in volume, the current grade standards have been regularly used as a basis of marketing. In recent years, foreign and domestic buyers have developed customers that have uses for nuts which have specifications outside the scope of the U.S. grade standards. In addition, U.S. marketers have begun to offer for sale byproduct forms of pistachio nuts for which there are no uniform marketing specifications in the form of recognized grade standards.

AMS received a request to update and revise the United States Standards for Grades of Pistachio Nuts in the Shell and the United States Standards for Grades of Shelled Pistachio Nuts from the CPC. The CPC is the State-approved marketing agent for the California pistachio industry and represents nearly all commercial pistachio producers and handlers in California. AMS and its State cooperator in California have been closely working with CPC and its members since 1994 to review and update the industry grade standards. Official inspection services, with these U.S. grade standards as the basis, have been used by the industry since the inception of the standards.

Currently, the majority of U.S. pistachio production, and more than 30 percent of worldwide pistachio production, originates from California. The California industry, in cooperation with the CPC, began a comprehensive review of the current standards in 1994. As this process evolved, the industry tested possible revision theories through hands-on testing in the packing plants, through consumer preference studies, and through public meetings with processors, growers and other interested parties. This was initiated in order to review the standards and meet the marketing needs of the U.S. pistachio industry and the preferences of industry buyers and the general public. As a result of this study, the CPC, acting on behalf of California growers and

shippers, requested an amendment to the standards.

This rule revises the standards to more closely align the grade names with other tree nut commodities and current industry recognized marketing terms, reduce the tolerance for internal defects for the purpose of providing a higher degree of quality assurance to consumers, relax the level of light stain on the shell, more objectively define when nuts are damaged by various factors, and establish two additional grades which reflect the industry's marketing of in-shell byproducts. These changes are intended to update the standards to maintain their usefulness as they are applied to today's marketing challenges, both nationally and internationally.

Therefore, AMS amends the United States Standards for Grades of Pistachio Nuts in the Shell and the United States Standards for Grades of Shelled Pistachio Nuts as follows:

#### List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Trees, Vegetables.

#### PART 51—[AMENDED]

- For reasons set forth in the preamble, 7 CFR part 51 is amended as follows:
- 1. The authority citation for part 51 continues to read as follows:

**Authority:** 7 U.S.C. 1621–1627.

- 2. Section 51.2541 is revised to read as follows:

#### Subpart—United States Standards for Grades of Pistachio Nuts in the Shell Grades

##### § 51.2541 U.S. Fancy, U.S. Extra No. 1, U.S. No. 1 And U.S. Select Grades.

"U.S. Fancy," "U.S. Extra No. 1," "U.S. No. 1," and "U.S. Select" consists of pistachio nuts in the shell which meet the following requirements:

- (a) Basic requirements:
  - (1) Free from:
    - (i) Foreign material;
    - (ii) Loose kernels;
    - (iii) Shell pieces;
    - (iv) Particles and dust; and,
    - (v) Blanks.
  - (b) Shells:
    - (1) Free from:
      - (i) Non-split shells; and,
      - (ii) Shells not split on suture.
    - (2) Free from damage by:
      - (i) Adhering hull material;
      - (ii) Light stained;
      - (iii) Dark stained; and,
      - (iv) Other External (shell) defects.
  - (c) Kernels:

(1) Well dried, or, very well dried when specified in connection with the grade.  
 (2) Free from damage by:  
 (i) Immature kernels;  
 (ii) Kernel spotting; and,  
 (iii) Other Internal (kernel) defects.  
 (3) Free from serious damage by:  
 (i) Minor insect or vertebrate injury;  
 (ii) Insect damage;  
 (iii) Mold;  
 (iv) Rancidity;  
 (v) Decay; and,  
 (vi) Other Internal (kernel) defects.  
 (d) The nuts are of a size not less than <sup>30</sup>/<sub>64</sub> inch in diameter as measured by a round hole screen.  
 (e) For tolerances, see § 51.2544.

■ 3.—4. Section 51.2542 is revised to read as follows:

**§ 51.2542 U.S. Artificially Opened.**

“U.S. Artificially Opened” consists of artificially opened pistachio nuts in the shell which meet the following requirements:

- (a) Basic Requirements:
  - (1) Free from:
    - (i) Foreign material;
    - (ii) Loose kernels;
    - (iii) Shell pieces;
    - (iv) Particles and dust; and,
    - (v) Blanks.
  - (b) Shells:
    - (1) Free from:
      - (i) Non-split shells; and,

(ii) Shells not split on suture.  
 (2) Free from damage by:  
 (i) Adhering hull material;  
 (ii) Light stained;  
 (iii) Dark stained; and,  
 (iv) Other External (shell) defects.  
 (c) Kernels:  
 (1) Well dried, or, very well dried when specified in connection with the grade.  
 (2) Free from damage by:  
 (i) Immature kernels;  
 (ii) Kernel spotting; and,  
 (iii) Other Internal (kernel) defects.  
 (3) Free from serious damage by:  
 (i) Minor insect or vertebrate injury;  
 (ii) Insect damage;  
 (iii) Mold;  
 (iv) Rancidity;  
 (v) Decay; and,  
 (vi) Other Internal (kernel) defects.  
 (d) The nuts are of a size not less than <sup>30</sup>/<sub>64</sub> inch in diameter as measured by a round hole screen.  
 (e) For tolerances, see § 51.2544.

■ 5. Section 51.2543 is revised to read as follows:

**§ 51.2543 U.S. Non-Split.**

“U.S. Non-Split” consists of non-split pistachio nuts in the shell which meet the following requirements:

- (a) Basic requirements:
  - (1) Free from:
    - (i) Foreign material;
    - (ii) Loose kernels;

(iii) Shell pieces;  
 (iv) Particles and dust; and,  
 (v) Blanks.  
 (b) Shells:  
 (1) Free from damage by:  
 (i) Adhering hull material; and,  
 (ii) Dark stain.  
 (c) Kernels:  
 (1) Well dried, or very well dried when specified in connection with the grade.  
 (2) Free from damage by:  
 (i) Immature kernels;  
 (ii) Kernel spotting; and,  
 (iii) Other internal (kernel) defects.  
 (3) Free from serious damage by:  
 (i) Minor insect or vertebrate injury;  
 (ii) Insect damage;  
 (iii) Mold;  
 (iv) Rancidity;  
 (v) Decay; and,  
 (vi) Other Internal (kernel) defects.  
 (d) The nuts are of a size not less than <sup>30</sup>/<sub>64</sub> inch in diameter as measured by a round hole screen.  
 (e) For Tolerances, see § 51.2544.

■ 6. Section 51.2544 is revised to read as follows:

**§ 51.2544 Tolerances.**

(a) In order to allow for variations incident to proper grading and handling, the tolerances in Tables I, II, and III of this section are provided.

TABLE I.—TOLERANCES  
[Percent]

Factor	U.S. fancy	U.S. extra No. 1	U.S. No. 1	U.S. select	U.S. artificially opened	U.S. non-split
External (shell) Defects (tolerances by weight):						
(a) Non-split and not split on suture .....	2	3	6	10	10	N/A
(1) Non-split included in (a) .....	1	2	3	4	4	N/A
(b) Adhering hull material .....	1	1	1	2	2	2
(c) Light stained .....	7	12	25	N/A	N/A	N/A
(1) Dark stained, included in (c) .....	2	3	3	3	3	3
(d) Damage by other means .....	1	1	2	3	10	N/A
(e) Total External Defects .....	9	16	N/A	N/A	N/A	N/A
(f) Undersized (Less than <sup>30</sup> / <sub>64</sub> inch in diameter) ....	5	5	5	5	4	5

TABLE II.—TOLERANCES  
[Percent]

Factor	U.S. fancy	U.S. extra No. 1	U.S. No. 1	U.S. select	U.S. artificially opened	U.S. non-split
Internal (Kernel) Defects (tolerances by weight):						
(a) Damage .....	3	6	6	6	6	6
(b) Serious Damage .....	3	4	4	4	4	4
(1) Insect Damage, Mold, Rancid, Decay, included in (b) .....	1	2	2	2	2	2
(c) Total Internal Defects .....	4	8	9	9	9	9

TABLE III.—TOLERANCES  
[Percent]

Factor	U.S. fancy	U.S. extra No. 1	U.S. No. 1	U.S. select	U.S. artificially opened	U.S. non-split
Other Defects (tolerances by weight):						
(a) Shell pieces and blanks .....	2	2	2	2	2	2
(1) Blanks, included in (a) .....	1	1	1	1	1	1
(b) Foreign material (No glass, metal or live insects shall be permitted) .....	.25	.25	.25	.25	.25	.25
(c) Particles and dust .....	.25	.25	.25	.25	.25	.25
(d) Loose kernels .....	4	5	6	6	6	6

■ 7. Section 51.2545 is revised to read as follows:

**§ 51.2545 Application of tolerances.**

The tolerances for the grades apply to the entire lot and shall be based on a composite sample drawn from containers throughout the lot. Any container or group of containers which have nuts obviously different in quality or size from those in the majority of the containers shall be considered a separate lot and shall be sampled separately.

■ 8. Section 51.2546 is revised to read as follows:

**§ 51.2546 Size.**

Nuts may be considered as meeting a size designation specified in Table IV or a range in number of nuts per ounce, provided, the weight of 10 percent, by count, of the largest nuts in a sample does not exceed 1.50 times the weight of 10 percent, by count, of the smallest and the average number of nuts per ounce is not more than one-half nut above or below the extremes of the range specified.

TABLE IV.—NUT SIZE

Size designations	Average number of nuts per ounce <sup>1</sup>
Colossal .....	Less than 18.
Extra Large .....	18 to 20.
Large .....	21 to 25.
Medium .....	26 to 30.
Small .....	More than 30.

<sup>1</sup> Before Roasting.

■ 9. Section 51.2547 is revised to read as follows:

**§ 51.2547 Definitions.**

(a) *Well dried* means the kernel is firm and crisp.

(b) *Very well dried* means the kernel is firm and crisp and the average moisture content of the lot does not exceed 7.00 percent or is specified. (See § 51.2548.)

(c) *Loose kernels* means edible kernels or kernel portions which are out of the

shell and which cannot be considered particles and dust.

(d) *External (shell) defects* means any blemish affecting the hard covering around the kernel. Such defects include, but are not limited to, non-split shells, shells not split on suture, adhering hull material, light stained, or dark stained.

(1) *Damage by external (shell) defects* means any specific defect described in paragraphs (d)(1) (i) through (v) of this section, or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance or the edible or marketing quality of the individual shell or of the lot. (For tolerances see § 51.2544, Table I.)

(i) *Non-split shells* means shells are not opened or are partially opened and will not allow an 18/1000 (.018) inch thick by ¼ (.25) inch wide gauge to slip into the opening.

(ii) *Not split on suture* means shells are split other than on the suture and will allow an 18/1000 (.018) inch thick by ¼ (.25) inch wide gauge to slip into the opening.

(iii) *Adhering hull material* means an aggregate amount covers more than one-eighth of the total shell surface, or when readily noticeable on dyed shells.

(iv) *Light stained on raw or roasted nuts*, means an aggregate amount of yellow to light brown or light gray discoloration is noticeably contrasting with the predominate color of the shell and affects more than one-fourth of the total shell surface or, on dyed nuts, when readily noticeable.

(v) *Dark stained on raw or roasted nuts*, means an aggregate amount of dark brown, dark gray or black discoloration affects more than one-eighth of the total shell surface, or, on dyed nuts, when readily noticeable, provided that speckled appearing stain located within the area of one-fourth of the shell nearest the stem end shall be disregarded.

(e) *Internal (kernel) defects* means any blemish affecting the kernel. Such defects include, but are not limited to

evidence of insects, immature kernels, rancid kernels, mold, or decay.

(1) *Damage by internal (kernel) defects* means any specific defect described in paragraphs (e)(1)(i) through (ii) of this section; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance or the edible or marketing quality of the individual kernel or of the lot. (For tolerances see § 51.2544, Table II.)

(i) *Immature kernels* are excessively thin or when a kernel fills less than three-fourths, but not less than one-half the shell cavity.

(ii) *Kernel spotting* refers to dark brown or dark gray spots aggregating more than one-eighth of the surface of the kernel.

(2) *Serious damage by internal (kernel) defects* means any specific defect described in paragraphs (e)(2)(i) through (v) of this section; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance or the edible or the marketing quality of the individual kernel or of the lot. (For tolerances see § 51.2544, Table II.)

(i) *Minor insect or vertebrate injury* means the kernel shows conspicuous evidence of feeding.

(ii) *Insect damage* is an insect, insect fragment, web or frass attached to the kernel. No live insects shall be permitted.

(iii) *Mold* which is readily visible on the shell or kernel.

(iv) *Rancidity* means the kernel is distinctly rancid to taste. Staleness of flavor shall not be classed as rancidity.

(v) *Decay* means one-sixteenth or more of the kernel surface is decomposed.

(f) *Other defects* means defects which cannot be considered internal defects or external defects. Such defects include, but are not limited to shell pieces, blanks, foreign material or particles and dust. The following shall be considered other defects. (For tolerances see § 51.2544, Table III.)

(1) *Shell pieces* means open in-shell nuts not containing a kernel, half shells or pieces of shell which are loose in the sample.

(2) *Blank* means a non-split shell not containing a kernel or containing a kernel that fills less than one-half the shell cavity.

(3) *Foreign material* means leaves, sticks, loose hulls or hull pieces, dirt, rocks, insects or insect fragments not attached to nuts, or any substance other than pistachio shells or kernels. Glass, metal or live insects shall not be permitted.

(4) *Particles and dust* means pieces of nut kernels which will pass through a 5/64 inch round opening.

(5) *Undersize* means pistachio nuts in the shell which fall through a 30/64 inch round hole screen.

■ 10. Section 51.2548 is added to read as follows:

**§ 51.2548 Average moisture content determination.**

(a) Determining average moisture content of the lot is not a requirement of the grades, except when nuts are specified as "very well dried." It may be carried out upon request in connection with grade analysis or as a separate determination.

(b) Nuts shall be obtained from a randomly drawn composite sample. Official certification shall be based on

the air-oven method or other officially approved methods or devices. Results obtained by methods or devices not officially approved may be reported and shall include a description of the method or device and the owner of any equipment used.

■ 11. Section 51.2549 is added to read as follows:

**§ 51.2549 Metric conversion table.**

Use the following table for metric conversion:

Inches	Millimeters
5/64 .....	1.98
18/100 .....	.46
1/4 .....	6.35
30/64 .....	11.88
Ounces	Grams
1 .....	28.35
2 .....	56.70

**Subpart—United States Standards for Grades of Shelled Pistachio Nuts**

■ 12. In § 51.2555, paragraph (b) is revised to read as follows:

**§ 51.2555 General.**

\* \* \* \* \*

(b) These standards are applicable to raw, roasted, salted or salted/roasted pistachio kernels.

■ 13. Section 51.2556 is revised to read as follows:

**§ 51.2556 Grades.**

(a) "U.S. Fancy," "U.S. Extra No. 1," and "U.S. No. 1" consist of pistachio kernels which meet the following requirements:

(1) Well dried, or very well dried when specified in connection with the grade.

(2) Free from:

(i) Foreign material, including in-shell nuts, shells, or shell fragments.

(3) Free from damage by:

(i) Immature kernels;  
(ii) Kernel spotting; and  
(iii) Other defects.

(4) Free from serious damage by:

(i) Mold;  
(ii) Minor insect or vertebrate injury;  
(iii) Insect damage;  
(iv) Rancidity;  
(v) Decay; and,  
(vi) Other defects.

(5) Unless otherwise specified, kernels shall meet the size classification of Jumbo Whole Kernels (See § 51.2559).

(b) [Reserved]

■ 14. In § 51.2557, Table 1 is revised to read as follows:

**§ 51.2557 Tolerances.**

\* \* \* \* \*

TABLE 1.—TOLERANCES  
[Percent]

Factor (tolerances by weight)	U.S. fancy	U.S. extra No. 1	U.S. No. 1
(a) Damage .....	2.0	2.5	3.0
(b) Serious Damage .....	1.5	2.0	2.5
(1) Insect Damage, mold, rancid, decay, included in (b) .....	.3	.4	.5
(c) Foreign Material .....	.03	.05	.1

■ 15. Section 51.2559 is revised to read as follows:

**§ 51.2559 Size classifications.**

(a) The size of pistachio kernels may be specified in connection with the grade in accordance with one of the following size classifications.

(1) Jumbo Whole Kernels: 80 percent or more by weight shall be whole kernels and not more than 5 percent of the total sample shall pass through a 2 3/64 inch round hole screen with not more than 1 percent passing through a 1 1/64 inch round hole screen.

(2) Large Whole Kernels: 80 percent or more, by weight, shall be whole kernels and not more than 2 percent of the total sample shall pass through a 1 1/64 inch round hole screen.

(3) Large Split Kernels: 75 percent or more, by weight, shall be half kernels split lengthwise and not more than 5 percent of the total sample shall pass through a 1 1/64 inch round hole screen.

(4) Whole and Broken Kernels: means a mixture of any combination of whole kernels or pieces. The percentage of whole kernels and/or pieces may be specified. Not more than 5 percent of the total sample shall pass through a 5/64 inch round hole screen.

(b) [Reserved]

■ 16. Section 51.2560 is revised to read as follows:

**§ 51.2560 Definitions.**

(a) *Well dried* means the kernel is firm and crisp.

(b) *Very well dried* means the kernel is firm and crisp and the average

moisture content of the lot does not exceed 7 percent or is specified (See § 51.2561).

(c) *Foreign material* means leaves, sticks, in-shell nuts, shells or pieces of shells, dirt, or rocks, or any other substance other than pistachio kernels. No allowable tolerances for metal or glass.

(d) *Whole kernel* means 3/4 of a kernel or more.

(e) *Splits* means more than 3/4 of a half kernel split lengthwise.

(f) *Damage* means any specific defect described in paragraph (f) (1) through (2) of this section or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance or the edible or marketing quality of the

individual kernel or of the lot. (For tolerances, see § 51.2557, Table I.)

(1) *Immature kernels* are excessively thin kernels and can have black, brown or gray surface with a dark interior color and the immaturity has adversely affected the flavor of the kernel.

(2) *Kernel spotting* refers to dark brown or dark gray spots aggregating more than one-eighth of the surface of the kernel.

(g) *Serious damage* means any specific defect described in paragraph (g) (1) through (5) of this section, or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance or the edible or marketing quality of the individual kernel or of the lot. (For tolerances see § 51.2557 Table I.)

(1) *Mold* which is readily visible on the kernel.

(2) *Minor insect or vertebrate injury* means the kernel shows conspicuous evidence of feeding.

(3) *Insect damage* is an insect, insect fragment, web or frass attached to the kernel. No live insects shall be permitted.

(4) *Rancidity* means the kernel is distinctly rancid to taste. Staleness of flavor shall not be classed as rancidity.

(5) *Decay* means one-sixteenth or more of the kernel is decomposed.

■ 17. Section 51.2562 is added to read as follows:

**§ 51.2562 Metric Conversion Table.**

Use the following table for metric conversion:

Inches	Millimeters
$\frac{5}{64}$	1.98
$\frac{19}{64}$	6.35
$\frac{24}{64}$	9.53
Ounces	Grams
1	28.35
2	56.7

Dated: August 19, 2003.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 03-21547 Filed 8-21-03; 8:45 am]

**BILLING CODE 3410-02-P**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 1030**

[Docket No. DA-01-03; AO-361-A35]

**Milk in the Upper Midwest Marketing Area: Order Amending the Order**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This document adopts as a final rule, without change an interim final rule concerning pooling provisions of the Upper Midwest Federal milk order. Specifically, this final rule continues to prohibit the ability to simultaneously pool the same milk on the Upper Midwest Federal milk order and a State-operated milk order that has market-wide pooling. Additionally, the final rule limits the amount of milk that can be diverted to nonpool plants from pool distributing plants regulated under the order. More than the required number of producers in the Upper Midwest marketing area have approved the issuance of the final order amendments.

**EFFECTIVE DATE:** September 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Gino Tosi, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, Stop 0231-Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250-0231, (202) 690-1366, e-mail: [gino.tosi@usda.gov](mailto:gino.tosi@usda.gov).

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

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

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

**Regulatory Flexibility Act and Paperwork Reduction Act**

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than \$750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees.

For the purposes of determining which dairy farms are "small businesses," the \$750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

In June 2001, there were 12,748 producers pooled on, and 57 handlers regulated by, the Upper Midwest order. Based on these criteria, the vast majority of the producers and handlers would be considered as small businesses. The adoption of the proposed pooling standards serves to revise established criteria that determine those producers, producer milk, and plants that have a reasonable association with, and are consistently serving the fluid needs of, the Upper Midwest milk marketing area and are not associated with other market-wide pools concerning the same milk. Criteria for pooling are established on the basis of performance levels that are considered adequate to meet the Class I fluid needs and, by doing so, determine those that are eligible to share in the revenue that arises from the

classified pricing of milk. Criteria for pooling are established without regard to the size of any dairy industry organization or entity. The criteria established are applied in an identical fashion to both large and small businesses and do not have any different economic impact on small entities as opposed to large entities. Therefore, the amendments will not have a significant economic impact on a substantial number of small entities.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that these amendments would have no impact on reporting, recordkeeping, or other compliance requirements because they would remain identical to the current requirements. No new forms are proposed and no additional reporting requirements would be necessary.

This action does not require additional information collection that requires clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

Prior documents in this proceeding: Notice of Hearing: Issued June 5, 2001; published June 11, 2001 (66 FR 31185).

Tentative Final Decision: Issued February 8, 2002; published February 14, 2002 (67 FR 7040).

Interim Final Rule: Issued April 16, 2002; published April 22, 2002 (67 FR 19507).

Final Decision: Issued June 18, 2003; published June 24, 2003 (68 FR 37674).

#### Findings and Determinations

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

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

(a) *Findings upon the basis of the hearing record.* Pursuant to the

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

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

(1) The Upper Midwest order, as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

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

(b) *Additional Findings.* It is necessary in the public interest to make these amendments to the Upper Midwest order effective September 1, 2003. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the aforesaid marketing area.

The amendments to these orders are known to handlers. The final decision containing the proposed amendments to these orders was issued on June 18, 2003. These proposed amendments are identical to the amendments in the Interim Final Rule published in the **Federal Register** on April 22, 2002 (67 FR 19507) regulating the handling of milk in the Upper Midwest marketing area.

The changes that result from these amendments will not require extensive preparation or substantial alteration in the method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making these order amendments effective September 1, 2003. It would be contrary to the public interest to delay the effective date of these amendments for 30 days after their publication in the

**Federal Register.** (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559.)

(c) Determinations. It is hereby determined that:

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

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

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

#### List of Subjects in 7 CFR Parts 1030

Milk marketing orders.

#### Order Relative to Handling

■ *It is therefore ordered*, that on and after the effective date of this document, the handling of milk in the Upper Midwest marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby further amended, as follows:

#### PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

■ The interim final rule amending 7 CFR part 1030 which was published at (67 FR 19507) on April 16, 2002, is adopted as a final rule without change.

Dated: August 18, 2003.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 03–21530 Filed 8–21–03; 8:45 am]

**BILLING CODE 3410–02–U**

#### DEPARTMENT OF AGRICULTURE

#### Food Safety and Inspection Service

#### 9 CFR Part 430

[Docket No. 03–029N]

#### Listeria Monocytogenes Workshops for Small and Very Small Plants

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice of workshops.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is announcing that it will hold five workshops from September through October, 2003, to discuss the upcoming implementation of the interim final rule, "Control of *Listeria monocytogenes* in Ready-to-Eat Meat and Poultry Products," (68 FR 34208), which is effective on October 6, 2003. The provisions of the rule require official establishments that produce certain ready-to-eat (RTE) meat and poultry products to prevent product adulteration by the pathogenic environmental contaminant *Listeria monocytogenes* (L. monocytogenes).

The focus of the upcoming workshops will be on how small and very small plants can comply with the new regulations. Key elements of the implementation of the final rule will be addressed, and there will be an opportunity to ask questions and seek additional information. FSIS has held similar workshops in the past for small and very small plants as a means of helping such plants, which may have fewer resources than large plants, to comply with FSIS requirements.

**DATES:** The workshops will be held on September 13, 20, and October 4, 2003.

**ADDRESSES:** On September 13, workshops will be held in Raleigh, North Carolina and Bridgeport, Connecticut; on September 20, a workshop will be held in Kansas City, Kansas; and on October 4, workshops will be held in Albuquerque, New Mexico and Oakland, California. (Additional information will be provided at a later date.)

**FOR FURTHER INFORMATION CONTACT:** Pre-registration for the workshops is suggested. To register, please contact Ms. Sheila Johnson of the FSIS Strategic Initiatives, Partnership and Outreach Staff at (202) 690-6498, fax: (202) 690-6500, or e-mail:

*Sheila.Johnson@fsis.usda.gov*. For technical information, please contact Michaelle Fisher at (401) 221-7400, or email: *michaelle.fisher@fsis.usda.gov*. If a sign language interpreter or other special accommodations are required, please contact Ms. Sheila Johnson, no later than September 5.

**SUPPLEMENTARY INFORMATION:** On June 6, 2003, FSIS published an interim final rule, "Control of *Listeria monocytogenes* in Ready-to-Eat Meat and Poultry Products," (68 FR 34208), which will become effective October 6, 2003. The rule establishes regulations that require official establishments that produce RTE meat and poultry products to prevent product adulteration by the pathogenic environmental contaminant L. monocytogenes. Under the new

regulations, all establishments that produce RTE meat and poultry products that are exposed to the environment after lethality treatments and that support the growth of L. monocytogenes are to have controls that prevent product adulteration by L. monocytogenes in their hazard analysis and critical control point (HACCP) plans, in their sanitation standard operating procedures, or in prerequisite programs. Establishments are also required to maintain and share with FSIS data and information relevant to their controls for L. monocytogenes. Additionally, the new regulations permit an establishment to make claims on the labels of the RTE products regarding the processes used to eliminate or reduce L. monocytogenes or suppress or limit its growth in the products.

The workshops are designed to provide an overview of the final rule to owners and managers of small and very small Federal and State establishments. In addition, the workshops will give all stakeholders a more in-depth understanding of the three compliance alternatives, the sampling provisions, recordkeeping requirements, the use of labeling claims, how to comply with the validation provisions of the regulations, and how to prepare supporting documentation for their hazard analyses. The meeting will also provide the opportunity to discuss additional ways of ensuring that small and very small plants receive the assistance they need to successfully respond to the final rule.

#### Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS Web page located at <http://www.fsis.usda.gov>. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that

have requested to be included. Through the Listserv and Web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720-9113. To be added to the free e-mail subscription service (Listserv) go to the "Constituent Update" page on the FSIS Web site at <http://www.fsis.usda.gov/oa/update/update.htm>. Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

Done in Washington, DC on August 18, 2003.

**Garry L. McKee,**  
Administrator.

[FR Doc. 03-21483 Filed 8-21-03; 8:45 am]

**BILLING CODE 3410-DM-P**

---

## FEDERAL ELECTION COMMISSION

### 11 CFR Part 111

[Notice 2003-15]

#### Statement of Policy Regarding Deposition Transcriptions in Nonpublic Investigations

**AGENCY:** Federal Election Commission.

**ACTION:** Statement of policy.

**SUMMARY:** The Federal Election Commission announces an alteration to its historic practice with regard to transcripts of depositions in enforcement matters to permit deponents to obtain a copy of the transcript of their own deposition so long as there is no good cause to limit the deponent to an opportunity to review and sign the transcript.

**EFFECTIVE DATE:** August 22, 2003.

**FOR FURTHER INFORMATION CONTACT:** Lawrence L. Calvert, Deputy Associate General Counsel for Enforcement, Federal Election Commission, 999 E Street NW., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** When Federal Election Commission attorneys take a deponent's sworn testimony at an enforcement deposition authorized by 2 U.S.C. 437d(a)(4), only the deponent and his or her counsel may attend. Under historic practice, the deponent has the right to review and sign the transcript. 11 CFR 111.12(c) (applying Fed. R. Civ. P. 30(e) to Commission enforcement depositions). However, a deponent who is also a respondent is not currently allowed to obtain a copy of, or take notes when reviewing, his or her own transcript unless and until the General Counsel has transmitted, pursuant to 2 U.S.C. 437g(a)(3), a brief

recommending that the Commission find probable cause to believe that the respondent has violated or is about to violate the Federal Election Campaign Act of 1971, as amended ("the Act"), or Chapters 95 or 96 of Title 26, U.S. Code. The Office of General Counsel does not currently offer other deponents an opportunity to obtain their transcripts; once the entire matter has been closed, other deponents can copy the transcript at their own expense if the transcript is made part of the public record.

The Commission recently invited the public to comment on various aspects of the agency's enforcement practices, including whether and when transcripts of depositions should be released and to whom. See "Enforcement Procedures," Notice 2003-9, 68 FR 23311 (May 1, 2003). One possible change in practice included in the notice was for the Office of General Counsel to routinely allow deponents who are also respondents to procure immediately a copy of their own transcripts unless, on a case-by-case basis, the General Counsel concluded (or the Commission concluded, on the recommendation of the General Counsel) that it was necessary to the successful completion of the investigation to withhold the transcript until completion of the investigation.

On June 11, 2003, the Commission held a public hearing on its enforcement practices. At the hearing, counsel for the regulated community suggested changes to the agency's enforcement procedures, including its deposition policy. Some of those testifying suggested that deponents be allowed to obtain copies of their own depositions immediately after the deposition, contrary to the historic practice. Several of these commenters also noted that the Commission's practice regarding depositions contrasts with that of some other civil law enforcement agencies during the investigative stage of their proceedings.

The Commission is governed, in part, by the Administrative Procedure Act (APA). Under the APA, "[a] person compelled to submit data or evidence is entitled to retain or, on payment of lawfully proscribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony." 5 U.S.C. 555(c). One example of "good cause" recognized by courts is a concern that witnesses still to be examined might be coached. See *Commercial Capital Corp. v. SEC*, 360 F.2d 856, 858 (7th Cir. 1966). In the past, all open investigations have been considered as

falling within the APA's good-cause exception based on the potential for deponents to share their testimony with third parties. The Commission and its Office of General Counsel have also been mindful of the Federal Election Campaign Act's requirement that ongoing investigations be kept confidential.<sup>1</sup>

Other federal agencies that conduct nonpublic investigations have adopted policies that interpret the APA's good-cause exception more narrowly. For example, in 1964 the Federal Communications Commission adopted a policy whereby: "In any matter pending before the Commission, any person submitting data or evidence, whether acting under compulsion or voluntarily, shall have the right to retain a copy thereof, or to procure a copy \* \* \* of any transcript made of his testimony, upon payment of the charges therefor to the person furnishing the same, which person may be designated by the Commission. The Commission itself shall not be responsible for furnishing the copies." 47 CFR 1.10. In 1972, the Securities and Exchange Commission adopted its current rule on this subject, which is similar to the FCC's. See 17 CFR 203.6. Likewise, the practice of the Commodity Futures Trading Commission is governed by 17 CFR 11.7(b), which states: "A person compelled to submit data or evidence in the course of an investigatory proceeding shall be entitled to retain or, upon payment of appropriate fees \* \* \* procure a copy or transcript thereof, except that the witness may for good cause be limited to inspection of the official transcript of his testimony."

After carefully reviewing the comments submitted to it on this matter and considering the experience of other federal agencies regarding deposition transcripts in nonpublic investigations, the Commission hereby announces that, from the date of publication of this notice, it will permit deponents in enforcement matters to obtain, upon request to the Office of General Counsel, a copy of the transcript of their own deposition. The Commission has determined that it can maintain the integrity of its investigations even if current practice is altered, so long as

<sup>1</sup> Under 2 U.S.C. 437g(a)(12): "Any notification or investigation made under this section shall not be made public by the Commission or by any person without the written consent of the person receiving such notification or the person with respect to whom such investigation is made. Any member or employee of the Commission, or any other person, who violates the provisions \* \* \* shall be fined not more than \$2,000. Any such member, employee, or other person who knowingly and willfully violates the provisions \* \* \* shall be fined not more than \$5,000."

access to transcripts may still be denied upon determination that good cause exists for doing so, and so long as third-party witnesses (or deponents who are also respondents in matters with multiple respondents) are granted access to their transcripts subject to the confidentiality requirements of the Act.

Accordingly, in all matters open and pending before the Commission on or after the date of publication of this notice, a deponent may, in writing, request a copy of his or her own deposition transcript. The request may be made at any time after the deposition concludes. The Office of General Counsel will review the request and, absent good cause to the contrary, it will notify the deponent and the court reporter in writing that the deponent may obtain a copy of the transcript, at his or her own cost, from the court reporter. If the Associate General Counsel or her deputy determined that there was reason to invoke the good-cause exception, this Office would notify the deponent and the Commission. This change would not in any way affect 11 CFR 111.12(c).

Dated: August 18, 2003.

**Michael E. Toner,**

*Commissioner, Federal Election Commission.*

[FR Doc. 03-21543 Filed 8-21-03; 8:45 am]

**BILLING CODE 6715-01-P**

---

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2000-CE-17-AD; Amendment 39-13279; AD 2003-17-05]

RIN 2120-AA64

#### **Airworthiness Directives; Short Brothers and Harland Ltd. Models SC-7 Series 2 and SC-7 Series 3 Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that applies to all Short Brothers and Harland Ltd. (Shorts) Models SC-7 Series 2 and SC-7 Series 3 airplanes. This AD establishes a technical service life for these airplanes and allows you to incorporate modifications, inspections, and replacements of certain life limited items to extend the life limits of these airplanes. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for

the United Kingdom. The actions specified by this AD are intended to prevent failure of critical structure of the aircraft caused by fatigue.

**DATES:** This AD becomes effective on September 29, 2003.

The Director of the **Federal Register** approved the incorporation by reference of certain publications listed in the regulations as of September 29, 2003.

**ADDRESSES:** You may get the service information referenced in this AD from Short Brothers PLC, PO Box 241, Airport Road, Belfast BT3 9DZ Northern Ireland; telephone: +44 (0) 28 9045 8444; facsimile: +44 (0) 28 9073 3396. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000-CE-17-AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4059; facsimile: (816) 329-4090.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

*What events have caused this AD?* The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified FAA that an unsafe condition may exist on all Shorts Models SC-7 Series 2 and SC-7 Series 3 airplanes. The CAA reports that the Model SC-7 airframe has undergone structural evaluations that have resulted in the establishment of an airplane service life limit.

Modifications, inspections, and replacements of certain life limited items have been identified to further extend the life of the aircraft.

*What is the potential impact if FAA took no action?* The life limits, if not complied with, could result in failure of the primary structural components and possibly result in structural failure during flight.

*Has FAA taken any action to this point?* We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Shorts Models SC-7 Series 2 and SC-7 Series 3 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 13, 2002 (67 FR 68779). The NPRM proposed to establish a technical service life for these airplanes and allow you to incorporate

modifications, inspections, and replacements of certain life limited items to extend the life limits of these airplanes.

*Was the public invited to comment?*

The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

**Comment Issue No. 1: AD Is Not Needed**

*What is the commenter's concern?*

One commenter states that the proposed issuance of this AD serves no safety benefit since all of the U.S. registered airplanes affected are already in compliance with the referenced service information, and no accidents have been reported as a result of any structural failures. The commenter recommends that FAA not issue this AD. We infer that the commenter recommends that FAA withdraw the NPRM.

*What is FAA's response to the concern?* We do not concur that the AD serves no safety benefit and that we should withdraw the NPRM. The FAA does not have confirmation that all of the U.S. registered airplanes are in compliance with the referenced service information. In addition, imported aircraft need to have the AD stated for a records checks during issuance of an airworthiness certificate. The actions referenced in the service information are not required when the service life limits are reached, unless required by AD.

Therefore, the AD is necessary to ensure the life limits are required. We are not changing the final rule AD action as a result of this comment.

**Comment Issue No. 2: Economic Hardship**

*What is the commenter's concern?*

Ten commenters state that issuing the AD would result in economic hardship to them. Specifically, these commenters communicated the following:

- Seven commenters state that issuing the AD would result in a prohibitive cost increase for their use of the aircraft or result in the loss of the aircraft. We infer that "by loss of the use of the aircraft" that the owner/operator of the affected airplane would choose to retire the airplane from service.
- Three commenters state that issuing the AD would reduce the remaining time-in-service of the affected airplanes and result in airplanes with no resale value. We infer that owners/operators would choose to withdraw airplanes from service rather than work with the manufacturer to

develop a life extension program for the affected airplanes.

We infer that the 10 commenters want FAA to withdraw the NPRM.

*What is FAA's response to the concern?* The FAA does not concur that the NPRM should be withdrawn because of economic impact. We have no way of determining the number or extent of inspections, repairs, and replacements that would be necessary based on the owner/operator and manufacturer developed life extension program for the affected airplanes noted in the NPRM. Further, it is the owners'/ operators' responsibility to propose an alternative method of compliance that provides an acceptable level of safety.

We are not changing the final rule AD action as a result of these comments.

**Comment Issue No. 3: Insufficient Comment Time**

*What is the commenter's concern?*

Five commenters state that the comment period length was insufficient, that additional time is necessary to obtain technical information from the manufacturer, that there is no urgent safety condition indicating the need for this AD, and that more time is needed to propose a more comprehensive inspection program.

We infer that the five commenters want FAA to extend the comment period of the NPRM and delay issuance of the AD.

*What is FAA's response to the concern?* We disagree that the comment period for the NPRM should be extended. The comment period ended on December 23, 2002. However, FAA has always accepted late comments. Based on the timing of the final rule, the public had more than six extra months to comment on the NPRM. The FAA agrees that no urgent safety of flight condition existed; if an urgent safety of flight condition exists for this type design, we would have determined that this regulation is an emergency regulation that must be issued immediately and that must become effective prior to public comment. Owners/operators who want to propose a more comprehensive inspection program are free to work with the manufacturer to develop a life extension program for the affected airplane(s) and submit a plan to the FAA as an alternative method of compliance.

We are not changing the final rule AD action as a result of these comments.

**Comment Issue No. 4: Inadequate/ Incorrect Supporting Data**

*What is the commenter's concern?* Six commenters state that inadequate/ incorrect supporting data had been cited

or used in the development of the NPRM, as follows:

- Several commenters state that FAA should require the manufacturer or others to submit data for review.
- Two commenters state that the aircraft's characteristics make it the most safe for their use. The FAA infers that the commenters prefer this type design to other type designs.
- Three commenters state that several airplanes have not been subject to operations that would reduce life limits. We infer that the commenters believe these airplanes are eligible for life extension programs.

*What is FAA's response to the concern?* The FAA disagrees that inadequate or incorrect supporting data has been considered in the development of the NPRM. Under the bilateral airworthiness agreement between the United Kingdom and the United States, the airworthiness authority (after coordination with the manufacturer), notified FAA that an unsafe condition exists or could develop on all Shorts Models SC-7 Series 2 and SC-7 Series 3 airplanes. The airworthiness authority reported that the Model SC-7 airframe has undergone structural evaluations that have resulted in the establishment of an airplane service life limit. Modifications, inspections, and replacements of certain life limited items were identified to further extend the life of the aircraft.

We have reviewed the available data and found the data adequate and correct. Therefore, we are not changing the final rule AD action as a result of these comments.

#### **Comment Issue No. 5: Service Difficulty History Does Not Justify AD Action**

*What is the commenter's concern?* Several commenters state that the service difficulty history shows no structural problems of the type stated in the NPRM. We infer that the commenters feel the lack of a service difficulty history for the type design warrants the withdrawal of the NPRM.

*What is FAA's response to the concern?* The FAA disagrees that the lack of a service difficulty history is sufficient to justify the withdrawal of the NPRM. The manufacturer and the airworthiness authority have stated that the life limit should be reduced based on their analyses and technical expertise.

The FAA has examined these findings, reviewed all available information, and determined that AD action should be taken. Therefore, we are not changing the final rule AD action as a result of these comments.

#### **Comment Issue No. 6: Operational Profile (Gross Weight Penalty)**

*What is the commenter's concern?* Two commenters state that certain airplanes have an operational history profile (operating at lesser gross weight than considered by the manufacturer and foreign airworthiness authority) that does not warrant reduction in life limits as would be required in the AD. The FAA infers that commenters want the withdrawal of the proposed NPRM or adjustment of the life limits for certain aircraft of the affected type design.

*What is FAA's response to the concern?* The FAA disagrees that certain airplanes' operational history profiles warrant withdrawal of the NPRM or changes in the life limits. The manufacturer and the foreign airworthiness authority have determined that AD action is needed, and FAA confirms this need for AD action.

The owners/operators of affected airplanes are free to work with the manufacturer to develop a life extension program for the affected airplanes and submit a plan to the FAA.

We are not changing the final rule AD action as a result of these comments.

#### **Comment Issue No. 7: Safe Life Principle**

*What is the commenter's concern?* The commenter states the argument that the manufacturer should not be using a 35-year old safe life process to determine life limits for aircraft of this type design. Further, newer non-destructive inspection (NDI) techniques are available. The FAA infers that the commenter wants the NPRM withdrawn or increased life limits for certain aircraft.

*What is FAA's response to the concern?* We disagree that the NPRM should be withdrawn or that there should be increased life limits for certain aircraft. Although newer NDI techniques do exist, no NDI procedures have been proposed for this issue that we have determined will detect the fatigue before it occurs. We will consider NDI procedures proposed as part of an alternative method of compliance.

We are not changing the final rule AD action as a result of this comment.

#### **Comment Issue No. 8: Freedom of Information Act (FOIA) Request Not Fulfilled**

*What is the commenter's concern?* One commenter states that FAA has not provided FOIA requested information. We infer that the commenter wants the NPRM withdrawn or a supplemental

NPRM issued with the public allowed to review the requested information and to provide public comments with a new comment period.

*What is FAA's response to the concern?* The FAA disagrees that the NPRM should be withdrawn or a supplemental NPRM issued. The FAA handles FOIA requests independently of ADs. We have determined that an unsafe condition exists and that AD action is necessary to correct it.

Therefore, we are not changing the final rule AD action as a result of this comment.

#### **Comment Issue No. 9: Service Bulletins Already Incorporated**

*What is the commenter's concern?* Commenters state that all affected airplanes have incorporated the requirements of the referenced service information. Also, one service bulletin was issued in 1978. FAA infers that the commenters believe the NPRM should be withdrawn because they believe all airplanes in the United States have complied with the service information and the service bulletin issued in 1978 without a related AD action until now.

*What is FAA's response to the concern?* The FAA disagrees that the NPRM should be withdrawn. Assurance that all airplanes are in compliance with service information is not justification to not issue an AD. The original type certificate did not include service life limits. The only way to mandate these limits on all airplanes, including those getting future airworthiness certificates, is through AD action.

We are not changing the final rule AD action as a result of these comments.

#### **Comment Issue No. 10: AD Action Should Not Apply to Aircraft Used in Part 91 Operations**

*What is the commenter's concern?* The commenter states that, because the aircraft looks good and has been operated under favorable conditions, (1) there should be an in-depth study of the AD; (2) initial life limits for the aircraft should be 30,000 cycles; and (3) a recommended plan of inspection should be implemented. The FAA infers that the commenter wants the NPRM withdrawn or a supplemental NPRM issued with a life limit of 30,000 cycles and a recommended plan of inspection proposed.

*What is FAA's response to the concern?* We disagree that the NPRM should be withdrawn or a supplemental NPRM issued. We have determined that the AD as proposed addresses the unsafe condition. The referenced life extension program could be proposed as an alternative method of compliance

provided details are included that show an acceptable level of safety. A detailed method and thresholds for cracks and inspection intervals would have to be proposed.

We are not changing the final rule AD action as a result of these comments.

**FAA's Determination**

*What is FAA's final determination on this issue?* After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of

the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

**Cost Impact**

*How many airplanes does this AD impact?* We estimate that this AD affects 22 airplanes in the U.S. registry.

*What is the cost impact of this AD on owners/operators of the affected airplanes?* The impact of this AD will be not being able to operate the airplane past the established service life limit. The following paragraphs present cost if you choose to extend the life limit.

We estimate the following costs to accomplish the aircraft life extension prescribed in Shorts Service Bulletin No. 51–51 on 19 aircraft:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
350 workhours × \$60 per hour = \$21,000 .....	\$90,000	\$111,000	\$2,109,000

We estimate the following to accomplish the aircraft life extension

prescribed in Shorts Service Bulletin No. 51–52 for the 6 aircraft serial

numbers 1845, 1847, 1883, 1889, 1943, and 1960:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
120 workhours × \$60 per hour = \$7,200 .....	\$22,000	\$29,200	\$175,200

Three of these 6 airplanes will also incorporate Shorts Service Bulletin No. 51–51 and are part of the 19 airplanes subset of the total set of 22 airplanes in the U.S. registry.

**Compliance Time of This AD**

*What would be the compliance time of this AD?* The compliance time of this AD is upon accumulating the applicable life limit or within the next 90 days after the effective date of this AD, whichever occurs later.

*Why is the compliance time of this AD presented in flights, hours TIS and calendar time?* The unsafe condition on these airplanes is a result of the combination of the number of times the airplane is operated and how the airplane is operated (for example, weight carried). Airplane operation varies among operators. For example, one operator may operate the airplane 100 flights or 50 hours TIS in 3 months and carrying low weights while it may take another operator 12 months or more to accumulate 100 flights or 50 hours TIS while carrying heavy weights. For this reason, we have determined that the compliance time of this AD will be specified in flights, hours time-in-service (TIS), and calendar time in order to assure this condition is not allowed to go uncorrected over time.

**Regulatory Impact**

*Does this AD impact various entities?* The regulations adopted herein will not

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

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration

amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

**2003–17–05 Short Brothers and Harland Ltd.:** Amendment 39–13279; Docket No. 2000–CE–17–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models SC–7 Series 2 and SC–7 Series 3 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent failure of critical structure of the aircraft caused by fatigue.

(d) *What must I do to comply with this AD?* Do not operate the airplane upon accumulating the applicable life limit or within the next 90 days after September 29, 2003 (the effective date of this AD), whichever occurs later. The following table presents the life limits:

Serial number	Life limit
(1) SH1845 and SH1883.	10,000 hours time-in-service (TIS).
(2) SH1847 .....	15,200 hours TIS.

Serial number	Life limit
(3) SH1889 .....	13,805 flights.
(4) SH1943 .....	11,306 flights.
(5) SH1960 .....	4,142 flights.
(6) All airplanes that do not have serial number SH1845, SH1883, SH1847, SH1889, SH1943, or SH1960.	20,000 flights.

**Note 1:** For owners/operators that do not have a record of the number of flights on the aircraft, assume the number of flights on the basis of two per operating hour.

(e) *What must I do to extend the life limits for airplanes with serial number SH1845, SH1847, SH1883, SH1889, SH1943, or SH1960?* To extend the life limit on one of these airplanes, you must accomplish the actions of Shorts Service Bulletin No. 51-52, Original Issue: September 1, 1981 (latest version at Revision No.: 4, dated: July 16, 2002), and Shorts Skyvan Maintenance Program 1, not dated. The following table presents the extended life limit:

Serial number	Extended life limit
(1) SH1845:	13,456 hours TIS.
(2) SH1847:	20,200 hours TIS.
(3) SH1883:	15,000 hours TIS.
(4) SH1889:	20,094 flights.
(5) SH1943:	17,325 flights.
(6) SH1960:	8,449 flights.

(f) *What must I do to extend the life limit for my airplanes that do not have serial number SH1845, SH1883, SH1847, SH1889, SH1943, or SH1960?* You can extend the life limit to 27,000 flights by accomplishing the actions of Shorts Service Bulletin No. 51-51, Original Issue: June 6, 1978 (latest version at Revision No.: 6, dated: March 14, 1983), and Shorts Skyvan Maintenance Program 1, not dated.

**Note 2:** These life limits described in paragraph (e) are the final life limits of each aircraft unless the owner/operator works with Shorts Brothers PLC to develop a life extension program. Submit a plan to the FAA (address specified in paragraph (g) of this AD) for the proposed life extension program. Accomplishment of Shorts Service Bulletin No. 51-51, Original Issue: June 6, 1978 (latest version at Revision No.: 6, dated: March 14, 1983), does not extend the service life beyond the life limits described in paragraph (e).

(g) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

- (1) Your alternative method of compliance provides an equivalent level of safety; and
- (2) The Standards Office Manager, Small Airplane Directorate, approves

your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

**Note 3:** This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(h) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4059; facsimile: (816) 329-4090.

(i) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(j) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Shorts Service Bulletin No. 51-51, Revision No.: 6, dated: March 14, 1983; and Shorts Service Bulletin No. 51-52, Revision No.: 4, dated: July 16, 2002). The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Short Brothers PLC, P.O. Box 241, Airport Road, Belfast BT3 9DZ Northern Ireland; telephone: +44 (0) 28 9045 8444; facsimile: +44 (0) 28 9073 3396. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 4:** The subject of this AD is addressed in British AD Number 019-09-81, not dated.

(k) *When does this amendment become effective?* This amendment becomes effective on September 29, 2003.

Issued in Kansas City, Missouri, on August 12, 2003.

**Diane K. Malone,**  
Acting Manager, Small Airplane Directorate,  
Aircraft Certification Service.

[FR Doc. 03-20983 Filed 8-21-03; 8:45 am]

BILLING CODE 4910-13-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. 2003-CE-30-AD; Amendment 39-13277; AD 2003-17-03]

RIN 2120-AA64

**Airworthiness Directives; Piaggio Aero Industries S.p.A. Model P-180 Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This document supersedes Airworthiness Directive (AD) 2003-03-14, which applies to all PIAGGIO AERO INDUSTRIES S.p.A. (PIAGGIO) Model P-180 airplanes. AD 2003-03-14 currently requires you to inspect and determine whether any firewall shutoff or crossfeed valve with a serial number in a certain range is installed and requires you to replace or modify any valve that has a serial number within this range. The modification consisted of reworked valves that were re-identified with an "A" at the end of the serial number. AD 2003-03-14 allows the pilot to check the logbook and does not require the inspection and replacement requirement if the check shows that one of these valves is definitely not installed. Since AD 2003-03-14 became effective, the Federal Aviation Administration (FAA) has found that the valve manufacturer was not correctly incorporating the modification on reworked valves. Consequently, the installation of modified fuel valves installed per AD 2003-03-14 could allow the unsafe condition to remain on the affected airplanes. This AD would require you to replace any firewall shutoff or crossfeed valve with a serial number in a certain range even if it has been modified per AD 2003-03-14. The actions specified by this AD are intended to prevent a faulty firewall shutoff or crossfeed valve from developing cracks and leaking fuel. This could result in an engine fire.

**DATES:** This AD becomes effective on September 3, 2003.

The Director of the **Federal Register** approved the incorporation by reference

of certain publications listed in the regulation as of September 3, 2003.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before September 17, 2003.

**ADDRESSES:** Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003-CE-30-AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: 9-ACE-7-Docket@faa.gov. Comments sent electronically must contain "Docket No. 2003-CE-30-AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get the service information referenced in this AD from PIAGGIO AERO INDUSTRIES S.p.A, Via Cibrario 4, 16154 Genoa, Italy; telephone: +39 010 6481 856; facsimile: +39 010 6481 374. You may view this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003-CE-30-AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the *Office of the Federal Register*, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4145; facsimile: (816) 329-4090.

#### SUPPLEMENTARY INFORMATION:

##### Discussion

*Has FAA taken any action to this point?* A ground fire on the left-hand engine nacelle caused by a cracked crossfeed valve that had leaked fuel on a PIAGGIO Model P-180 airplane caused FAA to issue AD 2003-03-14, Amendment 39-13038 (68 FR 5815, February 5, 2003).

AD 2003-03-14 currently requires you to inspect and determine whether any firewall shutoff or crossfeed valve with a serial number in a certain range is installed and requires you to replace or modify any valve that has a serial number within this range. The modification consisted of reworked valves that were re-identified with an "A" at the end of the serial number. This AD allows the pilot to check the logbook and does not require the inspection and replacement requirement

if the check shows that one of these valves is definitely not installed.

*What has happened since AD 2003-03-14 to initiate this proposed action?* The Ente Nazionale per l'Aviazione Civile (ENAC), which is the airworthiness authority for Italy, recently notified FAA of the need to change AD 2003-03-14. The ENAC reports that the valve manufacturer was not correctly incorporating the modification on reworked valves and that these modified valves need to be replaced.

*Is there service information that applies to this subject?* PIAGGIO has issued Service Bulletin No. ASB80-0191, dated February 27, 2003. Included as part of this service bulletin is Electromech Technologies SB 484-3 AB, dated February 18, 2003.

*What are the provisions of this service information?* The service information includes:

- A list of those Electromech part number (P/N) fuel valves that are affected by the unsafe condition;
- Procedures for determining whether one of the affected fuel valves is installed; and
- Instructions for replacing or modifying any affected fuel valve.

*What action did the ENAC take?* The ENAC classified this service bulletin as mandatory and issued Italian RAI-AD 2003-119, dated April 3, 2003, in order to ensure the continued airworthiness of these airplanes in Italy.

*Was this in accordance with the bilateral airworthiness agreement?* This airplane model is manufactured in Italy and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the ENAC has kept FAA informed of the situation described above.

#### The FAA's Determination and an Explanation of the Provisions of This AD

*What has FAA decided?* The FAA has examined the findings of the ENAC; reviewed all available information, including the service information referenced above; and determined that:

- The unsafe condition referenced in this document exists or could develop on other PIAGGIO Model P-180 airplanes of the same type design that are on the U.S. registry;
- The fuel valves modified per AD 2003-03-14 should also be replaced;
- The actions specified in the previously-referenced service

information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

*What does this AD require?* This AD supersedes AD 2003-03-14 with a new AD that requires you to replace any firewall shutoff or crossfeed valve with a serial number in a certain range even if it has been modified per AD 2003-03-14.

*How does the revision to 14 CFR part 39 affect this AD?* On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

*Will I have the opportunity to comment prior to the issuance of the rule?* Because the unsafe condition described in this document could result in an engine fire, we find that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

#### Comments Invited

*How do I comment on this AD?* Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, FAA invites your comments on the rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date specified above. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this AD action and determining whether we need to take additional rulemaking action.

*Are there any specific portions of this AD I should pay attention to?* We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

*How can I be sure FAA receives my comment?* If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2003-CE-30-AD." We will date stamp and mail the postcard back to you.

**Compliance Time of This AD**

*Why is the compliance time presented in calendar time instead of hours time-in-service (TIS)?* The compliance of this AD is presented in calendar time instead of hours TIS because the affected shutoff and crossfeed valves are unsafe as a result of a quality control problem. The problem has the same chance of existing on an airplane with 50 hours TIS as it would for an airplane with 1,000 hours TIS. Therefore, FAA has determined that the compliance time of this AD should be presented in calendar time.

**Regulatory Impact**

*Does this AD impact various entities?* These regulations will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, FAA

has determined that this final rule does not have federalism implications under Executive Order 13132.

*Does this AD involve a significant rule or regulatory action?* We have determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

■ 2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 2003-03-14, Amendment 39-13038 (68 FR 5815, February 5, 2003), and by adding a new AD to read as follows:

**2003-17-03 Piaggio Aero Industries S.p.A.:**  
Amendment 39-13277; Docket No. 2003-CE-30-AD; Supersedes AD 2003-03-14, Amendment 39-13038.

(a) *What airplanes are affected by this AD?* This AD affects Model P-180 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent a faulty firewall shutoff or crossfeed valve from developing cracks and leaking fuel. This could result in an engine fire.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
<p>(1) <i>Maintenance Records Check:</i> (i) Check the maintenance records to determine whether an Electro Mech part number (P/N) EM484-3 firewall shutoff or crossfeed valve with a serial number in the range of 148 through 302 (with or without an "A" at the end of the serial number) is installed. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may perform this check.</p> <p>(ii) If, by checking the maintenance records, the owner/operator can definitely show that no Electro Mech P/N EM484-3 firewall shutoff or crossfeed valves with a serial number in the range of 148 through 302 (with or without an "A" at the end of the serial number) are installed, then the inspection requirement of paragraph (d)(2) of this AD and the replacement requirement of paragraph (d)(3) of this AD do not apply. You must make an entry into the aircraft records that shows compliance with these portions of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).</p>	<p>Within 5 days after September 3, 2003 (the effective date of this AD), unless already accomplished.</p>	<p>No special procedures necessary to check the logbook.</p>
<p>(2) <i>Inspection:</i> Inspect the three Electro Mech P/N EM484-3 firewall shutoff and crossfeed valves to determine whether they incorporate a serial number in the range of 148 through 302 (with or without an "A" at the end of the serial number).</p>	<p>Within 5 days after September 3, 2003 (the effective date of this AD), unless already accomplished.</p>	<p>In accordance with PIAGGIO Aero Industries S.p.A. Service Bulletin No. ASB80-0191, dated February 27, 2003; and Electromech Technologies SB 484-3 AB, dated February 18, 2003.</p>

Actions	Compliance	Procedures
(3) <i>Replacement/Modification</i> : If any Electro Mech P/N EM484-3 firewall shutoff or crossfeed valve is found that incorporates a serial number in the range of 148 through 302 (with or without an "A" at the end of the serial number), accomplish one of the following:	Accomplish any necessary replacements or modifications prior to further flight after the inspection required by paragraph (d)(2) of this AD, unless already accomplished.	Replace in accordance with the applicable maintenance manual. Modify in accordance with PIAGGIO Aero Industries S.p.A. Service Bulletin No. ASB80-0191, dated February 27, 2003; and Electromech Technologies SB 484-3 AB, dated February 18, 2003.
(i) Install valve(s) that does not (do not) incorporate a serial number in the range of 148 through 302 (with or without an "A" at the end of the serial number); or (ii) Have any valve(s) modified that incorporates (incorporate) a serial number in the range of 148 through 302 (with or without an "A" at the end of the serial number). The valve will be re-identified with a "B" at the end of the serial number.		
(4) <i>Valves Modified per AD 2003-03-14</i> : Any valve modified per AD 2003-03-14 and re-identified with an "A" at the end of the serial number must be replaced or modified per paragraph (d)(3)(i) or (d)(3)(ii) of this AD, respectively.	Within 5 days after September 3, 2003 (the effective date of this AD), unless already accomplished.	In accordance with PIAGGIO Aero Industries S.p.A. Service Bulletin No. ASB80-0191, dated February 27, 2003; and Electromech Technologies SB 484-3 AB, dated February 18, 2003.
(5) <i>Spare</i> s: Do not install, on any airplane, any Electro Mech P/N EM484-3 firewall shutoff or crossfeed valve that incorporates a serial number in the range of 148 through 302 (with or without an "A" at the end of the serial number), unless it has been modified as specified in paragraph (d)(3)(ii) of this AD.	As of September 3, 2003 (the effective date of this AD).	Not applicable.

(e) *Can I comply with this AD in any other way?*

(1) To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.13. Send these requests to the Manager, Standards Office, Small Airplane Directorate. For information on any already approved alternative methods of compliance, contact S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4145; facsimile: (816) 329-4090.

(2) Alternative methods of compliance approved in accordance with AD 2003-03-14, which is superseded by this AD, are not approved as alternative methods of compliance with this AD.

(f) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with PIAGGIO Aero Industries S.p.A. Service Bulletin No. ASB80-0191, dated February 27, 2003; and Electromech Technologies SB 484-3 AB, dated February 18, 2003. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from PIAGGIO AERO INDUSTRIES S.p.A., Via Cibrario 4, 16154 Genoa, Italy; telephone: +39 010 6481 856; facsimile: +39 010 6481 374. You may view this information at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 2003-03-14, Amendment 39-13038.

**Note:** The subject of this AD is addressed in Italian RAI-AD 2003-119, dated April 3, 2003.

(h) This AD becomes effective on September 3, 2003.

Issued in Kansas City, Missouri, on August 12, 2003.

**Diane K. Malone,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03-20963 Filed 8-21-03; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 381

[Docket No. RM03-11-000]

#### Annual Update of Filing Fees

August 18, 2003.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final rule; annual update of Commission filing fees.

**SUMMARY:** In accordance with 18 CFR 381.104, the Commission issues this update of its filing fees. This notice provides the yearly update using data in the Commission's Management, Administrative, and Payroll System to calculate the new fees. The purpose of

updating is to adjust the fees on the basis of the Commission's costs for Fiscal Year 2002.

**EFFECTIVE DATE:** September 22, 2003.

**FOR FURTHER INFORMATION CONTACT:** Troy Cole, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Room 4R-01, Washington, DC 20426, (202) 502-6161.

**SUPPLEMENTARY INFORMATION:** *Document Availability:* In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for FERRIS and the FERC's Web site during normal business hours from our Help line at (202) 502-8222 or the Public

Reference Room at (202) 502-8371 Press 0, TTY (202) 502-8659. E-Mail the Public Reference Room at [public.reference.room@ferc.gov](mailto:public.reference.room@ferc.gov).

The Federal Energy Regulatory Commission (Commission) is issuing this notice to update filing fees that the Commission assesses for specific services and benefits provided to identifiable beneficiaries. Pursuant to 18

CFR 381.104, the Commission is establishing updated fees on the basis of the Commission's Fiscal Year 2002 costs. The adjusted fees announced in this notice are effective September 22, 2003. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget,

that this final rule is not a major rule within the meaning of section 251 of Subtitle E of Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(2). The Commission is submitting this final rule to both houses of the United States Congress and to the Comptroller General of the United States.

The new fee schedule is as follows:

<b>Fees Applicable to the Natural Gas Policy Act</b>	
1. Petitions for rate approval pursuant to 18 CFR 284.123(b)(2). (18 CFR 381.403) .....	\$9,480
<b>Fees Applicable to General Activities</b>	
1. Petition for issuance of a declaratory order (except under Part I of the Federal Power Act). (18 CFR 381.302(a)) .....	19,040
2. Review of a Department of Energy remedial order:	
Amount in controversy	
\$0-9,999. (18 CFR 381.303(b)) .....	\$100
\$10,000-29,999. (18 CFR 381.303(b)) .....	\$600
\$30,000 or more. (18 CFR 381.303(a)) .....	27,800
3. Review of a Department of Energy denial of adjustment:	
Amount in controversy	
\$0-9,999. (18 CFR 381.304(b)) .....	\$100
\$10,000-29,999. (18 CFR 381.304(b)) .....	\$600
\$30,000 or more. (18 CFR 381.304(a)) .....	14,580
4. Written legal interpretations by the Office of General Counsel. (18 CFR 381.305(a)) .....	\$5,460
<b>Fees Applicable to Natural Gas Pipelines</b>	
1. Pipeline certificate applications pursuant to 18 CFR 284.224. (18 CFR 381.207(b)) .....	1,000 *
<b>Fees Applicable to Cogenerators and Small Power Producers</b>	
1. Certification of qualifying status as a small power production facility. (18 CFR 381.505(a)) .....	16,370
2. Certification of qualifying status as a cogeneration facility. (18 CFR 381.505(a)) .....	18,540
3. Applications for exempt wholesale generator status. (18 CFR 381.801) .....	870

\* This fee has not been changed.

**List of Subjects in 18 CFR Part 381**

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

**Thomas R. Herlihy,**  
*Executive Director.*

■ In consideration of the foregoing, the Commission amends part 381, chapter I, title 18, Code of Federal Regulations, as set forth below.

**PART 381—FEES**

■ 1. The authority citation for part 381 continues to read as follows:

**Authority:** 15 U.S.C. 717-717w; 16 U.S.C. 791-828c, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352; 49 U.S.C. 60502; 49 App. U.S.C. 1-85.

**§ 381.302 [Amended]**

■ 2. In 381.302, paragraph (a) is amended by removing “18,260” and adding “\$19,040” in its place.

**§ 381.303 [Amended]**

■ 3. In 381.303, paragraph (a) is amended by removing “\$26,660” and adding “\$27,800” in its place.

**§ 381.304 [Amended]**

■ 4. In 381.304, paragraph (a) is amended by removing “\$13,980” and adding “\$14,580” in its place.

**§ 381.305 [Amended]**

■ 5. In 381.305, paragraph (a) is amended by removing “\$5,240” and adding “\$5,460” in its place.

**§ 381.403 [Amended]**

■ 6. Section 381.403 is amended by removing “\$9,090” and adding “\$9,480” in its place.

**§ 381.505 [Amended]**

■ 7. In 381.505, paragraph (a) is amended by removing “\$15,700” and adding “\$16,370” in its place and by removing “\$17,770” and adding “\$18,540” in its place.

**§ 381.801 [Amended]**

■ 8. Section 381.801 is amended by removing “\$990” and adding “\$870” in its place.

[FR Doc. 03-21551 Filed 8-21-03; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Bureau of Customs and Border Protection**

**19 CFR Part 122**

**[CBP Dec. 03-22]**

**User Fee Airports**

**AGENCY:** Customs and Border Protection, Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations to reflect the designation of Williams Gateway Airport in Mesa, Arizona and Roswell Industrial Air Center in Roswell, New Mexico as user fee airports and to correct an error regarding the city in Texas in which the McKinney Airport user fee airport is located. A user fee airport is one which while not qualifying for designation as an international or landing rights airport, has been approved by the Commissioner of the Bureau of Customs and Border Protection (CBP) to receive, for a fee, the services of a CBP officer for the processing of aircraft entering the United States and their passengers and cargo.

**EFFECTIVE DATE:** August 22, 2003.

**FOR FURTHER INFORMATION CONTACT:**

Richard Balaban, Office of Field Operations, 202-927-0031.

**SUPPLEMENTARY INFORMATION:****Background**

Generally, a civil aircraft arriving from a place outside of the United States is required to land at an airport designated as an international airport. Alternatively, the pilot of a civil aircraft may request permission to land at a specific airport and if landing rights are granted, the civil aircraft may land at that landing rights airport.

Section 236 of Pub. L. 94-573 (the Trade and Tariff Act of 1984), codified at 19 U.S.C. 58b, created an option for civil aircraft desiring to land at an airport other than an international or landing rights airport. A civil aircraft arriving from a place outside of the United States may ask for permission to land at an airport designated by the Secretary of the Treasury as a user fee airport.

Pursuant to 19 U.S.C. 58b, an airport may be designated as a user fee airport if the Secretary of the Treasury determines that the volume of business at the airport is insufficient to justify the availability of customs services at the airport and the governor of the state in which the airport is located approves the designation. Generally, the type of aircraft that would seek designation as a user fee airport would be one at which a company, such as an air courier service, has a specialized interest in regularly landing.

As the volume of business anticipated at this type of airport is insufficient to justify its designation as an international or landing rights airport, the availability of customs services is not paid for out of appropriations from the general treasury of the United States. Instead, the customs services are provided on a fully reimbursable basis to be paid for by the user fee airport on behalf of the recipients of the services.

The fees which are to be charged at user fee airports, according to the statute, shall be paid by each person using the customs services at the airport and shall be in the amount equal to the expenses incurred by the Secretary of the Treasury in providing customs services which are rendered to such person at such airport, including the salary and expenses of those employed by the Secretary of the Treasury to provide the customs services. To implement this provision, generally, the airport seeking the designation as a user fee airport or that airport's authority agrees to pay a flat fee annually and the users of the airport are to reimburse that airport/airport authority. The airport/

airport authority agrees to set and periodically to review the charges to ensure that they are in accord with the airport's expenses.

Sections 403(1) and 411 of the Homeland Security Act of 2002 ("the Act," Pub. L. 107-296) transferred the United States Customs Service and its functions from the Department of the Treasury to the Department of Homeland Security; pursuant to section 1502 of the Act, the President renamed the "Customs Service" as the "Bureau of Customs and Border Protection," also referred to as the "CBP."

The Commissioner of CBP, pursuant to § 122.15, Customs Regulations (19 CFR 122.15) designates airports as user fee airports pursuant to 19 U.S.C. 58b. Section 122.15 sets forth the list of designated user fee airports.

Thirty seven airports are currently listed in § 122.15. This document revises the list of user fee airports. It adds Williams Gateway Airport in Mesa, Arizona, and Roswell Industrial Air Center in Roswell, New Mexico, to this listing of designated user fee airports. It also corrects the location of McKinney Municipal Airport from Dallas, Texas, to McKinney, Texas.

**Regulatory Flexibility Act and Executive Order 12866**

Because no notice of proposed rulemaking is required for this final rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Agency organization matters such as this amendment are exempt from consideration under Executive Order 12866.

**Inapplicability of Public Notice and Delayed Effective Date Requirements**

Because this amendment merely updates and corrects the list of user fee airports designated by the Commissioner of CBP in accordance with 19 U.S.C. 58b and neither imposes any additional burdens on, nor takes away any existing rights or privileges from, the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary, and for the same reasons, pursuant to 5 U.S.C. 553(d)(3) a delayed effective date is not required.

**Drafting Information**

The principal author of this document was Janet L. Johnson, Regulations Branch, Office of Regulations and Rulings, CBP. However, personnel from other offices participated in its development.

**List of Subjects in 19 CFR Part 122**

Air carriers, Aircraft, Airports, Customs duties and inspection, Freight,

**Amendments to the Regulations**

■ Part 122, Customs Regulations (19 CFR Part 122) is amended as set forth below.

**PART 122—AIR COMMERCE REGULATIONS**

■ 1. The authority citation for part 122, Customs Regulations, continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a.

\* \* \* \* \*

■ 2. The listing of user fee airports in section 122.15(b) is amended:

■ a. By adding, in alphabetical order, in the "Location" column, "Mesa, Arizona" and by adding on the same line, in the "Name" column, "Williams Gateway Airport;"

■ b. By adding, in alphabetical order, in the "Location" column, "Roswell, New Mexico" and by adding on the same line, in the "Name" column, "Roswell Air Industrial Center;" and

■ c. On the same line as the "McKinney Airport" in the "Name" column, by removing in the "Location" column "Dallas, Texas" and by adding in its place "McKinney, Texas."

Dated: August 19, 2003.

**Robert C. Bonner,**

*Commissioner, Bureau of Customs and Border Protection.*

[FR Doc. 03-21576 Filed 8-21-03; 8:45 am]

**BILLING CODE 4820-02-P**

**DEPARTMENT OF HOMELAND SECURITY****Customs and Border Protection****19 CFR Part 148**

[CBP Dec. 03-21]

**Changes to Customs and Border Protection List of Designated Public International Organizations**

**AGENCY:** Customs and Border Protection, Department of Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations by updating the list of designated public international organizations entitled to certain free entry privileges provided for under provisions of the International Organizations Immunities Act. The last time the list was updated was in 1996 and since then the President has issued several Executive Orders, which have designated certain organizations as entitled to certain free entry privileges. Accordingly, Customs and Border

Protection deems it appropriate to update the list at this time.

**EFFECTIVE DATE:** August 22, 2003.

**FOR FURTHER INFORMATION CONTACT:** Dennis Sequeira, Director, International Organizations & Agreements Division, Office of International Affairs, (202) 927-1480.

**SUPPLEMENTARY INFORMATION:**

**Background**

The International Organizations Immunities Act (the Act) (22 U.S.C. 288 *et seq.*) generally provides that certain international organizations, agencies, and committees, in which the United States participates or otherwise has an interest and which have been designated by the President through appropriate Executive Order as public international organizations, are entitled to enjoy certain privileges, exemptions, and immunities conferred by the Act. The Department of State lists the public international organizations, designated by the President as entitled to enjoy any measure of the privileges, exemptions, and immunities conferred by the Act, in the notes following the provisions of Section 288.

One of the privileges provided for under the Act at 22 U.S.C. 288a is that the baggage and effects of alien officers, employees, and representatives—and their families, and servants—to the designated organization, are admitted free of duty and without entry. Those designated organizations entitled to this duty-free entry privilege are delineated at § 148.87(b), Customs Regulations (19 CFR 148.87(b)). Thus, the list of public international organizations maintained by Customs and Border Protection (CBP) is for the limited purpose of identifying those organizations entitled to the duty-free entry privilege; it does not necessarily include all of the organizations that are on the list maintained by the Department of State, which delineates all of the international organizations designated by the President regardless of the extent of the privileges conferred.

The last revision of the list of public international organizations at § 148.87(b) was in 1996 (T.D. 96-23), when the total number of designated international organizations became 69. Since 1996, eight Executive Orders have been issued each designating a new public international organization, as follows:

1. Executive Order 12956 of March 13, 1995, 60 FR 14199, 3 CFR 1996 Comp., p. 332, 31 Weekly Comp.Pres.Doc. 408, designated the Israel-United States

Binational Industrial Research and Development Foundation;

2. Executive Order 12986 of January 18, 1996, 61 FR 1693, 3 CFR 1997 Comp., p. 156, 32 Weekly Comp.Pres.Doc. 77, designated the International Union for Conservation of Nature and Natural Resources with limited privileges; certain privileges, regarding immunity from suit and judicial process and search and seizure, were not extended;

3. Executive Order 12997 of April 1, 1996, 61 FR 14949, 3 CFR 1997 Comp., p. 179, 32 Weekly Comp.Pres.Doc. 596, designated the Korean Peninsula Energy Development Organization;

4. Executive Order 13042 of April 9, 1997, 62 FR 18017, 73 CFR 1998 Comp., p. 194, 33 Weekly Comp.Pres.Doc. 492, designated the World Trade Organization;

5. Executive Order 13049 of June 11, 1997, 62 FR 32472, 3 CFR 1998 Comp., p. 206, 33 Weekly Comp.Pres.Doc. 857, designated the Organization for the Prohibition of Chemical Weapons;

6. Executive Order 13052 of June 30, 1997, 62 FR 35659, 3 CFR 1998 Comp., p. 210, 33 Weekly Comp.Pres.Doc. 998, designated the Hong Kong Economic and Trade Offices;

7. Executive Order 13097 of August 7, 1998, 63 FR 43065, 3 CFR 1999 Comp., p. 205, 34 Weekly Comp.Pres.Doc. 1588, designated the Interparliamentary Union; and

8. Executive Order 13240 of December 18, 2001, 66 FR 66257, 3 CFR 2002 Comp., p. 824, 37 Weekly Comp.Pres.Doc. 1813, designated the Council of Europe in Respect of the Group of States Against Corruption (GRECO).

This brings the total number of designated international organizations listed at § 148.87(b) to 77. Accordingly, CBP is amending its list of designated public international organizations at § 148.87(b) to account for these eight additions.

This document also corrects an editorial error, *i.e.*, an international organization designated by T.D. 96-13 is incorrectly referenced; thus, the reference to the Border Environmental Cooperation Commission should read the Border Environment Cooperation Commission.

**Inapplicability of Public Notice and Comment Requirements, Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866**

Because this amendment merely corrects the listing of designated

organizations entitled by law to free entry privileges as public international organizations, pursuant to 5 U.S.C. 553(b)(B), good cause exists for dispensing with notice and public procedure thereon as unnecessary. For the same reason, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d) (1) and (3). Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This document does not meet the criteria for a “significant regulatory action” as specified in E.O. 12866.

**Drafting Information**

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

**List of Subjects in 19 CFR Part 148**

Customs duties and inspection, Executive orders, Foreign officials, Government employees, International organizations, Privileges and immunities, Taxes.

**Amendment to the Regulations**

■ For the reasons stated above, part 148, Customs Regulations (19 CFR part 148), is amended as set forth below:

**PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS**

■ 1. The general authority citation for part 148 and the specific authority citation for § 148.87 continue to read as follows:

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

\* \* \* \* \*

Section 148.87 also issued under 22 U.S.C. 288.

■ 2. Section 148.87(b) is amended by removing in the “Organization” column the name “Border Environmental Cooperation Commission” and adding in its place “Border Environment Cooperation Commission” and by adding the following, in appropriate alphabetical order, to the table, to read as follows:

**§ 148.87 Officers and employees of, and representatives to, public international organizations.**

\* \* \* \* \*

(b) \* \* \*

Organization	Executive Order	Date
Council of Europe in Respect of the Group of States Against Corruption (GRECO) .....	13240	Dec. 18, 2001.
Hong Kong Economic and Trade Offices .....	13052	June 30, 1997.
International Union for Conservation of Nature and Natural Resources—Limited privileges .....	12986	Jan. 18, 1996.
Interparliamentary Union .....	13097	Aug. 7, 1998.
Israel-United States Binational Industrial Research and Development Foundation .....	12956	Mar. 13, 1995.
Korean Peninsula Energy Development Organization .....	12997	Apr. 1, 1996.
Organization for the Prohibition of Chemical Weapons. ....	13049	June 11, 1997.
World Trade Organization .....	13042	Apr. 9, 1997.

Dated: August 18, 2003.

**Robert C. Bonner,**

*Commissioner, Customs and Border Protection.*

**Timothy E. Skud,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 03–21577 Filed 8–21–03; 8:45 am]

BILLING CODE 4820–02–P

**DEPARTMENT OF HOMELAND SECURITY**

**Bureau of Customs and Border Protection**

**19 CFR Part 191**

[CBP Dec. 03–23]

RIN 1515–AD02

**Manufacturing Substitution Drawback: Duty Apportionment**

**AGENCY:** Bureau of Customs and Border Protection, Department of Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** This document adopts as a final rule, with changes, the interim rule amending the Customs Regulations that was published in the **Federal Register** on July 24, 2002, as T.D. 02–38. The interim rule amended the regulations to provide the method for calculating manufacturing substitution drawback where imported merchandise, which is dutiable on its value, contains a chemical element and amounts of that chemical element are used in the manufacture or production of articles which are either exported or destroyed under Customs supervision. Recent court decisions have held that a chemical element that is contained in an

imported material that is subject to an *ad valorem* rate of duty may be designated as same kind and quality merchandise for drawback purposes. The amendment provides the method by which the duty attributable to the chemical element can be apportioned and requires a drawback claimant, where applicable, to make this apportionment calculation.

**EFFECTIVE DATE:** August 22, 2003.

**FOR FURTHER INFORMATION CONTACT:** William G. Rosoff, Chief, Duty and Refund Determinations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, Tel. (202) 572–8807.

**SUPPLEMENTARY INFORMATION:**

**Background**

*Drawback—19 U.S.C. 1313*

Section 313 of the Tariff Act of 1930, as amended, (19 U.S.C. 1313), concerns drawback and refunds. Drawback is a refund of certain duties, taxes and fees paid by the importer of record and granted to a drawback claimant upon the exportation, or destruction under Customs supervision, of eligible articles. The purpose of drawback is to place U.S. exporters on equal footing with foreign competitors by refunding most of the duties paid on imports used in domestic manufactures intended for export.

*Substitution for Drawback Purposes—19 U.S.C. 1313(b)*

There are several types of drawback. Under section 1313(b), a manufacturer can recoup duties paid for imported merchandise if it uses merchandise of the same kind and quality to produce exported articles pursuant to the terms

of the statute. Section 1313(b) reads, in pertinent part:

(b) *Substitution for drawback purposes.*

If imported duty-paid merchandise and any other merchandise (whether imported or domestic) of the same kind and quality are used in the manufacture or production of articles within a period not to exceed three years from the receipt of such imported merchandise by the manufacturer or producer of such articles, there shall be allowed upon the exportation, or destruction under customs supervision, of any such articles, notwithstanding the fact that none of the imported merchandise may actually have been used in the manufacture or production of the exported or destroyed articles, an amount of drawback equal to that which would have been allowable had the merchandise used therein been imported \* \* \*.

Manufacturing substitution drawback is intended to alleviate some of the difficulties in accounting for whether imported merchandise has, in fact, been used in a domestic manufacture. Section 1313(b) permits domestic or other imported merchandise to be used to make the export article, instead of the actual imported merchandise, so long as the domestic or other imported merchandise is of the “same kind and quality” as the actual imported merchandise.

Several recent court cases have examined the scope of the term “same kind and quality” as used in 19 U.S.C. 1313(b). See *E.I. DuPont De Nemours and Co. v. United States*, 116 F. Supp. 2d 1343 (Ct. Int’l Trade 2000). See also *International Light Metals v. United States*, 194 F.3d 1355 (Fed. Cir. 1999). In these cases, the courts held that a chemical element that is contained in an imported material that is dutiable on its value may be designated as same kind

and quality merchandise for purposes of manufacturing substitution drawback pursuant to 19 U.S.C. 1313(b). The holding in *DuPont* necessitates apportionment as a necessary method of claiming a drawback entitlement under these circumstances. *DuPont*, 116 F. Supp. 2d at 1348–49.

#### *Amendment to § 191.26(b) of the Customs Regulations*

On July 24, 2002, Customs and Border Protection (CBP), as its predecessor agency, the Customs Service, promulgated interim amendments to the Customs Regulations, published in the **Federal Register** (67 FR 48368) as T.D. 02–38, to implement the courts' holdings in *DuPont* and *ILM*. The interim amendments to the Customs Regulations were made to § 191.26 (19 CFR 191.26), which sets forth the recordkeeping requirements for manufacturing drawback. Paragraph (b) of this section describes the recordkeeping requirements for substitution drawback.

To implement the courts' interpretation of 19 U.S.C. 1313(b), T.D. 02–38 amended § 191.26(b) by adding language that explains how to apportion the duty attributable to same kind and quality chemical elements contained in *ad valorem* duty-paid imported materials for purposes of manufacturing substitution drawback. T.D. 02–38 also amended § 191.26(b) to provide an example of apportionment calculations.

#### *Duty Apportionment Calculation*

In order for a drawback claimant to be able to ascertain what portion of the *ad valorem* duty paid on imported merchandise is attributable to a chemical element contained in the merchandise, an apportionment calculation is necessary. First, if the imported duty-paid material is a compound with other constituents, including impurities, and the purity of the compound in the imported material is shown by satisfactory analysis, that purity, converted to a decimal equivalent of the percentage, is multiplied against the entered amount of the material to establish the amount of pure compound. The amount of the element in the pure compound is to be determined by use of the atomic weights of the constituent elements, converting to the decimal equivalent of their respective percentages, and multiplying that decimal equivalent against the above-determined amount of pure compound. Second, the amount claimed as drawback based on a contained element must be taken into account and deducted from the duty paid on the

imported material that may be claimed on any other drawback claim.

#### **Discussion of Comments**

Five commenters responded to the solicitation of public comment published in T.D. 02–38. A description of the comments received, together with CBP's analyses, is set forth below.

*Comment:* Several commenters disagreed with CBP's interpretation that the court decisions in *DuPont* and *ILM* require an apportionment calculation to determine the proper drawback entitlement.

*CBP's response:* CBP maintains its view that the holdings in *DuPont* and *ILM* necessitate apportionment of the duty attributable to a chemical element contained in an *ad valorem* duty-paid imported material if this chemical element is the designated good in a drawback claim under 19 U.S.C. 1313(b). As noted above, the CAFC in *ILM* and the CIT in *DuPont* examined the scope of the term "same kind and quality" as used in 19 U.S.C. 1313(b) and determined that a chemical element contained in an imported material that is dutiable on its value may be designated as same kind and quality merchandise for purposes of manufacturing substitution drawback. In *ILM*, the CAFC stated that as there was "no dispute as to the amount of titanium that was used in the scrap \* \* \* the amount of drawback to which *ILM* would be entitled based upon the titanium in that scrap and the titanium in the imported sponge could be precisely determined." Similarly, in *DuPont*, the CIT noted that because the amount of titanium in the feedstocks can be accurately determined, substitution of another feedstock for synthetic rutile is permitted. If either the CAFC or the CIT intended drawback to be permitted on all the titanium-containing raw materials, the courts would not have emphasized that calculation of the amount of titanium contained in the raw materials entitled the claimant to a specific amount of drawback. The courts clearly recognized that apportionment by relative weight was necessary to prevent the overpayment of drawback.

*Comment:* Several commenters noted that if apportionment is required, apportionment by relative value is a more appropriate calculation method than apportionment by relative weight. In a related comment, one commenter suggested that a drawback claimant should have the option to apportion duty using either relative value or relative weight.

*CBP's response:* CBP disagrees. As discussed above, the courts in both *ILM*

and *DuPont* require apportionment by relative weight. Both of these courts held that the quantity, and not the value, of the sought material (the titanium) could be determined and consequently the amount of drawback could be determined. Moreover, there is no authority to apportion duty by relative value for a drawback claim per 19 U.S.C. 1313(b) when only one good results from the processing of the imported merchandise. If the sought material, *i.e.*, the titanium, was divided to make two articles, then relative value apportionment would be required.

*Comment:* One commenter submitted that apportionment by relative weight contradicts the drawback statute (19 U.S.C. 1313) because this section, at paragraph (a), provides drawback upon the "exportation or destruction under custom supervision of articles manufactured or produced in the United States with the use of imported merchandise, \* \* \*." The commenter noted that the sought element in *DuPont* (the titanium) is neither "used" nor "imported" because it is the feedstock containing the titanium that is "imported" and "used" within the meaning of section 1313(b). Another commenter stated that section 1313(b) provides no legal basis for apportionment under these circumstances.

*CBP's response:* CBP disagrees. The plain language of 19 U.S.C. 1313(b) permits drawback to be paid only on the sought element, and the sought element in both *ILM* and *DuPont* was the titanium. Section 1313(b) provides that an amount of drawback equal to that which would have been allowable had the *merchandise* used therein been imported is payable if imported duty-paid *merchandise* and any other *merchandise* (whether imported or domestic) of the *same kind or quality* are used in the manufacture or production of articles subsequently exported or destroyed. Clearly, per 19 U.S.C. 1313(b), the merchandise upon which drawback may be paid is the merchandise characterized as "same kind and quality." It cannot be said that the various feedstocks used to provide the sought element in those cases are of the "same kind and quality," but only that the titanium, as a discrete element contained in the feedstocks, was of the "same kind and quality" as required by section 1313(b). In *ILM*, the CAFC makes clear that the merchandise of the "same kind and quality" required by 19 U.S.C. 1313(b) was the sought element, titanium, and not the various feedstocks. *ILM*, 194 F.3d 1355 at 1367. Additionally, in applying the three

factors promulgated by the CAFC in *ILM*, the CIT in *Dupont* stated:

\* \* \* the [ILM] court reasoned that the phrase "same kind and quality" should be applied only to the sought element contained in a source material, and not to the source material as a whole or the impurities contained therein \* \* \*. Thus, although different ores may be made up of a number of elements, the "same kind and quality" standard applies only to the element used in manufacturing the exported article.

*Dupont*, at 1348. Therefore, the court held that the titanium is the designated merchandise. Since titanium is an element, and an element is measured by its weight, apportionment by relative weight is required. Consequently, the apportionment of the duty attributable to a chemical element contained in *ad valorem* duty-paid imported merchandise must be calculated by the relative weights of the sought element and the feedstock used.

*Comment:* One commenter stated that since T.D. 82-36 (16 Cust. B. & Dec. 97, February 26, 1982) is specific as to "how to determine the quantity of imported merchandise to be designated, and therefore, the basis for the allowance of drawback," apportionment by weight is not mandated by the court decisions.

*CBP's response:* CBP disagrees. The CAFC in *ILM* stated:

\* \* \* we find little assistance in the facts of T.D. 82-36. That ruling dealt with a substitution of copper ores, in which each ore contained impurities and a single sought element, copper \* \* \*. In this case, the scrap contains several sought elements, and no impurities have been identified as such.

*ILM* at 1363.

It is additionally noted that the *ILM* and the *Dupont* Courts found that the designated material was titanium, an element. The amount of an element is calculated by its weight.

*Comment:* One commenter suggested that since the drawback claimant does not separate the sought element from the feedstock, then it is the feedstock and not the sought element that must be the imported merchandise designated for drawback.

*CBP response:* CBP disagrees. The courts in *ILM* and *Dupont* held that the element was the material that met the same kind and quality requirement and therefore the element was the designated merchandise. The CAFC in *ILM* noted that it was not necessary to extract the sought element from the feedstock, and stated "\* \* \* we see no reason why *ILM* should be required to undertake such an additional step [of extracting the titanium from the scrap] \* \* \*". Both the *ILM* and *Dupont* Courts determined that since the amount of the

sought element (the titanium) could be precisely determined, it was unnecessary to require that it be extracted as a discrete element before drawback was payable.

*Comment:* One commenter stated that CBP was incorrectly using the "same kind and quality" test to apportion the duties because this standard is only used for determining whether imported goods may be substituted for other goods.

*CBP response:* CBP disagrees. As discussed above, the only merchandise upon which drawback may be paid as per 19 U.S.C. 1313(b) is the imported duty-paid and designated merchandise characterized as "same kind and quality." In *ILM*, the CAFC unequivocally stated that the merchandise of the "same kind and quality" required by section 1313(b) is the sought element—not the various feedstocks. *ILM* at 1367. Therefore, the CAFC found that the sought element, the titanium, was of the same kind and quality and thus only the titanium could be the designated merchandise.

*Comment:* One commenter stated that CBP's example of the apportionment calculation set forth in § 191.26(b)(4) is incorrect, and noted that CBP applies the \$0.011 factor to each pound of titanium. The commenter submits that, in fact, each pound of material in the imported synthetic rutile, be it titanium, oxygen, or impurities, bears the same \$0.02 duty.

*CBP response:* CBP agrees. The example in the interim amendments to § 191.26(b)(4), set forth in T.D. 02-38, is inconsistent with the liquidation instructions on which it was to have been based. Since the total duty on the imported synthetic rutile includes duty on its titanium content, the calculation should be \$600 duty paid divided by 30,000 pounds synthetic rutile ( $\$600 \div 30,000 = .02$ ) duty per pound of imported rutile. Therefore, the example set forth in § 191.26(b)(4) is amended accordingly and set forth below in the regulatory text section of this document.

*Comment:* One commenter suggested that apportioning duty based on weight "encourages uneconomical activities, such as the export of waste and impurities in order to obtain drawback that would be due under value based methodologies." The same commenter noted that this exportation of waste would result in an overpayment of duty and a doubling of drawback claims because each drawback claimant would file an additional claim for waste.

*CBP response:* CBP disagrees. No waste is generated from the designated merchandise, *i.e.*, the titanium. Additionally, even if waste were

generated, it has been CBP's position based on long-standing court decisions that drawback is not allowable on the exportation of waste. In *United States v. Dean Linseed-Oil Co.*, 87 Fed. 453, 456 (2d Cir. 1898), *cert. den.*, 172 U.S. 647 (1898), the court implicitly accepted the government's position that drawback was unavailable on the exportation of waste. CBP has continuously followed this position. See *Precision Specialty Metals, Inc. v. United States*, 116 F.Supp. 2d 1350 (Ct. Int'l Trade (2001)).

*Comment:* One commenter stated that apportioning the duty by weight will be administratively difficult and burdensome. Another commenter stated that all the information necessary to perform the duty calculation required by § 191.26(b), as amended by T.D. 02-38, is not on the manufacturing certificate.

*CBP response:* The court instructed CBP to make the calculation to properly administer the statute. Therefore, CBP must follow the court's decision regardless of whether the requisite calculation is burdensome.

## Conclusion

After analysis of the comments and further review of the matter, CBP has determined to adopt as a final rule, with the changes mentioned in the comment discussion and with additional non-substantive editorial changes, the interim rule published in the **Federal Register** (67 FR 48368) on July 24, 2002, as T.D. 02-38.

## Inapplicability of Delayed Effective Date

These regulations serve to add apportionment language to the Customs Regulations necessitated by recent decisions of the Court of International Trade and the Court of Appeals for the Federal Circuit, and to finalize an interim rule that is already in effect. In addition, the regulatory changes serve to benefit the public by providing specific information as to how a drawback claimant is to correctly make the requisite duty apportionment calculations when claiming manufacturing substitution drawback for a chemical element contained in *ad valorem* duty-paid imported merchandise. For these reasons, pursuant to the provisions of 5 U.S.C. 553(d)(1) and (3), CBP finds that there is good cause for dispensing with a delayed effective date.

## The Regulatory Flexibility Act and Executive Order 12866

Because no notice of proposed rulemaking was required, the provisions of the Regulatory Flexibility Act (5

U.S.C. 601 *et seq.*) do not apply. Further, these amendments do not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

#### Drafting Information

The principal author of this document was Ms. Suzanne Kingsbury, Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection. However, personnel from other offices participated in its development.

#### List of Subjects 19 CFR Part 191

Claims, Commerce, Customs duties and inspection, Drawback, Reporting and recordkeeping requirements.

#### Amendment to the Regulations

■ For the reasons stated above, the interim rule amending part 191 of the Customs Regulations (19 CFR part 191), which was published at 67 FR 48368–48370 on July 24, 2002, is adopted as a final rule with the change set forth below.

#### PART 191—DRAWBACK

■ 1. The general authority citation for part 191 continues to read as follows:

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

\* \* \* \* \*

■ 2. In § 191.26, the example to paragraph (b)(4) is amended to read as follows:

#### § 191.26 Recordkeeping for manufacturing drawback.

\* \* \* \* \*

(b) *Substitution manufacturing.* \* \* \*  
(4) \* \* \*

*Example to paragraph (b)(4).*

Synthetic rutile that is shown by appropriate analysis in the entry papers to be 91.7% pure titanium dioxide is imported and dutiable at a 5% *ad valorem* duty rate. The amount of imported synthetic rutile is 30,000 pounds with an entered value of \$12,000. The total duty paid is \$600. Titanium in the synthetic rutile is designated as the basis for a drawback claim under 19 U.S.C. 1313(b). The amount of titanium dioxide in the synthetic rutile is determined by converting the purity percentage (91.7%) to its decimal equivalent (.917) and multiplying the entered amount of synthetic rutile (30,000 pounds) by that decimal equivalent (.917 × 30,000 = 27,510 pounds of titanium dioxide contained in the 30,000 pounds of imported synthetic rutile). The titanium, based on atomic weight, represents

59.93% of the constituents in titanium dioxide. Multiplying that percentage, converted to its decimal equivalent, by the amount of titanium dioxide determines the titanium content of the imported synthetic rutile (.5993 × 27,510 pounds of titanium dioxide = 16,486.7 pounds of titanium contained in the imported synthetic rutile). Therefore, up to 16,486.7 pounds of titanium is available to be designated as the basis for drawback. As the per-unit duty paid on the synthetic rutile is calculated by dividing the duty paid (\$600) by the amount of imported synthetic rutile (30,000 pounds), the per-unit duty is two cents of duty per pound of the imported synthetic rutile ( $\$600 \div 30,000 = \$0.02$ ). The duty on the titanium is calculated by multiplying the amount of titanium contained in the imported synthetic rutile by two cents of duty per pound ( $16,486.7 \times \$0.02 = \$329.73$  duty apportioned to the titanium). The product is then multiplied by 99% to determine the maximum amount of drawback available ( $\$329.73 \times .99 = \$326.44$ ). If an exported titanium alloy ingot weighs 17,000 pounds, in which 16,000 pounds of titanium was used to make the ingot, drawback is determined by multiplying the duty per pound (\$0.02) by the weight of the titanium contained in the ingot (16,000 pounds) to calculate the duty available for drawback ( $\$0.02 \times 16,000 = \$320.00$ ). Because only 99% of the duty can be claimed, drawback is determined by multiplying this available duty amount by 99% ( $.99 \times \$320.00 = \$316.80$ ). As the oxygen content of the titanium dioxide is 45% of the synthetic rutile, if oxygen is the designated merchandise on another drawback claim, 45% of the duty claimed on the synthetic rutile would be available for drawback based on the substitution of oxygen.

**Robert C. Bonner,**

*Commissioner, Customs and Border Protection.*

Approved: August 19, 2003.

**Timothy E. Skud,**

*Deputy Assistant Secretary of the Treasury.*  
[FR Doc. 03–21575 Filed 8–21–03; 8:45 am]

**BILLING CODE 4820–02–P**

#### DEPARTMENT OF TRANSPORTATION

#### National Highway Traffic Safety Administration

#### Federal Highway Administration

#### 23 CFR Part 1225

[Docket No. NHTSA–2002–13680]

RIN 2127–AI44

#### Operation of Motor Vehicles by Intoxicated Persons

**AGENCY:** National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** This final rule implements a program enacted by the Department of Transportation and Related Agencies Appropriations Act, 2001 (DOT Appropriations Act of FY 2001), which requires the withholding of Federal-aid highway funds, beginning in fiscal year (FY) 2004, from any State that has not enacted and is not enforcing a law that provides that any person with a blood or breath alcohol concentration (BAC) of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a *per se* offense of driving while intoxicated or an equivalent *per se* offense. This final rule defines what constitutes a conforming 0.08 BAC law for purposes of this statute.

**DATES:** *Effective Date:* This final rule becomes effective on October 21, 2003.

*Compliance Date:* To meet the requirements of the 0.08 BAC sanction program, States must enact and enforce a conforming Section 163 law on or before September 30, 2003.

**FOR FURTHER INFORMATION CONTACT:** In NHTSA: Ms. Jo Ann Moore, Office of Injury Control Operations & Resources, NHTI–200, telephone (202) 366–2121, fax (202) 366–7394; Ms. Carmen Hayes, Office of Injury Control Operations & Resources, NHTI–200, telephone (202) 366–2121; Ms. Tyler Bolden, Office of Chief Counsel, NCC–113, telephone (202) 366–1834, fax (202) 366–3820.

In FHWA: Mr. Rudy Umbs, Office of Safety, HSA–1, telephone (202) 366–2177, fax (202) 366–3222; Mr. Raymond W. Cuprill, Office of Chief Counsel, HCC–30, telephone (202) 366–0791, fax (202) 366–7499; or Mr. Byron E. Dover, Office of Safety, HSA–10, telephone (202) 366–2161, fax (202) 366–2249.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents for Supplementary Information**

- I. Background
  - A. TEA-21, Section 163 Incentive Grant Program
  - B. Effects of Section 163 Incentive Grant Program
  - C. DOT Appropriations Act for FY 2001—Sanction Program
- II. Notice of Proposed Rulemaking for the 0.08 BAC Sanction Program
  - A. Compliance Criteria
  - B. Demonstrating Compliance
  - C. Period of Availability of Funds
- III. Comments
  - A. Federalism
  - B. Comments Regarding Compliance Criteria
  - C. Comments Regarding Procedures
- IV. Regulatory Analyses and Notices
  - A. Executive Order 12988 (Civil Justice Reform)
  - B. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures
  - C. Regulatory Flexibility Act
  - D. Paperwork Reduction Act
  - E. National Environmental Policy Act
  - F. The Unfunded Mandates Reform Act
  - G. Executive Order 13132 (Federalism Summary Impact Statement)
  - H. Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)

**I. Background**

*A. TEA-21, Section 163 Incentive Grant Program*

On June 9, 1998, the Transportation Equity Act for the 21st Century (TEA-21) was signed into law. Section 1404 of the Act established a \$500 million incentive grant program under 23 U.S.C. 163 to encourage States to adopt effective 0.08 BAC laws. Section 163 provided that the Secretary of Transportation shall make a grant to any State that has enacted and is enforcing a law that provides that any person with a BAC of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a *per se* offense of driving while intoxicated or an equivalent *per se* offense.

On September 3, 1998, NHTSA and the FHWA (the agencies) published a joint interim final rule, establishing the criteria that States must meet and the procedures they must follow to qualify for an incentive grant. See 63 FR 46881. On July 1, 1999, after considering the comments filed in response to the interim final rule, the agencies published a final rule implementing the Section 163 incentive grant program. See 64 FR 35568.

*B. Effects of Section 163 Incentive Grant Program*

Before the Section 163 incentive grant program was signed into law, only 16

States had enacted laws that established 0.08 BAC as their *per se* limit. Between June 1998 and October 2000, only two additional States and the District of Columbia enacted and began enforcing 0.08 BAC laws that met all the Section 163 criteria.

*C. DOT Appropriations Act for FY 2001—Sanction Program*

In an effort to further reduce impaired driving injuries and fatalities, Congress created a new 0.08 BAC program in the DOT Appropriations Act of FY 2001. See Public Law 106-346—Appendix, sec. 351, 114 Stat. 1356A-34, 35. Section 351 of Public Law 106-346—Appendix (Section 351) provides for the withholding of Federal-aid highway funds from any State that has not enacted and is not enforcing a 0.08 BAC law by the beginning of FY 2004. This legislation did not alter the incentive grant program, which was established in TEA-21. That program will continue through FY 2003.

The DOT Appropriations Act of FY 2001 was signed into law on October 23, 2000. Since that date, twenty-six additional States have enacted conforming 0.08 BAC laws. As of August 15, 2003, forty-four States, the District of Columbia and the Commonwealth of Puerto Rico have enacted 0.08 BAC laws that meet all the requirements of Section 163.<sup>1</sup> See Table 1.

**TABLE 1.—STATES WITH 0.08 BAC LAWS THAT MEET SECTION 163 CRITERIA**

[as of August 15, 2003]

State	Enactment date	Effective date
Alabama .....	07/31/95	10/01/95
Alaska .....	07/03/01	09/01/01
Arizona .....	04/11/01	08/31/01
Arkansas .....	03/06/01	08/13/01
California .....	1989	01/01/90
Connecticut .....	07/01/02	07/01/02
District of Columbia .....	12/01/98	04/13/99
Florida .....	04/27/93	01/01/94
Georgia .....	04/16/01	07/01/01
Hawaii .....	06/30/95	06/30/95
Idaho .....	03/17/97	07/01/97
Illinois .....	07/02/97	07/02/97
Indiana .....	05/09/01	07/01/01
Iowa .....	04/24/03	07/01/03
Kansas .....	04/22/93	07/01/93
Kentucky .....	04/21/00	10/01/00
Louisiana .....	06/26/01	09/30/03
Maine .....	04/28/88	08/04/88
Maryland .....	04/10/01	09/30/01
Massachusetts .....	06/30/03	06/30/03

<sup>1</sup>To date, the following States have not enacted conforming 0.08 BAC laws: Colorado, Delaware, Minnesota, New Jersey, Pennsylvania and West Virginia.

**TABLE 1.—STATES WITH 0.08 BAC LAWS THAT MEET SECTION 163 CRITERIA—Continued**

[as of August 15, 2003]

State	Enactment date	Effective date
Michigan .....	07/15/03	09/30/03
Mississippi .....	03/11/02	07/01/02
Missouri .....	06/12/01	09/29/01
Montana .....	04/15/03	04/15/03
Nebraska .....	03/01/01	09/01/01
Nevada .....	06/10/03	09/23/03
New Hampshire .....	04/15/93	01/01/94
New Mexico .....	03/19/93	01/01/94
New York .....	12/30/02	11/01/03
North Carolina .....	07/05/93	10/01/93
North Dakota* .....	04/07/03	08/01/03
Ohio .....	03/31/03	07/01/03
Oklahoma .....	06/08/01	07/01/01
Oregon .....	08/04/83	10/15/83
Puerto Rico .....	01/10/00	01/10/01
Rhode Island .....	07/02/03	07/02/03
South Carolina .....	06/19/03	08/19/03
South Dakota .....	02/27/02	07/01/02
Tennessee .....	06/27/02	07/01/03
Texas .....	05/28/99	09/01/99
Utah .....	03/19/83	08/01/83
Vermont .....	06/06/91	07/01/91
Virginia .....	04/06/94	07/01/94
Washington .....	03/30/98	01/01/99
Wisconsin .....	07/03/03	09/30/03
Wyoming .....	03/11/02	07/01/02

**Total: 44 States, plus the District of Columbia and Puerto Rico**

\* North Dakota's 0.08 BAC law, which was scheduled to go into effect on August 1, 2003, was suspended by submission of a referendum petition, and the future status of this law is currently uncertain.

**II. Notice of Proposed Rulemaking for the 0.08 BAC Sanction Program**

On February 6, 2003, the agencies published a notice of proposed rulemaking (NPRM) in the **Federal Register** to define the criteria to be applied to determine what constitutes a valid 0.08 BAC law for purposes of the statute (68 FR 6091). The statute requires the Secretary to withhold from apportionment a portion of Federal-aid highway funds from any State that does not meet the Section 163 requirements, beginning on October 1, 2003. To avoid such withholding, a State must enact and enforce a law that provides that any person with a BAC of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a *per se* offense of driving while intoxicated or an equivalent *per se* offense. The Secretary has delegated the authority to define conforming 0.08 BAC laws to NHTSA and the authority to implement the 0.08 BAC sanction program to the FHWA.

As required by statute, if any State has not enacted and is not enforcing a conforming 0.08 BAC law by October 1,

2003, two percent of its FY 2004 Federal-aid highway apportionment under 23 U.S.C. 104(b)(1), 104(b)(3) and 104(b)(4) shall be withheld. These sections relate to the apportionments for the National Highway System, the Surface Transportation Program and the Interstate System (including resurfacing, restoring, rehabilitating and reconstructing the interstate system). The amount withheld would increase by two percent each year, until it reaches eight percent in FY 2007 and thereafter.

#### A. Compliance Criteria

In the NPRM, the agencies proposed that the same criteria that had been applied since 1998 to determine whether a State had enacted and made effective a conforming 0.08 BAC law under the Section 163 incentive grant program, be applied also to the Section 163 sanction program. See 64 FR 35568. To meet the Section 163 criteria, a conforming 0.08 BAC law must contain the following elements:

##### 1. Any Person

A State must enact and enforce a law that establishes a BAC limit of 0.08 or greater that applies to *all persons*. The law can provide for no exceptions.

##### 2. Blood or Breath Alcohol Concentration (BAC) of 0.08 Percent

A State must set a level of no more than 0.08 percent as the *per se* limit for blood or breath alcohol concentration, thereby making it an offense for any person to have a BAC of 0.08 or greater while operating a motor vehicle.

##### 3. Per Se Law

A State must consider persons who have a BAC of 0.08 percent or greater while operating a motor vehicle in the State to have committed a *per se* offense of driving while intoxicated. In other words, States must establish a 0.08 "*per se*" law, that makes operating a motor vehicle with a BAC of 0.08 percent or above, in and of itself, an offense.

##### 4. Primary Enforcement

A State must enact and enforce a 0.08 BAC law that provides for primary enforcement. Under a primary enforcement law, law enforcement officials have the authority to enforce the law without, for example, the need to show that they had probable cause or had cited the offender for a violation of another offense. Any State with a law that provides for secondary enforcement of its 0.08 BAC provision will not meet the requirements of this part.

##### 5. Both Criminal and ALR Laws

A State must establish a 0.08 BAC *per se* level under its criminal code. In addition, if the State has an administrative license revocation or suspension (ALR) law, the State must establish an 0.08 BAC *per se* level under its *ALR law*, as well.

##### 6. Standard Driving While Intoxicated Offense

The State's 0.08 BAC *per se* law must be deemed to be or be equivalent to the State's standard driving while intoxicated offense; that is, the State's non-BAC *per se* driving while intoxicated offense in the State.

A more detailed discussion of the six elements described above is contained in the rulemaking for the incentive grant program. See 64 FR at 46883–84.

#### B. Demonstrating Compliance

To demonstrate compliance with this rulemaking, the agencies proposed that States be required to submit conforming certifications to the appropriate NHTSA Regional Administrator on or before July 15, to receive an incentive grant in FY 2003; and on or before September 30, to avoid the withholding of funds in FY 2004 and subsequent fiscal years.

In addition, the NPRM proposed not to require States in compliance with the Section 163 incentive grant program in FY 2003 to submit additional certifications for FY 2004, unless their law/s had changed in the interim.

Each State initially determined to be in noncompliance would, under the proposal, have until September 30 to rebut the initial determination or to come into compliance. The State would be notified of the agencies' final determination of compliance or noncompliance and the amount of funds to be withheld as part of the final notice of apportionments (which normally is issued on October 1 of each year).

#### C. Period of Availability of Funds

The NPRM proposed an incremental approach to the withholding of funds apportionment for noncompliance. Specifically, the NPRM proposed that if a State is found to be in noncompliance on October 1, 2003, the State would be subject to a two percent withholding of its FY 2004 apportionment on that date. If a State is found to be in noncompliance on October 1 of any subsequent fiscal year, the withholding percentage would increase by two percent each year, until it reached eight percent in FY 2007 and thereafter. See Table 2.

In addition, the NPRM proposed that any State that comes into compliance with the requirements of Section 163 on

or before September 30, 2007, would have their withheld funds restored to them. However, if a State is not in compliance with the requirements of Section 163 on October 1, 2007, any funds withheld from apportionment to the State would begin to lapse and would no longer be available for apportionment.

TABLE 2.—EFFECTS OF THE 0.08 BAC SANCTION PROGRAM ON NON-COMPLYING STATES

Fiscal year	Withhold (percent)	Lapse
2004 ...	2	
2005 ...	4	
2006 ...	6	
2007 ...	8	
2008 ...	8	2% withheld in FY04.
2009 ...	8	4% withheld in FY05.
2010 ...	8	6% withheld in FY06.
2011 ...	8	8% withheld in FY07.
2012 ...	8	8% withheld in FY08.

### III. Comments

The NPRM was published on February 6, 2003. The agencies received five comments in response to it. Comments were received from two State agencies and three concerned individuals. The State comments were submitted by Judy E. Brown, Chief of the Texas Department of Public Safety (TXDPS), Driver License Division, and Frank J. Busalacchi, Secretary for the Wisconsin Department of Transportation (WIDOT).

#### A. Federalism

To ensure that States had a full opportunity to raise any Federalism concerns, the agencies conducted an outreach program aimed at eliciting comments on the possible Federalism implications of this rule.

Since the incentive grant program was signed into law, States have had continuous contact with the agencies. States that were considering passing 0.08 BAC legislation were encouraged to submit copies of their proposals to the agencies' regional offices for review and initial comment. These legislative proposals were then forwarded to NHTSA's Office of Chief Counsel (OCC) to determine compliance with the requirements of Section 163. During this review process, OCC staff and staff from the Office of Injury Control Operations and Resources (ICOR) interacted with different State employees and officials by telephone and through electronic mail. These communications, both formal and informal, provided substantial opportunities for State and local officials to discuss and comment

on program compliance and policy issues. Following a full review of all applicable State laws and implementing regulations, OCC notified States of their compliance with Section 163 by letter. Any State found not to be in compliance with Section 163 was notified of the reasoning behind this determination and reminded of the impending sanction program becoming effective in FY 2004.

The agencies also solicited comments in the NPRM, and following its publication, sent letters requesting comments on possible Federalism implications to several National organizations representing State and local officials. The six organizations included: The National Governors Association, National Conference of State Legislatures, International Association of Chiefs of Police, Governors Highway Safety Association, National Sheriff's Association, and the American Association of State Highway and Transportation Officials. NHTSA has not received any indication of concerns about the Federalism implications of this rulemaking from these representatives. In addition, none of these groups submitted comments in response to the NPRM.

In sum, the agencies have considered the impact of this action on State and local agencies. We have concluded that the effects on States and local agencies will be minimal and consist of changes that States make as a matter of course when amending a State law. Furthermore, the agencies received no comments from State or local agencies to indicate otherwise. Accordingly, the agencies do not believe that this final rule raises any Federalism issues and no changes to this document are required.

#### *B. Comments Regarding Compliance Criteria*

The agencies received few comments to the NPRM. In particular, the agencies received no comments or objections to the compliance criteria proposed in the NPRM. Accordingly, these portions of the NPRM are being adopted without change.

#### *C. Comments Regarding Procedures*

The agencies received some comments and questions regarding procedural aspects of the NPRM. Texas, which has had a conforming 0.08 BAC law since September 1, 1999, commented on the proposed certification process. Specifically, the TXDPS commented favorably on the proposed certification process, stating that the "proposed certifications will legitimately serve NHTSA's goal of ascertaining state compliance for the

purpose of Federal-aid highway and grant funds distribution." Accordingly, TXDPS indicated that it has no objections or additional comments regarding the agencies' proposal.

WIDOT requested clarification regarding "the mechanics and timeline of the process to restore withheld funding." Specifically, WIDOT noted that Section 1225.9 of the proposed rule did not specify "the manner in which withheld funds would be restored to a state that comes into compliance following September 30, 2003." In its comments, WIDOT indicated that it presumed that the certification process detailed in Section 1225.7 of the proposed rule would be used for restoration of withheld funds. However, WIDOT noted that the rule did not specify that this would be the case. In addition, it remarked that the NPRM did not indicate "how quickly the restored funding will be available to a compliant state."

In response to these comments, the agencies have decided to modify the regulation by adding new provisions to the sections regarding "Certification requirements for sanction program" and "Period of availability of withheld funds." The agencies have determined that no other changes to the regulation are needed.

These new provisions specify the certification process that should be followed for States that comply with the requirements of Section 163 in FY 2004 or thereafter. These new provisions also clarify that States that are seeking compliance with Section 163, following a withholding of funds under Section 1225.8, should contact their appropriate NHTSA Regional Administrator and inform them that they have enacted a 0.08 BAC law they believe to be conforming. The new law and subsequent certification of compliance will be reviewed by NHTSA. If NHTSA determines, based on the State's law and its certification, that the State is now in compliance with Section 163 and these implementing regulations, NHTSA will inform the FHWA of its determination and the FHWA will restore all withheld apportionment funds to the State's appropriate apportionment categories as quickly as possible.

Three individuals also commented on the proposal, expressing support and opposition to the federal policy underlying the Congressional mandate and raising concerns about the constitutionality of the proposal and the ability of States to receive incentive grants in FY 2003.

Similar programs, such as the National Minimum Drinking Age and the National Maximum Speed Limit

programs, have been found constitutional in the past and we consider this program to fall within the ambit of those judicial rulings. *See, South Dakota v. Dole*, 483 U.S. 203 (1987) (upholding the withholding of funds from States without a conforming minimum drinking age act under the spending clause and the Twenty-first Amendment) and *The People v. Williams*, 175 Cal. App. 3d Supp. 16 (1985) (finding that the Federal withholding of funds from States without a conforming maximum speed limit was an appropriate exercise of Congress' authority under the spending clause and that the authority was not limited by the Tenth Amendment).

The agencies also note that a commenter from Texas expressed concern about this rulemaking because of "a potential Procedural Due Process problem." She asserted that, "according to a literal reading of § 1225.5(a)(1), Louisiana's 0.08 BAC law must be enforced (and therefore must also be effective) when Louisiana sends in its certification letter \* \* \* [yet] [t]he last day that Louisiana can send a certification letter is July 15, 2003—a full 2½ months before its 0.08 BAC law will be effective and enforced."

To address this concern, the commenter suggested certain revisions to the certification statements to allow Louisiana to qualify for an incentive grant fund in FY 2003. Specifically, the commenter suggested that the agencies amend the certification statement contained in Section 1225.5(a)(1) to allow States to submit certifications by July 15, 2003, if the newly enacted laws become effective before the end of the fiscal year.

While it is clear that States have no property interest in receiving TEA-21 funds, the comment raises a legitimate question regarding the manner in which States, such as Louisiana, are to certify that they qualify for an incentive grant if they enact a law prior to July 15 (when certifications are due to be submitted), and their law becomes effective on or before September 30, but after July 15. This issue had already been addressed in the 0.08 incentive grant regulations. *See* 64 FR at 35572.

In particular, the regulations provide that, "If the State's 0.08 BAC *per se* law is not currently in effect, but will become effective and be enforced before the end of the current fiscal year, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of \_\_\_\_\_, do hereby certify that the (State or Commonwealth) of \_\_\_\_\_ has enacted a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR 1225.4, (citations to

State law), and will become effective and be enforced as of (effective date of the law), and that the funds received by the (State or Commonwealth) of \_\_\_\_\_ under 23 U.S.C. 163 will be used for projects eligible for assistance under title 23 of the United States Code, which include highway construction as well as highway safety projects and programs." 23 CFR 1225.5(a)(1)(ii).

Since the start of the incentive grant program in 1998, the agencies have received and accepted certifications from a number of States using this type of certification statement. Given that the State of Louisiana enacted a conforming 0.08 BAC *per se* law prior to July 15, 2003, and it will become effective on September 30, 2003, the State should be able to submit this type of certification, in conformance with the current regulation.

The agencies did not propose to change this aspect of the regulation. However, after consideration of the comments received in response to this action, the agencies have decided to modify the certification requirements for the sanction program by adopting a similarly worded certification for States that are seeking to demonstrate conformance with the sanction program based on an enacted law that has not yet become effective.

#### IV. Regulatory Analyses and Notices

##### A. Executive Order 12988 (Civil Justice Reform)

This final rule will not have any preemptive or retroactive effect. This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

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

The agencies have determined that this action is a significant regulatory action within the meaning of Executive Order 12866 and is significant within the meaning of the Department of Transportation Regulatory Policies and Procedures. This determination is based on the fact that the withholding of Federal-aid highway funds under the 0.08 BAC sanction program is a matter of substantial interest to the public and to Congress. Further, there is a possibility that the State withholdings resulting from this action could total from \$34 million to over \$137 million. Accordingly, a final regulatory evaluation was prepared in conjunction with this rule.

The final regulatory evaluation concludes that, aside from advertising costs, the costs for implementing this

rulemaking action are minimal and consist of changes that States make as a matter of course when amending a State law. A complete discussion of the economic impact of this rule is contained in the final regulatory evaluation, which is in the docket.

##### C. Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612), the agencies have evaluated the effects of this action on small entities. As a sanction program, this rule will have different consequences depending on whether the States enact and enforce a conforming 0.08 BAC law or whether they choose to accept the sanction for not enacting and enforcing a conforming law.

In States that have enacted 0.08 BAC laws, consumption of beer has dropped 3.5 percent on average. By contrast, consumption of wine and spirits do not correlate with the number of drinking drivers in fatal crashes. Thus, if a State passes a 0.08 law, all businesses, large and small, that sell and serve beer are likely to experience a small reduction in sales. However, most businesses sell other products, such as food or other beverages. Therefore, the overall impact on those businesses would be significantly less than 3.5 percent. For some businesses, such as beer distributors (where a small business is defined as 100 employees or less), the decline may approach the 3.5 percent range.

States that do not enact and enforce conforming 0.08 BAC laws will lose Federal-aid highway funds. This loss may impact highway construction firms, where a small business is defined as \$28.5 million in annual gross income. The precise number of small businesses that may be affected cannot be determined, since it is assumed that any impact is just as likely to impact businesses of any size. In addition, the penalty affects only Federal highway funds, which make up, on average in the 6 States affected, only 15 percent of all State highway expenditures. Accordingly, even if the sanction were imposed at the highest rate of 8 percent, the maximum reductions in highway expenditures in the relevant States would be within a range of only 1.09 percent (in Minnesota or New Jersey) to 1.93 percent (in Delaware). Further, most of these businesses do not rely totally on highway construction contracts for their revenue.

Based on these considerations, we hereby certify that this action will not have a significant economic impact on a substantial number of small entities.

##### D. Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as implemented by the Office of Management and Budget (OMB) in 5 CFR part 1320.

##### E. National Environmental Policy Act

The agencies have reviewed this action for the purpose of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and have determined that it will not have any significant impact on the quality of the human environment.

##### F. The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531) requires agencies to prepare a written assessment of the costs, benefits and other effects of rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule does not require an assessment under this law. The costs to States to enact and make effective conforming 0.08 BAC laws will not result in annual expenditures that exceed the \$100 million threshold. Moreover, States that enact 0.08 BAC laws will avoid the loss of millions of dollars in Federal-aid highway funds.

##### G. Executive Order 13132 (Federalism Summary Impact Statement)

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have "federalism implications," agencies are directed to provide "a description of the extent of the agency's prior consultation with State and local officials; a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation; and a statement of the extent to which the concerns of the State and local officials have been met."

For the reasons cited earlier in the preamble, the agencies conclude that the effects of this rule on States and local agencies will be minimal and consist of changes that States make as a matter of course when amending a State law. Furthermore, the agencies note that Congress created the 0.08 BAC sanction program in Public Law 106-346-Appendix, and the agencies are required to carry out this program in accordance with the principles established by Congress.

Accordingly, the agencies do not believe that this final rule raises any Federalism issues and no changes to this document are required.

*H. Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)*

The agencies have analyzed this action under Executive Order 13175, and believe that this final rule will not have a substantial direct effect on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Regulation Identification Number

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

**List of Subjects in 23 CFR Part 1225**

Alcohol and alcoholic beverages, Transportation, Highway safety.

■ In accordance with the foregoing, 23 CFR Part 1225 is revised to read as follows:

**PART 1225—OPERATION OF MOTOR VEHICLES BY INTOXICATED PERSONS**

Sec.	
1225.1	Scope.
1225.2	Purpose.
1225.3	Definitions.
1225.4	Adoption of 0.08 BAC <i>per se</i> law.
1225.5	General requirements for incentive grant program.
1225.6	Award procedures for incentive grant program.
1225.7	Certification requirements for sanction program.
1225.8	Funds withheld from apportionment.
1225.9	Period of availability of withheld funds.
1225.10	Apportionment of withheld funds after compliance.
1225.11	Notification of compliance.
1225.12	Procedures affecting States in noncompliance.
Appendix A to Part 1225—Effects of the 0.08 BAC Sanction Program on Non-Complying States	

**Authority:** 23 U.S.C. 163; sec. 351, Pub. L. 106-346—Appendix, 114 Stat. 1356A-34, 35; delegation of authority at 49 CFR 1.48 and 1.50.

**§ 1225.1 Scope.**

This part prescribes the requirements necessary to implement 23 U.S.C. 163, which encourages States to enact and enforce 0.08 BAC *per se* laws through the use of incentive grants and Section 351 of Public Law 106-346—Appendix, which requires the withholding of Federal-aid highway funds from any State that has not enacted and is not enforcing a 0.08 BAC *per se* law as described in 23 U.S.C. 163.

**§ 1225.2 Purpose.**

The purpose of this part is to specify the steps that States must take to qualify for incentive grant funds in accordance with 23 U.S.C. 163; and the steps that States must take to avoid the withholding of funds as required by Section 351 of Public Law 106-346—Appendix.

**§ 1225.3 Definitions.**

As used in this part:

(a) *Alcohol concentration* means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(b) *ALR* means either administrative license revocation or administrative license suspension.

(c) *BAC* means either blood or breath alcohol concentration.

(d) *BAC per se law* means a law that makes it an offense, in and of itself, to operate a motor vehicle with an alcohol concentration at or above a specified level.

(e) *Citations to State law* means citations to all sections of the State's law relied on to demonstrate compliance with 23 U.S.C. 163, including all applicable definitions and provisions of the State's criminal code and, if the State has an ALR law, all applicable provisions of the State's ALR law.

(f) *Has enacted and is enforcing* means the State's law is in effect and the State has begun to implement the law.

(g) *Operating a motor vehicle* means driving or being in actual physical control of a motor vehicle.

(h) *Standard driving while intoxicated offense* means the non-BAC *per se* driving while intoxicated offense in the State.

(i) *State* means any one of the 50 States, the District of Columbia, or Puerto Rico.

**§ 1225.4 Adoption of 0.08 BAC per se law.**

In order to avoid the withholding of funds as specified in § 1225.8 of this part, and to qualify for an incentive grant under § 1225.5 of this part, a State must demonstrate that it has enacted and is enforcing a law that provides that any person with a blood or breath

alcohol concentration (BAC) of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a *per se* offense of driving while intoxicated or an equivalent *per se* offense. The law must:

- Apply to all persons;
- Set a BAC of not higher than 0.08 percent as the legal limit;
- Make operating a motor vehicle by an individual at or above the legal limit a *per se* offense;
- Provide for primary enforcement;
- Apply the 0.08 BAC legal limit to the State's criminal code and, if the State has an administrative license suspension or revocation (ALR) law, to its ALR law; and
- Be deemed to be or be equivalent to the standard driving while intoxicated offense in the State.

**§ 1225.5 General requirements for incentive grant program.**

(a) *Certification requirements.* (1) To qualify for a first-year grant under 23 U.S.C. 163, a State must submit a certification by an appropriate State official, that the State has enacted and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and § 1225.4 of this part and that the funds will be used for eligible projects and programs.

(i) If the State's 0.08 BAC *per se* law is currently in effect and is being enforced, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of \_\_\_\_\_, do hereby certify that the (State or Commonwealth) of \_\_\_\_\_ has enacted and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR 1225.4, (citations to State law), and that the funds received by the (State or Commonwealth) of \_\_\_\_\_ under 23 U.S.C. 163 will be used for projects eligible for assistance under title 23 of the United States Code, which include highway construction as well as highway safety projects and programs.

(ii) If the State's 0.08 BAC *per se* law is not currently in effect, but will become effective and be enforced before the end of the current fiscal year, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of \_\_\_\_\_, do hereby certify that the (State or Commonwealth) of \_\_\_\_\_ has enacted a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR 1225.4, (citations to State law), and will become effective and be enforced as of (effective date of the law), and that the funds received by the (State or Commonwealth) of \_\_\_\_\_ under 23 U.S.C. 163 will be used for projects eligible for assistance under title 23 of the United States Code, which include highway construction as well as highway safety projects and programs.

(2) To qualify for a subsequent-year grant under 23 U.S.C. 163, a State must submit a certification by an appropriate State official.

(i) If the State's 0.08 BAC *per se* law has not changed since the State last qualified for grant funds under this program, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of \_\_\_\_\_, do hereby certify that the (State or Commonwealth) of \_\_\_\_\_ has not changed and is enforcing a 0.08 BAC *per se* law, which conforms to 23 U.S.C. 163 and 23 CFR 1225.4, and that the funds received by the (State or Commonwealth) of \_\_\_\_\_ under 23 U.S.C. 163 will be used for projects eligible for assistance under title 23 of the United States Code, which include highway construction as well as highway safety projects and programs.

(ii) If the State's 0.08 BAC *per se* law has changed since the State last qualified for grant funds under this program, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of \_\_\_\_\_, do hereby certify that the (State or Commonwealth) of \_\_\_\_\_ has amended and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR 1225.4, (citations to State law), and that the funds received by the (State or Commonwealth) of \_\_\_\_\_, under 23 U.S.C. 163 will be used for projects eligible for assistance under title 23 of the United States Code, which include highway construction as well as highway safety projects and programs.

(3) An original and four copies of the certification shall be submitted to the appropriate NHTSA Regional Administrator. Each Regional Administrator will forward the certifications it receives to appropriate NHTSA and FHWA offices.

(4) Each State that submits a certification will be informed by the agencies whether or not it qualifies for funds.

(5) To qualify for grant funds in a fiscal year, certifications must be received by the agencies not later than July 15 of that fiscal year.

(b) Limitation on grants. A State may receive grant funds, subject to the following limitations:

(1) The amount of a grant apportioned to a State under § 1225.4 of this part shall be determined by multiplying:

(i) The amount authorized to carry out section 163 of 23 U.S.C. for the fiscal year; by

(ii) The ratio that the amount of funds apportioned to each such State under section 402 for such fiscal year bears to the total amount of funds apportioned to

all such States under section 402 for such fiscal year.

(2) A State may obligate grant funds apportioned under this Part for any project eligible for assistance under title 23 of the United States Code.

(3) The Federal share of the cost of a project funded with grant funds awarded under this part shall be 100 percent.

#### § 1225.6 Award procedures for incentive grant program.

(a) In each Federal fiscal year, grant funds will be apportioned to eligible States upon submission and approval of the documentation required by § 1225.5(a) and subject to the limitations in § 1225.5(b). The obligation authority associated with these funds is subject to the limitation on obligation pursuant to section 1102 of the Transportation Equity Act for the 21st Century (TEA-21).

(b) As soon as practicable after the apportionment in a fiscal year, but in no event later than September 30 of the fiscal year, the Governor's Representative for Highway Safety and the Secretary of the State's Department of Transportation for each State that receives an apportionment shall jointly identify, in writing to the appropriate NHTSA Regional Administrator, the amounts of the State's apportionment that will be obligated to highway safety program areas and to Federal-aid highway projects. Each NHTSA Regional Administrator will forward copies of the joint letters to the appropriate NHTSA and FHWA offices.

(c) Apportionments will not be made by the NHTSA and FHWA unless this letter from the State is received.

#### § 1225.7 Certification requirements for sanction program.

(a) Beginning with FY 2004, to avoid the withholding of funds, each State shall certify to the Secretary of Transportation, before the last day of the previous fiscal year, that it meets all the requirements of 23 U.S.C. 163 and this part.

(b) The certification shall contain a statement from an appropriate State official that the State has enacted and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR part 1225.

(1) If the State's 0.08 BAC *per se* law is currently in effect and is being enforced, the certification shall be worded as follows:

I, (name of certifying official), (position title), of the (State or Commonwealth) of \_\_\_\_\_, do hereby certify that the (State or Commonwealth) of \_\_\_\_\_, has enacted and is enforcing a 0.08 BAC *per se* law that

conforms to the requirements of 23 U.S.C. 163 and 23 CFR 1225.4, (citations to State law).

(2) If the State's 0.08 BAC *per se* law is not currently in effect, but will become effective and be enforced before the end of the current fiscal year, the certification shall be worded as follows:

I, (name of certifying official), (position title), of the (State or Commonwealth) of \_\_\_\_\_, do hereby certify that the (State or Commonwealth) of \_\_\_\_\_, has enacted a 0.08 BAC *per se* law that conforms to the requirements of 23 U.S.C. 163 and 23 CFR 1225.4, (citations to State law), and will become effective and be enforced as of (effective date of the law).

(c) An original and four copies of the certification shall be submitted to the appropriate NHTSA Regional Administrator. Each NHTSA Regional Administrator will forward copies of the certifications received to the appropriate NHTSA and FHWA offices.

(d) Once a State has been determined to be in compliance with the requirements of 23 U.S.C. 163 and this part, it is not required to submit additional certifications, except that the State shall promptly submit an amendment or supplement to its certification provided under this section if the State's 0.08 BAC *per se* law changes.

(e) *Certifications submitted in FY 2003.* (1) Any State that submits a certification of compliance under § 1225.5 of this part, in conformance with the requirements of 23 U.S.C. 163, on or before July 15, 2003, will qualify for an incentive grant in FY 2003 and will avoid the withholding of funds in FY 2004. All certifications submitted in conformance with the incentive grant program will meet the certification requirements of the sanction program.

(2) Any State that submits a certification of compliance under this section, in conformance with the requirements of 23 U.S.C. 163, between July 16, 2003 and September 30, 2003, will not qualify for an incentive grant in FY 2003, but will meet the certification requirements of the sanction program, thereby avoiding the withholding of funds in FY 2004.

(f) *Certifications submitted in FY 2004 or thereafter.* Any State that has been in noncompliance with the requirements of 23 U.S.C. 163 and this part, in or after FY 2004, will initially be subject to a withholding of funds in accordance with § 1225.8 of this part. Following the submission of a conforming certification of compliance by such States, all withheld funds will be restored to a States' appropriate apportionment categories in accordance with § 1225.9 of this part.

**§ 1225.8 Funds withheld from apportionment.**

(a) Beginning in fiscal year 2004, the Secretary shall withhold 2 percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a law that meets the requirements of 23 U.S.C. 163 and § 1225.4 of this part.

(b) In fiscal year 2005, the Secretary shall withhold 4 percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a law that meets the requirements of 23 U.S.C. 163 and § 1225.4 of this part.

(c) In fiscal year 2006, the Secretary shall withhold 6 percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a law that meets the requirements of 23 U.S.C. 163 and § 1225.4 of this part.

(d) In fiscal year 2007, and in each fiscal year thereafter, the Secretary shall withhold 8 percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a law that meets the requirements of 23 U.S.C. 163 and § 1225.4 of this part.

**§ 1225.9 Period of availability of withheld funds.**

If a State meets the requirements of 23 U.S.C. 163 and § 1225.4 of this part within 4 years from the date that a State's apportionment is reduced under § 1225.8, the apportionment for such State shall be increased by an amount equal to the reduction, as illustrated by appendix A of this part. The restored apportionment will be available to a State, as quickly as possible, upon a determination by NHTSA that the State is in conformance and notification to the FHWA.

**§ 1225.10 Apportionment of withheld funds after compliance.**

If a State has not met the requirements of 23 U.S.C. 163 and § 1225.4 of this part by October 1, 2007, the funds withheld under § 1225.8 shall begin to lapse and will no longer be available for apportionment to the State, in

accordance with appendix A of this part.

**§ 1225.11 Notification of compliance.**

(a) Beginning with FY 2004, NHTSA and FHWA will notify States of their compliance or noncompliance with the statutory and regulatory requirements of 23 U.S.C. 163 and this part, based on a review of certifications received. States will be required to submit their certifications on or before September 30, to avoid the withholding of funds in a fiscal year.

(b) This notification of compliance will take place through FHWA's normal certification of apportionments process. If the agencies do not receive a certification from a State, by June 15 of any fiscal year, or if the certification does not conform to the requirements of 23 U.S.C. 163 and this part, the agencies will make an initial determination that the State is not in compliance.

**§ 1225.12 Procedures affecting States in noncompliance.**

(a) Each fiscal year, each State determined to be in noncompliance with 23 U.S.C. 163 and this part, based on NHTSA and FHWA's preliminary review of its certification, will be advised of the amount of funds expected to be withheld under § 1225.8 from apportionment, as part of the advance notice of apportionments required under 23 U.S.C. 104(e), which is ordinarily issued on July 1 of each fiscal year.

(b) If NHTSA and FHWA determine that any State is not in compliance with 23 U.S.C. 163 and this part, based on the agencies' preliminary review, the State may submit documentation showing why it is in compliance. States will have until September 30 to rebut the initial determination or to come into compliance with 23 U.S.C. and this part. Documentation shall be submitted through NHTSA's Regional Administrators, who will refer the requests to appropriate NHTSA and FHWA offices for review.

(c) Each fiscal year, each State determined not to be in compliance with 23 U.S.C. 163 and this part, based on NHTSA's and FHWA's final determination, will receive notice of the funds being withheld under § 1225.8 from apportionment, as part of the certification of apportionments required under 23 U.S.C. 104(e), which normally occurs on October 1 of each fiscal year.

**Appendix A to Part 1225—Effects of the 0.08 BAC Sanction Program on Non-Complying States****EFFECTS OF THE 0.08 BAC SANCTION PROGRAM ON NON-COMPLYING STATES**

Fiscal year	Withhold	Lapse
2004 ...	2%	
2005 ...	4	
2006 ...	6	
2007 ...	8	
2008 ...	8	2% withheld in FY04.
2009 ...	8	4% withheld in FY05.
2010 ...	8	6% withheld in FY06.
2011 ...	8	8% withheld in FY07.
2012 ...	8	8% withheld in FY08.

Issued on: August 18, 2003.

**Mary E. Peters,**  
*Administrator, Federal Highway Administration.*

**Jeffrey W. Runge,**  
*Administrator, National Highway Traffic Safety Administration.*

[FR Doc. 03-21492 Filed 8-21-03; 8:45 am]

**BILLING CODE 4910-59-U**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 1**

[TD 9080]

RIN 1545-BC47

**Reduction of Tax Attributes Due to Discharge of Indebtedness; Correction**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to final and temporary regulations.

**SUMMARY:** This document contains corrections to final and temporary regulations relating to the reduction of tax attributes under sections 108 and 1017 of the Internal Revenue Code. These temporary regulations affect taxpayers that excluded discharge of under section 108. This document was published in the **Federal Register** on July 18, 2003 (68 FR 42590).

**EFFECTIVE DATE:** This correction is effective July 18, 2003.

**FOR FURTHER INFORMATION CONTACT:** Theresa M. Kolish (202) 622-7930 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:****Background**

The proposed regulations that are the subject of these corrections are under

sections 108 and 1017 of the Internal Revenue Code.

### Need for Correction

As published, the final regulations (TD 9080) contain errors that may prove to be misleading and are in need of clarification.

### Correction of Publication

■ Accordingly, the publication of the final regulations (TD 9080), which is the subject of FR Doc. 03-18145, is corrected as follows:

#### § 1.108-7T [Corrected]

■ 1. On page 42592, column 3, § 1.108-7T, paragraph (a)(2), line 2, the language “section 108(b)(5), however, to reduce” is corrected to read “section 108(b)(5), however, to apply any portion of the excluded COD income to reduce”.

■ 2. On page 42592, column 3, § 1.108-7T, paragraph (a)(2), lines 3 thru 7, the language “first the basis of depreciable property to the extent of the excluded COD income. If the basis of depreciable property is insufficient to offset the entire amount of the excluded COD, the” is corrected to read “first the basis of depreciable property to the extent of the excluded COD income is not so applied, the”.

■ 3. On page 42593, column 1, § 1.108-7T, paragraph (d)(ii), of *Example 3*, line 3, the language “trade debts of \$200,000 and a depreciable”, is corrected to read “debts of \$200,000 and a depreciable”.

■ 4. On page 42592, column 1, § 1.108-7T, paragraph (d)(ii), of *Example 3*, line 14, the language “trade debts of \$200,000 and a depreciable”, is corrected to read “debts of \$200,000 and a depreciable”.

■ 5. On page 42593, column 1, § 1.108-7T, paragraph (d)(ii), of *Example 3*, line 19, the language “requirements of section 354(a)(1)(A) and (B).” is corrected to read “requirements of section 354(b)(1) (A) and (B).”.

■ 6. On page 42593, column 1, § 1.108-7T, paragraph (ii), of *Example 3*, line 2, the language “to X’s trade creditors, under section”, is corrected to read “to X’s creditors, under section”.

■ 7. On page 42593, column 1, § 1.108-7T, paragraph (ii), of *Example 3*, line 7, the language “owed the trade creditors for \$100,000, the fair” is corrected to read “owed the creditors for \$100,000, the fair”.

■ 8. On page 42593, column 2, § 1.108-7T, paragraph (ii), of *Example 4*, line 2, the language “distribution of Y stock to X’s trade creditors,” is corrected to read

“distribution of Y stock to X’s creditors,”.

**LaNita Van Dyke,**

*Acting Chief, Regulations Unit, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. 03-21469 Filed 8-21-03; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[COTP San Francisco Bay 03-021]

RIN 1625-AA00

### Security Zone; Suisun Bay, Concord, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary security zone in the navigable waters of the United States adjacent to the Military Ocean Terminal Concord (MOTCO), California (formerly United States Naval Weapons Center Concord, California). The security zone is required to safely onload/offload military equipment. The required security zone is based on recent terrorist actions against the United States and for national security reasons to protect the public and areas surrounding MOTCO from potential terrorist attacks. The security zone will prohibit all persons and vessels from entering, transiting through or anchoring within a portion of the Suisun Bay surrounding MOTCO unless authorized by the Captain of the Port (COTP), or his designated representative.

**DATES:** This regulation is effective from 9 a.m. PDT on August 20, 2003 to 11:59 p.m. PDT on August 25, 2003.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket [COTP San Francisco Bay 03-021] and are available for inspection or copying at Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California, 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Doug Ebbers, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437-3073.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Additionally, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** as the schedule and other logistical details were not known until a date fewer than 30 days prior to the start date of the military operation. Publishing a NPRM and delaying its effective date would be contrary to the public interest since the safety and security of the people, ports, waterways, and properties of the Port Chicago and Suisun Bay areas would be jeopardized without the protection afforded by this security zone. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to ensure the protection of all cargo vessels, their crews, the public and national security.

### Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and the conflict in Iraq have made it prudent for U.S. ports to be on a higher state of alert because Al-Qaeda and other organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

Additionally, the threat of maritime attacks is real as evidenced by the October 2002 attack of a tank vessel off the coast of Yemen and the continuing threat to U.S. assets as described in the President’s finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September, 11, 2001 attacks and that such disturbances continue to endanger the international relations of the United States. See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks, (67 FR 58317, September 13, 2002); Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism, (67 FR 59447, September 20, 2002). Additionally, a Maritime Advisory was issued to: Operators of U.S. Flag and Effective U.S. controlled Vessels and other Maritime Interests, detailing the

current threat of attack, MARAD 02-07 (October 10, 2002).

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99-399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

In this particular rulemaking, to address the aforementioned security concerns, United States Army officials have requested that the Captain of the Port, San Francisco Bay, California establish a temporary security zone in the navigable waters of the United States surrounding the Military Ocean Terminal Concord (MOTCO), California, to safeguard vessels, cargo and crew engaged in military operations. This temporary security zone is necessary to safeguard the MOTCO terminal and the surrounding property from sabotage or other subversive acts, accidents, criminal actions, or other causes of similar nature. This zone is also necessary to protect military operations from compromise and interference and to specifically protect the people, ports, waterways, and properties of the Port Chicago and Suisun Bay areas.

#### Discussion of Rule

In this temporary rule, the Coast Guard is establishing a fixed security zone around Military Ocean Terminal Concord (MOTCO), California, under 33 CFR 165.T11-093, encompassing the navigable waters, extending from the surface to the sea floor, bounded by a line connecting the following coordinates: latitude 38°03'07" N and longitude 122°03'00" W; thence to latitude 38°03'15" N and longitude 122°03'04" W; thence to latitude 38°03'30" N and longitude 122°02'35" W; thence to latitude 38°03'50" N and longitude 122°01'15" W; thence to latitude 38°03'43" N and longitude 122°00'28" W; thence to latitude 38°03'41" N and longitude 122°00'03" W; thence to latitude 38°03'18" N and longitude 121°59'31" W, and along the shoreline back to the beginning point.

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed \$27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of \$250,000), and in rem liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel to the United States, a maximum criminal fine of \$10,000, and imprisonment up to 10 years, and a civil penalty of not more than \$25,000 for each day of a continuing violation.

The Captain of the Port will enforce this zone and may enlist the aid and cooperation of any Federal, State, county, municipal, and private agency to assist in the enforcement of the regulation. This regulation is proposed under the authority of 33 U.S.C. 1226 in addition to the authority contained in 50 U.S.C. 191 and 33 U.S.C. 1231.

#### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Although this regulation restricts access to the zone, the effect of this regulation will not be significant because the zone will encompass only a small portion of the waterway for a short duration. Vessels and persons may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port, or his designated representative.

The size of the zone is the minimum necessary to provide adequate protection for MOTCO, vessels engaged in operations at MOTCO, their crews, other vessels operating in the vicinity, their crews and passengers, adjoining areas, and the public. The entities most likely to be affected are commercial vessels transiting to or from Suisun Bay

via the Port Chicago Reach section of the channel.

#### Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because, although the security zone will occupy a section of the navigable channel (Port Chicago Reach) adjacent to the Marine Ocean Terminal Concord (MOTCO), vessels may receive authorization to transit through the zone by the Captain of the Port or his designated representative on a case-by-case basis. Additionally, vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zone to engage in these activities. Small entities and the maritime public will be advised of this security zone via public notice to mariners.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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

## Collection of Information

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

## Federalism

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

## Unfunded Mandates Reform Act

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

## Taking of Private Property

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

## Civil Justice Reform

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

## Protection of Children

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

## Indian Tribal Governments

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

responsibilities between the Federal Government and Indian tribes.

## Energy Effects

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

## Environment

We have analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing a security zone.

A final “Environmental Analysis Check List” and a final “Categorical Exclusion Determination” are available in the docket where located under **ADDRESSES**.

## List of Subjects in 33 CFR Part 165

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

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

### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

- 1. The authority citation for part 165 is revised to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

- 2. Add § 165.T11–093 to read as follows:

### **§ 165.T11–093 Security Zone; Navigable Waters of the United States Surrounding Military Ocean Terminal Concord (MOTCO), Concord, California.**

(a) *Location.* The security zone, which will be marked by lighted buoys, will encompass the navigable waters, extending from the surface to the sea floor, surrounding the Military Ocean Terminal Concord, Concord, California, bounded by a line connecting the following coordinates: latitude 38°03′07″ N and longitude 122°03′00″ W; thence to latitude 38°03′15″ N and longitude 122°03′04″ W; thence to latitude 38°03′30″ N and longitude 122°02′35″ W; thence to latitude 38°03′50″ N and longitude 122°01′15″ W; thence to latitude 38°03′43″ N and longitude 122°00′28″ W; thence to latitude 38°03′41″ N and longitude 122°00′03″ W; thence to latitude 38°03′18″ N and longitude 121°59′31″ W, and along the shoreline back to the beginning point.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entering, transiting through or anchoring in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, San Francisco Bay, or his designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Patrol Commander on scene on VHF-FM channel 13 or 16 or the Captain of the Port at telephone number 415–399–3547 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone by local law enforcement and the MOTCO police as necessary.

(e) *Effective period.* This section becomes effective at 9 a.m. PDT on August 20, 2003, and will terminate at 11:59 p.m. PDT on August 25, 2003.

Dated: August 13, 2003.

**Steven J. Boyle,**

*Commander, Coast Guard, Acting Captain of the Port, San Francisco Bay, California.*

[FR Doc. 03–21486 Filed 8–21–03; 8:45 am]

**BILLING CODE 4910–15–U**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[FRL-7547-7]

#### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final deletion of the Resin Disposal Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region III is publishing a direct final notice of deletion of the Resin Disposal Superfund Site (Site) located in the Borough of Jefferson, Allegheny County, Pennsylvania, from the National Priorities List (NPL).

The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final notice of deletion is being published by EPA with the concurrence of the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection (PADEP), because EPA has determined that all appropriate response actions under CERCLA have been completed at the Site and, therefore, further remedial action at the Site pursuant to CERCLA is not appropriate.

**DATES:** This direct final deletion will be effective October 21, 2003, unless EPA receives adverse comments by September 22, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

**ADDRESSES:** Comments may be mailed to: Trish Taylor, Community Involvement Coordinator, (3HS43), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, (215) 814-5539, [taylor.trish@epa.gov](mailto:taylor.trish@epa.gov).

Information Repositories: Comprehensive information about the Site is available for viewing and copying at the Site Information Repositories at the following locations: U.S. EPA Region III, Regional Center for Environmental Information (RCEI), 1650 Arch Street, Philadelphia, PA 19103, (215) 814-5364, Monday through Friday 8 a.m. to 4:30 p.m.; the Jefferson

Borough Library (contact, Ann Reschenthaler), Municipal Building, 925 Old Clairton Road, Jefferson Borough, Pennsylvania 15025 (412) 655-7741, Monday through Thursday 11 a.m. to 8:30 p.m.; and the Pennsylvania Department of Environmental Protection, Pittsburgh Office, 400 Waterfront Drive, Pittsburgh, PA 15222 (412) 442-4197.

#### FOR FURTHER INFORMATION CONTACT:

Rashmi Mathur, Remedial Project Manager (3HS22), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, (215) 814-5234, [mathur.rashmi@epa.gov](mailto:mathur.rashmi@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Table of Contents

- I. Introduction
- II. NPL Deletion Criteria
- III. Deletion Procedures
- IV. Basis for Site Deletion
- V. Deletion Action

#### I. Introduction

EPA Region III is publishing this direct final deletion of the Resin Disposal Superfund Site from the NPL.

EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, a site deleted from the NPL remains eligible for remedial actions if conditions at the site warrant such actions.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective October 21, 2003 unless EPA receives adverse comments by September 22, 2003 on this document. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final deletion before the effective date of the deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Resin Disposal Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

#### II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria have been met:

- i. Responsible parties or other persons have implemented all appropriate response actions required;
- ii. All appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or
- iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at a site, CERCLA section 121(c), 42 U.S.C. 9621(c) requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without application of the hazard ranking system.

#### III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with PADEP on the deletion of the Site from the NPL prior to developing this direct final notice of deletion.

(2) PADEP concurred with the deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final deletion, a notice of the availability of the parallel notice of intent to delete published today in the "Proposed Rules" section of the **Federal Register** is being published in a major local newspaper of general circulation at or near the Site and is being distributed to the appropriate federal, state, and local government officials and other interested parties; the newspaper notice announces the 30-day public comment period concerning the notice of intent to delete the Site from the NPL.

(4) EPA placed copies of documents supporting the deletion in the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this notice to delete also published in today's **Federal Register**, EPA will publish a timely withdrawal of this direct final deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion of a Site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

#### IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

##### A. Site Location

The Site is located about one half mile west of the town of West Elizabeth in Jefferson Borough, Allegheny County, Pennsylvania and comprises approximately 26 acres. The Site contains a 2-acre landfill which is located in the head of a narrow valley on the site of a former coal mine. The Site overlies a bedrock aquifer, and is also in contact with the Pittsburgh Coal formation, a source of non-potable ground water.

##### B. Site History

Between 1950 to 1964, the Pennsylvania Industrial Chemical Corporation (PICCO) deposited approximately 85,000 tons of process wastes consisting of petroleum and coal derived chemicals mixed with clay in the onsite landfill. Prior to 1950, the area on which the landfill came to be located had been used for coal strip and deep mining operations. At the location of the landfill, PICCO deposited approximately 20 feet of waste in place of the mined coal.

PICCO deposited the waste into the landfill as a slurry which collected behind an earthen dike constructed across the upper end of the strip-mined valley. Precipitation runoff from the surrounding hillsides along with any free water from the waste materials collected within the active landfill behind the dike. After PICCO stopped depositing waste in the landfill, it

placed a poorly graded, native clay soil cover, ranging in thickness from four to ten feet, over the surface of the landfill. As a result, the direct precipitation and run off from the surrounding hills ponded at times on the landfill cover. Some of the water infiltrated the cover, recharging the waste material and adjacent ground water system. The remainder of the water evaporated or ran off to an unnamed stream. Over time residual product oils decanted from the waste materials as free product. The free product and infiltrated water migrated southeast through the landfill dike into downslope soils and also southwest into mine voids in the adjacent Pittsburgh Coal Formation.

In 1972, Hercules, Incorporated purchased the Site. Between 1980 and 1984, Hercules conducted field investigations of the ground water conditions in the coal formation, deep bedrock, and the extent of contaminated soils downslope of the landfill. Those investigations revealed that there were contaminants in ground water in the Pittsburgh Coal Formation and in downslope soils and perched ground water. In 1983, as a result of those investigations, Hercules installed a leachate collection trench below the lower landfill dike to collect leachate and ground water. The trench is still operating. Liquids collected in the trench are directed to an oil/water separator. The oil is collected and is burned at the Hercules Jefferson Plant boiler. The water is discharged to the Jefferson Borough Sanitary Sewer System and, then, to the West Elizabeth sewage treatment plant.

EPA completed a Superfund Site Investigation in April 1982. The Site received a Hazard Ranking System score of 37.69 in December 1982, was proposed for the National Priorities List (NPL) in December 1982 and was placed on the NPL in September 1983.

##### Remedial Investigation and Feasibility Study

In November 1987, Hercules entered into a Consent Order and Agreement with the Pennsylvania Department of Environmental Resources (PADER), the name of which was subsequently changed to PADEP, to conduct a Remedial Investigation (RI)/Feasibility Study (FS) (collectively, RI/FS) in order to characterize the Site for potential remediation. In March 1988, Hercules began work under an EPA-approved RI, which included conducting an extensive study of the extent of contamination of the soils, ground water, and surface water associated with the landfill. Hercules submitted a final RI Report which provided a detailed

analysis of no action, containment, and treatment options to PADER and EPA in March 1991, and submitted the final FS to PADER and EPA in May 1991.

##### Characterization of Risk

The primary contaminants of concern affecting soil, debris, and ground water at the Site are volatile organic compounds (VOCs) including benzene, toluene, and xylenes and other organics including naphthalene, poly-aromatic hydrocarbons (PAHs) and phenols. Federal Maximum Contaminant Levels (MCLs) for drinking water established pursuant to the Safe Drinking Water Act, 42 U.S.C. Section 300f *et seq.*, were exceeded for benzene, benzo (a) pyrene, ethylbenzene, 2-methylnaphthalene, 4-methylphenol, naphthalene, toluene, and xylene. The exposure route which made the greatest contribution to the trespasser scenario was the inhalation of Ethylbenzene and 4-methyl-2-pentanone (VOC) vapors. The VOCs, naphthalene, PAHs and phenols are "hazardous substances" as defined in section 101(14) of CERCLA.

After reviewing the results of the original RI/FS, EPA categorized the Site into two operable units. Operable Unit One (OU-1) addresses remediation of the landfill, the adjacent contaminated soils, non-aqueous floating product present in the subsurface mine voids of the Pittsburgh Coal Formation, and monitoring of onsite ground water. Operable Unit Two (OU-2) addresses offsite ground water, seeps and residential wells.

##### Record of Decision Findings for OU-1

A June 28, 1991 Record of Decision (ROD) documented the selected remedial action for OU-1 which included: installation of a multi-layer cap; reinforcement and upgrading of the lower landfill dike to increase its stability; installation of an upgraded oil/water separator downslope of the leachate collection system, with discharge of aqueous phases to a publicly owned treatment works; relocation of a sanitary sewer; implementation of institutional controls which include deed restrictions to alert prospective buyers to the presence of hazardous substances onsite and to prohibit future development; construction of a fence around the perimeter of the Site property to prevent unauthorized access; offsite reclamation of non-aqueous phase liquids (NAPLS) through skimmer wells for use as an energy source; and implementation of a Site maintenance and long-term ground water monitoring program.

#### Response Actions for OU-1

In February 1992, Hercules signed a Consent Decree with EPA to perform the Remedial Design (RD)/Remedial Action (RA) (collectively RD/RA) at this Site. EPA approved the final RD Work Plan on December 4, 1992; the Final Oil/Water Separator Design on December 21, 1994 and the Final Design for the landfill cap and the fence on September 29, 1995.

As part of the RA, Hercules performed the following activities, among others: replaced the oil/water separator; reinforced the lower landfill dike with approximately 5,000 tons of clean soil, and then regraded and hydroseeded; placed a multi-layer cap on the onsite landfill; installed infiltration controls around the perimeter of the landfill; placed a six inch layer of topsoil on top of the cap; and hydroseeded the landfill; erected fences around the perimeter of the Site and also around the onsite landfill; and installed and currently operates a well skimmer system down gradient of the landfill to collect floating product in ground water that may otherwise migrate offsite via the mine voids and monitored ground water quarterly for three years and semiannually until the Five-Year Review. Hercules completed the RA activities in October 1996.

#### Record of Decision Findings for OU-2

In September 1995, EPA issued a No Further Action ROD for OU-2 which required long-term onsite and offsite monitoring of the ground water. Hercules is monitoring the onsite ground water pursuant to the RA selected in the ROD for OU1. Under OU-2, Hercules monitored offsite ground water quarterly for three years and then semiannually until the five-year review was completed. The Five-Year Review recommendations included quarterly monitoring for TW-13 until the second Five-Year Review or until EPA determines that further monitoring is unnecessary.

Under the OU-2 ROD, offsite monitoring includes sampling of the offsite monitoring wells, as well as monitoring the seeps, sampling of an unnamed tributary and sampling of residential wells near the Site. EPA discontinued the requirement that Hercules monitor residential wells after it determined that, based on ground water monitoring during the RI and the 1999 ground water monitoring events, residential water users are not affected by Site related contaminants. EPA also discontinued the requirement that Hercules conduct bi-monthly surface water sampling because repeated

surface water sampling from 1991 to 1998 showed levels of contaminants of concern at or well below Maximum Contaminant Levels for the "Drinking Water Regulations and Health Advisories" in the unnamed stream. EPA determined that the decrease in levels of contaminants of concern in the stream were a result of the following remedial actions: buttressing of the landfill, construction of a multi-layer cover system over the landfill area, upgrading of an oil/water separator and routine product recovery from a network of down gradient product recovery wells.

#### C. Future Activity

##### Operation and Maintenance

Hercules is required to perform the following Operation and Maintenance (O&M) activities with EPA oversight: periodic inspections of the landfill cover system and the fence, ground water monitoring, light non-aqueous phase liquids (LNAPL) recovery through the skimmer wells, maintenance of the oil/water separator and any other activities necessary to ensure continued protection of public health and the environment. Until the next five-year review or until EPA determines that further monitoring efforts are unnecessary, Hercules is required to continue semi-annual ground water monitoring in selected monitoring wells; quarterly monitoring for TW-13 and quarterly LNAPL recovery. The LNAPL recovery, in conjunction with long-term ground water monitoring, will continue to ensure the effectiveness of the completed remedy at the Resin Disposal Site.

##### Five-Year Review

CERCLA requires a five-year review of all sites at which hazardous substances, pollutants or contaminants remain at the Site. Since residual organic solvents, resin cakes and oils from a resin manufacturing process and ground water contamination remain at the Site, the five-year review process will be used to ensure that the selected remedy continues to be protective of human health and the environment. EPA completed the first five-year review of the Resin Disposal Site on September 19, 2000. In that five-year review, EPA determined that the remedy was not completely protective of human health and the environment because institutional controls on future land use at the Site had not yet been implemented. In July 2002, EPA implemented institutional controls to limit future land use at the Resin

Disposal Site. Those institutional controls were recorded at the Allegheny County Courthouse, Recorder of Deeds Office, in Jefferson Borough, Pennsylvania. These controls include alerting prospective buyers to the presence of hazardous substances onsite and recite Hercules' obligation under the Consent Decree to limit future development. EPA has determined that all requirements of the RODs for OU-1 and OU-2 have been achieved at the Site and the remedies selected in those RODs are protective of human health and the environment. EPA plans to complete the next five-year review prior to September 19, 2005.

#### D. Community Involvement

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories.

#### V. Deletion Action

The EPA, with the concurrence of the Commonwealth of Pennsylvania, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions, under CERCLA, other than O&M and five-year reviews, are necessary. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective October 21, 2003 unless EPA receives adverse comments by September 22, 2003 on this document. If adverse comments are received within the 30-day public comment period on this document to delete, EPA will publish a timely withdrawal of this direct final deletion before the effective date of the deletion and the deletion will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

#### List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: August 4, 2003.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

■ For the reasons set out in this document, 40 CFR part 300 is amended as follows:

#### **PART 300—[AMENDED]**

■ 1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

#### **Appendix B—[Amended]**

■ 2. Table 1 of Appendix B to Part 300 is amended by removing the site for “Resin Disposal, Jefferson Borough, PA.”

[FR Doc. 03–21596 Filed 8–21–03; 8:45 am]

**BILLING CODE 6560–50–P**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Centers for Medicare & Medicaid Services**

#### **42 CFR Part 413**

**[CMS–1199–F]**

**RIN 0938–AL51**

#### **Medicare Program; Electronic Submission of Cost Reports**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends regulation by requiring that, for cost reporting periods ending on or after December 31, 2004, all hospices, organ procurement organizations, rural health clinics, Federally qualified health centers, community mental health centers, and end-stage renal disease facilities must submit cost reports currently required under the Medicare regulations in a standardized electronic format. This rule also allows a delay or waiver of this requirement when implementation would result in financial hardship for a provider. The provisions of this rule allow for more accurate preparation and more efficient processing of cost reports.

**DATES:** *Effective Date:* The provisions of this final rule are effective September 22, 2003.

*Applicability Date:* The provisions of this final rule are effective for cost reporting periods ending on or after December 31, 2004.

**FOR FURTHER INFORMATION CONTACT:** Larry Stevenson, (410) 786–5529.

**SUPPLEMENTARY INFORMATION:** Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is \$10. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**. This **Federal Register** document is also available from the **Federal Register** online database through GPO access, a service of the U.S. Government Printing Office. The website address is: <http://www.access.gpo.gov/nara/index.html>.

#### **I. Background**

Generally, under the Medicare program, hospices, organ procurement organizations (OPOs), rural health clinics (RHCs), Federally qualified health centers (FQHCs), community mental health centers (CMHCs), and end-stage renal disease (ESRD) facilities are paid for the reasonable costs of the covered items and services they furnish to Medicare beneficiaries. Sections 1815(a) and 1833(e) of the Social Security Act (the Act) provided that no payments will be made to a provider unless it has furnished the information, requested by the Secretary of the Department of Health and Human Services (the Secretary), needed to determine the amount of payments due the provider. In general, providers submit this information through cost reports that cover a 12-month period. Rules governing the submission of cost reports are set forth in title 42 of the Code of Federal Regulations (CFR) 413.20 and 413.24.

Under § 413.20(a), all providers participating in the Medicare program are required to maintain sufficient financial records and statistical data for proper determination of costs payable under the program. In addition, providers must use standardized definitions and follow accounting, statistical, and reporting practices that are widely accepted in the health care industry and related fields. Under § 413.20(b) and § 413.24(f), providers are required to submit cost reports annually, with the reporting period

based on the provider's accounting year. Additionally, under § 413.24, all hospitals participating in the prospective payment system must meet cost reporting requirements set forth at § 413.20 and § 413.24.

Section 1886(f)(1)(B)(i) of the Act requires the Secretary to establish a standardized electronic cost reporting system for all hospitals participating in the Medicare program. This provision was effective for hospital cost reporting periods beginning on or after October 1, 1989. On January 2, 1997, we revised our regulations at § 413.24(f)(4)(ii) to extend the electronic cost reporting requirement to skilled nursing facilities (SNFs) and home health agencies (HHAs) (62 FR 26–31).

The required cost reports must be electronically transmitted to the intermediary in American Standard Code for Information Interchange (ASCII) format. In addition to the electronic file, hospitals, SNFs, and HHAs were initially required to submit a hard copy of the full cost report. We later revised our regulations in § 413.24(f)(4)(iv) to state that providers were required to submit, instead, a hard copy of a one-page settlement summary, a statement of certain worksheet totals found in the electronic file, and a statement signed by the provider's administrator or chief financial officer certifying the accuracy of the electronic file. In order to preserve the integrity of the electronic file, in the January 1997 final rule we specified procedures regarding the processing of the electronic cost report once it is submitted to the intermediary (62 FR 27).

#### **II. Provisions of the Proposed Regulations**

With the exception of revising the first cost reporting period affected from those ending on or after December 31, 2002 to those ending on or after December 31, 2004, we have adopted the provisions as set forth in our proposed rule, published in the **Federal Register** on July 26, 2002 (67 FR 48840–48844). We revised the cost reporting periods affected to take into account the publication date for this final rule. We discuss the finalized provisions in section IV of this final rule.

#### **III. Analysis of and Responses to Public Comments**

We received approximately 20 comments on the proposed electronic submission of cost reports requirements. These comments were from providers, professional organizations, trade associations, vendors and individuals. Summaries of the public comments

received and our responses to those comments are set forth below.

*Comment:* Several commenters requested that we add language to the regulation that would prohibit fiscal intermediaries (FIs) from requesting paper copies of the Medicare cost report, in addition to the electronic cost report.

*Response:* According to our CMS manual provisions (Provider Reimbursement Manual 15–2, chapter 1, sections 131 and 132), the electronic cost report file is considered the official cost report by the FI and, as a result, must be accepted by the FI. Since March 31, 1993, hospitals have not been required to submit a paper copy of the cost report to the FI. Similarly, since March 31, 2000, SNFs and HHAs have not been required to submit a paper copy of the cost report to the FI. We have, however, provided a two-year phase-in period for the providers that are subject to this regulation. During this two-year phase-in period, the paper copy of the cost report will be considered the official copy. After the expiration of the two-year period, though, a paper copy of the cost report will not be required to be submitted to the FI. We believe this phase-in period is necessary, so that providers are familiar with the requirements of electronic cost reporting.

*Comment:* We received several comments concerning our proposal to distribute free electronic cost reporting software to providers who can demonstrate that it would be a financial hardship to purchase software from vendors. One comment, from a software vendor, requested that we add language that would preclude the distribution of free software because it would be “unfair” to small vendors and the software would be poor quality. Another commenter asked that we specify a date that the free software would be available to providers. Also, we received a comment that the CMS-provided software would not allow providers to determine final settlement and that providers would still have to complete the cost report manually.

*Response:* With regard to the comment concerning adding language to the regulation that would preclude the distribution of free software, free software is made available to the providers based upon financial need only. The provider must demonstrate to the FI that the provider is financially unable to purchase commercial software. It has been our experience, with the hospitals, SNFs, and HHAs currently required to file electronically, that relatively few providers request the free software. If, however, the provider

requests the free software and can demonstrate to the FI that it would be a financial hardship to purchase the software from a vendor, we will provide the software so that the provider can comply with the provisions of this rule. The quality of the software will be sufficient to allow the provider to comply with all provisions of this rule in a timely and efficient manner.

With regard to the comment concerning the projected date that the free software will be available, we expect that it should be available by September 30, 2004.

The comment that the CMS-provided software would not allow providers to determine final settlement and, as a result, that providers would still have to complete the cost report manually, is correct. The software allows the provider to create an electronic cost report file only for use by the FI and a final settlement amount is not necessary in this instance. Providers who use free software are always required to manually complete the cost report and to manually determine the final settlement.

*Comment:* We received a comment that the final regulation should also require that Comprehensive Outpatient Rehabilitation Facilities (CORFs) and Outpatient Physical Therapy providers (OPTs) file cost reports electronically.

*Response:* We are not requiring CORFs and OPTs to file electronically because CORFs are paid on a fee schedule for services furnished on or after April 1, 2001 and OPTs will be paid on a fee schedule for services furnished on or after July 1, 2003. For those providers with cost reporting periods beginning on or after the aforementioned dates, cost reports will no longer be required. We believe that it would be administratively burdensome as well as not economically feasible to require these providers to meet the electronic filing requirements for such a short period of time.

*Comment:* We received a comment that the final rule should include an exemption from the electronic filing requirement for no or low utilization providers because it appears that these providers are exempt from such filing requirements in § 413.24(h).

*Response:* Section 413.24(h) does not address the electronic filing requirement but it does provide that an FI may waive the requirement that a provider submit a full cost report if it qualifies as low utilization or no cost Medicare provider. Thus, based upon a waiver by the FI, under § 413.24(h), a low utilization or no Medicare utilization provider would not be required to file an electronic cost report. Because our current regulations

clearly state that a full cost report need not be filed by a low utilization or no Medicare utilization provider, we believe that an exception, such as the one requested by the commenter, is not necessary for this final rule.

*Comment:* We received a comment that we should clarify the minimum requirements of what constitutes a financial hardship for the purposes of qualifying for the waiver and/or free software.

*Response:* Given the wide spectrum of the providers affected, we believe it is best to determine financial hardship on a case-by-case basis. Some examples of financial hardship include cash flow problems, previous year's net operating loss, and a required repayment of the past year's overpayment. These are some examples of financial hardship but should not be seen as all-encompassing. The flexibility to make these determinations is necessary as the providers differ greatly in terms of size, location, expenses, and services provided. The FI will need to have this flexibility in order to make a fair and reasonable determination for each provider.

*Comment:* We received several comments concerning the one-time pass through of costs (direct reimbursement on a dollar-for-dollar basis) for RHCs and FQHCs rather than reimbursing those providers based on the determination of the total allowable costs of the RHCs and FQHCs.

*Response:* We are unable to reimburse RHCs and FQHCs in a way other than direct reimbursement because to do so would require a statutory change in the method of reimbursement for the RHCs and FQHCs.

*Comment:* We received a comment reflecting concern that the cost of dial up Internet service required to file electronically would be a burden for rural providers.

*Response:* There is no requirement to use the Internet to electronically file a cost report. The medium for transfer of cost reports submitted electronically to FIs is a 3½" diskette.

*Comment:* We received two comments expressing concern about the phase-in period. One concern was that the two-year phase-in period was too long. Another concern was that the two-year period should be extended to three years.

*Response:* We believe that the two-year phase-in period is necessary to allow providers to become familiar with the requirements of electronic filing and that a shorter phase-in period would be insufficient to accomplish this.

Similarly, prior experience with the hospital cost report, the SNF cost report,

and the HHA cost report indicate that the two-year phase-in period provides ample time for the providers to adjust to the electronic methods for filing the cost report, and a longer period is not necessary.

*Comment:* We received a comment that we should delay the implementation of the electronic filing requirement for FQHCs from December 31, 2002 until June 30, 2003 to allow those providers more time for implementation.

*Response:* We are revising the implementation date to December 31, 2004 to allow all providers more time to implement the rule.

*Comment:* We received a comment that recommended that we have a pilot testing period before implementing the electronic filing requirement.

*Response:* Electronic filing of cost reports has been required since March 31, 1993 for hospitals and for SNFs and HHAs since March 31, 2000 and, based on our experiences with hospitals, SNFs, and HHAs, we believe that the electronic filing requirements will be implemented by hospices, OPOs, RHCs, FQHCs, CMHCs, and ESRD facilities, as efficiently as has been the case with the other providers mentioned. Moreover, the two-year phase-in period, which will end May 31, 2007, will allow sufficient time for the providers subject to this regulation to adapt to the electronic filing requirement. The hard copy of the cost report is the official copy during the two-year transition period. For this two-year phase-in period, no cost report will be rejected but the FIs will make the provider aware of the edits that the provider did not pass. This flexibility will allow the provider to correct any problems that the provider has encountered with electronic filing before the phase-in period ends.

*Comment:* We received a comment that a correction period of 60 days be allowed for providers to resubmit electronic cost reports that are rejected by the FI.

*Response:* While it is the responsibility of the provider to submit an acceptable cost report to the FI by the required due date of the cost report, we have established a two-year phase-in period where the hardcopy of the cost report will be the official cost report and will not be rejected by the FI—a concern of the commenter. The two-year phase-in period has been established to allow the provider sufficient time to familiarize itself with the electronic filing requirements. Also, during this two-year phase-in period, the FI will inform the provider concerning any problems that the provider may

encounter with the electronic filing requirement that would cause rejection in the future. It should be noted, as well, that there already exists a 30-day period during which providers can correct errors and resubmit electronic cost reports to the FI (*See* Provider Reimbursement Manual 15–II, Chapter 1, section 140).

*Comment:* We received a comment that all current cost reports should be settled by the FIs before the implementation of the electronic filing requirement.

*Response:* The settlement of cost reports is not governed by this final rule and any changes regarding the settlement of cost reports are beyond the scope of this rule which is concerned solely with electronic filing requirements.

*Comment:* We received a comment that we should provide electronic Provider Statistical Reimbursement & Report data (PS&R)—reimbursement and statistical data that we prepare—to providers.

*Response:* Although this comment does not fall within the scope of this rule, we believe that it may be helpful to address this process issue. We note, therefore, that this information is used by the FI for the settlement of cost reports. The detailed PS&R, however, is available from the FI upon written request from the provider if there are any discrepancies between the provider's data and the PS&R summary report. The FI is required to send the summary PS&R report to the provider 30 days before the due date of the cost report.

*Comment:* A commenter requested that we not extend the “complex” and “punitive” criteria for acceptable cost reports currently imposed on hospitals, SNFs, and HHAs to the other providers affected by this final rule.

*Response:* We do not believe that acceptability criteria for electronic cost report filings are complex and they certainly are not intended to be punitive. We developed these criteria both to help the provider and to ensure that the provider is aware of what is required to file an acceptable cost report. We believe these criteria, which we attempt to keep at a minimum, will help ensure accuracy and save time to both the provider and the FI. Generally included in the criteria, for example, are the level one electronic edits that all cost reports must pass in order for the cost report to be acceptable. By clearly enumerating these level one edits in our criteria—the criteria most critical in the filing of an acceptable electronic cost report—we believe providers will have every opportunity to meet the

requirements in a timely and accurate manner.

#### IV. Provisions of the Final Rule

In this final rule, we are applying the current hospital, SNF, and HHA electronic cost reporting requirements to hospices, OPOs, RHCs, FQHCs, CMHCs, and ESRD facilities with the exception that, for the first 2 years, the hard copy of the cost report must be submitted with the electronic cost report. Over that 2-year period (until May 31, 2007) the hard copy will continue to be the official copy. We believe that the use of electronically prepared cost reports will be beneficial for hospices, OPOs, RHCs, FQHCs, CMHCs, and ESRD facilities because the cost reporting software for these reports will virtually eliminate computational errors and substantially reduce preparation time. Moreover, the use of cost reporting software will save time whenever the provider needs to change individual entries in a cost report.

This rule provides that a hospice, organ procurement organization, RHC, FQHC, CMHC, or ESRD facilities may submit a written request for a waiver or a delay of these requirements if it believes that implementation of the electronic submission requirement would cause a financial hardship. Consistent with the existing regulations (*see* § 413.24(h)), we are continuing to allow providers with low or no Medicare utilization to request a waiver of full or simplified cost reporting.

#### V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA 1995), we are required to provide 30 days notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. However, the requirements referenced and discussed below are currently approved by OMB.

##### *Section 413.24 Adequate Cost Data and Cost Finding*

Currently, § 413.24 requires hospitals, SNFs, and HHAs to submit electronic cost reports. However, as proposed in the regulation, hospices, OPOs, RHCs, FQHCs, CMHCs, or ESRD facilities will no longer have the option of submitting either a hard copy or electronic cost report. In addition to the electronic cost report, these providers will also continue to be required to submit to the appropriate FI, hard copies of a settlement summary, statement of certain worksheet totals, and the Federally prescribed statement signed

by its administrator or chief financial officer certifying the accuracy of the electronic file or the manually prepared cost report. We believe that these electronic filing requirements will initially increase the burden by approximately 40 hours and cost approximately \$5000 for each cost reporting period. We expect that this burden will decrease as the providers become familiar and proficient in electronic filing.

However, as currently approved, these providers may request a delay or waiver of the electronic submission requirement in paragraph (f)(4)(ii) of this section if this requirement would cause a financial hardship.

As noted above, while all the above reporting requirements are subject to the PRA, they are currently approved under OMB approval numbers 0938-0050, "Hospital/Healthcare Complex Cost Report," with a current expiration date of November 30, 2005, 0938-0463; "Skilled Nursing Facility Cost Report," with a current expiration date of May 31, 2004; 0938-0022, "Home Health Agency Cost Report," with a current expiration date of May 31, 2004; 0938-0758, "Hospice Cost Report," with a current expiration date of March 31, 2005; 0938-0102, "Organ Procurement Agency/Laboratory Statement of Reimbursable Costs," with a current expiration date of October 31, 2003, which is currently at OMB awaiting re-approval; 0938-0107, "Independent Rural Health Clinic/Freestanding Federally Qualified Health Center Cost Report," with a current expiration date of October 31, 2005; 0938-0236, "Medicare Independent Renal Dialysis Facility Cost Report," with a current expiration date of August 31, 2004; and 0938-0657, "End Stage Renal Disease Network Cost Report," with a current expiration date of December 31, 2003, which is currently in the re-approval process.

## VI. Regulatory Impact Statement

We have examined the impacts of this final rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980 Pub. L. 96-354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory

approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more annually). This rule will not have a significant economic impact on hospices, OPOs, RHCs, FQHCs, CMHCs, and ESRD facilities, and, therefore, is not a major rule. There are no requirements for hospices, OPOs, RHCs, FQHCs, CMHCs, and ESRD facilities to initiate new processes of care, and reporting; to increase the amount of time spent on providing or documenting patient care services; or to purchase computer software.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having annual receipts of \$6 million to \$29 million or less annually (*see* 65 FR 69432). For purposes of the RFA, all providers and small businesses that distribute cost-report software to providers are considered small entities. We do not believe that this rule will have a significant impact on these providers as no or low utilization providers already have the ability to file for a waiver of the electronic filing requirement. In demonstrated cases of financial hardship, however, we will provide free software. With computers so common in the work place today it is hard to imagine that a provider does not already access to a computer and, in the rare instance when a provider would have to purchase a computer, we believe the cost would be negligible. In addition, the providers have a period of almost two years to familiarize themselves with the electronic filing requirements, since the first cost reports will not be due until May 31, 2005. Our intermediaries are not considered small entities for the purposes of the RFA. Individuals and States are not included in the definition of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of

a Metropolitan Statistical Area and has fewer than 100 beds.

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

As stated above, under § 413.20(b) and § 413.24(f), providers are required to submit cost reports annually, with reporting periods based on the provider's accounting year. This final rule requires hospices, OPOs, RHCs, FQHCs, CMHCs, and ESRD facilities, like hospitals, SNFs and HHAs, to submit their Medicare cost reports in a standardized electronic format. This requirement will take effect for cost reporting periods ending on or after December 31, 2004, meaning that the first electronic cost reports will be due May 31, 2005.

Currently, approximately 55 percent of all hospices, OPOs, RHCs, FQHCs, CMHCs, and ESRD facilities submit a hard copy of an electronically prepared cost report to the intermediary. We believe that the provisions of this final rule will have little or no effect on these providers, except to reduce the time involved in copying and collating a hard copy of the report for intermediaries. Under this rule, instead of submitting a complete hard copy of the report, providers will be required to submit only hard copies of a settlement summary, statement of certain worksheet totals, and a statement signed by the administrator or chief financial officer certifying the accuracy of the electronic file or the manually prepared cost report. In addition to the 55 percent of providers that currently use electronic cost reporting, this rule will not affect those providers that do not file a full cost report and, as stated above, would not be required to submit cost reports electronically.

This rule may have an impact on those providers who do not prepare electronic cost reports, some of whom may have to purchase computer equipment, obtain the necessary software, and train staff to use the software. However, as discussed below, we believe that the potential impact of this final rule on those providers who do not prepare electronic cost reports will be insignificant.

First, a small number of the 45 percent of providers that do not submit electronic cost reports may have to purchase computer equipment to comply with the provisions of this rule. These providers are generally owned

and operated by one or two individuals and are often located in rural areas. They include approximately 1,500 RHCs and 1,500 FQHCs. We estimate that 1,350 of the 3000 RHCs and FQHCs may not have the necessary computer equipment. We believe, however, that most providers already have access to computer equipment, which they are now using for internal record keeping purposes, as well as for submitting electronically generated bills to their fiscal intermediaries, for example. Thus, we do not believe that obtaining computer equipment will be a major obstacle to electronic cost reporting for most providers. For those providers that may have to purchase computer equipment, we note that, in accordance with current regulations governing payment of provider costs, we will pay for the cost of the equipment as an overhead cost. Rural health clinics and FQHCs will be reimbursed subject to a payment limit; OPOs reimbursed based on costs; hospices reimbursed according to fee schedule; ESRDs paid a composite rate, and CMHCs will be reimbursed through a blend of prospective payment (PPS) and cost.

We recognize that a potential cost for providers that do not submit electronic cost reports will be that of training staff to use the software. Since most hospices, OPOs, RHCs, FQHCs, CMHCs, and ESRD facilities currently use computers, we do not believe that training staff to use the new software will impose a large burden on providers. An additional cost would be the cost of the software offered by commercial vendors. However, providers could eliminate this cost by obtaining the necessary software from us, free of charge. In those instances when these requirements may cause hardship, a waiver can be granted.

The requirement that hospitals submit cost reports in a standardized electronic format has been in place since October 1989. Since that time, the accuracy of cost reports has increased and we have received very few requests for waivers. Additionally, we have not received any comments from the hospital industry indicating that the use of electronic cost reporting is overly burdensome. We believe that electronic cost reporting will be equally effective for hospices, OPOs, RHCs, FQHCs, CMHCs, and ESRD facilities, with the benefits (such as increased accuracy and decreased preparation time) outweighing the costs of implementation for most providers.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure

in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, that exceeds the inflation-adjusted threshold of \$110 million. This rule does not impose any costs that would exceed the \$110 million threshold on the governments mentioned, or the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have examined this final rule and have determined that this rule will not have an impact on the rights, roles, and responsibilities of State, local, or tribal governments.

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

#### List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid amends 42 CFR chapter IV part 413 as follows:

#### **PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES**

■ 1. The authority citation for part 413 continues to read as follows:

**Authority:** Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i) and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

■ 2. Section 413.24 is amended by revising existing paragraphs (f)(4)(i) through (f)(4)(v) to read as follows:

#### **§ 413.24 Adequate cost data and cost finding.**

\* \* \* \* \*

(f) *Cost reports.* \* \* \*

(4) *Electronic submission of cost reports.*

(i) As used in this paragraph, “provider” means a hospital, skilled nursing facility, home health agency, hospice, organ procurement organization, rural health clinic, Federally qualified health clinic, community mental health center, or end-stage renal disease facility.

(ii) Effective for cost reporting periods beginning on or after October 1, 1989 for hospitals, cost reporting periods ending on or after December 31, 1996 for skilled nursing facilities and home health agencies, and cost reporting periods ending on or after December 31, 2004 for hospices, organ procurement organizations, rural health clinics, Federally qualified health centers, community mental health centers, and end-stage renal disease facilities, a provider is required to submit cost reports in a standardized electronic format. The provider’s electronic program must be capable of producing the CMS standardized output file in a form that can be read by the fiscal intermediary’s automated system. This electronic file, which must contain the input data required to complete the cost report and to pass specified edits, must be forwarded to the fiscal intermediary for processing through its system.

(iii) The fiscal intermediary stores the provider’s as-filed electronic cost report and may not alter that file for any reason. The fiscal intermediary makes a “working copy” of the as-filed electronic cost report to be used, as necessary, throughout the settlement process (that is, desk review, processing audit adjustments, and final settlement). The provider’s electronic program must be able to disclose if any changes have been made to the as-filed electronic cost report after acceptance by the intermediary. If the as-filed electronic cost report does not pass all specified edits, the fiscal intermediary must return it to the provider for correction. For purposes of the requirements in paragraph (f)(2) of this section concerning due dates, an electronic cost report is not considered to be filed until it is accepted by the intermediary.

(iv) Effective for cost reporting periods ending on or after September 30, 1994 for hospitals, cost reporting periods ending on or after December 31, 1996 for skilled nursing facilities and home health agencies, and cost reporting periods ending on or after December 31, 2004 for hospices, organ procurement organizations, rural health clinics, Federally qualified health centers, community mental health centers, and end-stage renal disease facilities, a provider must submit a hard copy of a settlement summary, a statement of certain worksheet totals found within the electronic file, and a statement signed by its administrator or chief financial officer certifying the accuracy of the electronic file or the manually prepared cost report. During a transition period (first two cost-reporting periods on or after December 31, 2004), hospices, organ procurement

organizations, rural health clinics, Federally qualified health centers, community mental health centers, and end-stage renal disease facilities must submit a hard copy of the completed cost report forms in addition to the electronic file. The following statement must immediately precede the dated signature of the provider's administrator or chief financial officer:

I hereby certify that I have read the above certification statement and that I have examined the accompanying electronically filed or manually submitted cost report and the Balance Sheet Statement of Revenue and Expenses prepared by \_\_\_\_\_ (Provider Name(s) and Number(s)) for the cost reporting period beginning \_\_\_\_\_ and ending \_\_\_\_\_ and that to the best of my knowledge and belief, this report and statement are true, correct, complete and prepared from the books and records of the provider in accordance with applicable instructions, except as noted. I further certify that I am familiar with the laws and regulations regarding the provision of health care services, and that the services identified in this cost report were provided in compliance with such laws and regulations.

(v) A provider may request a delay or waiver of the electronic submission requirement in paragraph (f)(4)(ii) of this section if this requirement would cause a financial hardship or if the provider qualifies as a low or no Medicare utilization provider. The provider must submit a written request for delay or waiver with necessary supporting documentation to its intermediary no later than 30 days after the end of its cost reporting period. The intermediary reviews the request and forwards it, with a recommendation for approval or denial, to CMS central office within 30 days of receipt of the request. CMS central office either approves or denies the request and notifies the intermediary within 60 days of receipt of the request.

\* \* \* \* \*

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

Dated: February 21, 2003.

**Thomas A. Scully,**

*Administrator, Centers for Medicare & Medicaid Services.*

Approved: April 24, 2003.

**Tommy G. Thompson,**

*Secretary.*

[FR Doc. 03–21441 Filed 8–21–03; 8:45 am]

BILLING CODE 4120–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### Centers for Disease Control and Prevention

#### 42 CFR Part 493

[CMS–2226–CN]

RIN 0938–AK24

### Medicare, Medicaid, and CLIA Programs; Laboratory Requirements Relating to Quality Systems and Certain Personnel Qualifications; Correction

**AGENCY:** Centers for Disease Control and Prevention (CDC) and Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects technical errors that appeared in the final rule published in the **Federal Register** on January 24, 2003, entitled “Medicare, Medicaid and CLIA Programs; Laboratory Requirements Relating to Quality Systems and Certain Personnel Qualifications.” This document is a supplement to the January 24, 2003 final rule.

**EFFECTIVE DATE:** September 22, 2003.

**FOR FURTHER INFORMATION CONTACT:**

Rhonda S. Whalen (CDC), (770) 488–8155.

Judith A. Yost (CMS), (410) 786–3531.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

In FR Doc. 03–1230 of January 24, 2003 (68 FR 3640), there were several technical errors that are identified and corrected in the “Correction of Errors” section below. The corrections described below are effective September 22, 2003.

Specifically, this document corrects errors of omission, clarifies ambiguities, and corrects erroneous references and typographical errors. We would ordinarily publish these changes in a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. This notice and comment rulemaking procedure can be waived, however, if an agency finds good cause to do so (that is, notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest) and it incorporates a statement of the finding and its reasons therefore in the final rule. We find good cause to waive notice and comment procedures for the

corrections contained in this final rule for the reasons set forth in section III of this notice.

## II. Correction of Errors

### A. Preamble Corrections

- In the final rule published on January 24, 2003 (68 FR 3640), make the following corrections:
- On page 3641, in column three, in line seven from the bottom of the page, “Establish” is corrected to read “establish”.
- On page 3642, in column two, in the first paragraph carried over from column one, in lines 13 and 14, the words “the National Registry for Clinical Chemistry” are corrected to read “the National Registry of Certified Chemists (formerly known as the National Registry in Clinical Chemistry)”.
- On page 3643, in column two of the Table, in lines 18, 21, and 24, “systems” is corrected to read “system”.
- On page 3648, in column three of the Table, in line 14, “§§ 493.1274(e)(1)(i) through (e)(1)(v), and (e)(2)” is corrected to read “§§ 493.1274(e)(1)(i) through (e)(1)(iii), and (e)(2)”.
- On page 3650, in column two of the Table, in lines 2, 4, 5, 7, 9, 10, 12, 13, 14, 15, 16, 17, 19, 20, 22, 23, 24, 25, 28, 32, 38, 40, 42, 44, 45, 46, 47, 48, and 50 (twice), add the word “quality” before “assessment”.
- On page 3650, in column three of the Table, in line 18, “§§ 493.1230; 493.1236(a)(1); 493.1239(a) and (b)” is corrected to read “§§ 493.1230; 493.1236(a); 493.1239(a) and (b)”.
- On page 3671, in column two, in the first paragraph of the response, “the American Board of Medical Immunology” is corrected to read “the American Board of Medical Laboratory Immunology.”
- On page 3671, in column two, in the first paragraph of the response, “the National Registry for Clinical Chemistry” is corrected to read “the National Registry of Certified Chemists (formerly known as the National Registry in Clinical Chemistry)”.
- On page 3673, in column three, in the first paragraph of the response, in line 16, “quality systems include” is corrected to read “a quality system includes”.
- On page 3674, in column two, in Subpart A—General Provisions (Definitions), in the first bullet point under that heading, add the words “nonwaived test” and “waived test” in alphabetical order.
- On page 3674, in column two, in Subpart A—General Provisions (Definitions), add, above the third bullet, a new bullet with the words “We revised

§ 493.19(e)(1) by removing the reference to the former Subpart P.”

- On page 3675, in column one, in the first paragraph carried over from the preceding page, “Systems” is corrected to read “System”.
- On page 3675, in column two, in the section heading and in bullets number one and three, remove the “s” from the word “systems”.
- On page 3694, in column two, in the last paragraph, and on page 3696, in column one, in the last paragraph of the page, “(Eisenberg, 1998)” is corrected to read “(Isenberg, 1998)”.
- On page 3701, in column three, in the “References” section, “Eisenberg, Henry D., Ed.” is corrected to read “Isenberg, Henry D., Ed.” and is placed in alphabetical order.

*B. Omitted Regulatory Text*

The January 24, 2003 final rule (68 FR 3640) utilized a couple of terms that have never been formally defined in the CLIA regulations. We believe that any ambiguities about “nonwaived test” and “waived test” would be resolved by defining them at § 493.2.

The definition of “waived test” need not be subject to notice and comment rulemaking as the definition merely cites to the statutory criteria for waiver as specified in section 353(d)(3) of the Public Health Service Act (PHS). “Non-waived tests” is likewise defined in terms of the statutory criteria for waiver. As notice and comment rulemaking is unnecessary, we are adding these definitions to § 493.2.

In addition, we explained in the January 24, 2003 final rule that we were renaming, reorganizing, and consolidating similar requirements into one section, deleting duplicate requirements, and rewording numerous requirements to maintain and/or clarify their original intent, making the revised regulations easier to read and understand. As part of this effort, we removed “subpart P”, but neglected to remove references to subpart P in §§ 493.19(e)(1), 493.20(c), 493.25(d), 493.47(c)(2), and 493.1359(b)(2). As section “P” no longer exists, it is unnecessary to seek comments on these deletions as no purpose or interests would be served if they were maintained. As such, these references to subpart “P” are deleted by this final rule.

*C. Regulatory Text Corrections*

- In FR Doc. 03–1230 of January 24, 2003 (65 FR 3640):

**PART 493—LABORATORY REQUIREMENTS**

- The authority citation for part 493 continues to read as follows:

**Authority:** Sec. 353 of the Public Health Service Act, secs. 1102, 1861(e), the sentence following sections 1861(s)(11) through 1861(s)(16) of the Social Security Act (42 U.S.C. 263a, 1302, 1395x(e), and the sentence following 1395x(s)(11) through 1395x(s)(16)).

- In § 493.2, the following definitions are added in alphabetical order to read as follows:

**§ 493.2 Definitions.**

*Nonwaived test* means any test system, assay, or examination that has not been found to meet the statutory criteria specified at section 353(d)(3) of the Public Health Service Act.

*Waived test* means a test system, assay, or examination that HHS has determined meets the CLIA statutory criteria as specified for waiver under section 353(d)(3) of the Public Health Service Act.

- In § 493.19, paragraph (e)(1) is revised to read as follows:

**§ 493.19 Provider-performed microscopy procedures.**

(1) Meet the applicable requirements in subpart C or subpart D, and subparts F, H, J, K, and M of this part.

- In § 493.20, paragraph (c) is revised to read as follows:

**§ 493.20 Laboratories performing tests of moderate complexity.**

(c) If the laboratory also performs waived tests, compliance with subparts H, J, K, and M of this part is not applicable to the waived tests. However, the laboratory must comply with the requirements in §§ 493.15(e), 493.1773, and 493.1775.

- In § 493.25, paragraph (d) is revised to read as follows:

**§ 493.25 Laboratories performing tests of high complexity.**

(d) If the laboratory also performs waived tests, the requirements of subparts H, J, K, and M are not applicable to the waived tests. However, the laboratory must comply with the requirements in §§ 493.15(e), 493.1773, and 493.1775.

- In § 493.47, paragraph (c)(2) is revised to read as follows:

**§ 493.47 Requirements for a certificate for provider-performed microscopy (PPM) procedures.**

(2) The applicable requirements of this subpart and subparts H, J, K, and M of this part; and

**Table of Contents for Subparts J and K of Part 493 [Corrected]**

- On page 3703 in column one, in the heading of the Table of Contents for Subpart K, the word “Systems” is corrected to read “System”.
- On page 3703, in column one, in the Table of Contents for Subpart K—Quality System for Nonwaived Testing, line 18, “§ 493.1125” is corrected to read “§ 493.1225”.
- On page 3703, in column one, in the Table of Contents for Subpart K—Quality System for Nonwaived Testing, General Laboratory Systems, in line 15, add the word “quality” before “assessment.”
- On page 3703, in column one, in the Table of Contents for Subpart K—Quality System for Nonwaived Testing, Preanalytic Systems, in line 5, add the word “quality” before “assessment.”
- On page 3703, in column two, in the Table of Contents for Subpart K—Quality System for Nonwaived Testing, Analytic Systems, in line 22, “§ 493.1189” is corrected to read “§ 493.1289” and the word “quality” is added before “assessment.”
- On page 3703, in column two, in the Table of Contents for Subpart K—Quality System for Nonwaived Testing, Postanalytic Systems, in line three, add the word “quality” before “assessment.”

**§ 493.1105 [Corrected]**

- On page 3704, in column one, in paragraph (a)(3), in line four, “all analytic systems” is corrected to read “records documenting all analytic systems”.
- On page 3704, in column one, in paragraph (a)(3)(ii), in line four, “CFR 606.160(b)(3)(ii), (b)(3)(v), and (d)” is corrected to read “CFR 606.160(b)(3)(ii), (b)(3)(iv), (b)(3)(v), and (d)”.
- On page 3704, in column one, in paragraph (a)(5), in line one, the heading is corrected to read “Quality system assessment records.”
- On page 3704, in column one, in paragraph (a)(6)(i), in lines two and three, “21 CFR 606.160(b)(3)(ii), (b)(3)(iv), and (d)” is corrected to read “21 CFR 606.160(d).”
- On page 3704, in column one, in paragraph (b), in line five, “maintained” is corrected to read “retained”.

**Subpart K—[Corrected]**

■ On page 3704, in column one, in the section heading for Subpart K, the word “Systems” is corrected to read “System”.

**§ 493.1200 [Corrected]**

■ On page 3704, in column one, in paragraph (a), in line five, “quality systems” is corrected to read “a quality system”.

■ On page 3704, in column two, in paragraph (b), in line one, remove the words “Each of”, and capitalize the letter “T” in the word “The”.

■ On page 3704, in column two, in paragraph (b), in line two, “an assessment” is corrected to read “a quality assessment”.

■ On page 3704, in column two, in paragraph (c), in line two, the word “systems” is corrected to read “system”.

**§ 493.1208 [Corrected]**

■ On page 3704, in column three, in line two, “§§ 93.1281” is corrected to read “§§ 493.1281”.

**§ 493.1234 [Corrected]**

■ On page 3705, in column two, in line six, “individual” is corrected to read “person”.

**§ 493.1239 [Corrected]**

■ On page 3705, in column two, in the section heading, add the word “quality” before “assessment.”

■ On page 3705, in column three, in paragraph (a), in line three, “system requirements” is corrected to read “systems requirements”.

■ On page 3705, in column three, in paragraph (b), lines one and seven, add the word “quality” before “assessment”.

■ On page 3705, in column three, in paragraph (c), in line two, add the word “quality” before “assessment”.

**§ 493.1249 [Corrected]**

■ On page 3706, in column one, in the heading of § 493.1249 add the word “quality” before “assessment.”

■ On page 3706, in columns one and two, in paragraph (b), in lines one and seven, add the word “quality” before “assessment”.

■ On page 3706, in column two, in paragraph (c), in line two, add the word “quality” before “assessment”.

**§ 493.1251 [Corrected]**

■ On page 3706, in column two, in paragraph (b)(11), in line two, “results or panic or alert values” is corrected to read “results, or panic or alert values”.

■ On page 3706, in column three, in paragraph (b)(13), in lines five and six, “reporting imminent life threatening results, or panic, or alert values” is

corrected to read “reporting imminently life-threatening results, or panic or alert values”.

**§ 493.1253 [Corrected]**

■ On page 3707, in column one, in paragraph (b)(2), in lines eight through ten, remove the words “Gram stain, or potassium hydroxide preparations”.

**§ 493.1256 [Corrected]**

■ On page 3707, in column three, in paragraph (a), in line four, the word “analytical” is corrected to read “analytic”.

■ On page 3708, in column two, in paragraph (e)(1), in line four, add the phrase “(except those specifically referenced in § 493.1261(a)(3))” before the word “and”.

**§ 493.1271 [Corrected]**

■ On page 3709, in column three, in paragraph (f), in line one, the heading “Documentation.” is added.

**§ 493.1273 [Corrected]**

On page 3709, in column three, in paragraph (a), in line one, the phrase “As specified in § 493.1256(e)(3),” is added at the beginning of the first sentence, and the word “Fluorescent” is corrected to be lower-case.

**§ 493.1274 [Corrected]**

■ On page 3710, in column three, in paragraph (d)(2)(iii), in line one, “Nongynecologic slide preparation” is corrected to read “Nongynecologic slide preparations”.

■ On page 3711, in column two, in paragraph (h), in line one, the heading “Documentation.” is added.

**§ 493.1276 [Corrected]**

■ On page 3711, in column two, in paragraph (d), in line five, “System of Cytogenetic Nomenclature” is corrected to read “System for Human Cytogenetic Nomenclature”.

**§ 493.1278 [Corrected]**

■ On page 3712, in column two, in paragraph (g), in line one, the heading “Documentation.” is added.

**§ 493.1289 [Corrected]**

■ On page 3713, in the heading of § 493.1289, add the word “quality” before “assessment”.

■ On page 3713, in column one, in paragraph (b), in lines one and seven, add the word “quality” before “assessment”.

■ On page 3713, in column one, in paragraph (c), in line two, add the word “quality” before “assessment.”

**§ 493.1291 [Corrected]**

■ On page 3713, in column one, in paragraph (a), in line one, add the word “an” before the word “adequate”.

■ On page 3713, in column one, in paragraph (a), in line two, “systems” is corrected to read “system(s)”.

■ On page 3713, in column two, in paragraph (c)(1), in line three, “or an unique” is corrected to read “or a unique”.

■ On page 3713, in column two, in paragraph (g), in line six, “imminent” is corrected to read “imminently”.

**§ 493.1299 [Corrected]**

■ On page 3713, add the word “quality” before “assessment”: in the section heading; in column three, in paragraph (b), in lines one and seven; and in column three, in paragraph (c), in line two.

**§ 493.1359 [Amended]**

■ In § 493.1359, paragraph (b)(2) is revised to read as follows:

\* \* \* \* \*

(b) \* \* \*

(2) Is performed in accordance with applicable requirements in subparts H, J, K, and M of this part.

**III. Waiver of Proposed Rulemaking**

We ordinarily publish these changes in a notice of proposed rulemaking in the **Federal Register** and invite public comment before final changes are adopted. However, we can waive this notice and comment rulemaking if we find good cause to do so (that is, notice and comment procedure is impracticable, unnecessary, or contrary to the public interest) and the agency incorporates a statement of the finding and the reasons therefore in the final rule that is published.

In this case, we believe that it is unnecessary to undertake notice and comment rulemaking procedures because the changes this notice adopts have no substantive effect. Specifically, in this notice, the two definitions that have been adopted merely refer the reader back to the statutory criteria for waiver. The correction and/or update of names of entities and persons does not alter to whom the regulations are referring. The citations that have been removed were to non-existent regulatory cites. The addition of the word “quality” throughout the regulations merely provides clarification as to what the regulated entity is ultimately assessing without altering the means to be used for such assessments or the parties that must conduct those assessments. The relocation of one requirement from under one heading to

another did not alter what was required of whom. Also, the grammatical and capitalization changes that have been made had no effect on the meaning of the provisions that contain them. As the substance of the regulatory text itself governs regulated entities, the substantive alteration of the preamble to make it conform to the regulatory text had no substantive effect.

As these changes do not have any substantive effect, we believe that no benefit would come of submitting these changes to public comment. We therefore find that it is "unnecessary" to submit these changes to notice and comment rulemaking as that term is used in section 553(b)(B) of the Administrative Procedure Act. Thus, we find good cause to waive notice and comment rulemaking procedures.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

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

Dated: August 18, 2003.

**Ann C. Agnew,**

*Executive Secretary to the Department.*

[FR Doc. 03–21549 Filed 8–21–03; 8:45 am]

**BILLING CODE 4120–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 15

[PP Docket No. 00–67; FCC 00–342]

#### Compatibility Between Cable Systems and Consumer Electronics Equipment

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** The Commission adopted new rules on the labeling of digital television receivers and other consumer electronics receiving devices. Certain rules contained new and modified

information collection requirements and were published in the **Federal Register** on October 27, 2000. This document announces the effective date of these published rules.

**DATES:** The amendments to §§ 15.3, 15.19 and 15.18 published at 65 FR 64388, October 27, 2000, became effective on May 1, 2001.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Brooks, Office of Engineering and Technology, Policy and Rules Division, (202) 418–2454.

**SUPPLEMENTARY INFORMATION:** On May 1, 2001, the Office of Management and Budget (OMB) approved the information collection requirements contained in Sections 15.3; 15.19; and 15.118 pursuant to OMB Control No. 3060–0959. Accordingly, the information collection requirements contained in these rules became effective on May 1, 2001.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

[FR Doc. 03–21506 Filed 8–21–03; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 03–2350; MB Docket No. 03–25, RM–10637]

#### Radio Broadcasting Services; Basin City and Othello, WA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Audio Division, at the request of Wheeler Broadcasting, Inc., substitutes Channel 248C2 for Channel 248C3 at Othello, Washington, reallocates Channel 248C2 to Basin City, Washington, and modifies Station KLZN's license accordingly. Channel 248C2 can be allotted to Basin City, Washington, in compliance with the Commission's minimum distance separation requirements with a site

restriction of 7.2 km (4.5 miles) north of Basin City. The coordinates for Channel 248C2 at Basin City, Washington, are 46–39–26 North Latitude and 119–10–23 West Longitude.

**DATES:** Effective September 29, 2003.

**FOR FURTHER INFORMATION CONTACT:** Deborah Dupont, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MB Docket No. 03–25, adopted July 23, 2003, and released July 24, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

#### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

#### PART 73—RADIO BROADCAST SERVICES

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

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

#### § 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Basin City, Channel 248C2, and by removing Othello, Channel 248C3.

Federal Communications Commission.

**John A. Karousos,**  
*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 03–21505 Filed 8–21–03; 8:45 am]

**BILLING CODE 6712–01–P**

# Proposed Rules

Federal Register

Vol. 68, No. 163

Friday, August 22, 2003

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.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 334

RIN 3206-AJ94

#### Temporary Assignment of Employees Between the Federal Government and State, Local, and Indian Tribal Governments, Institutions of Higher Education, and Other Eligible Organizations

**AGENCY:** Office of Personnel  
Management (OPM).

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Personnel Management is proposing a plain language rewrite of its regulations regarding the Intergovernmental Personnel Act (IPA) Mobility Program as part of a broader review of OPM's regulations. The purpose of the revision is to make the regulations more readable.

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

**ADDRESSES:** Send or deliver comments to Susan M. Barker, Manager, Recruitment, Examining, and Assessment Group, Office of Personnel Management, Room 6500, 1900 E Street NW., Washington, DC, 20415, fax: (202) 606-0390, or e-mail them to [smbarker@opm.gov](mailto:smbarker@opm.gov).

**FOR FURTHER INFORMATION CONTACT:** Susan M. Barker by telephone at (202) 606-2226; by fax at (202) 606-0390; or by e-mail at [smbarker@opm.gov](mailto:smbarker@opm.gov).

**SUPPLEMENTARY INFORMATION:** OPM is issuing proposed regulations implementing the provisions in 5 U.S.C. 3371-3376 that concern the temporary assignment of employees to and from States. The purpose of these proposed revisions to part 334 is not to make substantive changes, but rather to enhance the clarity and improve the readability of the regulations. To achieve these ends, we have converted the regulations to a question-and-answer format. In addition, to further clarify

this rule, we are soliciting comment on whether certain entities define themselves as: (1) an "instrumentality or authority of a state or states or local government" as cited in 5 U.S.C. 3371; and/or (2) a "Federal-State authority or instrumentality" as cited in 5 U.S.C. 3371.

#### E. O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E. O. 12866.

#### Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

#### List of Subjects in 5 CFR part 334

Colleges and universities,  
Government employees, Indians,  
Intergovernmental relations.

#### Key Coles James,

*Director, Office of Personnel Management.*

Accordingly, OPM is proposing to revise 5 CFR part 334 to read as follows:

#### PART 334—TEMPORARY ASSIGNMENT OF EMPLOYEES BETWEEN THE FEDERAL GOVERNMENT AND STATE, LOCAL, AND INDIAN TRIBAL GOVERNMENTS, INSTITUTIONS OF HIGHER EDUCATION, AND OTHER ELIGIBLE ORGANIZATIONS

Sec.

- 334.101 What is the purpose of this part?  
334.102 Definitions.  
334.103 What are the requirements for an organization to participate in this program?  
334.104 What is the duration of an assignment in this program?  
334.105 Must Federal employees return to the Government at the end of an assignment?  
334.106 Is there a requirement for a written agreement?  
334.107 What are the rules for terminating an assignment?  
334.108 Are any reports required with this program?

**Authority:** 5 U.S.C. 3376; E.O. 11589, 3 CFR 557 (1971-1975).

#### § 334.101 What is the purpose of this part?

The purpose of this part is to implement the objectives of title IV of the Intergovernmental Personnel Act of 1970 and title VI of the Civil Service

Reform Act. These statutes authorize the temporary assignment of employees between the Federal Government and State, local, and Indian tribal governments, institutions of higher education and other eligible organizations.

#### § 334.102 Definitions.

In this part:

*Assignment* means a period of service under chapter 33, subchapter VI of title 5, United States Code;

*Employee*, for purposes of participation in this program, means an individual serving in a Federal agency under a career or career-conditional appointment, including career appointees in the Senior Executive Service, individuals under appointments of equivalent tenure in excepted service positions (including, e.g., Presidential Management Intern program, the Federal Career Intern program, Student Career Experience program, and Veterans' Recruitment Appointments (VRA)); or an individual employed for at least 90 days in a career position with a State, local, or Indian tribal government, institution of higher education, or other eligible organization;

*Federal agency* has the same meaning as in 5 U.S.C. 3371(3);

*Indian tribal government* has the same meaning as in 5 U.S.C. 3371(2)(C);

*Institution of higher education* means a domestic, accredited public or private 4-year college or university, or a technical or junior college;

*Local government* has the same meaning as in 5 U.S.C. 3371(2)(A) and (B);

*Other organization* has the same meaning as in 5 U.S.C. 3371(4); and  
*State* has the same meaning as in 5 U.S.C. 3371(1).

#### 334.103 What are the requirements for an organization to participate in this program?

(a) Organizations interested in participating in the mobility program as an instrumentality or authority of a State or local government or as an "other organization" as set out in this part must have their eligibility certified by the Federal agency with which they are entering into an assignment.

(b) Written requests for certification should include a copy of the organization's:

- (1) Articles of incorporation;
- (2) Bylaws;
- (3) Internal Revenue Service nonprofit statement; and

(4) Any other information which indicates that the organization has as a principal function the offering of professional advisory, research, educational, or development services, or related services to governments or universities concerned with public management.

(c) Federally funded research and development centers which appear on a master list maintained by the National Science Foundation are eligible to participate in the program.

(d) An organization denied certification by an agency may request reconsideration by the Office of Personnel Management (OPM).

**§ 334.104 What is the duration of an assignment in this program?**

(a) The head of a Federal agency, or his or her designee, may make an assignment for up to 2 years, which may be extended for up to 2 more years if the parties agree.

(b) A Federal agency may not send an employee on an assignment if that person is a Federal employee and has participated in this program for more than a total of 6 years during his or her Federal career. OPM may waive this provision upon the written request of the agency head, or his or her designee.

(c) A Federal agency may not send or receive an employee on an assignment if the employee has participated in this program for 4 continuous years without at least a 12-month return to duty with the organization from which the employee was originally assigned.

**§ 334.105 Must Federal employees return to the Government at the end of an assignment?**

(a) A Federal employee assigned under this subchapter must agree, as a condition of accepting an assignment, to serve with the Federal Government upon completion of the assignment for a period equal to the length of the assignment.

(b) If the employee fails to carry out this agreement, he or she must reimburse the Federal agency for its share of the costs of the assignment (exclusive of salary and benefits). The head of the Federal agency, or his or her designee, may waive this reimbursement for good and sufficient reason.

**§ 334.106 Is there a requirement for a written agreement?**

(a) Before the assignment begins, the assigned employee and the Federal agency, the State, local, or Indian tribal government, institution of higher education, or other eligible organization shall enter into a written agreement recording the obligations and

responsibilities of the parties, as specified in 5 U.S. Code 3373–3375.

(b) Federal agencies must maintain a copy of each assignment agreement form as well as any modification to the agreement.

**§ 334.107 What are the rules for terminating an assignment?**

(a) An assignment may be terminated at any time at the request of the Federal agency or the State, local, or Indian tribal government, institution of higher education, or other organization participating in this program. Where possible, the party terminating the assignment prior to the agreed upon date should provide 30-days advance notice along with a statement of reasons to the other parties to the agreement.

(b) Federal assignees continue to encumber the positions they occupied prior to assignment, and the position is subject to any personnel actions that might normally occur. At the end of the assignment, the employee must be allowed to resume the duties of his/her position or must be reassigned to another position of like pay and grade.

(c) An assignment is terminated automatically when the employer/employee relationship ceases to exist between the assignee and his/her original employer.

(d) The Office of Personnel Management shall have the authority to direct Federal agencies to terminate assignments or take other corrective actions when assignments are found to have been made in violation of the requirements of the Intergovernmental Personnel Act and/or this part.

**§ 334.108 Are any reports required with this program?**

A Federal agency which assigns an employee to, or receives an employee from, a State, local, or Indian tribal government, institution of higher education or other eligible organization in accordance with this part shall submit to the Office of Personnel Management such reports as the Office of Personnel Management may request.

[FR Doc. 03–21417 Filed 8–21–03; 8:45 am]

BILLING CODE 6325–43–P

**OFFICE OF PERSONNEL MANAGEMENT**

**5 CFR Part 532**

RIN 3206–AJ78

**Prevailing Rate Systems; Redefinition of the North Dakota and Duluth, MN, Appropriated Fund Wage Areas**

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Office of Personnel Management is issuing a proposed rule that would redefine the North Dakota and Duluth, MN, Federal Wage System (FWS) appropriated fund wage areas. The proposed rule would redefine Clearwater and Mahnommen Counties and the White Earth Indian Reservation portion of Becker County from the North Dakota FWS wage area to the Duluth FWS wage area. These changes would assign all blue-collar Federal employees working in Indian Health Service facilities in northern Minnesota to one FWS wage schedule.

**DATES:** We must receive comments on or before September 22, 2003.

**ADDRESSES:** Send or deliver comments to Donald J. Winstead, Deputy Associate Director for Pay and Performance Policy, Strategic Human Resources Policy Division, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200, e-mail [payleave@opm.gov](mailto:payleave@opm.gov), or FAX: (202) 606–4264.

**FOR FURTHER INFORMATION CONTACT:** Mark A. Allen at (202) 606–2848, e-mail [maallen@opm.gov](mailto:maallen@opm.gov), or FAX: (202) 606–4264.

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management (OPM) is proposing to redefine the North Dakota and Duluth, MN, Federal Wage System (FWS) appropriated fund wage areas. This proposed rule would redefine Clearwater and Mahnommen Counties and the White Earth Indian Reservation portion of Becker County from the North Dakota FWS wage area to the Duluth FWS wage area. We are taking this action because FWS employees who work for closely related Bemidji Area Indian Health Service (IHS) facilities in northern Minnesota are currently in two separate FWS wage areas. The Department of Health and Human Services has requested that OPM redefine the North Dakota and Duluth wage areas so that blue-collar employees of its IHS facilities in northern Minnesota would be covered by one wage schedule.

OPM considers the following regulatory criteria under 5 CFR 532.211 when defining FWS wage area boundaries:

- (i) Distance, transportation facilities, and geographic features;
- (ii) Commuting patterns; and
- (iii) Similarities in overall population, employment, and the kinds and sizes of private industrial establishments.

Based on our analysis of the regulatory criteria for defining appropriated fund FWS wage areas, we find that the criteria for Clearwater, Mahnomen, and Becker Counties do not strongly favor defining the counties to one FWS wage area more than another. However, the IHS medical centers in northern Minnesota are in an unusual situation in that they are in a rural area that is economically and socially integrated by the local reservation system and not strongly integrated with the labor markets in either the North Dakota or Duluth FWS survey areas. It is desirable to have IHS employees aligned under one wage schedule because the area and population serviced by the medical centers serves as a unique labor market. However, there is insufficient private sector industry and FWS employment in northern Minnesota to meet OPM's regulatory requirements for establishing a separate FWS wage area for the IHS employees there. Because it is not feasible to establish a separate FWS wage area for IHS employees in northern Minnesota, the FWS employment locations must be defined to the area of application of an existing FWS wage area.

Analysis of OPM's regulatory criteria for defining FWS wage areas shows that the majority of IHS employment locations under the Bemidji Area in northern Minnesota are more closely aligned with the Duluth wage area than the North Dakota wage area. The White Earth, Red Lake, and Cass Lake Indian Health Centers are part of the Bemidji Area but their associated reservations are not entirely within the Duluth wage area. The White Earth Indian Reservation occupies the northern portion of Becker County and most of Mahnomen County, while the Red Lake and Cass Lake Indian Reservations occupy the northern portions of Clearwater County. We therefore propose that Clearwater and Mahnomen Counties be redefined from the North Dakota wage area to the Duluth wage area. We also propose that the White Earth Indian Reservation portion of Becker County be redefined from the North Dakota wage area to the Duluth wage area.

There are 11 IHS employees in Becker County, and none in Clearwater or Mahnomen Counties. There are several FWS employees stationed in the part of Becker County that we do not propose to define to the Duluth wage area. We believe the mixed nature of the regulatory analysis findings for Becker County indicates that the non-IHS employment locations in Becker County should remain appropriately defined to the North Dakota wage area. The affected IHS employees in Becker County would be placed on the wage schedule for the Duluth wage area after we publish final regulations in the **Federal Register**.

The Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee that advises OPM on FWS pay matters, reviewed and recommended these changes by consensus. Based on its review of the regulatory criteria for defining FWS wage areas, FPRAC recommended no other changes in the geographic definitions of the North Dakota and Duluth wage areas.

**Regulatory Flexibility Act**

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

**List of Subjects in 5 CFR Part 532**

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

**Key Coles James,**

*Director, U.S. Office of Personnel Management.*

Accordingly, the Office of Personnel Management proposes to amend 5 CFR part 532 as follows:

**PART 532—PREVAILING RATE SYSTEMS**

1. The authority citation for part 532 continues to read as follows:

**Authority:** 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. In appendix C to subpart B, the wage area listing for the State of Minnesota is amended by revising the listing for Duluth; and for the State of North Dakota, to read as follows:

**Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas**

\* \* \* \* \*

**MINNESOTA**  
**Duluth**  
*Survey Area*

Minnesota:

- Carlton
- St. Louis
- Wisconsin:
- Douglas
- Area of Application. Survey area plus:*
- Minnesota:
- Aitkin
- Becker (Including the White Earth Indian Reservation portion only)
- Beltrami
- Cass
- Clearwater
- Cook
- Crow Wing
- Hubbard
- Itasca
- Koochiching
- Lake
- Lake of the Woods
- Mahnomen
- Pine
- Wisconsin:
- Ashland
- Bayfield
- Burnett
- Iron
- Sawyer
- Washburn

\* \* \* \* \*

**NORTH DAKOTA**  
*Survey Area*

- North Dakota:
- Burleigh
- Cass
- Grand Forks
- McLean
- Mercer
- Morton
- Oliver
- Trail
- Ward
- Minnesota:
- Clay
- Polk

*Area of Application. Survey area plus:*

- North Dakota:
- Adams
- Barnes
- Benson
- Billings
- Bottineau
- Bowman
- Burke
- Cavalier
- Dickey
- Divide
- Dunn
- Eddy
- Emmons
- Foster
- Golden Valley
- Grant
- Griggs
- Hettinger
- Kidder
- La Moure
- Logan
- McHenry
- McIntosh
- McKenzie
- Mountrail
- Nelson
- Pembina

Pierce  
 Ramsey  
 Ransom  
 Renville  
 Richland  
 Rolette  
 Sargent  
 Sheridan  
 Sioux  
 Slope  
 Stark  
 Steele  
 Stutsman  
 Towner  
 Walsh  
 Wells  
 Williams

## Minnesota:

Becker (Excluding the White Earth Indian  
 Reservation portion)  
 Kittson  
 Marshall  
 Norman  
 Otter Tail  
 Pennington  
 Red Lake  
 Roseau  
 Wilkin

\* \* \* \* \*

[FR Doc. 03-21415 Filed 8-21-03; 8:45 am]

BILLING CODE 6325-39-P

---

**DEPARTMENT OF TRANSPORTATION**
**Federal Aviation Administration**
**14 CFR Part 39**

[Docket No. 2003-NM-159-AD]

RIN 2120-AA64

**Airworthiness Directives; Bombardier Model CL-600-2C10 (Regional Jet Series 700 & 701) Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the superseding of an existing airworthiness directive (AD), applicable to certain Bombardier Model CL-600-2C10 (Regional Jet Series 700 & 701) series airplanes, that currently requires a revision to the Airplane Flight Manual (AFM) to prohibit operations into known or forecast icing conditions under certain conditions. That AD also requires an inspection to detect damage of the wing anti-ice (WAI) ducts to determine if the external shrouds of the ducts are open or cracked, and replacement of any damaged duct with a new duct or a duct with the same part number, and an optional terminating action. This action would require accomplishment of the previously optional terminating action for the AFM

revision and inspection. The actions specified by the proposed AD are intended to prevent the WAI ducts from collapsing, cracking, or rupturing, which could cause leakage of hot air in the under-floor pressurized area of the fuselage when the anti-ice system is turned on. Such leakage of hot air results in insufficient heat for the anti-ice system and consequent aerodynamic degradation. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by September 22, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2003-NM-159-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: [9-anm-nprmcomment@faa.gov](mailto:9-anm-nprmcomment@faa.gov). Comments sent via fax or the Internet must contain "Docket No. 2003-NM-159-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

**SUPPLEMENTARY INFORMATION:**
**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address

specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003-NM-159-AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2003-NM-159-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

**Discussion**

On June 5, 2003, the FAA issued AD 2003-12-06, amendment 39-13191 (68 FR 35152, June 12, 2003), applicable to certain Bombardier Model CL-600-2C10 (Regional Jet Series 700 & 701) series airplanes, to require a revision to the Airplane Flight Manual (AFM) to prohibit operations into known or forecast icing conditions under certain conditions. That AD also requires an inspection to detect damage of the wing anti-ice (WAI) ducts to determine if the external shrouds of the ducts are open or cracked, and replacement of any damaged duct with a new duct or a duct with the same part number, and an optional terminating action. That action was prompted by several reports of failure of the WAI ducts. The

requirements of that AD are intended to prevent the WAI ducts from collapsing, cracking, or rupturing, which could cause leakage of hot air in the under-floor pressurized area of the fuselage when the anti-ice system is turned on. Such leakage of hot air results in insufficient heat for the anti-ice system and consequent aerodynamic degradation.

#### Actions Since Issuance of Previous Rule

In the preamble of AD 2003-12-06, the FAA indicated that the actions required by that AD were considered "interim action" and that further rulemaking action was being considered to require replacement of all four WAI ducts with new ducts per CRJ 700/900 Series Regional Jet (Bombardier) Alert Service Bulletin A670BA-30-007, which would terminate the inspection and AFM requirements of that AD. We now have determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

#### Explanation of Relevant Service Information

The manufacturer has issued CRJ 700/900 Series Regional Jet (Bombardier) Alert Service Bulletin A670BA-30-007, Revision A, dated April 15, 2003 (referenced in AD 2003-12-06 as the appropriate source of service information for doing the required actions). The alert service bulletin describes procedures for a detailed inspection to detect damage of the four WAI ducts and to determine if the external shrouds of the ducts are open or cracked, and replacement of any damaged duct with a new duct or a duct with the same part number (P/N) that is free of any dent or other handling damage. The alert service bulletin also describes procedures for eventual replacement of all four WAI ducts with new ducts.

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, classified this service bulletin as mandatory and issued Canadian airworthiness directive CF-2003-07 to ensure the continued airworthiness of these airplanes in Canada.

#### FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the

situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

#### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 2003-12-06 to continue to require the following actions:

- A revision to the Limitations Section of the AFM to prohibit operations into known or forecast icing conditions under certain conditions;
- An inspection to detect damage of the WAI ducts to determine if the external shrouds of the ducts are open or cracked; and
- Replacement of any damaged duct with a new duct or a duct with the same part number.

The proposed AD also would require accomplishment of the previously optional terminating action for the AFM revision and inspection. The actions would be required to be accomplished in accordance with the service bulletin described previously.

#### Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

#### Cost Impact

There are approximately 55 airplanes of U.S. registry that would be affected by this proposed AD.

The AFM revision that is currently required by AD 2003-12-06 takes approximately 1 work hour per airplane to accomplish, at an average labor rate of \$65 per work hour. Based on these figures, the cost impact of the currently required AFM revision on U.S. operators is estimated to be \$3,575, or \$65 per airplane.

The inspection that is currently required by AD 2003-12-06 takes approximately 4 work hours per airplane to accomplish, at an average labor rate of \$65 per work hour. Based

on these figures, the cost impact of the currently required inspection on U.S. operators is estimated to be \$14,300, or \$260 per airplane.

The terminating action that is proposed in this AD action would take approximately 48 work hours per airplane to accomplish, at an average labor rate of \$65 per work hour. Based on these figures, the cost impact of the proposed terminating action in this AD on U.S. operators is estimated to be \$171,600, or \$3,120 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with the proposed inspection in this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

#### Regulatory Impact

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

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–13191 (68 FR 35152, June 12, 2003), and by adding a new airworthiness directive (AD), to read as follows:

**Bombardier, Inc.** (Formerly Canadair):

Docket 2003–NM–159–AD. Supersedes AD 2003–12–06, Amendment 39–13191.

**Applicability:** Model CL–600–2C10 (Regional Jet Series 700 & 701) series airplanes, serial numbers 10004 through 10119 inclusive; certificated in any category.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent the wing anti-ice (WAI) ducts from collapsing, cracking, or rupturing, consequent leakage of hot air in the under-floor pressurized area of the fuselage when the anti-ice system is turned on, insufficient heat for the anti-ice system, and aerodynamic degradation, accomplish the following:

**Referenced Service Information**

(a) The term “service bulletin,” as used in this AD, means the Accomplishment Instructions of CRJ 700/900 Series Regional Jet (Bombardier) Alert Service Bulletin A670BA–30–007, Revision A, dated April 15, 2003, including Appendices A and B, dated March 18, 2003.

**Restatement of Requirements of AD 2003–12–06, Amendment 39–13191****Airplane Flight Manual (AFM) Revision**

(b) Within 48 hours after June 27, 2003 (the effective date of AD 2003–12–06, amendment 39–13191), revise the Limitations Section of the CRJ 700 AFM to include the following (this may be accomplished by inserting a copy of this AD into the AFM):

“1. Anti-Ice Bleed Leak Detection Controller (AILC) Channels (*see Note 1*):

Flight with “WING A/I FAULT” status message on the engine indication and crew alerting system (EICAS) is not authorized, except as follows:

One may be inoperative as indicated by “WING A/I FAULT” status message on EICAS provided:

(a) Wing Anti-Ice switch is selected OFF, and

(b) Operations are not conducted into known or forecast icing conditions.

2. Wing/Fuselage Anti-Ice Bleed Leak Detection Loops (*see Note 1*):

Flight with Wing/Fuselage Anti-Ice Bleed Leak Detection Loops inoperative is not authorized, except as follows:

One loop (A or B) may be inoperative provided:

(a) Wing Anti-Ice switch is selected OFF, and

(b) Operations are not conducted into known or forecast icing conditions.

**Note 1:** This limitation supersedes the Master Minimum Equipment List (MMEL).”

**Detailed Inspection and Corrective Actions if Necessary**

(c) Within 150 flight hours after June 27, 2003, do a detailed inspection to detect damage of the four WAI ducts and to determine if the external shrouds of the WAI ducts are open or cracked, per the alert service bulletin.

(1) If no discrepancy is found, no further action is required by this paragraph.

(2) If any external shroud of a WAI duct is found open or cracked, before further flight, inspect the surrounding equipment and structure per a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, or Transport Canada Civil Aviation (TCCA) (or its delegated agent).

(3) If any damaged WAI duct is found, before further flight, replace the WAI duct with a new duct or a duct with the same part number (P/N) that is free of any dent, crease, or other handling damage, per the alert service bulletin.

**Note 1:** For the purposes of this AD, a detailed inspection is defined as: “An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, *etc.*, may be used. Surface cleaning and elaborate access procedures may be required.”

**Reporting Requirement**

(d) Submit a report of the results of the inspection required by paragraph (c) of this AD per the alert service bulletin specified in paragraph (c) of this AD. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) If the inspection was done after June 27, 2003: Submit the report within 14 days after the inspection.

(2) If the inspection was accomplished prior to June 27, 2003: Submit the report within 14 days after June 27, 2003.

**New Requirements of This AD****Terminating Action**

(e) Within 1,500 flight hours after the effective date of this AD, replace all four WAI

ducts with new ducts having P/N GG670–80504–5 or –6, or P/N GG670–80312–3 or –4, as applicable, per the service bulletin. Replacement of all four WAI ducts terminates the requirements of this AD. After doing the replacement, the AFM revision required by paragraph (b) of this AD may be removed.

**Alternative Methods of Compliance**

(f) In accordance with 14 CFR 39.19, the Manager, New York ACO, FAA, is authorized to approve alternative methods of compliance for this AD.

**Note 2:** The subject of this AD is addressed in Canadian airworthiness directive CF–2003–07, effective on March 25, 2003.

Issued in Renton, Washington, on August 18, 2003.

**Kyle L. Olsen,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–21523 Filed 8–21–03; 8:45 am]

**BILLING CODE 4910–13–U**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. 2003–SW–15–AD]

RIN 2120–AA64

**Airworthiness Directives; Eurocopter France Model AS332C, C1, L, L1, AS350B, BA, B1, B2, B3 and D, and AS355E, F, F1, F2 and N Helicopters**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes adopting a new airworthiness directive (AD) for the specified Eurocopter France (Eurocopter) model helicopters that have a Breeze 300-pound electric hoist (hoist) installed. This proposal would require modifying and re-identifying the hoist operator control unit and replacing certain fuses. This proposal is prompted by a test of a hoist that revealed an anomaly in the electrical control circuit. The actions specified by this proposed AD are intended to prevent failure of the hoist pyrotechnic squib electrical control unit, lack of adequate current to activate the hoist pyrotechnic squib, an inability of the pilot to cut the rescue hoist cable in the event of cable entanglement or other emergency, and subsequent loss of control of the helicopter.

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

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the

Regional Counsel, Southwest Region, Attention: Rules Docket No. 2003-SW-15-AD, 2601 Meacham Blvd., Room 663, Forth Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: [9-asw-adcomments@faa.gov](mailto:9-asw-adcomments@faa.gov). Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Carroll Wright, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193-0111, telephone (817) 222-5120, fax (817) 222-5961.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2003-SW-15-AD." The postcard will be date stamped and returned to the commenter.

**Discussion**

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter Model AS332C, C1, L, L1, Model AS350B, BA, BB, B1, B2, B3 and D, and Model AS355E, F, F1, F2 and N helicopters. The DGAC advises of the discovery of a case of failure of a rescue hoist emergency release control system

to operate due to an anomaly in the electrical control circuit.

Eurocopter has issued Alert Service Bulletin (ASB) No. 25.00.71, for Model AS355E, F, F1, F2, and N helicopters; and ASB No. 25.00.79, for Model AS350B, BA, BB, B1, B2, B3, and D helicopters. Both ASBs are dated November 12, 2002, and specify embodiment of MOD 07 3190 on helicopters equipped with the fixed parts for the hoist. MOD 07 3190 consists of (1) eliminating resistor 27M in the hoist operator's control unit 26M and (2) replacing the 25A quick-response fuses on the Honeywell unit at 31 alpha or 21 delta for the Model AS350 or on the distribution panel 10 alpha for the Model 355 helicopters. Eurocopter has also issued alert Service Bulletin No. 25.01.18, dated November 12, 2002, for Model AS332C, C1, L, and L1 helicopters. Modification 332PCS 78 288 consists of eliminating resistor 81M in hoist box 91M and re-identifying the hoist box as 332P67-2894-01, -02, -03, or -04, depending on which electrical wiring assembly is installed in the helicopter. The DGAC has classified these ASBs as mandatory and issued AD 2002-585(A) and AD 2002-584(A), both dated November 27, 2002, to ensure the continued airworthiness of these helicopters in France.

This AD would require correction of an anomaly between the Eurocopter hoist control box electrical circuits and the Breeze 300 lb. hoist. The Eurocopter hoist control box supplies 2 amperes to the hoist pyrotechnic squib, however the Breeze 300 lb. hoist requires 10 amperes to activate the pyrotechnic squib. The TRW (LUCAS and Air Equipment) hoists require only 1 ampere to activate their pyrotechnic squibs. Therefore, this AD would not apply to the TRW (LUCAS and Air Equipment) hoist installations even though DGAC AD 2002-585(A) applied to these hoists.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

This previously described unsafe condition is likely to exist or develop on other helicopters of these same type designs registered in the United States.

Therefore, the proposed AD would require, within 100 hours time-in-service (TIS) or 2 months, whichever comes first, modifying and re-identifying the hoist operator control unit and replacing certain fuses. The actions would be required to be accomplished in accordance with the ASBs described previously.

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD.

The FAA estimates that this proposed AD would affect 58 helicopters of U.S. registry (50 Model AS350 helicopters and 8 Model AS355 helicopters, and no Model AS332 helicopters) and the proposed actions would take approximately 3.5 work hours per helicopter to accomplish at an average labor rate of \$60 per work hour. Required parts would cost approximately \$10 for a time-delay fuse for Model AS350 series helicopters, or \$20 for two time-delay fuses for Model AS355 series helicopters. Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators would be \$12,840 to modify each hoist in the entire fleet.

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

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**Eurocopter France:** Docket No. 2003–SW–15–AD.

*Applicability:* Model AS332C, C1, L, and L1, AS350B, BA, B1, B2, B3 and D, and AS355E, F, F1, F2 and N helicopters with a Breeze 300-pound electric hoist (hoist) and hoist operator control unit 26M, part number (P/N) 350A63–1136–00 or 350A63–1136–01, and hoist electric box 91M, P/N 332A67–2875–00, installed, certificated in any category.

*Compliance:* Required within 100 hours time-in-service or within 2 months, whichever occurs first, unless accomplished previously.

To prevent failure of the hoist pyrotechnic squib electrical control unit, lack of adequate current to activate the hoist pyrotechnic squib, an inability of the pilot to cut the rescue hoist cable in the event of cable entanglement or other emergency, and subsequent loss of control of the helicopter, accomplish the following:

(a) Modify and re-identify the hoist operator control unit; replace the fuses; and functionally test the hoist operation and the emergency jettison controls in accordance with the Accomplishment Instructions, paragraph 2B, Operational Procedure, of Alert Service Bulletin (ASB) No. 25.00.71 for Model AS355E, F, F1, F2, and N helicopters; ASB No. 25.00.79 for Model AS350B, BA, B1, B2, B3, and D helicopters; and ASB No. 25.01.18 for Model AS332 C, C1, L, and L1 helicopters, all dated November 12, 2002, as applicable.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Safety Management Group, Rotorcraft Directorate, FAA, for information about previously approved alternative methods of compliance.

**Note:** The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 2002–584(A) and AD 2002–585(A), both dated November 27, 2002.

Issued in Fort Worth, Texas, on August 8, 2003.

**David A. Downey,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 03–21522 Filed 8–21–03; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Customs and Border Protection

#### 19 CFR Part 141

**RIN 1515–AC15**

### Anticounterfeiting Consumer Protection Act: Entry Documentation

**AGENCY:** Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of withdrawal of proposed rulemaking.

**SUMMARY:** This document informs the public that the Bureau of Customs and Border Protection (CBP) has decided to withdraw the proposal to require importers to provide on the invoice a listing of all trademarks appearing on imported merchandise and its packaging. The proposal was intended to provide a means to determine whether imported merchandise bears an infringing trademark in violation of law. The authority for the proposal was section 12 of the Anticounterfeiting Consumer Protection Act. Based on the comments received in response to the proposal and further evaluation of the proposal, CBP has determined that the proposed rule would not be an efficient and effective way to combat counterfeiting and is withdrawing the proposal.

**DATES:** As of August 22, 2003, the proposed rule published on September 13, 1999 (64 FR 49423) is withdrawn.

**FOR FURTHER INFORMATION CONTACT:** George F. McCray, Esq., Chief, Intellectual Property Branch, Office of Regulations and Rulings, Customs and Border Protection, (202) 572–8710.

#### SUPPLEMENTARY INFORMATION:

##### Background

On September 13, 1999, Customs (then exclusively under the Department of the Treasury; as of March 1, 2003, the U.S. Customs Service was transferred to the Department of Homeland Security, and became redesignated as the Bureau of Customs and Border Protection (CBP)) published a document in the **Federal Register** (64 FR 49423) proposing to amend the Customs

Regulations to require all importers to provide on each invoice of imported merchandise a listing of any trademark information appearing on the imported merchandise, including packaging. The proposal was intended to provide a means to determine whether imported merchandise bears an infringing trademark in violation of law. The authority for the proposal was section 12 of the Anticounterfeiting Consumer Protection Act of 1996 (ACPA)(19 U.S.C. 1484(d)).

Comments on the proposed amendment were solicited for 60 days.

The comment period closed November 13, 1999. Fifty-seven comments were received. Most were against the proposal. Among the reasons cited were that this requirement would present an overwhelming burden to importers, trademark owners, manufacturers and suppliers, and establish unrealistic recordkeeping requirements. Further, the requirement would likely not be complied with by counterfeiters. Additionally, it was stated that the proposal would not provide Customs with any new enforcement tools to combat the importation of infringing goods into the United States.

The following summarized comments supporting the withdrawal of the proposal are noted.

#### *Costs of Compliance Would Be Enormous*

The administrative costs associated with complying with this requirement would be enormous. The proposed amendment would cause severe and unreasonable burdens to trade and provide only minimal, if any, benefit to CBP enforcement.

The statement in the notice that the proposal would require importers to “identify information of a sort that is already maintained by the importer” is incorrect. The proposal would require importers to expend extraordinary efforts canvassing their suppliers—and their suppliers’ third-party suppliers—in order to develop required trademark lists. Additionally, even more effort would be required to ensure that the lists are up to date and accurately reflect the components contained in the merchandise covered by each specific invoice.

Creating and maintaining this database would force importers to create new administrative procedures devoted solely to tracking trademarks on components contained within final products. It would also force importers to devote resources to policing suppliers of such components.

### *Unrealistic Recordkeeping Requirements*

The proposed requirement would also place difficult recordkeeping obligations on foreign suppliers and importers who do not have direct knowledge of product components or parts. It would be extremely difficult to effectively monitor invoicing practices of thousands of different foreign vendors to ensure that trademark information is accurately listed on invoices. Additionally, many imported products incorporate parts and components which are themselves trademarked merchandise. Obtaining information as to the trademark status of parts and components would require considerable effort from both vendors and importers, and in certain instances would be unavailable in any event.

Most businesses (particularly those in the areas of high technology and communications) have very rapidly changing product specifications, often changing in-box components bearing trademarks during a production run. The logistics of managing exactly which trademarks are included in which box on which shipment would add enormous complexity and cost to the supply chain.

### *No New Enforcement Tools*

Furthermore, it was stated that the proposed regulation would do nothing to enhance Customs ability to enforce ACPA. Requiring trademark information to be printed on each invoice would not address the principal problem, which is mis-declaration by counterfeiters. Listing trademarks on an invoice does not help a Customs inspector determine whether or not the merchandise bears an infringing trademark. Generally, the only method of determining this is through actual inspection of the merchandise; in fact, without such inspections, substantiating the veracity of the information contained in these commercial invoices is extremely difficult.

### *Trademarked Merchandise Will Be Identified for Criminals and Counterfeiters Who Will Not Comply With New Requirements*

The fact that a shipment consists of branded apparel is not necessarily apparent from commercial and transportation documents and the identity of the trademarks is not always apparent from the name of the seller or consignee. This present circumstance makes it difficult for criminals to identify shipments of interest. The proposed entry documentation requirements would eliminate this

margin of safety and make it easier for this class of individual to target shipments.

### *Increased Penalties*

The proposal creates the likelihood that importers of legitimate product could be penalized for inadvertent omissions of some protected trademarks from the invoice. The regulatory proposal would create an affirmative obligation on the part of exporters and importers to list all trademarks appearing on the merchandise to be imported into the United States, and the omission of information on any trademarked goods would impose liability, under 19 U.S.C. 1592(a) for any "material omission".

### **Conclusion**

CBP has determined that the proposed rulemaking should be withdrawn. After consideration of the comments and further review, CBP agrees with the majority of commenters that the proposed approach would not be an effective or efficient way to combat counterfeiting. Since section 12 of the ACPA does not mandate revision of the Customs Regulations, but rather provides authority for CBP to require such additional information as the agency determines "may be necessary" to determine whether imported merchandise bears infringing trademarks, CBP does not believe amendment of the Customs Regulations is required; Customs already has access to information from other sources which effectively serves to identify imported merchandise bearing violative trademarks. Accordingly, CBP is withdrawing the proposal published in the **Federal Register** (64 FR 49423) on September 13, 1999. If, in the future, a more effective and efficient method of data collection is developed to aid in determining whether imported merchandise bears an infringing trademark, CBP will consider implementation of such measures at that time.

**Robert C. Bonner,**

*Commissioner, Customs and Border Protection.*

Approved: August 18, 2003.

**Timothy E. Skud,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 03-21574 Filed 8-21-03; 8:45 am]

**BILLING CODE 4820-02-P**

## **DEPARTMENT OF THE TREASURY**

### **Internal Revenue Service**

#### **26 CFR Parts 1 and 14a**

[REG-122917-02]

RIN 1545-BA75

#### **Statutory Stock Options; Hearing**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Cancellation of notice of public hearing on proposed rulemaking.

**SUMMARY:** This document provides notice of cancellation of a public hearing on proposed rulemaking relating to statutory stock options.

**DATES:** The public hearing originally scheduled for Tuesday, September 2, 2003, at 10 a.m. is cancelled.

**FOR FURTHER INFORMATION CONTACT:** Guy R. Traynor of the Legal Processing Division, Associate Chief Counsel, at (202) 622-3693 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on June 9, 2003 (68 FR 34344), announced that a public hearing was scheduled for September 2, 2003 at 10 a.m., in the auditorium of the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The subject of the Public hearing is proposed regulations under sections 421, 422, 423, 424, 425 and 6039, of the Internal Revenue Code. The public comment period for these proposed regulations expired on August 12, 2003.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of topics to be addressed. As of August 18, 2003, no one has requested to speak. Therefore, the public hearing scheduled for September 2, 2003 is cancelled.

**LaNita Van Dyke,**

*Acting Chief, Legal Publishing Division, Associate Chief Counsel (Procedure & Administration).*

[FR Doc. 03-21470 Filed 8-21-03; 8:45 am]

**BILLING CODE 4830-01-P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 300**

[FRL-7547-8]

**National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of intent to delete the Resin Disposal Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region III is issuing a notice of intent to delete the Resin Disposal Superfund Site (Site) located in the Borough of Jefferson, Allegheny County, Pennsylvania, from the National Priorities List (NPL) and requests public comments on this notice of intent. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at appendix B of 40 CFR part 300 of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). EPA and the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection (PADEP), have determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

In the "Rules and Regulations" Section of today's **Federal Register**, we are publishing a direct final notice of deletion of the Resin Disposal Superfund Site without prior notice of intent to delete, because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final deletion. If we receive no adverse comment(s) on the direct final notice of deletion, we will not take further action on this notice of intent to delete. If we receive adverse comment(s), we will withdraw the direct final notice of deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final deletion notice based on this notice of intent to delete. We will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion which is located

in the Rules Section of this **Federal Register**.**DATES:** Comments concerning this Site must be received by September 22, 2003.**ADDRESSES:** Written comments should be addressed to: Trish Taylor, Community Involvement Coordinator, (3HS43), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, (215) 814-5528, [taylor.trish@epa.gov](mailto:taylor.trish@epa.gov).**FOR FURTHER INFORMATION CONTACT:** Rashmi Mathur, Remedial Project Manager (3HS22), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, (215) 814-5234, [mathur.rashmi@epa.gov](mailto:mathur.rashmi@epa.gov).**SUPPLEMENTARY INFORMATION:** For additional information, see the Direct Final Notice of Deletion which is located in the Rules Section of this **Federal Register**.

**Information Repositories:** Comprehensive information about the Site is available for viewing and copying at the Site Information Repositories at the following locations: U.S. EPA Region III, Regional Center for Environmental Information (RCEI), 1650 Arch Street, Philadelphia, PA 19103, (215) 814-5364, Monday through Friday 8 a.m. to 4:30 p.m.; the Jefferson Borough Library (contact, Ann Reschenthaler), Municipal Building, 925 Old Clairton Road, Jefferson Borough, Pennsylvania 15025 (412) 655-7741, Monday through Thursday 11:00 a.m. to 8:30 p.m.; and the Pennsylvania Department of Environmental Protection, Pittsburgh Office, 400 Waterfront Drive, Pittsburgh, PA 15222 (412) 442-4197.

**List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601-9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: August 4, 2003.

**Donald S. Welsh,***Regional Administrator, Region III.*

[FR Doc. 03-21597 Filed 8-21-03; 8:45 am]

**BILLING CODE 6560-50-P****DEPARTMENT OF HEALTH AND HUMAN SERVICES****Centers for Medicare & Medicaid Services****42 CFR Part 414**

[CMS-1167-P]

RIN 0938-AL27

**Medicare Program; Payment for Respiratory Assist Devices With Bi-level Capability and a Back-up Rate****AGENCY:** Center for Medicare & Medicaid Services (CMS), HHS.**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would clarify that respiratory assist devices with bi-level capability and a back-up rate must be paid as capped rental items and not paid as items requiring frequent and substantial servicing (FSS), as defined in section 1834(a)(3) of the Social Security Act. This action would correct coding and payment errors, which began in 1994, when some Medicare contractors misinterpreted our statutorily prescribed policy and allowed these devices to be paid under the category for items requiring FSS.

**DATES:** *Comment Date:* Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on October 21, 2003.**ADDRESSES:** In commenting, please refer to file code CMS-1167-P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission or e-mail.

Mail written comments (one original and two copies) to the following address ONLY:

Centers for Medicare &amp; Medicaid Services, Department of Health and Human Services, Attention: CMS-1167-P, P.O. Box 8017, Baltimore, MD 21244-1850.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) to one of the following addresses:

Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5-14-03, 7500 Security Boulevard, Baltimore, MD 21244-1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are

encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Joel Kaiser, (410) 786-4499.

**SUPPLEMENTARY INFORMATION:**

*Inspection of Public Comments:* Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786-7195.

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

## I. Background

### A. DME Fee Schedule Payment Methodology

The Medicare Part B (Supplementary Medical Insurance) payment rules for durable medical equipment (DME) are located in section 1834(a) of the Social Security Act (the Act). In accordance with section 1834(a) of the Act, payment for DME is made on a fee schedule basis with items falling into several different payment categories, each with its own unique payment rules. The respiratory assist devices with bi-level capability would be placed in the category for other items of durable medical equipment, or capped rental items, as defined in section 1834(a)(7) of the Act.

Section 1834(a) of the Act provides that Medicare payment for DME is equal to 80 percent of the lesser of the actual charge for the item or the fee schedule amount for the item. It classifies DME into the following payment categories:

- Inexpensive or other routinely purchased DME.
- Items requiring frequent and substantial servicing (FSS).
- Customized items.
- Oxygen and oxygen equipment.

- Other covered items (other than DME).
- Other items of DME (capped rental items).

There are different payment rules for each category of DME. With the exception of customized items, fee schedule amounts are calculated for each item of DME, identified by codes in the Healthcare Common Procedure Coding System (HCPCS). The Medicare payment amount for a customized item of DME is based on the Medicare carrier's individual consideration of that item.

In general, the fee schedule amounts for DME are calculated on a statewide basis using average Medicare payments made in each State from 1986 and 1987 under the former reasonable charge payment methodology. The fee schedule amounts are generally adjusted annually by the change in the Consumer Price Index for all Urban Consumers (CPI-U) for the 12-month period ending June 30 of the preceding year. The fee schedule amounts are limited by a ceiling (upper limit) and floor (lower limit) equal to 100 percent and 85 percent, respectively, of the median of the statewide fee schedule amounts.

Section 13543 of the Omnibus Budget Reconciliation Act of 1993 (OBRA of 1993) (Pub. L. 103-66) amended section 1834(a)(3)(A) of the Act to remove certain ventilators, namely "intermittent assist devices with continuous airway pressure devices," from the DME payment category for items requiring FSS. Payment for an item in the FSS category is made on a monthly rental basis, with rental payments continuing as long as the item remains medically necessary. The conference report for OBRA of 1993 states that "this category is intended to include items which require frequent servicing in order to avoid imminent danger to a beneficiary's health." Those ventilators which were excluded from the FSS category by OBRA of 1993 fall into the payment category for capped rental (CR) items. Payment for items in the CR category is made on a monthly rental basis, with rental payments being capped at 15 months or 13 months, depending on whether the beneficiary, based upon an option that must be offered by the supplier in the 10th rental month, chooses to continue renting the item or take over ownership of the item via the "purchase option" provided by the statute. If the beneficiary chooses the "purchase option," then rental payments continue through the 13th month of use and the title for the equipment transfers from the supplier to the beneficiary. Medicare would then make payments for any necessary

maintenance and servicing of the patient-owned equipment. If the beneficiary chooses to continue renting the equipment, then rental payments continue through the 15th month of use, and the supplier continues to own the equipment. The supplier must continue to supply the rented item to the beneficiary as long as medically necessary. The supplier is entitled to receive a semi-annual maintenance and servicing payment in an amount not to exceed 10 percent of the purchase price for the equipment as determined by the statute. Total Medicare payments made through the 13th and 15th months of rental equal 105 and 120 percent, respectively, of the statutory purchase price for the equipment.

Suppliers of DME must meet the standards specified in 42 CFR 414.57. These standards specify that the supplier "must maintain and replace at no charge or repair directly, or through a service contract with another company, Medicare-covered items it has rented to beneficiaries." This requirement applies to items in both the FSS and CR payment categories. Therefore, for rental items in either category, the supplier is responsible for ensuring that the equipment is in good working order. In the case of items for which the patient has selected the purchase option, the patient arranges for the servicing and repair of the patient-owned equipment. Medicare payments are made as needed for maintenance and servicing of patient-owned equipment in the CR category.

It is not necessary for a respiratory therapist to perform the maintenance and servicing of respiratory assist devices. If DME suppliers perform maintenance and servicing of equipment, they are paid by Medicare for this service, regardless of whether the item is in the FSS or CR category. We are confident that this change in payment category will not result in a decrease in the current level of service being provided to the beneficiaries.

### B. HCPCS Coding for Respiratory Assist Devices

On January 1, 1992, code E0452 with the description of "intermittent assist device with continuous positive airway pressure device (CPAP)" was added and became effective in the HCPCS. This code was added to describe respiratory assist devices with bi-level air pressure capability, with or without a back-up rate, and with the ability to switch to CPAP mode. Bi-level pressure capability means that the device can deliver a lower level of pressure when the patient exhales than when the patient inhales, as opposed to CPAP, which is the

continuous delivery of a single level of positive air pressure. A back-up rate feature enables the device to automatically switch between the two levels of pressure at pre-determined intervals. The original manufacturer of bi-level respiratory assist devices submitted documentation to us as part of its HCPCS coding recommendation. The manufacturer stated the following in the documentation:

- The word "intermittent" refers to devices that are designed to be used by the patient for only part of the day, usually during the hours of sleep.
- The bi-level equipment requires very little maintenance and servicing.
- Other than monthly replacement of the air inlet filter on the front of the system, there is no routine maintenance required.
- Recommends that a performance verification be performed after each year of operation to ensure that the device is functioning properly.

In accordance with OBRA of 1993, intermittent assist devices are excluded from the FSS payment category and, therefore, fall into the CR payment category.

On January 1, 1992, code E0453 with the description of "therapeutic ventilator; suitable for use 12 hours or less per day" was added and became effective in the HCPCS. This code was added to describe ventilators that are used on a part time basis by patients who are dependent on volume ventilators (HCPCS code E0450) for more than 12 hours a day. The premise behind the therapeutic ventilator (code E0453) is similar to the portable oxygen equipment. The stationary volume ventilator (E0450), like stationary oxygen equipment, would be the primary equipment used by the patient. The portable therapeutic ventilator, like portable oxygen equipment, would be used part of the day by the patient to move about in order to exercise muscles, prevent decubitus ulcers, and achieve other therapeutic goals. Therapeutic ventilators were properly classified in the FSS payment category.

Beginning as early as May 25, 1992, some Medicare carriers issued erroneous guidance to suppliers that intermittent assist devices with a back-up rate should be billed for using the HCPCS code E0453 for therapeutic ventilators (FSS payment category) instead of the HCPCS code E0452 for intermittent assist devices (CR payment category). We are not certain to what degree carriers and suppliers were using code E0453 as opposed to code E0452 to bill for intermittent assist devices with a back-up rate. However, this practice continued to some extent

through 1993 and 1994, the respective years in which the OBRA of 1993 change in payment categories for intermittent assist devices was enacted and implemented. Responsibility for processing DME claims was transferred during this time from 34 local carriers to 4 regional carriers known as Durable Medical Equipment Regional Carriers (DMERCs). The DMERCs also issued erroneous guidance to suppliers that the intermittent assist devices with a back-up rate should be billed for using code E0453 instead of code E0452.

The classification of intermittent assist devices with a back-up rate under the FSS payment category versus the CR payment category results in a substantial increase in Medicare payments. For example, comparing cost of E0453 over 5 years using the 2000 fee schedule ceiling of \$612.52, total Medicare payments under the FSS payment category would be \$36,751.20 after 5 years as opposed to \$7,778.99 if the device was classified under the CR payment category.<sup>1</sup> Based on retail prices we obtained, we determined for the year 2000, that the purchase prices for intermittent assist devices with a back-up rate range from approximately \$3,000 to \$6,000. This highlights the fact that the correct classification of these devices for Medicare payment purposes is a significant issue in terms of safeguarding the Medicare trust fund. That is, placing these devices in the FSS payment category instead of the CR category results in Medicare paying every 5 years approximately \$36,700 rather than \$7,700 for an item that can be purchased for \$6,000 or less.

In 1998, for the first time, the DMERCs conducted an in-depth review of the use of intermittent assist devices with CPAP. As a result, in July 1998, the DMERCs issued proposed medical review policies on intermittent assist devices with CPAP, which called for a revision to the HCPCS codes for these devices and the adoption of more specific nomenclature to describe respiratory assistance technology. The term "respiratory assist device, bi-level pressure capability" was proposed to replace the HCPCS wording of "intermittent assist device with CPAP," and separate HCPCS codes were proposed to differentiate between devices with a back-up rate and devices without a back-up rate.

<sup>1</sup> The CR payment of \$7,778.99 includes the 15 monthly rental payments plus 7 payments of \$61.25 for maintenance and servicing that can be billed every 6 months beginning 6 months after the 15th rental payment has been made.

### *C. Public Meeting on Payment for Respiratory Assist Devices*

During the course of reviewing the DMERC medical review policies on respiratory assist devices, we became aware that the carriers and DMERCs had been allowing HCPCS code E0453 to be used primarily for the billing of respiratory assist devices with a back-up rate. As a result, we intended to take action to clarify that these devices belonged in the CR payment category. Because of concerns raised by the industry on the appropriate coding and payment classification for these devices, we announced in the **Federal Register** on June 4, 1999 that a public meeting would be held on June 25, 1999 to get input from the supplier community regarding the appropriate DME payment category for respiratory assist devices with a back-up rate. We made presentations at the June 25, 1999 public meeting, in addition to the Food and Drug Administration, the National Institutes of Health, respiratory assist device manufacturers, suppliers, clinicians, beneficiaries, and others.

The testimony at the public meeting that was given to support the claim that there is a need for FSS of respiratory devices with bi-level capability and a back-up rate described the need to have a respiratory therapist visit the beneficiary to make sure that the device is being used appropriately by the beneficiary and that the beneficiary is complying with the treatment. After the respiratory therapist performs an assessment of the beneficiary and has consulted with the beneficiary's physician, it may be determined that the pressure setting on the equipment needs to be adjusted. However, no information was presented at the public meeting that would indicate that the equipment itself requires FSS as required by section 1834(a)(3)(A) of the Act.

The DMERC medical review policies on respiratory assist devices were implemented on October 1, 1999. The following HCPCS codes were added as part of these new policies:

- K0532 Respiratory Assist Device, Bi-Level Pressure Capability, Without Back-up Rate Feature, Used With Noninvasive Interface, E.G., Nasal Or Facial Mask (Intermittent Assist Device With Continuous Positive Airway Pressure Device)
- K0533 Respiratory Assist Device, Bi-Level Pressure Capability, With Back-up Rate Feature, Used With Noninvasive Interface, E.G., Nasal Or Facial Mask (Intermittent Assist Device With Continuous Positive Airway Pressure Device)

K0534 Respiratory Assist Device, Bi-Level Pressure Capability, With Back-up Rate Feature, Used With Invasive Interface, E.G., Tracheostomy Tube (Intermittent Assist Device With Continuous Positive Airway Pressure Device)

These codes were added to better describe those respiratory assist devices, or intermittent assist devices with CPAP, that had been coded under codes E0452 and E0453 of the HCPCS since 1992. Code K0532 describes those intermittent assist devices with CPAP that did not have a back-up rate and were previously coded under code E0452 (CR payment category). Codes K0533 and K0534 describe those intermittent assist devices with CPAP that did have a back-up rate but had been coded under code E0453 (FSS payment category). It was also decided that no code was needed for therapeutic ventilators, the devices originally intended to fall under code E0453. Although the DMERC medical review policies were implemented on October 1, 1999, the decision regarding the appropriate DME payment category for devices with the back-up rate (codes K0533 and K0534) was delayed until now to allow more time for consideration of comments made at the June 25, 1999 public meeting.

After reviewing all of the information presented at the June 25, 1999 public meeting, we conclude that respiratory assist devices with bi-level pressure capability and a back-up rate do not require FSS payment. We also conclude that these devices are a type of intermittent assist device with CPAP and are therefore excluded from the FSS payment category by section 1834(a)(3)(A) of the Act. We conclude that all payments made for these devices in the past under the FSS payment category were erroneous.

#### *D. Office of Inspector General (OIG) Report on Respiratory Assist Devices*

In 1999, the OIG began an inspection to determine if respiratory assist devices with a back-up rate receive FSS. During the course of their inspection, the OIG conducted surveys of beneficiaries, suppliers, manufacturers, and accreditation agencies. In June 2001 (OEI-07-99-00440), the OIG issued their report on respiratory assist devices with a back-up rate, recommending that these devices be moved from the FSS payment category to the CR payment category. This recommendation is based on information gathered from the surveys conducted by the OIG that resulted in the following findings listed in the report:

- Supplier services consist primarily of routine maintenance and patient monitoring.

- For most beneficiaries, visits (from suppliers) do not meet supplier protocols for frequency.

- Contrary to supplier protocols, the number of beneficiaries receiving visits declines over time.

- Covering the respiratory assist device with back-up rate under capped rental would have saved Medicare \$11.5 million annually.

Therefore, the OIG, after conducting a detailed inspection, has determined that respiratory assist devices with a back-up rate do not receive FSS.

## **II. Provisions of the Proposed Regulations**

For the reasons stated above, we propose to include respiratory assist devices billed using HCPCS codes K0533 and K0534 in the DME fee schedule payment category for other items of DME, or capped rental items, as defined in section 1834(a)(7) of the Act. Rental claims received on or after the effective date of this provision would be claims considered for the initial month of rental for capped rental payment purposes.

## **III. Response to Comments**

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

## **IV. Collection of Information Requirements**

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

## **V. Regulatory Impact Statement**

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96-354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which

merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). We estimate that the reductions in annual expenditures that would occur as a result of moving respiratory assist devices with a back-up rate to the CR payment category will be approximately \$10 million, based on the payment differential between the CR and FSS payment categories. This estimate is based on estimated annual savings of \$11.5 million from the OIG report, rounded to the nearest \$10 million. The OIG found that the average number of months a beneficiary used the device between January 1996 and September 1999 was 16 months. We estimate that Medicare beneficiaries utilize 10,000 to 12,000 devices each year. Since this rule would result in reductions in total expenditures of less than \$100 million per year, this rule is not a major rule as defined in Title 5, United States Code, section 804(2) and is not an economically significant rule under Executive Order 12866.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities either by nonprofit status or by having revenues of \$6 million to \$29 million or less in any 1 year. For purposes of the RFA, approximately 98 percent of suppliers of DME and prosthetic devices are considered small businesses according to the Small Business Administration's (SBA) size standards. Individuals and States are not included in the definition of a small entity. We estimate that 106,000 entities bill Medicare for DME, prosthetics, orthotics, surgical dressings, and other equipment and supplies each year. We believe the impact on the DME industry and small businesses in general would be minimal because most companies supply many different types of equipment. Total Medicare expenditures for DME are approximately \$7 billion per year.

The OIG estimates that moving respiratory assist devices with a back-up rate to the CR payment category would result in payment reductions of

approximately \$11.5 million per year. Therefore, the overall impact on the total industry annual receipts would be small, that is, less than 1 percent reduction in Medicare revenue. However, while the overall impact is small, some suppliers would be seriously affected as a result of the mix of DME that they furnish to Medicare beneficiaries. Namely, suppliers who specialize in furnishing respiratory assist devices would be seriously affected by this rule. To estimate how many suppliers could be seriously affected by this rule, we analyzed data for the top 30 suppliers of RADs with a back-up rate, which account for approximately 50 percent of Medicare expenditures for code K0533. Total allowed charges for code K0533 were \$77 million in 2002. Therefore, a \$10 million reduction in annual expenditures resulting from this proposed rule equates to a 13 percent reduction in revenue for suppliers for code K0533. These top 30 suppliers were ranked in terms of total allowed charges attributed to them for claims received for HCPCS code K0533 from October 1, 2002 through December 31, 2002. Five of the top 30 suppliers would not be considered small entities by SBA standards. These 5 suppliers account for approximately 40 percent of total expenditures for K0533. Twenty-five suppliers in the top 30 could be considered small entities if such a determination was based solely on Medicare expenditures (data on revenue attributed to sources other than Medicare has not been obtained for these companies as part of this analysis). Therefore, the total reduction in revenue for potential small entities as a result of this proposed rule would be approximately \$6 million. The percentage of Medicare DME business that K0533 devices represent for 9 of the 25 potential small entities is 5 percent or less. For the remaining 16 potential small entities, the percentage of Medicare DME business that K0533 devices represent ranges from 17 to 98 percent. Therefore, these 16 suppliers would be seriously affected by this rule. Other K0533 suppliers not in the list of top 30 suppliers could also be small entities and could be seriously affected by this rule. The total allowed charges per year for these suppliers for code K0533 are less than \$250,000.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the

RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We are not preparing a rural impact analysis since we have determined that this rule would not have a significant economic impact on the operation of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal government, in the aggregate, or by the private sector of \$110 million. This rule would not have an effect on the governments mentioned, and private sector costs would be less than the \$110 million threshold.

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have determined that this rule does not significantly affect State or local governments.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

#### List of Subjects in 42 CFR Part 414

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

For the reasons stated in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR part 414 as follows:

#### PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

1. The authority citation for part 414 continues to read as follows:

**Authority:** Secs. 1102, 1871, and 1881(b)(1) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr (b)(1)).

2. In § 414.222 paragraph (a)(1) is revised to read as follows:

##### § 414.222 Items requiring FSS.

(a) *Definition.* \* \* \*

(1) Ventilators (except those that are either continuous airway pressure devices or respiratory assist devices with bi-level pressure capability with or without a back-up rate, previously referred to as intermittent assist devices

with continuous airway pressure devices).

\* \* \* \* \*

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program).

Dated: April 15, 2003.

**Thomas A. Scully,**

*Administrator, Centers for Medicare & Medicaid Services.*

Dated: April 24, 2003.

**Tommy G. Thompson,**

*Secretary.*

[FR Doc. 03–21443 Filed 8–21–03; 8:45 am]

BILLING CODE 4120–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 2

[ET 03–158; MB 03–159; FCC 03–165]

### Use of Television Channel 16 by the New York Police Department and NYMAC for Public Safety Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to amend the rules of the Federal Communications Commission (FCC) to reallocate television channel 16 to the land mobile service in order to permit the New York Police Department and New York Metropolitan Advisory Committee (NYMAC) to utilize the channel for public safety services.

**DATES:** Submit comments on or before September 22, 2003. Reply comments are due on or before October 6, 2003.

**ADDRESSES:** Federal Communications Commission, 445 12th St. SW., Washington, DC 20554. See **SUPPLEMENTARY INFORMATION** for filing instructions.

#### FOR FURTHER INFORMATION CONTACT:

Dave Roberts (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a summary of the FCC's Notice of Proposed Rulemaking, (NPRM) FCC 03–165, adopted on July 7, 2003, and released on July 10, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by

contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365 or at [bmillin@fcc.gov](mailto:bmillin@fcc.gov).

By this NPRM, the FCC initiates a rulemaking to determine whether to reallocate television channel 16 to the land mobile service for use by the New York Police Department and NYMAC for public safety use in the New York metropolitan area. Comments are sought on the technical impact of this proposal.

This matter shall be treated as a "permit—but-disclose" proceeding in accordance with the Commission's ex parte rules. 47 CFR 1.200, 1.1206. Members of the public are advised that ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided under the Commission's rules. See generally 47 CFR 1.1203 and 1.1206(a).

Pursuant to 47 CFR 1.415, 1.419, interested parties may file comments on or before September 22, 2003 and reply comments on or before October 6, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

Comments filed using ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. When completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties also may submit electronic comments by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience

delays in receiving U.S. Postal Service mail).

The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

- The filing hours at this location are 8 a.m. to 7 p.m.
- All hand deliveries must be held together with rubber bands or fasteners.
- Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, § 73.606(b) of the Commission's rules. See Certification That §§ 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

Accordingly, it is ordered that pursuant to the authority contained in Sections 1, 4(i), 4(j), 301, 303, 308, 309(j), and 337 of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154(j), 157(a), 301, 303, 308, 309(j), and 337 this Notice of Proposed Rulemaking is adopted.

**List of Subjects in 47 CFR Part 2**

Television.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 2 as follows:

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

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

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

2. Section 2.106, the Table of Frequency Allocations, is amended by

revising footnote NG66 to read as follows.

**§ 2.106 Table of Frequency Allocations.**

\* \* \* \* \*  
NON-FEDERAL GOVERNMENT (NG)  
FOOTNOTES

\* \* \* \* \*  
NG66 The use of the land mobile service in the band 470–512 MHz is available for assignment to licensees in the Public Mobile Services, the Public Safety Radio Pool, and the Industrial/Business Radio Pool at, or in the vicinity of 11 urbanized areas, as set forth in the following table. Additionally, the band 482–488 MHz (TV channel 16) is available for assignment to licensees in the Public Safety Radio Pool at, or in the vicinity of, Los Angeles and at, or in the vicinity of, New York City and Nassau and Suffolk Counties, New York. Such use in the land mobile service is subject to the conditions set forth in 47 CFR parts 22 and 90.

Urbanized area	Frequencies (MHz)	TV channel
New York, NY-Northeastern New Jersey.	470–482 .....	14, 15
Chicago, IL-Northwestern Indiana.	470–482 .....	14, 15
Boston, MA .....	470–476 and 482–488.	14, 16
Pittsburgh, PA ....	470–476 and 494–500.	14, 18
Los Angeles, CA	470–476 and 506–512.	14, 20
Miami, FL .....	470–476 .....	14
San Francisco-Oakland, CA.	482–494 .....	16, 17
Dallas, TX .....	482–488 .....	16
Washington, D.C.-Maryland-Virginia.	488–500 .....	17, 18
Houston, TX .....	488–494 .....	17
Philadelphia, PA-New Jersey.	500–512 .....	19, 20

\* \* \* \* \*

[FR Doc. 03–21507 Filed 8–21–03; 8:45 am]  
BILLING CODE 6712–01–P

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

[DA 03–2574; MB Docket No. 03–181; RM–10758]

**Radio Broadcasting Services; Blanchard and Weatherford, OK**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Audio Division requests comment on a petition filed by Wright Broadcasting Systems, Inc., licensee of FM Station KWEY, Channel 247C1,

Weatherford, Oklahoma. Petitioner proposes to change the community of license for KWEY-FM from Weatherford to Blanchard, Oklahoma, as a first local service, to change the corresponding channel allotment from Channel 247C1 to Channel 247A, and to modify the license of KWEY-FM accordingly. Channel 247A can be allotted to Blanchard in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.1 km (1.3 miles) southwest of Blanchard. The coordinates for Channel 247A at Blanchard are 35-07-21 North Latitude and 97-40-18 West Longitude.

**DATES:** Comments must be filed on or before September 22, 2003, and reply comments on or before October 7, 2003.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the petitioner as follows: John C. Trent, Putbren, Hunsaker & Trent, P.C., 100 Carpenter Drive, Suite 100, Post Office Box 217, Sterling, Virginia 20167-0217.

**FOR FURTHER INFORMATION CONTACT:** Deborah A. Dupont, Media Bureau (202) 418-7072.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03-181, adopted July 30, 2003 and released August 1, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICES

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

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

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Blanchard, Channel 247A, and by removing Channel 247C1 at Weatherford.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 03-21504 Filed 8-21-03; 8:45 am]

**BILLING CODE 6712-01-P**

# Notices

Federal Register

Vol. 68, No. 163

Friday, August 22, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

[Doc. No. TB-03-11]

#### Request for an Extension of and Revision to a Currently Approved Information Collection

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget, for an extension of and revision to the currently approved information collection in support of the Dairy and Tobacco Adjustment Act of 1983, the Rural Development, Food and Drug Administrative, and Related Agencies Appropriations Act for 2002 (Appropriations Act), and the Tobacco Inspection Act and Regulations Governing the Tobacco Standards.

**DATES:** Comments received by October 21, 2003, will be considered.

**ADDITIONAL INFORMATION OR COMMENTS:** Contact Kenneth E. Wall, Chief, Standardization and Review Branch, Tobacco Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 511 Cotton Annex Building, Stop 0280, 1400 Independence Avenue, SW., Washington, DC 20250-0280, Telephone (202) 205-0744 and Fax (202) 250-1191.

#### SUPPLEMENTARY INFORMATION:

*Title:* Reporting and Recording Requirements for 7 CFR Part 29.

*OMB Number:* 0581-0056.

*Expiration Date of Approval:* May 31, 2004.

*Type of Request:* Extension and revision of a currently approved information collection.

*Abstract:* The Tobacco Inspection Act (7 U.S.C. 511 *et seq.*) requires that all tobacco sold at designated auction markets in the U.S. be inspected and graded. Provision is also made for interested parties to request inspection and grading services on an as needed basis. The Appropriations Act (7 U.S.C. 511s) requires that all tobacco eligible for price support in the U.S. be inspected and graded. Also, the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 511r) requires the Secretary to inspect all tobacco offered for importation into the United States for grade and quality, except cigar and oriental tobacco, which must be certified by the importer as to kind and type, and in the case of cigar tobacco, that such tobacco will be used solely in the manufacture of cigars.

The information collection requirements authorized for the programs under the Tobacco Inspection Act, Appropriations Act, and the Dairy Tobacco Adjustment Act of 1983 include: Application for inspection of tobacco, application and other information used in the approval of new auction markets or the extension of services to designated tobacco markets, and information required to be provided in connection with auction and non-auction sales.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.56 hours per response.

*Respondents:* Primarily tobacco companies, tobacco manufacturers, import inspectors, and small business or organizations.

*Estimated Number of Respondents:* 634.

*Estimated Number of Responses per Respondent:* 13.

*Estimated Number of Responses:* 8057.

*Estimated Total Annual Burden on Respondents:* 4,547.

*Comments are invited on:* (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be

collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Kenneth E. Wall, Chief, Standardization and Review Branch, Tobacco Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 511 Cotton Annex Building, Stop 0280, 1400 Independence Avenue, SW., Washington, DC 20250-0280. All comments received will be available for public inspection during regular business hours at the same address.

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

Dated: August 18, 2003.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 03-21531 Filed 8-21-03; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF AGRICULTURE

### Office of the Under Secretary, Research, Education, and Economics

#### Notice of the Advisory Committee on Biotechnology and 21st Century Agriculture Meeting

**AGENCY:** Agricultural Research Service.

**ACTION:** Notice of Meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces a meeting of the Advisory Committee on Biotechnology and 21st Century Agriculture (AC21).

**DATES:** September 15-16, 2003, 8:30 a.m. to 5 p.m. both days.

**ADDRESSES:** The Meeting will take place at the Waugh Auditorium, USDA Economic Research Service, Third Floor, South Tower, 1800 M St., NW., Washington, DC 20036. Members of the public wishing to make oral statements should send request, in writing or by e-mail, to the contact person identified herein. Written requests may be sent to the contact person at: USDA, Office of the Deputy Secretary, 202B Jamie L. Whitten Federal Building, 12th and

Independence Avenue, SW., Washington, DC 20250. Request should be received at least 3 business days before the meeting.

**FOR FURTHER INFORMATION CONTACT:**

Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, Telephone (202) 720-3817; Fax (202) 690-4265; e-mail [mschechtman@ars.usda.gov](mailto:mschechtman@ars.usda.gov).

**SUPPLEMENTARY INFORMATION:** The second meeting of the AC21 has been scheduled for September 15-16, 2003. The AC21 consists of 18 members representing the biotechnology industry, the seed industry, international plant genetics research, farmers, food manufacturers, commodity processors and shippers, environmental and consumer groups, along with academic researchers including a bioethicist. In addition, representatives from the Departments of Commerce, Health and Human Services, and State, and the Environmental Protection Agency, the Council on Environmental Quality, and the Office of the United States Trade Representative serve as "ex officio" members. The Committee meeting will be held from 8:30 am to 5 p.m. on each day. The topics to be discussed will include: (1) Approval of a framework for the AC21's main report; (2) review of a draft outline for the introduction to that report; (3) development of a plan for the preparation of the report and organization of work groups; and (4) continuation of discussion on impacts of biotechnology along the overall food production and distribution system, focusing on potential impacts of new value-added biotechnology products with direct consumer benefits.

Background information regarding the work of the AC21 will be available on the USDA Web site at <http://www.usda.gov/agencies/biotech/ac21.html>. On September 15, 2003, if time permits, reasonable provision will be made for oral presentations of no more than five minutes each in duration. The meeting will be open to the public, but space is limited. If you would like to attend the meetings, you must register by contacting Ms. Dianne Harmon at (202) 720-4074, by fax at (202) 720-3191 or by e-mail at [धारmon@ars.usda.gov](mailto:धारmon@ars.usda.gov) at least 5 days prior to the meeting. Please provide your name, title, business affiliation, address, telephone, and fax number when you register. If you require a sign language interpreter or other special accommodation due to disability, please

indicate those needs at the time of registration.

**Edward B. Knipling,**

*Acting Administrator.*

[FR Doc. 03-21484 Filed 8-21-03; 8:45 am]

**BILLING CODE 3410-18-P**

**DEPARTMENT OF AGRICULTURE**

**Farm Service Agency**

**Request for Extension of a Currently Approved Information Collection—Certified State Mediation Program**

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Farm Service Agency (FSA) to request an extension of approval for the information collection used in support of the Certified State Mediation Program under title 7 of the Code of Federal Regulations part 785. The collection of information is used by FSA to determine whether a State meets the eligibility criteria to be a recipient of grant funds, and to determine if the grant is being administered appropriately. Lack of adequate information to make these determinations could result in the improper administration and appropriation of Federal grant funds.

**DATES:** Comments must be received on or before October 21, 2003 to be assured consideration.

**ADDRESSES:** Comments concerning this notice should be addressed to Chester Bailey, Mediation Coordinator, USDA, FSA, Outreach Staff, Room 3716-S, Stop 0511, 1400 Independence Avenue, SW., Washington, DC 20250 and to: the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Comments may be submitted by e-mail to [chester.bailey@wdc.usda.gov](mailto:chester.bailey@wdc.usda.gov). Copies of the information collection may be obtained by contacting Chester Bailey at (202) 720-1471.

**FOR FURTHER INFORMATION CONTACT:** Chester Bailey, FSA, Outreach Staff, telephone (202) 720-1471.

**SUPPLEMENTARY INFORMATION:**

*Title:* Certified Mediation Program.

*OMB Control Number:* 0560-0165.

*Expiration Date of Approval:* September 10, 2003.

*Type of Request:* Extension of Currently Approved Information Collection.

**Abstract:** This information is needed by FSA to effectively administer the Certified State Mediation Program in accordance with Subtitles A and B of Title V of the Agricultural Credit Act of 1987 (Pub. L. 100-233). FSA collects the information by mail, phone, fax, in person, or via the Internet. Although other institutions, public and private, generally require and collect information similar to that requested by FSA, there is a wide diversity in reporting practices.

The information to be collected includes an application for certification, re-verification for subsequent annual approval, SF-424 Application for Federal Assistance, audit reports and financial management systems and reporting requirements.

The information requested is reported annually and is necessary for the FSA to determine eligibility, and to administer the mediation grant program in an equitable and cost-effective manner.

**Estimate of Burden:** The public reporting burden for this information collection is estimated to average 34 hours per respondent.

**Respondents:** State agencies.

**Estimated Number of Respondents:** 29.

**Estimate Number of Responses per Respondent:** 6.

**Estimated Total Annual Burden on Respondents:** 986 hours.

Comment is invited on: (a) Whether the collection of information is necessary for the above stated purposes and the proper performance of FSA, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information being 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 automate, electronic, mechanical, or other technological collation techniques or other forms of information technology.

Comments will be summarized and included in the request for Office of Management and Budget approval.

Signed in Washington, DC, on August 15, 2003.

**James R. Little,**

*Administrator, Farm Service Agency.*

[FR Doc. 03-21490 Filed 8-21-03; 8:45 am]

**BILLING CODE 3410-05-P**

**DEPARTMENT OF AGRICULTURE****Farm Service Agency****Notice of Request for Extension of a Currently Approved Information Collection—Farm Loan Programs Account Servicing Policies**

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the intent of the Farm Service Agency (FSA) to request an extension of a currently approved information collection for "Farm Loan Programs Account Servicing Policies" used in support of the FSA, Farm Loan Programs (FLP). This renewal does not involve any revisions to the program regulations.

**DATES:** Comments on this notice must be received on or before October 21, 2003 to be assured consideration.

**FOR FURTHER INFORMATION CONTACT:**

Bashir Duale, Senior Loan Officer, USDA, Farm Service Agency, Loan Servicing and Property Management Division, 1400 Independence Avenue, SW., STOP 0523, Washington, DC 20250-0523; Telephone (202) 720-1645; Electronic mail: [bashir\\_duale@wdc.usda.gov](mailto:bashir_duale@wdc.usda.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* Farm Loan Programs Account Servicing Policies.

*OMB Control Number:* 0560-0161.

*Expiration Date of Approval:* March 31, 2004.

*Type of Request:* Extension of Currently Approved Information Collection.

*Abstract:* The regulation describes the policies and procedures the Agency will use in servicing delinquent FLP loans. Servicing of the accounts is administered in accordance with the provisions of the Consolidated Farm and Rural Development Act (CONACT), as amended. The CONACT establishes required notification by the Agency and response time frame requirements for the borrower and Agency actions on the borrower's request. Specifically, it requires a borrower to document that they can meet family living and farm operating expenses and service all debts, including the loan they are proposing to be restructured by the Agency. This information submitted by the borrowers to the Agency is used by the Agency officials to consider a financially distressed or delinquent borrower's request for debt restructuring, including rescheduling,

re-amortization, consolidation, deferral, and write down.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 45 minutes per response.

*Respondents:* Individuals or households, businesses or other for profit and farms.

*Estimated Number of Respondents:* 11,672.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 25,302.

Comments are sought on these requirements including: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility, (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; 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 technological collection techniques or other forms of information technology.

Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Bashir Duale, USDA, FSA, Farm Loan Programs, Loan Servicing and Property Management Division, 1400 Independence Avenue, SW., STOP 0523, Washington, DC 20250-0523. Copies of the information collection may be obtained from Bashir Duale at the above address.

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

Signed in Washington, DC, on August 15, 2003.

**James R. Little,**

*Administrator, Farm Service Agency.*

[FR Doc. 03-21491 Filed 8-21-03; 8:45 am]

**BILLING CODE 3410-05-P**

**DEPARTMENT OF AGRICULTURE****Farm Service Agency****Information Collection: Minority Farm Register**

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from all interested individuals and organizations on the collection of information for a Minority Farm Register, which is a voluntary register of minority farm or ranch operators, landowners, tenants and others with farming or ranching interest. The Minority Farm register will provide a listing to be used by USDA's Office of Outreach and other minority outreach organizations to better serve minority farmers and help abate the decline of minority farmers throughout the country.

**DATES:** Comments on this notice must be received on or before October 21, 2003 to be assured consideration. Comments received after that date will be considered to the extent practicable. Comments should reference the OMB number and title of the information collection to which they pertain.

**ADDRESSES:** Comments should be sent to Ronald W. Holling, Assistant to the Director, Office of Business and Program Integration, Farm Service Agency, STOP 0501, 1400 Independence Avenue, SW., Washington, DC 20250-0501, (202) 720-8530; e-mail [Ronald.Holling@usda.gov](mailto:Ronald.Holling@usda.gov), and to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. All comments will become a matter of public record. For further information, contact Ronald Holling at the address listed above.

**SUPPLEMENTARY INFORMATION:**

*Title:* USDA Minority Farm Register.

*OMB Number:* 0560-NEW.

*Type of Request:* Request for Approval of a New Information Collection.

*Abstract:* The purpose of this information collection is to create a Minority Farm Register, which is a voluntary register of minority farm or ranch operators, landowners, tenants and others with farming or ranching interest. The information to be collected will be name, address, Social Security Number, phone number, race, ethnicity and gender. The names and addresses will be the only required information. Providing Social Security Numbers, phone numbers, race, ethnicity and gender will be completely voluntary. The Register will provide a listing to be used by USDA's Office of Outreach to help minority farm and ranch operators who are not land owners to be introduced to FSA's land ownership and farm loan programs to acquire land

and position minority owners of farm and ranch land to be informed of FSA and other USDA farm programs. Except for Social Security Numbers, information on the list may be shared with community-based outreach organizations. The Social Security Numbers, when provided, will only be used internally by USDA to match the person with their farm program records in order to better target outreach efforts. Race, ethnicity and gender, when provided, will be used by USDA and minority outreach organizations that serve the particular clientele.

The Minority Farm Register will be established by FSA and jointly administered with USDA's Office of Outreach. A specific register sign-up form will be issued in Spanish and English. Informational registration material will be distributed to community-based organizations, minority-serving educational institutions, and government agencies assisting minorities with land retention and acquisition, and will be available on the internet to ensure the program is widely publicized and accessible to all. Community-based organizations, minority-serving educational institutions and other groups serving minority clientele will be partnered with as needed. The USDA is requesting a 3-year extension of approval.

This information collection was previously approved by OMB for USDA's Office of Outreach under OMB Control Number 0508-0004. The collection is being transferred to FSA and approval is being sought as a new collection of information.

*Respondents:* Individuals and households.

*Estimated annual number of respondents:* 54,000.

*Estimated annual number of forms filed per person:* 1.

*Estimated average time to respond:* 5 minutes (0.083 hours).

*Estimated total annual burden hours:* 4,500.

Comments are invited on (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for OMB approval.

Dated: Signed at Washington, DC, on July 10, 2003.

**James R. Little,**

*Administrator, Farm Service Agency.*

[FR Doc. 03-21532 Filed 8-21-03; 8:45 am]

**BILLING CODE 3410-05-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Information Collection; Timber Sale Operating Plans

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension of a previously approved information collection for Timber Sale Operating Plans. The collected information will help the Forest Service facilitate contract administration of timber sales on National Forest System lands. Information will be collected from purchasers of this timber.

**DATES:** Comments must be received in writing on or before October 21, 2003.

**ADDRESSES:** All comments should be addressed to Rex Baumbach, Forest and Rangelands Management, 1400 Independence Avenue, SW., Mail Stop 1105, Washington, DC 20250-1105.

Comments also may be submitted via facsimile to (202) 205-1045 or by e-mail to: [rbaumbach@fs.fed.us](mailto:rbaumbach@fs.fed.us).

The public may inspect comments received in the Office of the Director, Forest and Rangelands Management Staff, Forest Service, USDA, Room 3NW, Yates Building, 1400 Independence Avenue, SW., Washington, DC. Visitors are urged to call ahead to (202) 205-0855 facilitate entrance into the building.

**FOR FURTHER INFORMATION CONTACT:** Rex Baumbach, Timber Sale Contract Administration Specialist, Forest and Rangelands Management, at (202) 205-0855.

#### SUPPLEMENTARY INFORMATION:

##### Description of Information Collection

The following describes the information collection to be extended:

*Title:* Timber Operating Plans.

*OMB Number:* 0596-0086.

*Expiration Date of Approval:* January 31, 2004.

*Type of Request:* Extension of an information collection previously approved by the Office of Management and Budget.

*Abstract:* The information collected is used by the agency to plan agency timber sale contract administration workload and to determine whether timber sale purchasers had scheduled operations delayed and; therefore, are eligible for an extension of the contract termination date. The information is required by timber sale contract provisions in Form FS 2400-6, Timber Sale Contract, and Form FS 2400-6T, Timber Sale Contract.

Respondents are National Forest System land timber sale purchasers who prepare a chart or letter within 60 days of a timber sale contract award, and annually thereafter until the contract is completed. The timber sale purchaser outlines timeframes and methods of accomplishing road construction, timber harvesting, and other contract requirements.

Forest Service personnel evaluate the collected information to facilitate timber sale contract administration and to determine eligibility for National Forest System land timber sale contract term extensions. Data gathered in this information collection are not available from other sources.

*Estimate of Annual Burden:* 30 minutes per response.

*Type of Respondents:* Purchasers of National Forest System timber.

*Estimated Annual Number of Respondents:* 2500.

*Estimated Annual Number of Responses per Respondent:* 1.5.

*Estimated Total Annual Burden on Respondents:* 1,875 hours.

#### Comment Is Invited

The agency invites comments on the following: (a) The necessity of the information collection for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific 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 collected; and (d) ways to minimize the information collection burden on respondents, including the use of automated, electronic, mechanical, or other technological collection

techniques or other forms of information technology.

#### Use of Comments

All comments received in response to this notice, including names and addresses when provided, will become a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: August 15, 2003.

**Abigail R. Kimbell,**

*Associate Deputy Chief, National Forest System.*

[FR Doc. 03-21579 Filed 8-21-03; 8:45 am]

BILLING CODE 3410-11-P

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### **Beaverhead-Deerlodge National Forest Land and Resource Management Plan Revision. Beaverhead-Deerlodge National Forest in Beaverhead, Butte-Silver Bow; Anaconda-Deer Lodge, Granite, Jefferson, Powell, Madison and Gallatin Counties, MT**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an Environmental Impact Statement.

**SUMMARY:** The USDA, Forest Service, Beaverhead-Deerlodge National Forest, will prepare an Environmental Impact Statement (EIS) to document the analysis and disclose the environmental impacts of the proposed action to revise and combine Land and Resource Management Plans for the Beaverhead and Deerlodge National Forests. The proposal seeks to integrate resource management and incorporate larger place-based management areas. A Notice of Intent was published May 3, 2002, in the **Federal Register**, Vol. 67, No. 86, p. 22396. This is a revision of that notice in order to provide a detailed proposed action for public review and comment.

**PUBLIC INVOLVEMENT:** The public is invited to comment on the Proposed Action or meet with Marty Gardner at any point in time during the 90-day comment period beginning on August 22, 2003. Contact Marty at (406) 683-3680 or e-mail [mgardner@fs.fed.us](mailto:mgardner@fs.fed.us), to schedule a meeting. To get on the mailing list contact Jack Degolia (406) 683-3984, or e-mail [jdegolia@fs.fed.us](mailto:jdegolia@fs.fed.us).

**DATES:** Initial comments concerning the proposed action should be received in writing, no later than 90 days from the publication of this notice of intent.

**ADDRESSES:** Please send comments to Herrera Environmental Consultants, 101

E. Broadway, Missoula, MT 59802. Comments may also be electronically submitted to [shopkins@herrerainc.com](mailto:shopkins@herrerainc.com).

#### **FOR FURTHER INFORMATION CONTACT:**

Marty Gardner, Interdisciplinary Team Leader, Beaverhead-Deerlodge National Forest, 420 Barrett, Dillon, MT 59725, phone (406) 683-3860, or e-mail [mgardner@fs.fed.us](mailto:mgardner@fs.fed.us).

*Responsible Official:* Bradley E. Powell, Regional Forest, Northern Region, 200 E. Broadway, Missoula, MT 59807

**SUPPLEMENTARY INFORMATION:** We are revising the original Notice of Intent (**Federal Register**, Vol. 67, No. 86, page 22396, May 3, 2002), in order to provide a detailed proposed action for public review and comment. We are coordinating efforts with the Bureau of Land Management, Tribes, Montana Fish, Wildlife, and Parks as well as County Commissioners. In order to generate meaningful dialogue with the public we hope to meet with any interested groups or individuals upon request. To request a presentation for meetings at any time during the analysis and prior to the Draft Environmental Impact Statement call Marty Gardner at (406) 683-3860 or e-mail [mgardner@fs.fed.us](mailto:mgardner@fs.fed.us). We plan no formal public hearings at this time.

To assist the Forest Service with identification and consideration of issues and concerns regarding the proposed action, comments should be as specific as possible. It is also helpful if comments refer to specific pages or sections of the proposed action. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementation of procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3.

Additional public comment will be accepted after publication of the DEIS anticipated by December 2004. The Environmental Protection Agency will publish the Notice of Availability of the Draft Environmental Impact Statement in the **Federal Register**. The Forest will also publish a legal notice of availability in the Montana Standard Newspaper, Butte, Montana. The comment period on the Draft EIS will begin the day after the legal notice is published. The Final EIS and Decision are expected late in 2005.

Dated: August 6, 2003.

**Bradley E. Powell,**

*Regional Forester.*

[FR Doc. 03-20989 Filed 8-21-03; 8:45 am]

BILLING CODE 3410-11-M

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### **Curry and Hill Private Property Access, Medicine Bow-Routt National Forests, Jackson County, CO**

**AGENCY:** USDA, Forest Service.

**ACTION:** Notice of Intent to prepare an Environmental Impact Statement.

**SUMMARY:** The Forest Service will prepare an Environmental Impact Statement (EIS) to assess and disclose the environmental effects of issuing a road easement to allow motorized access to private property surrounding Matheson Reservoir. Matheson Reservoir and the Curry and Hill private property are located in Township 4 North, Range 79 West, Section 19 on the Parks Ranger District of the Routt National Forest in Colorado.

Proponents have requested a road easement for year-round motorized access across National Forest System (NSF) lands to their property for non-commercial purposes. Access would be granted through the Alaska National Interest Lands Conservation Act of 1980 (Pub. L. 96-487). As proposed, the proponents would access NFS lands in Township 3 North, Range 79 West, Section 8 and proceed north approximately 5 miles to Township 4 North, Range 79 West, Section 19 utilizing National Forest System Trail 58, also known as the Grimes Trail. The Grimes Trail has been closed to motorized use since 1994, and major improvements would be necessary to accommodate full-size vehicles.

The portion of the Grimes Trail that accesses the private land is located in a non-motorized management area prescription (1.32, Backcountry Recreation, Non-motorized). It is also located in the Troublesome Inventoried Roadless Area. For these reasons, authorization of a road easement would require an amendment to the Routt National Forest Land and Resource Management Plan (Forest Plan, 1997).

The purpose for this action is to decide the type of access Curry and Hill need to secure reasonable use and enjoyment of their land in Section 19, T4N, R79W. Reasonable use per 36 CFR 251.114(a) is "based on contemporaneous uses made of similarly situated lands in the area."

The need for the action is to respond to Curry and Hill's request that the Forest Service issue an easement for motorized use of the Grimes Trail. The Forest Service must also determine the terms and conditions under which the proponents may access the Curry and

Hill private property while protecting National Forest resources and improvements.

The Forest Service is giving notice that it is beginning a full environmental analysis and decision-making process for this proposal so that potentially interested or affected individuals, agencies, or organizations can participate in the process and contribute to the final decision. All comments and suggestions on the scope of the analysis and decision-making process are welcome.

**DATES:** Public scoping to determine the effects of issuing a road easement for the Grimes Trail is initiated through publication of this Notice of Intent in the **Federal Register**. Written comments and suggestions should be postmarked within 30 days of the day after this notice is published in the **Federal Register** to receive consideration. A draft EIS that will have a 45-day public comment period is expected in November 2003. A final decision is expected in March 2004.

**ADDRESSES:** Send written comments to Melissa Martin, Medicine Bow-Routt National Forests Supervisor's Office, 2468 Jackson Street, Wyoming 82070. Electronic mail (e-mail) may be sent to [mmmartin@fs.fed.us](mailto:mmmartin@fs.fed.us) and FAX may be sent to (307) 745-2398. Telephone: (307) 745-2371.

**FOR FURTHER INFORMATION CONTACT:** Tom Florich, Recreation and Lands Program Manager, Medicine Bow-Routt National Forests, 2468 Jackson Street, Laramie, Wyoming 82070. Telephone: (307) 745-2435.

**SUPPLEMENTARY INFORMATION:** Curry and Hill had been accessing their private land north off of County Road 2, located in Jackson County, Colorado, through another private landowner's property, through BLM land, onto NFS land. Although Curry and Hill claim access was deeded through the other private landowner on April 30, 1918, the private landowner has been denying Curry and Hill access. Litigation is currently pending to determine whether or not Curry and Hill have legal access across this private land. The Grimes Trail has been closed to motorized use since 1994.

Since the matter of reasonable access to this inholding must be resolved, subject to rules and regulations, the Forest Service has decided that it would be prudent to address the proposal at this time.

#### **Preliminary Alternatives: Proposed Action—Road Easement**

*Authorization:* Under the Proposed Action, the Forest Service would issue

a road easement for year-round motorized access across National Forest System (NFS) lands to the Curry and Hill private property for non-commercial purposes. As proposed, the proponents would access NFS lands in Township 3 North, Range 79 West, Section 8 and proceed north approximately 5 miles to Township 4 North, Range 79 West, Section 19 utilizing National Forest System Trail 58, also known as the Grimes Trail. The Grimes Trail has been closed to motorized use since 1994, and major improvements would be necessary to accommodate full-size vehicles.

The portion of the Grimes Trail that accesses the private land is located in a non-motorized management area prescription (1.32, Backcountry Recreation, Non-motorized). It is also located in the Troublesome Inventoried Roadless Area. For these reasons, authorization of a road easement would require an amendment to the Routt National Forest Land and Resource Management Plan (Forest Plan, 1997).

*Alternative Access:* The Forest Service would authorize access to the private land from the north in a motorized portion of National Forest. Access would be off of State Highway 125 to National Forest Service Road (NFSR) 106, also known as the Willow Creek Road. From there, access would be off of NFSR 730 to NFSR 107. NFSR 107 terminates where it intersects Sheep Creek and connects with Trail 57 on the other side. Trail 57 crosses a riparian area before entering the private land. To avoid the riparian area, roughly  $\frac{3}{4}$  of a mile of road construction would be necessary.

*No Action:* The Forest Service would deny request for the easement and would issue an Off-road Vehicle Use permit for limited use of All Terrain Vehicles (ATVs) on the Grimes Trail. No improvements to the Grimes Trail would be necessary.

*Preliminary Issues:* The following preliminary issues have been identified:

- Roadless area road construction/reconstruction (motorized access in a non-motorized prescription).

*Decisions To Be Made:* The Forest Service is required to provide, subject to reasonable rules and regulations, access across NFS lands as deemed adequate for landowner's reasonable enjoyment of their property. However, the Forest Service is not required to provide the most direct, economical, or convenient route for the landowner. The Forest Service must assure that the access provided is acceptable within the guidelines of the Forest Plan.

Based on the above information, the environmental effects of the

alternatives, and the comments submitted during the public participation process, the responsible official must decide:

- Whether or not to provide access across NFS land currently located in a non-motorized management area prescription (Proposed Action) or to require alternate access; and
- The terms and conditions under which the proponents may access the Curry and Hill private property while also protecting the surface natural resources in the area.

*Reviewer Obligations:* The comment period for this proposal will be 30 days from the day after this Notice of Intent is published in the **Federal Register**.

*Release of Names:* Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this Proposed Action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within ten (10) days.

*Responsible Official:* The responsible official is the Forest Supervisor of the Medicine Bow-Routt National Forests.

As the Responsible Official, I will decide which, if any, of the alternatives to be described in the draft Environmental Impact Statement will be implemented. I will document the decision and reasons for my decision in a Record of Decision.

Dated: August 15, 2003.

**Mary H. Peterson,**

*Medicine Bow-Routt National Forests.*

[FR Doc. 03-21567 Filed 8-21-03; 8:45 am]

**BILLING CODE 3410-GM-M**

**DEPARTMENT OF AGRICULTURE****Natural Resources Conservation Service****Notice of Availability of a Finding of No Significant Impact (FONSI)**

**AGENCY:** Natural Resources Conservation Service, USDA.

**ACTION:** Notice of availability of a Finding of No Significant Impact for a project on Conrad Creek for review and comment.

**SUMMARY:** The NRCS has issued a Finding of No Significant Impact (FONSI) for a stream restoration project on a private landowner's land on Conrad Creek. A copy of the FONSI and the final Environmental Assessment (EA) is available for public review at the following locations:

- NRCS Office, 157 NW. 15th, Unit 1, Newport, OR 97365;
- Siuslaw Soil and Water Conservation District Office, 1525 12th Street, Suite F, Florence, OR 97439;
- Florence Public Library, 1460 9th Street, Florence, OR 97439;
- Additional copies may be obtained by contacting Kate Danks, NRCS, 541-265-2631.

**DATES:** Comments will be received on or before September 22, 2003.

**ADDRESSES:** Address all requests and comments to Kate Danks, District Conservationist, Natural Resources Conservation Service (NRCS), 157 NW. 15th, Unit 1, Newport, OR 97365; (541)-265-9351 (fax).

**FOR FURTHER INFORMATION CONTACT:** Kate Danks, NRCS, 541-265-2631.

Dated: August 11, 2003.

**Bob Graham,**

*State Conservationist, Portland, OR.*

[FR Doc. 03-21494 Filed 8-21-03; 8:45 am]

**BILLING CODE 3410-16-P**

**DEPARTMENT OF AGRICULTURE****Natural Resources Conservation Service****Rehabilitation of Floodwater Retarding Structure Nos. 3D, 3E, and 5A of the East Fork Above Lavon Watershed of the Trinity River Watershed, Collin County, TX**

**AGENCY:** Natural Resources Conservation Service, USDA.

**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 rehabilitation of Floodwater Retarding Structure Nos. 3D, 3E, and 5A of the East Fork Above Lavon Watershed of the Trinity River Watershed.

**FOR FURTHER INFORMATION CONTACT:**

Larry D. Butler, State Conservationist, Natural Resources Conservation Service, 101 South Main, Temple, Texas 76501-7682, Telephone (254) 742-9800.

**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, Larry D. Butler, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project will rehabilitate Floodwater Retarding Structure (FRS) Nos. 3D, 3E, and 5A to maintain the present level of flood control benefits and comply with the current performance and safety standards.

Rehabilitation of FRS Nos. 3D, 3E, and 5A will require the disturbance of 14.2 acres. The modification of FRS Nos. 3D, 3E, and 5A will include the addition of principal spillway and auxiliary spillway capacity to each structure to meet current performance and safety standards for high hazard dams. The disturbed areas will be planted to plants that have wildlife values. The proposed work will not affect any prime farmland, endangered or threatened species, wetlands, or cultural resources.

Federal assistance will be provided under authority of the Small Watershed Rehabilitation Amendments of 2000 (section 313, Pub. L. 106-472). Total project costs is estimated to be \$3,289,715, of which \$2,250,485 will be paid from the Small Watershed Rehabilitation funds and \$1,039,230 from local funds.

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

Larry D. Butler, Ph.D, State Conservationist.

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: July 31, 2003.

**Larry D. Butler,**

*State Conservationist.*

[FR Doc. 03-21493 Filed 8-21-03; 8:45 am]

**BILLING CODE 3410-16-P**

**COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED****Procurement List; Additions**

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

**ACTION:** Additions to Procurement List.

**SUMMARY:** This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**EFFECTIVE DATE:** September 21, 2003.

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

**FOR FURTHER INFORMATION CONTACT:** Sheryl D. Kennerly, (703) 603-7740.

**SUPPLEMENTARY INFORMATION:** On August 2, and December 6, 2002, May 2, May 9, May 30, June 20, and June 27, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 50416, and 72640, 68 FR 23441, 24919, 32458, 36972, and 38288) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

**Regulatory Flexibility Act Certification**

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

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small

organizations that will furnish the products and services to the Government.

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

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the products and services proposed for addition to the Procurement List.

#### End of Certification

Accordingly, the following products and services are added to the Procurement Lists:

#### Products

*Product/NSN:* Rochester Midland

Envirocare Products  
7930-00-NIB-0253, Carpet &  
Upholstery Cleaner

7930-00-NIB-0254, Food Service  
Cleaner

7930-00-NIB-0255, Glass Cleaner

7930-00-NIB-0256, Hand Soap

7930-00-NIB-0257, LiquiBac

7930-00-NIB-0258, Low Foam All

Purpose Cleaner

7930-00-NIB-0259, Neutral

Disinfectant

7930-00-NIB-0260, Tough Job

7930-00-NIB-0261, Washroom &

Fixture Cleaner

*NPA:* Lighthouse for the Blind, St.

Louis, Missouri

*Contract Activity:* Office Supplies &

Paper Products Acquisition Center,

New York, New York

#### Services

*Service Type/Location:* Administrative

Services, INS, Secure Electronic

Network for the Traveler's Rapid

Inspection, (SENTRI) Enrollment

Center, Otay Mesa, California

*NPA:* Job Options, Inc., San Diego,

California

*Contract Activity:* Immigration and

Naturalization Service, DOJ

*Service Type/Location:* Catering Service,

Military Entrance Processing

Station, Albany, New York

*NPA:* Albany County Chapter, NYSARC,

Inc., Slingerlands, New York

*Contract Activity:* Directorate of

Contracting, Fort Knox, Kentucky

*Service Type/Location:* Custodial

Service

Aguadilla Customhouse, Aguadilla,

Puerto Rico

CARIT Building, Guynabo, Puerto

Rico

Cruise Ship Piers (1, 4, 6 & Front

Pier), Old San Juan, Puerto Rico

Fajardo Customhouse, Fajardo, Puerto

Rico

ICAT Airport, Louis Munoz Marin

International Airport Carolina,

Puerto Rico

Isla Grande Airport, Isla Grande,

Puerto Rico

Mayaguez Customhouse, Mayaguez,

Puerto Rico

Mayaguez Customhouse, San Juan,

Puerto Rico

Miramar Customhouse, San Juan,

Puerto Rico

Panamerican Dock, Isla Grande,

Puerto Rico

Ponce Customhouse, Ponce, Puerto

Rico

San Juan Customhouse, San Juan,

Puerto Rico

*NPA:* The Corporate Source, Inc., New

York, New York

*Contract Activity:* U.S. Customs Service,

Indianapolis, Indiana

*Service Type/Location:* Custodial

Services, Defense Finance and

Accounting Service (DFAS)—

Denver Center, Denver, Colorado

*NPA:* North Metro Community Services

for Developmentally Disabled,

Westminister, Colorado

*Contract Activity:* 460th Air Base Wing,

Buckley AFB, Colorado

*Service Type/Location:* Dining Facility

Attendant Services

29th Engineering Battalion, Building

503B, Fort Shafter, Hawaii

65th Engineering Battalion, Building

1492, Schofield Barracks, Hawaii

*NPA:* Opportunities for the Retarded,

Inc., Wahiawa, Hawaii

*Contract Activity:* U.S. Army Support

Command, Fort Shafter, Hawaii

*Service Type/Location:* Facilities/

Grounds Maintenance, Addicks

Field Office and Compound Storage

Yard, Barker Visitors Areas, Dams,

Reservoirs & Related Facilities,

Houston, Texas

*NPA:* Training, Rehabilitation, &

Development Institute, Inc., San

Antonio, Texas

*Contract Activity:* U.S. Army Corps of

Engineers, Galveston, Texas

*Service Type/Location:* Janitorial &

Related Services, New Federal

Building, Youngtown, Ohio

*NPA:* Youngstown Area Goodwill

Industries, Youngstown, Ohio

*Contract Activity:* GSA, Public

Buildings Service (5P), Chicago,

Illinois

*Service Type/Location:* Janitorial/

Custodial, Childcare Development

Center Andersen AFB, Guam

*NPA:* Able Industries of the Pacific,

Tamuning, Guam

*Contract Activity:* 36th CONS/LGCD,

Andersen AFB, Guam

*Service Type/Location:* Janitorial/

Custodial

Fort Shafter, Buildings 344 and 1507,

Hawaii

Schofield Barracks, Buildings 690,

692 and 1087, Hawaii

*NPA:* Network Enterprises, Inc.,

Honolulu, Hawaii

*Contract Activity:* U.S. Army Support

Command, Fort Shafter, Hawaii

*Service Type/Location:* Janitorial/

Custodial, U.S. Customs Service,

8855 NE Airport Way, Portland,

Oregon

*NPA:* Portland Habilitation Center, Inc.,

Portland, Oregon

*Contract Activity:* U.S. Customs Service,

Indianapolis, Indiana

*Service Type/Location:* Janitorial/

Custodial, Western Area Power

Administration, Devils Lake

Substation, Devils Lake, North

Dakota

*NPA:* Lake Region Corporation, Devils

Lake, North Dakota

*Contract Activity:* Western Area Power

Administration, Bismarck, North

Dakota

*Service Type/Location:* Janitorial/

Grounds Maintenance

Bureau of Customs and Border

Protection, McAllen Sector Quonset

Hut, McAllen, Texas

Bureau of Customs and Border

Protection, Traffic Checkpoint

(Sarita)—McAllen Sector,

Kingsville, Texas

Bureau of Customs and Border

Protection, Traffic Checkpoint—

McAllen Sector, Brownsville, Texas

Bureau of Customs and Border

Protection, Traffic Checkpoint—

McAllen Sector, Falfurrias, Texas

Bureau of Customs and Border

Protection, Traffic Checkpoint

(Mercedes)—McAllen Sector,

Weslaco, Texas

Bureau of Customs and Border

Protection Station, Electronic/

Technical McAllen Sector,

Kingsville, Texas

Bureau of Customs and Border

Protection Station, McAllen Sector,

Corpus Christi, Texas

Bureau of Customs and Border

Protection Station (McAllen Sector)

Falfurrias, Texas

Bureau of Customs and Border

Protection Station (McAllen Sector)

Rio Grande City, Texas

*NPA:* Training, Rehabilitation, &

Development Institute, Inc., San

Antonio, Texas

*Contract Activity:* Immigration and

Naturalization Service, DOJ

*Service Type/Location:* Office Supply

Store, Department of Housing and

Urban Development, St. Louis,

Missouri

*NPA:* Alphapointe Association for the Blind, Kansas City, Missouri  
*Contract Activity:* U.S. Department of Housing and Urban Development, St. Louis, Missouri

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

**Sheryl D. Kennerly,**

*Director, Information Management.*

[FR Doc. 03-21562 Filed 8-21-03; 8:45 am]

**BILLING CODE 6353-01-P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Addition

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

**ACTION:** Proposed Addition to Procurement List.

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

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** September 21, 2003.

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

**FOR FURTHER INFORMATION CONTACT:** Sheryl D. Kennerly, (703) 603-7740.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments of the proposed actions. If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

### Regulatory Flexibility Act Certification

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

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

2. If approved, the action will result in authorizing small entities to furnish the service to the Government.

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

### End of Certification

The following service is proposed for addition to Procurement List for production by the nonprofit agencies listed:

#### Service

*Service Type/Location:* Custodial Services, Whidbey Island Naval Air Station, Building 2644, Oak Harbor, Washington

*NPA:* News Leaf, Inc., Oak Harbor, Washington

*Contract Activity:* Naval Facilities Engineering Command, Oak Harbor, Washington

**Sheryl D. Kennerly,**

*Director, Information Management.*

[FR Doc. 03-21563 Filed 8-21-03; 8:45 am]

**BILLING CODE 6353-01-P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### Regulations and Procedures Technical Advisory Committee; Notice of Open Meeting

The Regulations and Procedures Technical Advisory Committee will meet on September 9, 2003, 9 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

#### Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on pending regulations.
4. Discussion on penalty guidelines.
5. Discussion on the Enhanced Proliferation Control Initiative.
6. Discussion on deemed export licensing.

7. Discussion on Automated Export System filer licensing proposal and revised option 4 criteria.

8. Discussion on technology controls.

9. Discussion on Transshipment Country Export Control Initiative "best practices".

10. Reports from working groups.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials, two weeks prior to the meeting date, to the following address: Ms. Lee Ann Carpenter, OSIES/EA/BIS MS: 3876, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230.

For more information contact Lee Ann Carpenter on (202) 482-2583.

Dated: August 19, 2003.

**Lee Ann Carpenter,**

*Committee Liaison Officer.*

[FR Doc. 03-21526 Filed 8-21-03; 8:45 am]

**BILLING CODE 3510-JT-M**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

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

**ACTION:** Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part.

**SUMMARY:** The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with July anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received requests to revoke three antidumping duty orders in part.

**EFFECTIVE DATE:** August 22, 2003.

**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 July anniversary dates. The Department also received timely requests to revoke in part the antidumping duty orders on Silicon Metal from Brazil, Canned Pineapple Fruit from Thailand and Bulk Aspirin from the People's Republic of China.

**Initiation of Reviews**

In accordance with 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 July 31, 2004.

	Period to be reviewed
<b>Antidumping Duty Proceedings</b>	
Brazil: Silicon Metal, A-351-806 .....	7/1/02-6/30/03
Companhia Brasileira Carureto De Calcio	
Companhia Ferroligas Minas Gerais-Minasligas	
Chile: Individual Quick Frozen Red Raspberries, A-337-806 .....	12/31/01-6/30/03
Agricola Nova Ltda.	
Agroindustrial Frisac Ltda.	
Agroindustrial Merco Trading Ltda.	
Agroindustria Sagrada Familia Ltda.	
Agroindustrial Frutos del Maipo Ltda.	
Agross S.A.	
Alimentos Proeteo Ltda.	
Alimentos Frutos S.A.	
Andesur S.A.	
Arvalan S.A.	
Armijo Carrasco, Claudio del Carmen	
Bajo Cero S.A.	
Certified Pure Ingredients (Chile) Inc. y Cia. Ltda.	
Chile Andes Foods S.A.	
Angloeuro Comercio Exterior S.A.	
Comercializadora Agricola Berries & Fruit Ltda.	
Comercializadora de Alimentos del Sur Ltda.	
Comercio y Servicios S.A.	
Copefrut S.A.	
C y C Group S.A.	
Exportaciones Meyer S.A.	
Multifrigo Valparaiso S.A.	
Exportadora Pentagro S.A.	
Agroindustria Framberry Ltda.	
Francisco Nancuvilu Punsin	
Frigorifico Ditzler Ltda.	
Frutas de Guaico S.A.	
Fruticola Olmue S.A.	
Fruticola Viconto S.A.	
Hassler Monckeberg S.A.	
Hortifrut S.A.	
Interagro Comercio Y Ganado S.A.	
Kugar Export Ltda.	
Maria Teresa Ubilla Alarcon	
Prima Agrotrading Ltda.	
Procesadora y Exportadora de Frutas y Vegetales Ltda.	
Santiago Comercio Exterior Exportaciones Ltda.	
Sociedad Agricola Valle del Laja Ltda.	
Sociedad Exportaciones Antiquino Ltda.	
Sociedad San Ernesto Ltda.	
Terra Natur S.A.	
Terrazas Export S.A.	
Uren Chile S.A.	
Valles Andinos S.A.	
Vital Berry Marketing S.A.	
Rio Teno S.A.	
Nevada Export S.A.	
Agroindustrias San Francisco Ltda.	
Agroindustria Niquen Ltda.	
Agroindustria y Frigorifico M y M Ltda.	
Agrocomercial Las Tinajas Ltda.	
France: Stainless Steel Sheet and Strip in Coils, A-427-814 .....	7/1/02-6/30/03
Ugine & ALZ France S.A.	
Germany: Industrial Nitrocellulos, A-428-803 .....	7/1/02-6/30/03
Hagedorn AG	
Wolff Walsrode AG	
Germany: Stainless Steel Sheet and Strip in Coils A-428-825 .....	7/1/02-6/30/03

	Period to be reviewed
Krupp Thyssen Nirosta GmbH Thyssen Krupp VDM GmbH	
India: Polyethylene Terephthalate (PET) Film, A-533-824 .....	12/21/01-6/30/03
Jindal Polyester Limited of India	
Iran: In-Shell Pistachios, A-507-502 .....	7/1/02-6/30/03
Nima Trading Company	
Italy: Certain Pasta, A-475-818 .....	7/1/02-6/30/03
Barilla Alimentare, S.p.A.	
Rummo S.p.A. Molino e Pastificio	
Pastificio Antonio Pallante S.r.L.	
Industrie Alimentari Molisane S.r.l.	
Pastificio Fratelli Pagani S.p.A.	
Prodotti Alimentari Meridionali	
Pastificio Guido Ferrara S.r.L.	
Pastificio Garofalo S.p.A.	
Industrie Alimentare Colavita, S.p.A.	
Pastificio Riscossa F. Illi Mastromauro, S.r.L.	
Pastificio Carmine Russo S.p.A./Pastificio Di Nola S.p.A.	
Corticella Molini e Pasrifici S.p.a./Pasta Combattenti S.p.a.	
La Molisana Industrie Alimentari S.p.a.	
Pasta Lensi S.r.l. (successor to IAPC Italia S.r.l.)	
Molino e Pastificio Tomasello S.r.l.	
Italy: Stainless Steel Sheet Strip in Coils, A-475-824 .....	7/1/02-6/30/03
Thyssen Krupp Acciai Speciali S.p.A.	
Japan: Stainless Steel Sheet and Strip in Coils, A-588-845 .....	7/1/02-6/30/03
Kawasaki Steel Corporation	
Mexico: Stainless Steel Sheet and Strip in Coils, A-201-822 .....	7/1/02-6/30/03
Thyssen Krupp Mexinox S.A. de C.V.	
Republic of Korea: Stainless Steel Sheet and Strip in Coils, A-580-834 .....	7/1/02-6/30/03
Dai Yang Metal Co., Ltd.	
Taiwan: Polyethylene Terephthalate Film, & Strip, A-583-837 .....	12/21/01-6/30/03
Nan Ya Plastics Corporation, Ltd.	
Shinkong Synthetic Fibers Corporation	
Taiwan: Stainless Steel Sheet and Strip in Coils, A-583-831 .....	7/1/02-6/30/03
Ta Chen Stainless Pipe Co., Ltd.	
Tung Mung Development Co., Ltd.	
Yieh United Steel Corporation	
China Steel Corporation	
Tang Eng Iron Works	
PFP Taiwan Co., Ltd.	
Yieh Loong Enterprise Co., Ltd.	
Yieh Trading Corp.	
Goang Jau Shing Enterprise Co., Ltd.	
Yieh Mau Corp.	
Chien Shing Stainless Co.	
Chain Chon Industrial Co., Ltd.	
Thailand: Canned Pineapple, A-549-813 .....	7/1/02-6/30/03
Dole (Thailand) Ltd./Dole Package Foods Co./Dole Food Co.	
Kuiburi Fruit Canning Company Limited	
Malee Sampran Public Company, Ltd.	
The Prachuab Fruit Canning Company	
Siam Fruit Canning (1988) Co., Ltd.	
Thai Pineapple Canning Industry Corporation	
The Thai Pineapple Public Co., Ltd.	
Vita Food Factory (1989) Co., Ltd.	
The People's Republic of China: Bulk Aspirin <sup>1</sup> , A-570-853 .....	7/1/02-6/30/03
Jilin Henghe Pharmaceutical Co., Ltd.	
Shandong Xinhua Pharmaceutical Co., Ltd.	
The People's Republic of China: Persulfates <sup>2</sup> , A-570-847 .....	7/1/02-6/30/03
Degussa-AJ (Shanghai) Initiators Co.	
Shanghai AJ Import and Export Corporation	
The People's Republic of China: Sebacic Acid <sup>3</sup> , A-570-825 .....	7/1/02-6/30/03
Tianjin Chemicals Import & Export Corporation and manufactured by any compoany other than Hengshui Dongfeng Chemical Co., Ltd.	
Guangdong Chemicals Import and Export Corporation.	
Turkey: Certain Pasta, A-489-805 .....	7/1/02-6/30/03
Beslen Makarna Gida Sanayi ve Ticaret A.S./Beslen Pazarlama Gida Sanayi ve Ticaret, A.S.	
Filiz Gida Sanayi ve Ticaret A.S.	
Gidasa Sabanci Gida Sanayi ve ticaret, A.S. (successor to Maktas Makarnacilik ve Ticaret, A.S.)	
Oba Makarnacilik Sanayi ve Ticaret, A.S.	
Pastavilla Makarnacilik Sanayi ve Ticaret, A.S.	
The United Kingdom: Industrial Nitrocellulose, A-412-803 .....	7/1/02-6/30/03

	Period to be reviewed
Imperial Chemical Industries PLC/Nobel's Explosives Company, Ltd. Troon Investments Limited/Nobel Enterprises	
<b>Countervailing Duty Proceedings</b>	
Italy: Certain Pasta, C-475-819 ..... Pastificio Carmine Russo S.p.A./Pastificio Di Nola S.p.A. Pastificio Antonio Pallante S.r.L. Pastificio Fratelli Pagani S.p.A. Corticella Molini e Pastifici S.p.a/Pasta Combattenti S.p.a. Pasta Lensi S.r.l. (successor to IAPC Italia S.r.l.) Pasta Zara S.p.a.	1/1/02-12/31/02
India: Polyethylene Terephthalate (PET) Film, C-533-825 ..... Gaware Polyester Limited Jindal Polyester Limited of India Polyplex Corporation Limited	10/22/01-12/31/02
Turkey: Certain Pasta, C-489-806 ..... Gidasa Sabanci Gida Sanayi ve Ticaret A.S.	1/1/02-12/31/02
<b>Suspension Agreements</b>	
None.	

<sup>1</sup> If one of the above named companies does not qualify for a separate rate, all other exporters of bulk aspirin 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.

<sup>2</sup> If one of the above named companies does not qualify for a separate rate, all other exporters of persulfates 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.

<sup>3</sup> If one of the above named companies does not qualify for a separate rate, all other exporters of sebacic acid from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 USC 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: August 19, 2003.

**Holly A Kuga,**

*Acting Deputy Assistant Secretary, Group II for Import Administration.*

[FR Doc. 03-21578 Filed 8-21-03; 8:45 am]

BILLING CODE 3510-DS-P

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**District Export Council Nomination Opportunity**

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of opportunity to serve as a member of one of the fifty-eight District Export Councils.

**SUMMARY:** The U.S. Department of Commerce is currently seeking expressions of interest from individuals in serving as a member of one of the fifty-eight District Export Councils (DECs) nationwide. The DECs are closely affiliated with the U.S. Export Assistance Centers of the U.S. Commercial Service. DECs combine the energies of more than 1,500 exporters and export service providers who promote U.S. exports. DEC members volunteer at their own expense.

**DATES:** Applications for nomination to a DEC must be received by the designated local USEAC representative by September 1, 2003.

**FOR FURTHER INFORMATION:** Contact: Cory Simek, National DEC Program Manager, the U.S. Commercial Service, tel. 314-425-3300.

**SUPPLEMENTARY INFORMATION:** DECs sponsor and participate in numerous trade promotion activities, as well as supply specialized expertise to small

and medium-sized businesses that are interested in exporting.

*Selection Process:* About half of the approximately 30 positions on each of the 58 DECs are open for nominations for the term that ends December 31, 2007. Nominees are recommended by the local U.S. Export Assistance Center Director, in consultation with the DEC and other local export promotion partners. After a review process, nominees are selected and appointed to a DEC by the Secretary of Commerce.

*Membership Criteria:* Each DEC is interested in nominating highly-motivated people. Appointment is based upon an individual's energetic leadership, position in the local business community, knowledge of day-to-day international operations, interest in export development, and willingness and ability to devote time to council activities. Members include exporters, export service providers and others whose profession supports U.S. export promotion efforts.

**Authority:** 15 U.S.C. 1501 *et seq.*, 15 U.S.C. 4721.

Dated: August 11, 2003.

**Bruce W. Blakeman,**

*Deputy Assistant Secretary for Domestic Operations, U.S. and Foreign Commercial Service.*

[FR Doc. 03-21509 Filed 8-21-03; 8:45 am]

BILLING CODE 3570-FF-P

**DEPARTMENT OF COMMERCE****International Trade Administration****Export Trade Certificate of Review**

**ACTION:** Notice of revocation of Export Trade Certificate of Review No. 99-00004.

**SUMMARY:** The Secretary of Commerce issued an Export Trade Certificate of Review to USXT, Inc. on November 17, 1999. Because this certificate holder has failed to file an annual report as required by law, the Secretary is revoking the certificate. This notice summarizes the notification letter sent to USXT, Inc.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482-5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97-290, 15 U.S.C. 4011-21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III ("the Regulations") are found at 15 CFR part 325. Pursuant to this authority, a certificate of review was issued on November 17, 1999 to USXT, Inc.

A certificate holder is required by law to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate (section 308 of the Act, 15 U.S.C. 4018, section 325.14(a) of the Regulations, 15 CFR 325.14(a)). The annual report is due within 45 days after the anniversary date of the issuance of the Certificate of Review (sections 325.14(b) of the Regulations, 15 CFR 325.14(b)). Failure to submit a complete annual report may be the basis for revocation (sections 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a)(3) and 325.14(c)).

On November 7, 2002, the Department of Commerce sent to USXT, Inc. a letter containing annual report questions with a reminder that its annual report was due on January 1, 2003. Additional reminders were sent on March 31, 2003 and on April 11, 2003. The Department has received no written response from USXT, Inc. to any of these letters.

On May 5, 2003, and in accordance with section 325.10(c)(2) of the Regulations, (15 CFR 325.10(c)(2)), the Department of Commerce sent a letter by certified mail to notify USXT, Inc. that the Department was formally initiating the process to revoke its

certificate for failure to file an annual report. In addition, a summary of this letter allowing USXT, Inc. thirty days to respond was published in the **Federal Register** on July 17, 2003 at 68 FR 42397. Pursuant to 325.10(c)(2) of the Regulations (15 CFR 325.10(c)(2)), the Department considers the failure of USXT, Inc. to respond to be an admission of the statements contained in the notification letter.

The Department has determined to revoke the certificate issued to USXT, Inc. for its failure to file an annual report. The Department has sent a letter, dated August 19, 2003, to notify USXT, Inc. of its determination. The revocation is effective thirty (30) days from the date of publication of this notice. Any person aggrieved by this decision may appeal to an appropriate U.S. district court within 30 days from the date on which this notice is published in the **Federal Register** 325.10(c)(4) and 325.11 of the Regulations, 15 CFR 324.10(c)(4) and 325.11 of the Regulations, 15 CFR 325.10(c)(4) and 325.11.

Dated: August 19, 2003.

**Jeffrey Anspacher,**  
*Director, Office of Export Trading Company Affairs.*

[FR Doc. 03-21559 Filed 8-21-03; 8:45 am]

**BILLING CODE 3510-DR-P**

**DEPARTMENT OF COMMERCE****International Trade Administration****Export Trade Certificate of Review**

**ACTION:** Notice of revocation of Export Trade Certificate of Review No. 01-00005.

**SUMMARY:** The Secretary of Commerce issued an Export Trade Certificate of Review to Vinex International, Inc. on January 7, 2002. Because this certificate holder has failed to file an annual report as required by law, the Secretary is revoking the certificate. This notice summarizes the notification letter sent to Vinex International, Inc.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482-5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97-290, 15 U.S.C. 4011-21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III ("the Regulations") are found at 15 CFR part 325. Pursuant to this authority, a

certificate of review was issued on January 7, 2002 to Vinex International, Inc.

A certificate holder is required by law to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate (section 308 of the Act, 15 U.S.C. 4018, § 325.14(a) of the Regulations, 15 CFR 325.14(a)). The annual report is due within 45 days after the anniversary date of the issuance of the Certificate of Review (§§ 325.14(b) of the Regulations, 15 CFR 325.14(b)). Failure to submit a complete annual report may be the basis for revocation (§§ 325.10(a)(3) and 325.14(c) of the Regulations, 15 CFR 325.10(a)(3) and 325.14(c)).

On December 23, 2002, the Department of Commerce sent to Vinex International, Inc. a letter containing annual report questions with a reminder that its annual report was due on February 21, 2003. Additional reminder letters were sent on March 28, 2003, and May 2, 2003. The Department has received no written response from Vinex International, Inc. to any of these letters.

On July 11, 2003, and in accordance with § 325.10(c)(2) of the Regulations, (15 CFR 325.10(c)(2)), the Department of Commerce sent a letter by certified mail to notify Vinex International, Inc. that the Department was formally initiating the process to revoke its certificate for failure to file an annual report. In addition, a summary of this letter allowing Vinex International, Inc. thirty days to respond was published in the **Federal Register** on July 17, 2003 (68 FR 42396). Pursuant to 325.10(c)(2) of the Regulations (15 CFR 325.10(c)(2)), the Department considers the failure of Vinex International, Inc. to respond to be an admission of the statements contained in the notification letter.

The Department has determined to revoke the certificate issued to Vinex International, Inc. for its failure to file an annual report. The Department has sent a letter, dated August 19, 2003, to notify Vinex International, Inc. of its determination. The revocation is effective thirty (30) days from the date of publication of this notice. Any person aggrieved by this decision may appeal to an appropriate U.S. district court within 30 days from the date on which this notice is published in the **Federal Register** (325.10(c)(4) and 325.11 of the Regulations, 15 CFR 324.10(c)(4) and 325.11).

Dated: August 19, 2003.

**Jeffrey Anspacher,**

*Director, Office of Export Trading Company Affairs.*

[FR Doc. 03-21560 Filed 8-21-03; 8:45 am]

BILLING CODE 3510-DR-P

**COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS**

**Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia**

August 18, 2003.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection.

**EFFECTIVE DATE:** August 22, 2003.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the Bureau of Customs and Border Protection website at <http://www.customs.gov>. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at <http://otexa.ita.doc.gov>.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for special shift, carryover, and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION:** Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also

see 67 FR 63627, published on October 15, 2002.

**James C. Leonard III,**  
*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

August 18, 2003.

Commissioner,  
*Bureau of Customs and Border Protection, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 8, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on August 22, 2003, you are directed to adjust the limits for the categories listed below, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month restraint limit <sup>1</sup>
<b>Levels in Group I</b>	
200 .....	1,476,997 kilograms.
219 .....	15,270,125 square meters.
225 .....	11,489,214 square meters.
300/301 .....	7,021,187 kilograms.
313-O <sup>2</sup> .....	31,260,345 square meters.
314-O <sup>3</sup> .....	98,121,165 square meters.
315-O <sup>4</sup> .....	40,551,401 square meters.
317-O <sup>5</sup> /617/326-O <sup>6</sup>	34,314,569 square meters of which not more than 6,740,952 square meters shall be in Category 326-O.
331pt./631pt. <sup>7</sup> .....	1,849,575 dozen pairs.
336/636 .....	1,171,892 dozen.
338/339 .....	2,289,763 dozen.
340/640 .....	2,704,896 dozen.
341 .....	1,701,611 dozen.
342/642 .....	647,472 dozen.
345 .....	789,268 dozen.
347/348 .....	3,101,896 dozen.
359-C/659-C <sup>8</sup> .....	2,425,501 kilograms.
359-S/659-S <sup>9</sup> .....	2,714,167 kilograms.
360 .....	2,272,301 numbers.
361 .....	2,272,301 numbers.
369-S <sup>10</sup> .....	1,567,240 kilograms.
433 .....	13,085 dozen.
443 .....	97,075 numbers.
445/446 .....	68,696 dozen.
447 .....	20,505 dozen.
448 .....	25,606 dozen.
604-A <sup>11</sup> .....	1,218,956 kilograms.
611-O <sup>12</sup> .....	5,644,173 square meters.
613/614/615 .....	38,276,032 square meters.

Category	Twelve-month restraint limit <sup>1</sup>
618-O <sup>13</sup> .....	8,212,635 square meters.
619/620 .....	15,829,582 square meters.
638/639 .....	2,444,580 dozen.
641 .....	4,003,033 dozen.
643 .....	568,078 numbers.
644 .....	770,921 numbers.
645/646 .....	1,316,294 dozen.
647/648 .....	5,096,526 dozen.
<b>Group II</b>	
201, 218, 220, 224, 226, 227, 237, 239pt. <sup>14</sup> , 332, 333, 352, 359-O <sup>15</sup> , 362, 363, 369-O <sup>16</sup> , 400, 410, 414, 434, 435, 436, 438, 440, 442, 444, 459pt. <sup>17</sup> , 469pt. <sup>18</sup> , 603, 604-O <sup>19</sup> , 624, 633, 652, 659-O <sup>20</sup> , 666pt. <sup>21</sup> , 845, 846 and 852, as a group	153,665,221 square meters equivalent.
<b>Subgroup in Group II</b>	
400, 410, 414, 434, 435, 436, 438, 440, 442, 444, 459pt. and 469pt., as a group	3,618,316 square meters equivalent.
<b>In Group II subgroup</b>	
435 .....	56,808 dozen.

<sup>1</sup> The limits have not been adjusted to account for any imports exported after December 31, 2002.

<sup>2</sup> Category 313-O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

<sup>3</sup> Category 314-O: all HTS numbers except 5209.51.6015.

<sup>4</sup> Category 315-O: all HTS numbers except 5208.52.4055.

<sup>5</sup> Category 317-O: all HTS numbers except 5208.59.2085.

<sup>6</sup> Category 326-O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

<sup>7</sup> Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510; Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

<sup>8</sup> Category 359-C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

<sup>9</sup>Category 359-S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020; Category 659-S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

<sup>10</sup>Category 369-S: only HTS number 6307.10.2005.

<sup>11</sup>Category 604-A: only HTS number 5509.32.0000.

<sup>12</sup>Category 611-O: all HTS numbers except 5516.14.0005, 5516.14.0025 and 5516.14.0085.

<sup>13</sup>Category 618-O: all HTS numbers except 5408.24.9010 and 5408.24.9040.

<sup>14</sup>Category 239pt.: only HTS number 6209.20.5040 (diapers).

<sup>15</sup>Category 359-O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359-C); 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020 (Category 359-S); 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545 (Category 359pt.).

<sup>16</sup>Category 369-O: all HTS numbers except 6307.10.2005 (Category 369-S); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302.51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505 (Category 369pt.).

<sup>17</sup>Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

<sup>18</sup>Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

<sup>19</sup>Category 604-O: all HTS numbers except 5509.32.0000 (Category 604-A).

<sup>20</sup>Category 659-O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659-C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659-S); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540 (Category 659pt.).

<sup>21</sup>Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.2000, 6303.12.0000, 6303.92.1000, 6303.92.2010, 6303.99.0010, 6304.11.2000, 6304.19.2000, 6304.91.0040, 6304.99.6020, 6307.90.9884, 9404.90.9522 and 9404.90.9522.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,  
James C. Leonard III,  
*Chairman, Committee for the Implementation of Textile Agreements.*  
[FR Doc.03-21557 Filed 8-21-03; 8:45 am]

**BILLING CODE 3510-DR-S**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Nepal

August 18, 2003.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting a limit.

**EFFECTIVE DATE:** August 25, 2003.

**FOR FURTHER INFORMATION CONTACT:** Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the Bureau of Customs and Border Protection website at <http://www.customs.gov>. For information on embargoes and quota reopenings, refer to the Office of Textiles and Apparel website at <http://otexa.ita.doc.gov>.

#### SUPPLEMENTARY INFORMATION:

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 347/348 is being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States** (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also

see 67 FR 63631, published on October 15, 2002.

**James C. Leonard III,**  
*Chairman, Committee for the Implementation of Textile Agreements.*

### Committee for the Implementation of Textile Agreements

August 18, 2003.

Commissioner,  
*Bureau of Customs and Border Protection,*  
*Washington, DC 20229*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 8, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Nepal and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on August 25, 2003, you are directed to increase the current limit for Categories 347/348 to 1,233,798 dozen<sup>1</sup>, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Nepal.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,  
James C. Leonard III,  
*Chairman, Committee for the Implementation of Textile Agreements.*  
[FR Doc. 03-21558 Filed 8-21-03; 8:45 am]

**BILLING CODE 3510-DR-S**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Department of Defense Missile Defense Agency Record of Decision Supplemental Environmental Impact Statement for the Airborne Laser Program

**SUMMARY:** Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, Public Law (Pub. L.) 91-90 (as amended) and the regulations promulgated by the Council on Environmental Quality at 40 CFR 1505.2, the Department of Defense (DOD), Missile Defense Agency (MDA), has prepared the following Record of Decision (ROD) on the Supplemental Environmental Impact Statement (SEIS) for the Airborne Laser (ABL) Program. The ROD contains the statement of decision, identifies the alternatives considered, and discusses the factors on which the decision was based, and any mitigating measures deemed necessary

<sup>1</sup> The limit has not been adjusted to account for any imports exported after December 31, 2002.

to avoid or minimize environmental impacts.

**FOR FURTHER INFORMATION CONTACT:** Mr. K. Rock, 703-697-5506.

**SUPPLEMENTARY INFORMATION:**

**Overview**

The United States (U.S.) requires a more accurate and effective defense against ballistic missiles by destroying them during the boost phase, just after launch. Currently, the U.S. and its allies are limited to defense of troops of high-value assets within a small area of a theater of operations as the missile nears its target. Improvements in missile range and accuracy and the rapid increase in the number of missile-capable nations increase the threat. The ABL aircraft is a modified Boeing 747 aircraft that accommodates a laser-weapon system and laser fuel storage tanks. The ABL aircraft incorporates an Active Ranging System (ARS) laser, a Track Illuminator Laser (TILL), and a Beacon Illuminator Laser (BILL); a laser-beam control system designed to focus the beam on target; and a High-Energy Laser (HEL) (*i.e.*, chemical, oxygen, iodine laser [COIL]) designed to negate the target. The ARS is a lower-power gas laser, and the BILL and TILL are lower-power solid-state lasers. An onboard Battle Management Command Center provides computerized control of aspects of the laser-weapon system, communications, and intelligence. The ABL aircraft would fly at high altitudes and would detect and track launches of ballistic missile using onboard sensors. During flight-test activities, active tracking of the missile with the BILL and TILL would begin at approximately 35,000 feet above mean sea level.

The ABL program is one of the elements of the MDA Ballistic Missile Defense System (BMDS) that is intended to provide an effective defense for the U.S., its deployed forces, and its friends and allies from limited missile attack during all segments of an attacking missile's flight. The ABL element of the BMDS is being developed to provide an effective defense to limited ballistic missile threats during the boost segment of an attacking missile's flight.

The *Final Environmental Impact Statement for the Program Definition and Risk Reduction Phase of the Airborne Laser Program* (FEIS) was published in April 1997. The 1997 FEIS analyzed several alternatives for establishing the Home Base, the Diagnostic Test Range, and the Extended-Area Test Range that are required to effectively demonstrate the ability of the ABL system. The 1997 FEIS considered Edwards Air Force

Base (AFB), California, and Kirtland AFB, New Mexico, as possible Home Base locations; White Sands Missile Range (WSMR), New Mexico, and China Lake Naval Air Warfare Center, California, as the Diagnostic Test Range; and the Western Range, including Vandenberg AFB and/or Point Mugu Naval Air Warfare Center Weapons Division, both in California, as the Extended-Area Test Range.

The ROD for the 1997 FEIS identified Edwards AFB as the Home Base (to support the ABL aircraft and conduct ground-test activities of the ABL system), WSMR as the Diagnostic Test Range, and the Western Range as the Expanded-Area Test Range (both for supporting proposed flight-test activities of the ABL systems). Based upon operational and environmental concerns in that FEIS, Edwards AFB was chosen as the primary location for conducting ground-test activities. Kirtland AFB and WSMR were identified as alternative ground-test locations in the event that ground testing was not possible at Edwards AFB.

**Purpose and Need**

The SEIS sets forth the supplemental environmental analysis required based on changes in the proposed test program that have occurred since the 1997 FEIS was completed and examines proposed test activities at Edwards AFB, Kirtland AFB, WSMR/Holloman AFB, and Vandenberg AFB. Holloman AFB is a U.S. Air Force installation that shares most of its boundary with WSMR. The 1997 FEIS previously examined test activities and test locations and is considered the No-Action Alternative for this SEIS. The following is a list of new or refined actions that require the preparation of an SEIS:

- Testing of two ABL aircraft (referred to as the Block 2004 aircraft and an improved follow-on aircraft, the Block 2008) rather than the individual aircraft addressed in the 1997 FEIS
- Proposed ground testing that was not considered in detail in the 1997 FEIS
  - Potential effects due to off-range laser during test activities
  - Potential effects of lowering the test altitude of the ABL aircraft from 40,000 feet to 35,000 feet or higher
  - Testing of the ARS laser, the BILL, the TILL, and the Surrogate High-Energy Laser (SHEL) systems that were not considered in detail in the 1997 FEIS
  - Refinement of proposed ABL test activities (*i.e.*, location of tests, types of tests, and number of tests).

These new or refined actions will maximize testing efficiencies and realism, and provide further

clarification of the ABL weapon system test program.

**Decision**

The MDA will proceed with the Proposed Action as described in the SEIS and summarized below. Appropriate management plans and regulations would be adhered to and suitable mitigation measures would be initiated to minimize potential adverse effects.

**Proposed Action and Alternatives**

The Proposed Action is to conduct test activities of the ABL system at test ranges associated with Edwards AFB and Vandenberg AFB, California, and Kirtland AFB and WSMR/Holloman AFB, New Mexico. Test activities would involve testing the laser components on the ground and in flight to verify that laser components operate together safely and effectively. Two ABL aircraft (Block 2004 and Block 2008) would be utilized during test activities. Software upgrades to the Block 2004 aircraft would be tested and added to that test aircraft under a Block 2006 effort. Once upgraded with the newer operating system, the Block 2004 would be designated as the Block 2006 aircraft. Ground testing of the ABL system is proposed at Edwards AFB. Kirtland AFB and WSMR/Holloman AFB have been identified as alternative ground-test locations if ground tests cannot be conducted at Edwards AFB. Flight testing is proposed at the R-2508 Airspace Complex (Edwards AFB), Western Range (Vandenberg AFB), and WSMR (including Federal Aviation Administration [FAA]-controlled airspace and airspace utilized by Fort Bliss).

The ABL aircraft would be housed at an existing hanger at Edwards AFB. Edwards AFB is also the location where the laser systems would be integrated into the aircraft, where ground tests would occur, and is the location for initial aircraft flight test. Although flight testing of the ABL system would occur within the R-2508 Airspace Complex, Western Range and WSMR, ABL test flights would begin and end at Edwards AFB. The ABL aircraft could be used to support other BMDS incidental exercises and deployments from other locations. These operations would be supported by other environmental analysis as appropriate.

*Ground-Testing Activities.* Ground testing of the lower-power laser systems (*i.e.*, ARS, BILL, TILL, and SHEL) would be performed at Edwards AFB. Ground-testing activities would be conducted from an aircraft parking pad or the end of a runway with the laser beam

directed over open land toward ground targets with natural features (e.g., mountains, hills, buttes) or earthen berms as a backstop. Lower-power lasers could also be fired from the System Integration Laboratory (SIL) at the Birk Flight Test Facility to range targets for atmospheric testing. Appropriate automatic hard-stop limits and beam path restrictors would be incorporated into the test design to ensure that laser energy does not extend beyond natural features and backstops. Additionally, the proposed ground test area would be cleared of personnel prior to initiating test activities. The ground-testing activities could also be conducted using a ground-based simulator within Building 151 at Edwards AFB. No open range testing of the HEL (COIL) would be conducted. Ground testing of the HEL would be conducted at Edwards AFB within Building 151 and the SIL using a ground-based simulator or an enclosed test cell. In the event that ground testing is not possible at Edwards AFB, ground testing of the ARS, BILL, TILL, and SHEL systems only could be conducted at Kirtland AFB or Holloman AFB/WSMR.

**Flight-Testing Activities.** Flight tests at ranges associated with WSMR (including FAA-controlled airspace and airspace utilized by Fort Bliss), Edwards AFB (R-2508 Airspace Complex), and Vandenberg AFB (Western Range) would be used to test the ARS, BILL, TILL, SHEL, and HIL systems.

The ABL tests would include acquisition and tracking of targets at short-range as well as high-energy tests. These tests would be conducted against instrumented diagnostic target boards carried by balloons, missiles, or aircraft. Missiles would incorporate a flight-termination system, when required, to ensure that debris would be contained on the range in the event the target must be destroyed during flight. Proteus aircraft (a manned aircraft with a target board attached) and Missile Alternative Range Target Instrument (MARTI) drops (balloon with a target board attached) would be utilized for testing of the lower-power laser systems (i.e., ARS, BILL, TILL, and SHEL). MARTI drops would also be used for testing the HEL.

The MARTI is a diagnostic target for ABL that is similar in size and geometry to a ballistic missile. The basic construction consists of a shell of aluminum with aluminum fins attached, coated with paint selected to represent the properties of the paint on ballistic missiles (no fuel would be onboard). The balloon would rise to an approximate height of 100,000 feet and may pass over private and BLM-managed lands, depending on wind

conditions aloft. When the balloon is over the target drop box and at the desired altitude the MARTI payload would be released. The MARTI would free-fall to 50,000 feet allowing approximately 55 seconds of engagement time, allowing multiple engagements on each drop. A nominal three engagements per MARTI drop are planned. Approximately 60 pounds of flare attached to the MARTI would burn during the entire ABL engagement to provide an infrared source for the ARS. The flare would be exhausted prior to the MARTI reaching the ground. After the ABL engagement is complete, a parachute system would be deployed to slow down and recover the complete MARTI unit for reuse.

During flight tests with the ABL aircraft, up to two "chase aircraft" may be utilized to monitor test activities. The ABL aircraft would fly at an altitude of 35,000 feet or higher. The laser systems would be directed above horizontal in an upward direction to minimize potential ground impact or potential contact with other aircraft. The energy from the HEL would heat the missile's booster components and cause a stress fracture, which would destroy the missile.

Missile debris would be contained within the range boundaries. The geometry of the tests would preclude operation of the laser except at an angle that is above the horizon. The onboard sensors and laser clearinghouse data would be used to confirm that no other aircraft or satellites are within the potential path of the beam, although controlled airspace would be utilized during ABL test activities and would be verified cleared. Airborne diagnostic testing would revalidate and expand on-the-ground test activities, confirm computer model predictions, and enable complete system tests.

**No-Action Alternative.** The No-Action Alternative is to proceed with ABL testing activities as addressed in the 1997 FEIS and associated ROD.

#### NEPA Process

The Notice of Intent (NOI) to prepare an SEIS for ABL Program test actions was published in the **Federal Register** on March 22, 2002, initiating the public scoping process. Public scoping meetings were held in April 2002 in communities perceived to be affected by the ABL tests. The Notice of Availability (NOA) of the ABL Draft SEIS was published in the **Federal Register** in September 2002. This initiated a public review and comment period for the Draft SEIS. Four public hearings were held in October 2002 in the same locations as the public scoping

meetings. Comments on the Draft SEIS were considered in the preparation of the Final SEIS. A Department of Defense NOA for the Final SEIS was published in the **Federal Register** on June 16, 2003. An Environmental Protection Agency NOA for the Final SEIS was published on July 3, 2003, initiating an additional 30-day comment period. Comments were considered in the decision process, culminating in this ROD.

#### Environmental Issues

The proposed activities addressed in the SEIS do not change the scope, quantity, or quality of the actions analyzed in the 1997 FEIS; therefore, only the following resources were analyzed in the SEIS for potential impacts: airspace, hazardous materials and hazardous waste management, health and safety, air quality, noise, biological resources, cultural resources, and socioeconomic. Environmental issues identified during the analysis are summarized below. The complete SEIS is available at the following Web site: [http://www.afcee.brooks.af.mil/ec/eiap/eis/abl/ABL\\_F-SEIS\\_Apr\\_03.pdf](http://www.afcee.brooks.af.mil/ec/eiap/eis/abl/ABL_F-SEIS_Apr_03.pdf).

**Environmental Effects of the Proposed Action.** The current regional airspace restrictions would continue due to ABL testing activities. Flight-testing activities occurring within FAA-controlled airspace would be coordinated with the FAA prior to conducting test activities. Hazardous materials used and hazardous waste generated during ABL testing activities would be managed in accordance with applicable federal, state, DOD, and Air Force regulations regarding the use, storage, and handling of hazardous materials, hazardous waste, and hazardous chemicals identified under the hazardous Materials Management Plan. ABL testing activities would involve ground-level and in-flight lasing. Performance of ABL testing activities in accordance with appropriate safety measures would reduce the potential for health and safety impacts. There would be short-term, negligible increases in pollutant emissions due to ground- and flight-testing activities. The minimal increases would not delay regional progress toward attainment of any air quality standard. The negligible increases in pollutants would not exceed the *de minimus* threshold of any regional air basin. Due to the location of the ground-test activities and the altitude of the flight-test activities, no residential areas would be exposed to continuous noise levels exceeding 65 decibels (dBA). Because ABL testing activities would be conducted in accordance with the applicable regulations and existing

standard operating procedures for debris recovery, adverse biological resource and cultural resource impacts are not anticipated. The proposed ABL testing activities would require a long-term increase of approximately 750 personnel at Edwards AFB to support the ABL program and a short-term increase of up to 50 program related temporary personnel during test activities. These personnel would provide a small, positive, yet largely unnoticeable effect on population, income, and employment in the vicinity of the installations.

*Environmental Effects of the No-Action Alternative.* ABL test activities would continue in accordance with those actions addressed in the 1997 FEIS and associated ROD. The regional airspace restrictions at the installations would continue due to ongoing mission activities. Management of hazardous materials and waste at the installations would continue to in accordance with current practices. Current range safety measures at the installations would continue with current practices. Current range safety measures at the installations would continue to ensure public safety and the environment are protected. Based on the 1997 FEIS, no adverse air quality, noise, biological, cultural, or socioeconomic impacts are anticipated.

*Preferred Alternative.* The Proposed Action is the preferred alternative. This would involve conducting test activities of the ABL system at test ranges associated with Edwards AFB and Vandenberg AFB, California, and Kirtland AFB and WSMR/Holloman AFB, New Mexico. Test activities would involve testing the laser components on the ground and in flight to verify that laser components operate together safely and effectively. Edwards AFB has been selected as the Home Base and will be the primary location for ground-testing activities. White Sands Missile Range has been selected as the Diagnostic Test Range and the Western Range has been selected as the Expanded-Area Test Range.

*Environmentally Preferred Alternative.* The environmentally preferred alternative is the no-action alternative.

*Cumulative Impacts.* The SEIS found no cumulative impacts on the human environment from proposed ABL testing activities. However, due to the nature of test activities at the Western Range and WSMR, other missile test and rocket launch activities at the Western Range and WSMR, other missile test and rocket launch activities within the ranges to support other military and commercial functions would be

occurring. These missile tests and rocket launches have been addressed in Environmental Assessments (EAs) and Environmental Impact Statements (EISs) that limit the number of launches and are carefully scheduled/coordinated to prevent conflicts with overlapping missions.

In the event that ground tests are conducted at Holloman AFB, potential mission conflicts could occur at Holloman AFB due to parking the ABL aircraft and associated support equipment at the western end of the base runway. This arrangement would prevent aircraft from taking-off or landing (*i.e.*, require closure of the runway). In order to avoid mission conflicts at Holloman AFB, other less frequently or unused runways, taxiways, or aircraft apron locations could be identified/dedicated to support the ABL aircraft during the short period of ground-test activities. If a suitable ground-test location that avoids Holloman AFB mission activities cannot be identified, the ABL ground-test program would be postponed until conditions at Edwards AFB or Kirtland AFB are suitable. In addition, during ABL flight-test activities, conflicts with the Holloman AFB flying mission could occur due to the ABL test activities using restricted airspace that is also used by Holloman AFB aircraft. This potential concern would be avoided through scheduling of test activities so that mission conflicts would not occur.

*Measures to Minimize Impacts.* All practicable means to avoid, minimize, or mitigate harm to the environment would be taken under the selected alternative. Because of the negligible impacts that ABL test activities would have on most environmental factors and measures already taken by the MDA, Air Force, and Army, no separate mitigation plan beyond adherence to applicable laws, regulations, and DOD guidelines is deemed necessary. ABL test activities would comply with applicable federal, state, DOD, Air Force, and Army regulations regarding the management of hazardous materials and hazardous waste. Evacuation plans and emergency response plans will be developed and implemented as required. Emergency planning documents will be updated and emergency response personnel trained and equipped prior to introduction of new hazardous materials.

To minimize potential laser hazards, multiple controls would be used to reduce the potential for off-range lasing and accidental lasing of unsuspecting receptors. These controls include the use of backdrops and enclosures, horizontal and vertical buffer zones,

administrative controls, and removal of mirror-like reflecting surfaces from the test area. Safety interlocks associated with the laser systems are in place to stop lasing activities in the event that the beam control steers the beam from the anticipated beam path. Evacuations, clearances, and road closures would be implemented to ensure worker and public health and safety. Any debris from target missile impact areas would be recovered in accordance with established Standard Operating Procedures (SOPs) and regulations.

Consultation with appropriate federal and state agencies (*e.g.*, U.S. Fish and Wildlife Service, SHPO) will be completed. Notice of launch activities will be provided to any concerned agencies, local communities, and recreational users. Efforts will be made to schedule ABL test activities to avoid impacts on other activities at the installations.

With regard to airspace, avoidance of the R-5119 Restricted Area associated with WSMR would mitigate the potential impact to the J13 and J57 high-altitude jet routes that transit through the Restricted Area. In order to avoid operational impacts at Holloman AFB, other less frequently used or unused runways, taxiways, or aircraft apron locations could be identified/dedicated to support the ABL aircraft during the short period of ground-test activities. If a suitable ground-test location that avoids Holloman AFB mission activities cannot be identified, the ABL ground-test program would be postponed until conditions at Edwards AFB or Kirtland AFB are suitable.

In the event that target debris affects White Sands pupfish habitat, specific operational steps for emergency responses would be determined on a case-by-case basis in accordance with the WSMR Missile Mishap Plan, Annex P to the Disaster Control Plan.

## Conclusion

The refinements in the original testing program analyzed in the SEIS serve to increase testing efficiencies and realism, and provide further advancement of the ABL testing program.

The factors and considerations offered above justify the selection by MDA of the Proposed Action as presented in the *Final Supplemental Environmental Impact Statement for the Airborne Laser Program*.

Dated: August 18, 2003.

Signed By Ronald T. Kadish, Lieutenant General, USAF, Director.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 03-21478 Filed 8-21-03; 8:45 am]

**BILLING CODE 5001-08-M**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

#### Proposed Collection; Comment Request

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Force Sustainment Division announces the proposed extension to AF Form 2800, Family Center Individual/Family Data Card; AF Form 2801, Family Support Center Interview and Follow-up Summary; AF Form 2805, Family Support Center Volunteer Data and Service Record. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, unity, and clarity of the information to be collected; (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by October 21, 2003.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to HQ USAF/DPDF, 1040 Air Force Pentagon, Room 5C238, Washington, DC 20330-1040, ATTN: Major Jay Doherty.

**FOR FURTHER INFORMATION CONTACT:** To request more information on these proposed data collection instruments, please write to the above address or call (703) 697-4720.

*Title, Associated Form, and OMB Number:* Family Support Center Individual/Family Data Card, AF Form 2800, Family Support Center Interview and Follow Up Summary, AF Form 2801; Family Support Center Volunteer Data and Service Record, AF Form 2805, OMB Number 0701-0070.

*Needs and Uses:* The information collection requirement is necessary to

obtain demographic data about individuals and family members who utilize the services of the Family Support Center. It is also a mechanism for tracking the services provided in order to determine program usage and trends as well as program evaluation, service targeting, and future budgeting. It also provides demographic data on volunteers and tracks volunteer service.

*Affected Public:* All those eligible for services provided by Family Support Centers (all Department of Defense personnel and their families) and those who volunteer in the Family Support Center.

*Annual Burden Hours:* 750.

*Number of Respondents:* 10,000.

*Responses per Respondent:* 3.

*Average Burden per Response:* 5 Minutes.

*Frequency:* Once.

#### SUPPLEMENTARY INFORMATION:

##### Summary of Information Collection

Respondents could be all those eligible for services, *i.e.*, all Department of Defense personnel and their families. The completed form is used to gather demographic data on those who use Family Support Centers, track what programs or services they use and how often. The elements in this form are the basis for quarterly data gathering which is forwarded through the Major Commands to the Air Staff.

**Pamela Fitzgerald,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 03-21479 Filed 8-21-03; 8:45 am]

**BILLING CODE 5001-05-P**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

#### Proposed Collection; Comment Request

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Headquarters Air Force Recruiting Service announces the proposed extension of a currently approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways

to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by (to be determined).

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to the Department of Defense, HQ AFRS/RSOP, 550 D Street West, Suite 1, Randolph AFB, TX 78150-4527.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Headquarters AFRS/RSOP, Enlisted Accessions Branch, at (21)-652-6188.

*Title, Associated Form, and OMB Number:* non-Prior Service and Prior Service Accessions, AETC Forms 1319, 1325, and 1419 and OMB Number 0701-0079.

*Needs and Uses:* The information collection requirement is necessary for recruiters to determine applicant qualifications when conducting an interview. Information from the interview will determine if additional documents on law violations, citizenship verification, and educations are needed. Applicants who have reached a certain age, marital status or classification are required to submit financial information. The AETC 1419 is used to collect police reports, law violation disposition reports, and court documents used to determine an applicant's moral qualification.

*Affected Public:* Individuals or households.

*Annual Burden Hours:* 69,105.

*Number of Respondents:* 110,231.

*Responses Per Respondent:* 1.

*Average Burden per Response:* 1.05 hours.

*Frequency:* On occasion.

#### SUPPLEMENTARY INFORMATION:

##### Summary of Information Collection

Respondents are civilian non-prior and prior service personnel applying for enlistment into the Air Force as enlisted members. The completed forms are used by the recruiter to establish eligibility status of applicants and determine what additional forms are needed to obtain the required information. If the forms are not included in the case file, individuals reviewing the file cannot be

readily assured of the qualifications of the applicant.

**Pamela Fitzgerald,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 03-21480 Filed 8-21-03; 8:45 am]

**BILLING CODE 5001-05-P**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

#### Proposed Collection; Comment Request

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice.

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

**DATES:** Consideration will be given to all comments received by October 27, 2003.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to the United States Air Force Academy, Office of Admissions, 2304 Cadet Drive, Suite 236, USAFA, CO 80840.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposed and associated collection instruments, please write to above address, or call the United States Air Force Academy, Office of Admissions, (719) 333-7291.

*Title, Associated Form, and OMB Number:* Air Force Academy Candidate Activities Records, USAFA Form 147, OMB Number 0701-0063.

*Needs and Uses:* The information collection requirement is necessary to obtain data on candidate's background and aptitude in determining eligibility and selection to the Air Force Academy.

*Affected Public:* Individuals or households.

*Annual Burden Hours:* 5,258.  
*Number of Respondents:* 7,010.  
*Responses per Respondent:* 1.  
*Average Burden per Response:* 45 Minutes.

*Frequency:* 1.

#### SUPPLEMENTARY INFORMATION:

##### Summary of Information Collection

The information collected on this form is required by 10 U.S.C. 9346. The respondents are students who are applying for admission to the United States Air Force Academy. Each student's background and aptitude is reviewed to determine eligibility. If the information on this form is not collected, the individual cannot be considered for admittance to the Air Force Academy.

**Pamela Fitzgerald,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 03-21481 Filed 8-21-03; 8:45 am]

**BILLING CODE 5001-05-P**

## DEPARTMENT OF EDUCATION

#### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before October 21, 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 Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4)

description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 19, 2003.

**Angela C. Arrington,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

#### Office of the Chief Financial Officer

*Type of Review:* Revision.

*Title:* U.S. Department of Education Budget Information—Non-Construction Programs Form and Grant Performance Report Form.

*Frequency:* Annually and One-Time (New Awards—ED524).

*Affected Public:* Businesses or other for-profit; not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 23,835.

*Burden Hours:* 457,501.

*Abstract:* This collection is necessary for the award and administration of discretionary and some formula grants. The Budget Information Non-Construction Programs (ED Form 524) enables the review of all years of a multi-year budget at the time of the initial award. The U.S. Department of Education Grant Performance Report (ED Form 524B) is one of the monitoring tools used by ED staff in the Post-Award and Grant Closeout functions.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2336. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202-4651 or to the e-mail address

*vivian\_reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO\_RIMG@ed.gov* or faxed to 202-708-9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 03-21561 Filed 8-21-03; 8:45 am]

BILLING CODE 4000-01-P

---

## DEPARTMENT OF ENERGY

### Environmental Management Advisory Board; Meeting

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Advisory Board. The Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Thursday, September 18th and Friday, September 19th, 2003.

**ADDRESSES:** U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW., (Room 6E-069), Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** James T. Melillo, Executive Director of the Environmental Management Advisory Board, (EM-10), 1000 Independence Avenue SW., (Room 5B-171), Washington, DC 20585. The telephone number is 202-586-4400. The Internet address is *james.melillo@em.doe.gov*.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on corporate issues confronting the Environmental Management Program. The Board will contribute to the effective operation of the Environmental Management Program by providing individual citizens and representatives of interested groups an opportunity to present their views on issues facing the Office of Environmental Management and by helping to secure consensus recommendations on those issues.

### Tentative Agenda

*Thursday, September 18, 2003*

1 p.m. Public Meeting Open  
 —Welcome  
 —Opening Remarks  
 —Program Briefings  
 —EM Budget Briefings  
 5 p.m. Public Comment Period and Adjournment

*Friday, September 19, 2003*

9 a.m. Opening Remarks  
 —EMAB Project Team Updates  
 —Board Discussions  
 3 p.m. Public Comment Period and Adjournment

*Public Participation:* This meeting is open to the public. If you would like to file a written statement with the Board, you may do so either before or after the meeting. If you would like to make an oral statement regarding any of the items on the agenda, please contact Mr. Melillo at the address or telephone number listed above, or call the Environmental Management Advisory Board office at 202-586-4400, and we will reserve time for you on the agenda. Those who call in and or register in advance will be given the opportunity to speak first. Others will be accommodated as time permits. The Board Chair will conduct the meeting in a manner that permits the orderly conduct of business.

*Minutes:* We will make the minutes of the meeting available for public review and copying by December 20, 2003. The minutes and transcript of the meeting will be available for viewing at the Freedom of Information Public Reading Room (1E-190) in the Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. The Room is open Monday through Friday from 9 a.m.-4 p.m. except on Federal holidays.

Issued in Washington, DC on August 19, 2003.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 03-21546 Filed 8-21-03; 8:45 am]

BILLING CODE 6450-01-M

---

## DEPARTMENT OF ENERGY

### Office of Science; High Energy Physics Advisory Panel; Meeting

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the High Energy Physics Advisory Panel (HEPAP). Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770) requires that

public notice of these meetings be announced in the **Federal Register**.

**DATES:** Monday, September 29, 2003; 9 a.m. to 6 p.m. and Tuesday, September 30, 2003; 8:30 a.m. to 4 p.m.

**ADDRESSES:** Hilton Washington Embassy Row, 2015 Massachusetts Avenue, NW., Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:**

Bruce Strauss, Executive Secretary; High Energy Physics Advisory Panel; U.S. Department of Energy; SC-22/ Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585-1290; Telephone: 301-903-3705.

**SUPPLEMENTARY INFORMATION:**

*Purpose of Meeting:* To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

*Tentative Agenda:* Agenda will include discussions of the following:

Monday, September 29, 2003, and Tuesday, September 30, 2003

- Discussion of the DOE/NSF HEPAP Subpanel on Particle Physics Project Prioritization Panel (P5) Report.
- Discussion of Department of Energy High Energy Physics Programs.
- Discussion of National Science Foundation Elementary Particle Physics Program.
- Discussion of the High-Energy Physics Facilities Recommended For the DOE Office of Science Twenty-Year Roadmap Report.
- Discussion of High Energy Physics University Programs.
- Reports on and Discussion of U.S. Large Hadron Collider Activities.
- Reports on and Discussion of Topics of General Interest in High Energy Physics.
- Public Comment (10-minute rule).

*Public Participation:* The meeting is open to the public. If you would like to file a written statement with the Panel, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Bruce Strauss, 301-903-3705 or *Bruce.Strauss@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

*Minutes:* The minutes of the meeting will be available for public review and copying within 90 days at the Freedom of Information Public Reading Room;

Room 1E-190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on August 19, 2003.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management.*

[FR Doc. 03-21545 Filed 8-21-03; 8:45 am]

**BILLING CODE 6450-01-M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. EC03-120-000, et al.]

#### Virginia Electric and Power Company, et al.; Electric Rate and Corporate Filings

August 13, 2003.

##### 1. Virginia Electric and Power Company

[Docket No. EC03-120-000]

Take notice that on August 8, 2003, Virginia Electric and Power Company (Dominion Virginia Power), tendered for filing with the Federal Energy Regulatory Commission (Commission), pursuant to Section 203 of the Federal Power Act and part 33 of the Commission's regulations, an application (Application) requesting Commission authorization for the Applicant's proposed purchase of an approximately 240 MW cogeneration facility and its appurtenant transmission facilities located in Gordonsville, Virginia.

Dominion Virginia Power states that copies of the filing were served upon Dominion Virginia Power's wholesale requirements customers, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

*Comment Date:* August 29, 2003.

##### 2. Hardee Power Partners, Limited Invenegy Investment Company LLC GTCR Fund VIII, L.P., GTCR Fund VIII/B, L.P., Hardee GP LLC, Hardee LP LLC

[Docket No. EC03-121-000]

Take notice that on August 8, 2003, Hardee Power Partners, Limited (Hardee Power), Invenegy Investment Company LLC, GTCR Fund VIII, L.P., GTCR Fund VIII/B, L.P., Hardee GP LLC and Hardee LP LLC (the Applicants) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act for authorization of the transfer of 100% of the partnership interests in Hardee Power to Hardee GP LLC and Hardee LP

LLC (the "Acquirers") so that upon consummation of the proposed transaction, the Acquirers will own 100% of Hardee Power. Applicants request confidential treatment for the documents contained in Exhibit I.

*Comment Date:* August 29, 2003.

##### 3. Carolina Power & Light Company and Florida Power Company

[Docket Nos. ER01-1807-012 and ER01-2020-009]

Take notice that on August 8, 2003, Carolina Power & Light Company and Florida Power Corporation tendered for filing with the Federal Energy Regulatory Commission modifications to their Open Access Transmission Tariffs (OATT) that modify the compliance filing that they made on June 16, 2003 in Docket Nos. ER01-1807-011 and ER01-2020-008. Carolina Power & Light Company states that copies of the filing were served upon the public utility's jurisdictional customers, the North Carolina Utilities Commission and the Florida Public Service Commission.

*Comment Date:* August 29, 2003.

##### 4. Ameren Services Company

[Docket No. ER02-2233-007]

Take notice that on August 7, 2003, the GridAmerica Participants and the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed a compliance filing in accordance with the Commission's Orders issued on July 23, 2003 and July 31, 2003 in the Docket No. ER02-2233-002 *et al.* See Ameren Services Company, 104 FERC ¶ 61,097 (July 23 Order); Ameren Services Company, 104 FERC ¶ 61,178 (July 31 Order).

The Midwest ISO has requested waiver of the requirements set forth in 18 CFR 385.2010. The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at [www.midwestiso.org](http://www.midwestiso.org) under the heading "Filings to FERC" for other interested parties in this matter.

*Comment Date:* August 28, 2003.

##### 5. Ameren Services Company

[Docket Nos. ER02-2233-008]

Take notice that on August 8, 2003, the GridAmerica Participants and the Midwest Independent Transmission

System Operator, Inc. (jointly, the Applicants) filed a compliance filing in accordance with the Commission's order issued on July 31, 2003 in Docket No. ER02-2233-002, *et al.* See Ameren Services Company, 104 FERC ¶ 61,178 (July 31 Order).

The Applicants have requested waiver of the requirements set forth in 18 CFR 385.2010. The Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at [www.midwestiso.org](http://www.midwestiso.org) under the heading "Filings to FERC" for other interested parties in this matter.

*Comment Date:* August 29, 2003.

##### 6. Entergy Services, Inc.

[Docket No. ER03-1037-001]

Take notice that on August 8, 2003, Entergy Services, Inc., (Entergy Services) on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., tendered for filing fully executed copies of an Amendment to the Service Agreement for Network Integration Transmission Service and Network Operating Agreement between Entergy Services and the City of North Little Rock, Arkansas, which had been previously submitted for filing in Docket No. ER03-1037-000 on July 3, 2003.

*Comment Date:* August 29, 2003.

##### 7. PJM Interconnection, L.L.C.

[Docket No. ER03-1173-000]

Take notice that on August 7, 2003, PJM Interconnection, L.L.C. (PJM), submitted amendments to Schedule 2 of the PJM Open Access Transmission Tariff (PJM Tariff) to reflect revised WPS Westwood Generation, LLC (Westwood) revenue requirements for Reactive Supply and Voltage Control from Generation Sources Service as a result of a settlement agreement accepted by the Commission in Dockets No. ER02-2361-000 and ER02-2361-001, 103 FERC ¶ 61,298.

PJM states that copies of this filing have been served on all PJM members, Westwood, and each state electric utility regulatory commission in the PJM region.

*Comment Date:* August 28, 2003.

**8. Pacific Gas and Electric Company**

[Docket No. ER03-1175-000]

Take notice that on August 7, 2003, Pacific Gas and Electric Company (PG&E) tendered for filing revised Generator Special Facilities Agreements, Generator Interconnection Agreements, Supplemental Letter Agreements and Amendments between PG&E and the following Calpine-owned parties: Los Esteros Critical Energy Facility, LLC (Los Esteros); Yuba City Energy Center, LLC (Yuba City); Gilroy B Feather River Energy Center, LLC (Gilroy B Feather River); and Riverview Energy Center, LLC (Riverview).

PG&E has requested certain waivers. PG&E states that copies of this filing have been served upon Calpine, Los Esteros, Yuba City, Gilroy B Feather River, Riverview, the California Independent System Operator Corporation and the CPUC.

*Comment Date:* August 28, 2003.

**9. PJM Interconnection, L.L.C.**

[Docket No. ER03-1176-000]

Take notice that on August 7, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing an amended interconnection service agreement among PJM, Marina Energy, L.L.C., and Atlantic City Electric Company d/b/a Conectiv Power Delivery.

PJM requests a waiver of the Commission's 60-day notice requirement to permit a July 9, 2003 effective date for the agreement. PJM states that copies of this filing were served upon the parties to the agreement and the state regulatory commissions within the PJM region.

*Comment Date:* August 28, 2003.

**10. PJM Interconnection, L.L.C.**

[Docket No. ER03-1177-000]

Take notice that on August 7, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing an interim interconnection service agreement among PJM, Pleasants Energy, L.L.C., and Allegheny Power.

PJM requests a waiver of the Commission's 60-day notice requirement to permit a July 29, 2003 effective date for the agreement. PJM states that copies of this filing were served upon the parties to the agreement and the state regulatory commissions within the PJM region.

*Comment Date:* August 28, 2003.

**11. PJM Interconnection, L.L.C.**

[Docket No. ER03-1178-000]

Take notice that on August 7, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing an interconnection service agreement (ISA) among PJM,

Conectiv Bethlehem, L.L.C., and PPL Electric Utilities Corporation and a notice of cancellation of an Interim ISA that has been superseded.

PJM requests a waiver of the Commission's 60-day notice requirement to permit a July 16, 2003 effective date for the ISA. PJM states that copies of this filing were served upon the parties to the agreement and the state regulatory commissions within the PJM region.

*Comment Date:* August 28, 2003.

**Standard Paragraph**

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary (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](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659. Protests and interventions may be filed.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. 03-21565 Filed 8-21-03; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****Notice of Settlement Agreement and Soliciting Comments**

August 13, 2003.

Take notice that the following settlement agreement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Settlement Agreement.

b. *Project No.:* 2205-006.

c. *Date Filed:* July 3, 2003.

d. *Applicant:* Central Vermont Public Service Corporation.

e. *Name of Project:* Lamoille River Hydroelectric Project.

f. *Location:* Located on the Lamoille River, in Franklin, Lamoille, and Chittenden Counties, Vermont.

g. Filed Pursuant to: Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. *Applicant Contact:* Mr. Michael J. Scarzello, Engineer, Central Vermont Public Service Corp., 77 Grove St., Rutland, VT 05701-3403 (802) 247-5207.

i. *FERC Contact:* Jack Duckworth at (202) 502-692, or by e-mail at [jack.duckworth@ferc.gov](mailto:jack.duckworth@ferc.gov).

j. *Deadline for Filing Comments:* The deadline for filing comments on the Settlement Agreement is 20 days from the date of this notice. The deadline for filing reply comments is 30 days from the date of this notice. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Under the Commission's Rules of Practice, intervenors in the relicensing proceeding filing documents with the Commission must serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions of the Commission's Web site (<http://www.ferc.gov>) under the "e-filing" link.

k. Central Vermont Public Service Corporation filed the Comprehensive Settlement Agreement on behalf of itself and 5 other stakeholders. The purpose of the Settlement Agreement is to resolve, among the signatories, all water resource related issues of Central Vermont Public Service Corporation's pending Application for New License for the Lamoille River Hydroelectric Project. The relicensing issues resolved through the settlement include requirements for reservoir drawdowns, bypass flows, downstream flows, and fish passage. Central Vermont Public Service Corporation requests that the Commission approve the Settlement Agreement and incorporate the proposed project operation restrictions and requirements in Appendix A of the

Settlement Agreement into a new license for the project.

l. A copy of the Settlement Agreement 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 eLibrary (FERRIS) link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above. Register online at <http://www.ferc.gov/esubscribenow.htm> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Linda Mitry,

Acting Secretary.

[FR Doc. 03-21502 Filed 8-21-03; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 2169-022]

#### Notice of Applications for Non-Project Use of Project Lands and Soliciting Comments, Motions To Intervene, and Protests

August 18, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

- a. *Application Type*: Non-Project Use of Project Lands.
- b. *Project No.*: 2169-022.
- c. *Date Filed*: March 13, 2003.
- d. *Applicant*: Alcoa Power Generating Inc., Tapoco Division (Tapoco).
- e. *Name of Project*: Tapoco Hydroelectric Project.
- f. *Location*: The project is located on the Cheoah and Little Tennessee Rivers, in Blount and Monroe Counties, Tennessee, and Graham and Swain Counties, North Carolina. The project consists of four developments: Chilhowee, Cheoah, Santeetlah, and Calderwood.
- g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.
- h. *Applicant Contact*: Mr. J. E. Adams, Tapoco, Inc., 300 N. Hall Road, Alcoa, TN 37701, (423) 977-3333.

i. *FERC Contact*: Any questions on this notice should be addressed to Ms. Shana High at (202) 502-8674, or e-mail address: [shana.high@ferc.gov](mailto:shana.high@ferc.gov).

j. *Deadline for filing comments and or motions*: September 2, 2003.

*All documents (original and eight copies) should be filed with*: Ms. Magalie Roman Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P-2169-022) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages e-filings.

k. *Description of Request*: Tapoco is seeking Commission authorization to issue a permit for non-project use of project lands and waters. The permit would be issued to modify the existing Santeetlah Marina, LLC. The proposed modification would increase mooring capacity from 100 to 180 watercraft, as needed, and would authorize construction of a new marina store. Santeetlah Marina, LLC is located on the Santeetlah Development, on the Cheoah and Little Tennessee Rivers in Graham and Swain Counties, North Carolina.

l. *Location of the Applications*: The filings are available for review at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please call the Helpline at (866) 208-3676 or contact [FERCONLINESUPPORT@ferc.gov](mailto:FERCONLINESUPPORT@ferc.gov). For TTY, contact (202) 502-8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified

comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*: Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. *Comments, protests and interventions may be filed electronically via the Internet in lieu of paper.* See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 03-21528 Filed 8-21-03; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Scoping Meeting and Soliciting Scoping Comments for an Applicant Prepared Environmental Assessment Using the Alternative Licensing Process

August 18, 2003.

a. *Type of Application*: Alternative Licensing Process.

b. *Project No.*: 2101.

c. *Applicant*: Sacramento Municipal Utility District (SMUD).

d. *Name of Project*: Upper American River Project.

e. *Location*: In the Rubicon River, Silver Creek, and South Fork American River watersheds in El Dorado and Sacramento counties, California. The project occupies federal lands within the El Dorado National Forest.

f. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)-825(r).

g. *Applicant Contact:* David F. Hanson, Project Manager, Hydro Relicensing at (916) 732-6703.

h. *FERC Contact:* James Fargo at (202) 502-6095; e-mail [james.fargo@ferc.gov](mailto:james.fargo@ferc.gov).

j. *Deadline for filing scoping comments:* September 17, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) using the "e-library" link.

k. The Upper American River Project facilities consist of several existing reservoirs, a series of powerhouses and about 180 miles of transmission line. The project has a total installed capacity of 688,000 kilowatts.

**Scoping Process**

SMUD will complete and file a preliminary Environmental Assessment, in lieu of Exhibit E of the license application. This differs from the traditional process, in which an applicant consults with agencies, Indian tribes, NGOs, and other parties during preparation of the license application and before filing the application, but the Commission staff performs the environmental review after the application is filed. The alternative procedures are intended to simplify and expedite the licensing process by combining the pre-filing consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

SMUD expects to file the APEA and the license application for the Upper American River Project with the

Commission by July 2005. Although SMUD's intent is to prepare an EA, there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

The purpose of this notice is to inform you of the opportunity to participate in the upcoming scoping meetings identified below, and to solicit your scoping comments.

**Scoping Meetings**

SMUD and the Commission staff will hold three scoping meetings, (1) in the daytime and (2) in the evening, to help us identify the scope of issues to be addressed in the APEA.

The daytime scoping meeting will focus on resource agency concerns, while the evening scoping meetings are primarily for public input. All interested individuals, organizations, and agencies are invited to attend any of the meetings, and to help the staff in identifying the environmental issues that should be analyzed in the APEA. The times and locations of these meetings are as follows:

Date	Time	Location
September 9, Tuesday .....	6 p.m.-8 p.m .....	SMUD Customer Services Center, 6301 S Street, Sacramento.
September 10, Wednesday .....	9 a.m.-4 p.m .....	SMUD Customer Services Center, 6301 S Street, Sacramento.
September 11, Thursday .....	6 p.m.-8 p.m .....	Building C, County Government Center, 2850 Fairlane Court, Placerville.

To help focus discussions, Scoping Document 1 is available for public review at the Sacramento Public Library (828 I Street), the El Dorado County Library (345 Fair Lane, Placerville) and on SMUD's hydro relicensing Web page <http://www.smud.org/relicensing>. Scoping Document 1 outlines the subject areas to be addressed in the APEA.

SD1 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, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659.

You may also register online at <http://www.ferc.gov/esubscribenow.htm> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Based on all written comments received, a Scoping Document 2 (SD2) may be issued. SD2 will include a revised list of issues, based on the scoping sessions.

**Objectives**

At the scoping meetings, the SMUD and FERC staff will: (1) Summarize the environmental issues tentatively identified for analysis in the APEA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the APEA, including viewpoints in opposition to, or in support of, the staffs' preliminary views; (4) determine the resource issues to be addressed in the APEA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

**Procedures**

The meetings will be recorded by a stenographer and will become part of

the formal record of the Commission proceeding on the project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to help define and clarify the issues to be addressed in the APEA.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. 03-21529 Filed 8-21-03; 8:45 am]

BILLING CODE 6717-01-P

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-7548-5]

**Environmental Laboratory Advisory Board; New Membership**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

The Charter for the Environmental Protection Agency's Environmental Laboratory Advisory Board (ELAB) has

been renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 section 9(c). The purpose of ELAB is to provide advice and recommendations to the Administrator of EPA on issues associated with the systems and standards of accreditation for environmental laboratories. ELAB is composed of representatives of non-Federal interest that were selected from among, but not limited to, trade associations for the environmental laboratory industry, trade associations from EPA's regulated community, environmental public interest groups, academia, local and tribal governments, and laboratory assessment bodies. ELAB is currently seeking additional membership from these areas of interest, or others, with experience in the systems and standards of accreditation for environmental laboratories.

Resumes and letters of interest may be directed to Lara P. Autry, NELAC/NELAP Director, U.S. Environmental Protection Agency, Office of Research and Development, National Exposure Research Laboratory, Environmental Sciences Division, Landscape Characterization Branch (E243-05), Research Triangle Park, NC 27711 or by e-mail: [autry.lara@epa.gov](mailto:autry.lara@epa.gov). Inquiries must be submitted by August 15, 2003 for consideration.

Dated: July 30, 2003.

**Henry L. Longest,**

*Acting Assistant Administrator, Office of Research and Development.*

[FR Doc. 03-21599 Filed 8-21-03; 8:45 am]

**BILLING CODE 6560-50-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

**[FRL-7548-6]**

### **Environmental Laboratory Advisory Board; Notice of Charter Renewal**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

The Charter for the Environmental Protection Agency's Environmental Laboratory Advisory Board (ELAB) has been renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 section 9(c). The purpose of ELAB is to provide advice and recommendations to the Administrator of EPA on issues associated with the

systems and standards of accreditation for environmental laboratories.

It is determined that ELAB is in the public interest in connection with the performance of duties imposed on the Agency by law.

Inquiries may be directed to Lara P. Autry, NELAC/NELAP Director, U.S. Environmental Protection Agency, Office of Research and Development, National Exposure Research Laboratory, Environmental Sciences Division, Landscape Characterization Branch (E243-05), Research Triangle Park, NC 27711 or by e-mail: [autry.lara@epa.gov](mailto:autry.lara@epa.gov).

Dated: July 30, 2003.

**Henry L. Longest,**

*Acting Assistant Administrator, Office of Research and Development.*

[FR Doc. 03-21600 Filed 8-21-03; 8:45 am]

**BILLING CODE 6560-50-M**

## **ENVIRONMENTAL PROTECTION AGENCY**

**[ER-FRL-6643-2]**

### **Environmental Impact Statements and Regulations; Availability of EPA Comments**

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564-7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 4, 2003 (68 FR 16511).

#### **Draft EISs**

ERP No. D-AFS-J70021-SD Rating EC2, Prairie Project Area (Lower Rapid Creek Area), Multiple Resource Management Actions, Implementation, Black Hills National Forest, Mystic Ranger District, Pennington County, ID.

*Summary:* EPA has environmental concerns about potential soil erosion, runoff and degradation of water quality and stream habitat, stream sedimentation, and impacts to wildlife and sensitive species. EPA recommended the final EIS include measures to minimize impacts to important wildlife habitat and private property when harvesting on the Forest Service-private land interface.

ERP No. D-FHW-E40797-MS Rating LO, Airport Parkway Extension, Improvements to MS-475 from I-20 to Old Brandon Road, U.S. Army COE Section 404 Permit Issuance, Rankin County, MS.

*Summary:* EPA has lack of objections to the proposed action.

However, EPA recommends that further information regarding project description, project need and adequate mitigation be included in the FEIS.

ERP No. D-FHW-F40413-IL Rating EC2, US 20 (FAP 301) Construction Project, IL-84 north of Galena to Bolton Road northwest of Freeport, Funding, NPDES Permit and U.S. Army COE Section 404 Permit Issuance, Jo Davies and Stephenson Counties, IL.

*Summary:* EPA has environmental concerns with the proposed project relating to: (1) Karst areas and groundwater contamination, (2) impaired water impacts, (3) neotropical migrant impacts, and (4) forest impact mitigation.

ERP No. D-FHW-F40414-OH Rating EC2, Butler County, OH-63 Extension to U.S. 127 (Trenton Area Access), Construction of a Multi-Lane Limited Access, Divided Highway on New Alignment from east of OH-41/OH-63 Interchange in the City of Monroe, Funding, Butler County, OH.

*Summary:* EPA has environmental concerns with the proposed project regarding potential ground water contamination in a federally-designated sole source aquifer (the Great Miami/Little Miami Buried Valley Aquifer System). EPA also asks that more information be provided on wetlands mitigation and impacts to surface water.

ERP No. D-FHW-F40415-IN Rating EC2, US 31 Improvement Project (I-465 to IN-38) between I-465 North Leg and IN-38, Funding, NPDES Permit and U.S. Army Section 10 and 404 Permits Issuance, Hamilton County, IN.

*Summary:* EPA has environmental concerns with the preferred alternative regarding potentially adverse impacts to public drinking water supplies, forests, wetlands, streams and floodplains. EPA recommends the FEIS include specific mitigation measures to minimize and/or compensate for these impacts.

ERP No. D-FHW-G40174-TX Rating LO, Eastern Extension of the President George Bush Turnpike (PGBT) from TX-78 to I-30, New Controlled Access Tollway Construction at a New Location, Cities of Garland, Sachse, Rowlett and Dallas, Dallas County, TX.

*Summary:* EPA has no objections to the project as proposed. EPA recommends additional information regarding the areas of air quality and floodplain mitigation be included in the FEIS.

ERP No. D-NPS-G65086-TX Rating LO, Big Bend National Park General Management Plan, Implementation, Brewster County, TX.

*Summary:* EPA has no objections to the selection of the preferred alternative as described.

ERP No. D-NPS-J65384-MT Rating EC2, Glacier National Park Commercial Services Plan, and General Management Plan, Implementation, Glacier National Park, a Portion of Waterton-Glacier International Peace Park, Flathead and Glacier Counties, MT.

*Summary:* EPA expressed environmental concerns with potential impacts to outstanding resource waters within Glacier National Park from stream channel maintenance activities and construction. EPA believes additional information should be presented to fully assess and mitigate all potential impacts of the management actions.

#### Final EISs

ERP No. F-AFS-K65249-CA, Stream Fire Restoration Project, Implementation, Plumas National Forest, Mt. Hough Ranger District, Plumas County, CA.

*Summary:* No formal comment letter was sent to the preparing agency.

ERP No. F-BLM-K61155-CA, Imperial Sand Dunes Recreation Area Management Plan Revision and Update and Amendment to the California Desert Conservation Area Plan, Implementation, Imperial County, CA.

*Summary:* No formal comment letter was sent to the preparing agency.

ERP No. F-COE-G39036-TX, North Padre Island Storm Damage Reduction and Environmental Restoration Project, Construction of a Channel between the Laquna Madre and the Gulf of Mexico across North Padre Island referred to as Packery Channel Project, Nueces County, TX.

*Summary:* EPA had no objections to the proposed action.

ERP No. F-DOE-L08055-WA, Kangley—Echo Lake Transmission Line Project, New 500-kilovolt (kV) Transmission Line Construction, U.S. Army COE Section 10 and 404 Permits Issuance, King County, WA.

*Summary:* No formal comment letter was sent to the preparing agency.

ERP No. F-DOE-L08063-WA, Plymouth Generating Facility, Construction and Operation of a 307-megawatt (MW) Natural Gas-Fired Combined Cycle Power Generation Facility on a 44.5 Acre Site, Conditional Use/Special Use Permit Issuance, Benton County, WA.

*Summary:* EPA continues to have environmental concerns with the lack of a comprehensive air quality cumulative effects analysis.

ERP No. F-FHW-K40253-CA, Riverside County Integrated Project,

Winchester to Temecula Corridor, Construction of a New Multi-Modal Transportation Facility, Route Location and Right-of-Way Preservation, Riverside County, CA.

*Summary:* EPA has environmental concerns regarding the preferred alternative's contribution to habitat fragmentation, and impacts to endangered species, waters of the United States, water quality and air quality. EPA requests clarifications in the Record of Decision, and commitments that these key issues be addressed in the Tier 2 project level evaluation.

ERP No. F-USN-K11107-CA, Naval Station Treasure Island Disposal and Reuse Property, Implementation, Local Redevelopment Authority (LRA), City of San Francisco, San Francisco County, CA.

*Summary:* No formal comment letter was sent to the preparing agency.

ERP No. FS-COE-G39002-00, Red River Chloride Control Project, Authorization to Reduce the Natural Occurring Levels of Chloride in the Wichita River Portion Only, North, Middle and South Forks, Wichita River and Red River, Implementation, Tulsa District, Wichita County, TX.

*Summary:* EPA had no objections to the preferred alternative.

ERP No. FS-UAF-K11076-00, Airborne Laser (ABL) Program, Conducting Test Activities at Kirtland Air Force Base (AFB) and White Sands Missile Range/Holloman AFB, New Mexico; and Edwards AFB and Vandenberg AFB, California, NM and CA.

*Summary:* No formal comment letter was sent to the preparing agency.

Dated: August 19, 2003.

**Joseph C. Montgomery,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 03-21601 Filed 8-21-03; 8:45 am]

**BILLING CODE 6560-50-P**

#### ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6643-1]

#### Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564-7167 or <http://www.epa.gov/compliance/nepa/>.

Weekly receipt of Environmental Impact Statements  
Filed August 11, 2003 Through August 15, 2003  
Pursuant to 40 CFR 1506.9.

*EIS No. 030376, DRAFT EIS, FHW, AK, Gravina Access Project, Improve Surface Transportation between Revillagigedo Island and Gravina Island, Ketchikan Gateway Borough, Funding by (TEA-21), Endangered Species Act Section 7, NPDES, U.S. Army COE Section 404 Permit, AK, Comment Period Ends: October 6, 2003, Contact: Tim A. Haugh (907) 586-7418. This document is available on the Internet at: <http://www.gravina-access.com>.*

*EIS No. 030377, DRAFT EIS, AFS, MT, North Belts Travel Plan and the Dry Range Project, Provide Motorized and Non-motorized Recreation, Helena National Forest, Broadwater, Lewis & Clark and Meagher Counties, MT, Comment Period Ends: October 6, 2003, Contact: Beth Ihle (406) 266-3425. This document is available on the Internet at: <http://www.fs.fed.us/r1/helena/projects>.*

*EIS No. 030378, FINAL EIS, FRC, LA, Hackberry Liquefied Natural Gas (LNG) Terminal and Natural Gas Pipeline Facilities, Construction and Operation, Cameron, Calcasieu, and Beauregard Parishes, LA, Wait Period Ends: September 22, 2003, Contact: Thomas Russo (800) 208-3372.*

*EIS No. 030379, FINAL EIS, BLM, WY, Pittsburg and Midway Coal Mining Proposal (WYW148816), Exchange of Private Owned Land P&M for Federally-Owned Coal, Lincoln, Carbon and Sheridan Counties, WY, Wait Period Ends: September 22, 2003, Contact: Nancy Doelger (307) 261-7627. This document is available on the Internet at: <http://www.wy.blm.gov>.*

*EIS No. 030380, REVISED DRAFT EIS, COE, CA, Port of Long Beach Pier J South Terminal Expansion Project, Additional Cargo Requirements Associated with Growing Export and Import Volumes, Port Master Plan (PMP) Amendment, COE Section 404, 401 and 10 Permits, City of Long Beach, CA, Comment Period Ends: October 6, 2003, Contact: Dr. Aaron O. Allen (805) 585-2148.*

*EIS No. 030381, FINAL EIS, NRC, NB, GENERIC EIS—Fort Calhoun Station, Unit 1, Renewal of the Operating Licenses (OLs) for an Additional 20 Years, Supplement 12 (NUREG-1437) Omaha Public Power District, Washington County, NB, Wait Period Ends: September 22, 2003, Contact: Jack Cushing (301) 415-1424.*

*EIS No. 030382, FINAL EIS, AFS, OR, ID, OR, ID, Hells Canyon National Recreation Area (HCNRA), Comprehensive Management Plan, Implementation, Wallowa-Whitman National Forest, Nez Perce and*

Payette National Forests, Bake and Wallowa Counties, OR and Nez Perce and Adam Counties, ID, Wait Period Ends: September 22, 2003, Contact: Elaine Kohrman (541) 523-1331. This document is available on the Internet at: <http://www.fs.fed.us/hellscanyon/>.

*EIS No. 030383, FINAL EIS, AFS, OR, Silvies Canyon Watershed Restoration Project, Additional Information concerning Ecosystem Health Improvements in the Watershed, Grant and Harney Counties, OR, Wait Period Ends: September 22, 2003, Contact: Lori Bailey (541) 573-4300.*

*EIS No. 030384, FINAL EIS, FHW, ND, Liberty Memorial Bridge Replacement Project, Poor and Deteriorating Structural Rehabilitation or Reconstruction, U.S. Coast Guard and U.S. Army COE Section 10 and 404 Permits Issuance, Missouri River, Bismarck and Mandan, ND, Wait Period Ends: September 22, 2003, Contact: Mark Schrader (701) 250-4343.*

*EIS No. 030385, FINAL EIS, SFW, PROGRAMMATIC EIS—Double crested Cormorant (DCCOs) Management Plan, Reduction of Resource Conflicts, Flexibility Enhancements of Natural Resource Agencies in dealing with DCCO Related Resource Conflicts and to ensure the Conservation of Healthy, Viable DCCO Population, Implementation, The Contiguous United States, Wait Period Ends: September 22, 2003, Contact: Shauna Hanisch (703) 358-1714.*

*EIS No. 030386, DRAFT EIS, DOE, AZ, Sahuartia-Nogales Transmission Line, Construction and Operation of a 345,00-volt (345 kV) Electric Transmission Line across the United States Border with Mexico, Application for Presidential Permit, Tucson Electric Power (TEP), Nogales, AZ, Comment Period Ends: October 14, 2003, Contact: Dr. Jerry Pell (202) 586-3362. This document is available on the Internet at: <http://tis.eh.doe.gov/nepa/documentspub.htm1>.*

#### Amended Notices

*EIS No. 030309, DRAFT SUPPLEMENT, FAA, CA, Los Angeles International Airport Proposed Master Plan Improvements, New Alternative, Enhanced Safety and Security Plan, Los Angeles County, CA, Comment Period Ends: November 7, 2003, Contact: David Kessler (310) 725-3615. Revision of FR Notice Published on 7/11/2003: CEQ Comment Period Ending 8/25/2003 has been Extended to 11/7/2003.*

*EIS No. 030266, DRAFT EIS, EPA, KY, VA, TN, WV, Programmatic—Mountaintop Mining and Valley Fills Program Guidance, Policies or Regulations to Minimize Adverse Environmental Effects to Waters of the U.S. and Fish and Wildlife Resources, Implementation, Appalachia, Appalachian Study Area, WV, KY, VA and TN, Comment Period Ends: January 6, 2004, Contact: John Forren (EPA) (215) 814-2705. Revision of FR Notice Published on 6/13/2003: CEQ Comment Period Ending 8/29/2003 has been Extended to 9/6/2004.*

Dated: August 18, 2003.

**Joseph C. Montgomery,**  
*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 03-21602 Filed 8-21-03; 8:45 am]

**BILLING CODE 6560-50-P**

#### ENVIRONMENTAL PROTECTION AGENCY

[FRL-7548-7]

#### Office of Research and Development; Board of Scientific Counselors, Executive Committee Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, Public Law 92-463, as amended (5 U.S.C., App.2) notification is hereby given that the Environmental Protection Agency, Office of Research and Development (ORD), Board of Scientific Counselors (BOSC), will hold an Executive Committee Meeting.

**DATES:** The Meeting will be held on September 11-12, 2003. On Thursday, September 11, the meeting will begin at 8:30 a.m., and will recess at 4:30 p.m. On Friday, January 12, the meeting will reconvene at 9 a.m. and will adjourn at approximately 2 p.m. All times noted are Eastern Time.

**ADDRESSES:** The Meeting will be held at the Lowe's L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC 20024.

**SUPPLEMENTARY INFORMATION:** Agenda items to include, but not be limited to: Homeland Security Research Strategy Report, Briefing on EPA's Report on the Environment, Discussion of BOSC Future Issues and Plans, and BOSC Communications Ad-Hoc Committee Draft Report.

Anyone desiring a draft BOSC agenda may fax their request to Shirley R Hamilton (202) 565-2444. The meeting is open to the public. Any member of

the public wishing to make a presentation at the meeting should contact Shirley Hamilton, Designated Federal Officer, Office of Research and Development (8701R), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or by telephone at (202) 564-6853. In general, each individual making an oral presentation will be limited to a total of three minutes.

**FOR FURTHER INFORMATION CONTACT:** Shirley R. Hamilton, Designated Federal Officer, U.S. Environmental Protection Agency, Office of Research and Development, National Center for Environmental Research (MC 8701R), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564-6853.

Dated: August 18, 2003.

**John C. Puzak,**

*Acting Director, National Center for Environmental Research.*

[FR Doc. 03-21598 Filed 8-21-03; 8:45 am]

**BILLING CODE 6560-50-P**

#### ENVIRONMENTAL PROTECTION AGENCY

[FRL-7547-3]

#### Connecticut Marine Sanitation Device Standard; Notice of Determination for the Connecticut Portion of the Pawcatuck River, Little Narragansett Bay, Portions of Fishers Island Sound and All of Stonington Harbor

On January 29, 2003 notice was published that the State of Connecticut had petitioned the Regional Administrator, Environmental Protection Agency (EPA), to determine that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for all waters of the "Connecticut portion of the Pawcatuck River, Little Narragansett Bay, portions of Fishers Island Sound and all of Stonington Harbor." The petition was filed pursuant to section 312 (f) (3) of Pub. L. 92-500, as amended by Pub. L. 95-217 and 100-4, for the purpose of declaring these waters a "No Discharge Area" (NDA).

Section 312 (f) (3) states: "After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such States require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply

until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply.”

The information submitted to me by the State of Connecticut certifies that there are three disposal facilities available to service vessels operating in the “Connecticut portion of the Pawcatuck River, Little Narragansett Bay, portions of Fishers Island Sound and all of Stonington Harbor.” A table with the facilities’ locations, contact information, hours of operation, and fees is appended at the end of this notice.

Based on an examination of the petition and its supporting information, which included site visits by EPA New

England staff, I have determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the area covered under this determination which includes the “Connecticut portion of the Pawcatuck River, Little Narragansett Bay, portions of Fishers Island Sound and all of Stonington Harbor.”

The area covered under this petition extends from Wamphassuc Point (41° 19’ 40.63” N by 71° 55’ 15.75” W) due south past Noyes Shoal to the boundary between Connecticut and New York (41° 18’ 28.99” N by 71° 55’ 15.75” W), easterly following the boundary between Connecticut and New York to the intersection of the Connecticut, New York and Rhode Island State lines (41° 18’ 16.69” N by 71° 54’ 27.23” W) and

following the boundary between Connecticut and Rhode Island to U. S. Route 1 over the Pawcatuck River and including all Connecticut waters seaward of U.S. Route 1.

This determination is made pursuant to section 312 (f) (3) of Pub. L. 92–500, as amended by Pub. L. 95–217 and 100–4. 0000

A Response to Comments was prepared for the nine communications EPA New England received during the 30 day comment period, and may be requested from EPA by written request to:

Ann Rodney, U.S. EPA New England, 1 Congress Street, Suite 1100, CWQ, Boston, MA 02114–2023.

Dated: August 12, 2003.

**Robert W. Varney,**  
Regional Administrator, Region 1.

Location	Contact Information	Hours of Operation (Call Ahead)	Mean Low Water Depth	Fee
Dodson Boatyard Stonington, CT .....	VHF CH 78 (860) 535–1507.	Mar–Oct 8–10 .....	6–7 feet .....	\$5
Norwest Marina Pawcatuck, CT .....	VHF CH 78 (860) 599–2442.	Apr–Nov 8–6 .....	6–7 feet .....	\$5
Westerly Pumpout Boat (mobile) .....	VHF CH 9 (401) 348–2538.	Apr–Oct 10–4 .....	N/A .....	\$5

[FR Doc. 03–21427 Filed 8–21–03; 8:45 am]  
BILLING CODE 6560–50–P

**FEDERAL COMMUNICATIONS COMMISSION**

**Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority**

August 18, 2003.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a 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:** Persons wishing to comment on this information collection should submit comments by October 21, 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 Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov*.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

**SUPPLEMENTARY INFORMATION:**

OMB Control No.: 3060–0202.

Title: Section 87.37, Developmental License.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for profit, not-for-profit institutions, and State, local, or Tribal government.

Number of Respondents: 12.

Estimated Time Per Response: 8 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 96 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: The requirement in section 87.37 is necessary to enable the Commission to gather data on the results of developmental programs conducted in the Aviation Service for which developmental authorizations have been issued. The data is required to determine whether such developmental authorizations should be renewed and/or whether rulemaking proceedings should be initiated to provide generally for such operations in the Aviation Service. The information is used by Commission staff to determine the merits of the program for which a developmental authorization was granted. If such information were not collected, the value of developmental programs in the Aviation Service would be severely limited. The Commission would have little, if any, information

available regarding the advantages and disadvantages of the subject developmental operations.

*OMB Control No.:* 3060-0222.

*Title:* Section 97.213, Remote Control of a Station.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Individuals or households, business or other for-profit entities.

*Number of Respondents:* 500.

*Estimated Time Per Response:* .2 hours (12 minutes).

*Frequency of Response:*

Recordkeeping requirement.

*Total Annual Burden:* 100 hours.

*Annual Reporting and Recordkeeping Cost Burden:* N/A.

*Needs and Uses:* The recordkeeping requirement contained in section 97.213 consists of posting a photocopy of the amateur station license, a label with the name, address, and telephone number of the station licensee, and the name of at least one authorized control operator. This requirement is necessary so that quick resolution of any harmful interference problems can be identified and to ensure that the station is operating in accordance with the Communications Act of 1934, as amended. The information is used by FCC staff during inspections and investigations to assure that remotely controlled amateur radio stations are licensed in accordance with applicable rules, statutes and treaties. In the absence of this recordkeeping requirement, field inspections and investigations related to harmful interference could be severely hampered and needlessly prolonged due to inability to quickly obtain vital information about a remotely controlled station.

*OMB Control No.:* 3060-0259.

*Title:* Section 90.263, Substitution of Frequencies Below 25 MHz.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for profit, and State, local, or Tribal governments.

*Number of Respondents:* 60.

*Estimated Time Per Response:* .5 hours.

*Frequency of Response:* On occasion reporting requirement.

*Total Annual Burden:* 30 hours.

*Annual Reporting and Recordkeeping Cost Burden:* N/A.

*Needs and Uses:* Section 90.263 requires applicants proposing operations in certain frequency bands below 25 MHz to submit supplemental

information showing such frequencies are necessary from a safety of life standpoint, and information regarding minimum necessary hours of operation. This requirement will be used by Commission staff in evaluating the applicant's need for such frequencies and the interference potential to other stations operating on the proposed frequencies.

*OMB Control No.:* 3060-0264.

*Title:* Section 80.413, On-Board Station Equipment Records.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Individuals or households, business or other for profit, not-for-profit institutions, and State, local, or Tribal government.

*Number of Respondents:* 1,000.

*Estimated Time Per Response:* 2 hours.

*Frequency of Response:*

Recordkeeping requirement.

*Total Annual Burden:* 2,000 hours.

*Annual Reporting and Recordkeeping Cost Burden:* N/A.

*Needs and Uses:* The recordkeeping requirement contained in section 80.413 is necessary to document the number and type of transmitters operating under an on-board station license. The information is used by FCC staff during inspections and investigations to determine what mobile units and repeaters are associated with on-board stations aboard a particular vessel. If this information were not collected, no means would be available to determine if this type of radio equipment is authorized or who is responsible for its operation. Enforcement and frequency management programs would be negatively affected.

*OMB Control No.:* 3060-0297.

*Title:* Section 80.503, Cooperative Use of Facilities.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Individuals or households, business or other-for-profit, not-for-profit institutions, and State, local, or Tribal government.

*Number of Respondents:* 100.

*Estimated Time Per Response:* 16 hours.

*Frequency of Response:*

Recordkeeping requirement.

*Total Annual Burden:* 1,600 hours.

*Annual Reporting and Recordkeeping Cost Burden:* N/A.

*Needs and Uses:* The recordkeeping requirements contained in section 80.503 are necessary to ensure licensees which share private facilities operate within the specified scope of service, on

a non-profit basis, and do not function as communications common carriers providing ship-shore public correspondence services. The information is used by FCC staff during inspections and investigations to insure compliance with applicable rules. If this information was not available, enforcement efforts could be hindered, frequency congestion in certain bands could increase, and the financial viability of some public coast radiotelephone stations could be threatened.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 03-21503 Filed 8-21-03; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

[EB Docket No. 03-152; FCC 03-158]

**William L. Zawila, Avenal Educational Services, Inc., Central Valley Educational Services, Inc., H.L. Charles d/b/a Ford City Broadcasting, Linda Ware d/b/a Lindsay Broadcasting, and Western Pacific Broadcasting, Inc.—Order To Show Cause, Notice of Opportunity for Hearing, and Hearing Designation Order**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document, the Commission issued an Order to Show Cause why the construction permits of broadcast stations KNGS(FM), Coalinga, California, KAAX(FM), Avenal, California, KAJP(FM), Firebaugh, California, and KZPE(FM), Ford City, California, and the license of broadcast station KZPO(FM), Lindsay, California, should not be revoked, and Notice of Opportunity for Hearing, and an Order designating for hearing the application for renewal of license of broadcast station KKFO(AM), Coalinga, California. **DATES:** Petitions by persons desiring to participate as a party in the hearing may be filed not later than September 22, 2003, pursuant to 47 CFR 1.223. See **SUPPLEMENTARY INFORMATION** for dates that named parties should file appearances.

**ADDRESSES:** Federal Communications Commission, Enforcement Bureau, 445 12th Street, SW., Washington, DC 20554. See **SUPPLEMENTARY INFORMATION** for further filing instructions.

**FOR FURTHER INFORMATION CONTACT:** William Freedman, Deputy Chief,

Enforcement Bureau, Investigations and Hearings Division, (202) 418-1420; Thomas Nessinger, Attorney-Advisor, Media Bureau, Audio Division, (202) 418-2700.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order to Show Cause, Notice of Opportunity for Hearing, and Hearing Designation Order, FCC 03-158, released July 16, 2003.

In the Order to Show Cause, the Commission set forth facts supporting the conclusion that the construction permits of broadcast stations KNGS(FM), Coalinga, California, KAAX(FM), Avenal, California, KAJP(FM), Firebaugh, California, and KZPE(FM), Ford City, California, and the license of broadcast station KZPO(FM), Lindsay, California, should be revoked, and offered the permittees/licenses of those broadcast stations the opportunity for hearing on the issues specified. In the Hearing Designation Order, the Commission determined there was a substantial and material question of fact as to whether the application of Western Pacific Broadcasting, Inc. ("WPBI") for renewal of the license of broadcast station KKFO(AM), Coalinga, California, should be denied, and designated for hearing the KKFO(AM) application for renewal of license.

Station KNGS(FM), Coalinga, California (permitted to William L. Zawila ["Zawila"]) and station KAAX(FM), Avenal, California (permitted to Avenal Educational Services, Inc.) were to have constructed a 91-meter tower near Avenal, California, on which the antennas for both stations were to be located. Both applicants filed license applications representing that both stations had been constructed as authorized. An informal objector presented evidence, confirmed by Commission investigation, that one month after the license applications were filed, the actual transmitting facilities consisted of two 50-foot telephone poles with no main studio facilities. Upon inquiry, Zawila represented that the 91-meter tower had been constructed but was destroyed by vandalism. Commission investigation indicated that Zawila's representations were false, and that the facilities of KNGS(FM) and KAAX(FM) were not constructed according to the permits.

Commission investigation of station KAJP(FM), Firebaugh, California (permitted to Central Valley Educational Services, Inc., of which Zawila is an officer) yielded substantial and material questions of fact as to whether the original antenna was constructed

according to the station's construction permit. Investigation also revealed no program origination or Emergency Alert System ("EAS") equipment at the KAJP(FM) studio. The facilities of station KZPE(FM), Ford City, California (permitted to H.L. Charles d/b/a Ford City Broadcasting) were non-operational, consisting of an antenna mounted on a telephone pole, no main studio facilities, non-operational transmission equipment, and a site that had no power and which was so remote that gasoline to operate a power generator could not be delivered. H.L. Charles, the permittee, referred all questions regarding the station's operation to her "manager," Zawila. Station KZPO(FM), Lindsay, California, is licensed to Linda Ware d/b/a Lindsay Broadcasting. In response to the Commission's pre-hearing inquiry, Zawila represented that Ms. Ware was deceased, but did not provide a date of death, and no application for transfer of control to the administrator of Ms. Ware's estate has been filed. Commission investigators found KZPO(FM)'s main studio is not located as indicated in its license, and that the main studio is not properly staffed. Investigators also determined that KZPO(FM)'s public file is incomplete, that there was no EAS equipment at the transmitter site or main studio, and that transmitter power output was in excess of that authorized.

In the Hearing Designation Order, the Commission set forth facts raising a substantial and material question of fact as to whether Zawila, as sole shareholder of WPBI, misrepresented facts to and/or lacked candor with the Commission by, among other things, representing that KKFO(AM) had lost its site due to redevelopment by the City of Coalinga, and representing that he was in negotiations with the City for return to the site, when in fact City officials denied such representations. The Commission also determined through investigation that WPBI failed to maintain properly staffed main studios for KKFO(AM); failed to maintain station logs or to make station logs and station facilities available for inspection by Commission representatives; failed to provide records and information to Commission representatives on request; failed timely to notify the Commission that KKFO(AM) was not adhering to a minimum operating schedule or failed to make an informal written request for additional time to restore a minimum operating schedule; failed to maintain a complete public file at the main studio of KKFO(AM) or at an accessible place in the community of license; failed to

make equipment performance measurements upon installation of a new or replacement main transmitter and annually thereafter; failed to maintain and operate KKFO(AM) in a manner that complies with the technical rules set forth in Commission rules and in accordance with the KKFO(AM) station authorization; and failed to transmit broadcast signals for a period of over twelve consecutive months, causing the expiration of the KKFO(AM) license as a matter of law. Pursuant to sections 312(a) and 312(c) of the Communications Act of 1934, as amended, 47 U.S.C. 312(a) and (c), and 47 CFR 1.91(a), William L. Zawila, Avenal Educational Services, Inc. ("AES"), Central Valley Educational Services, Inc. ("CVES"), and H.L. Charles d/b/a Ford City Broadcasting ("FCB") are directed to show cause why the construction permits for KNGS(FM), Coalinga, California; KAAX(FM), Avenal, California; KAJP(FM), Firebaugh, California; and KZPE(FM), Ford City, California, should not be revoked and all authority to operate said stations terminated, at a hearing before an F.C.C. Administrative Law Judge, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether William L. Zawila, individually and/or as an officer of AES and CVES, or on behalf of FCB, misrepresented facts to and/or lacked candor with the Commission in his statements regarding the construction and/or operation of the facilities of KNGS(FM), KAAX(FM), KAJP(FM), and KZPE(FM), and in his statements in response to official Commission inquiries regarding the operation of said stations, in violation of section 312(a)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 312(a)(1), and/or 47 CFR 73.1015;

2. To determine whether William L. Zawila, individually and/or as an officer of AES and CVES, or on behalf of FCB, willfully or repeatedly violated 47 CFR 73.1690(b)(2) by moving the antennas of KNGS(FM), KAAX(FM), KAJP(FM), or KZPE(FM) to different towers without a construction permit;

3. To determine whether William L. Zawila, AES, CVES and/or FCB willfully or repeatedly violated 47 CFR 73.1125 of the rules, by failing to maintain properly staffed main studios for KNGS(FM), KAAX(FM), KAJP(FM), and KZPE(FM), and by failing to have a local telephone number in the communities of license for KNGS(FM) and KAAX(FM), or toll-free telephone numbers for those stations;

4. To determine whether William L. Zawila, AES, CVES, and/or FCB

willfully or repeatedly violated 47 CFR 73.3526, by failing to maintain proper public inspection files for KNGS(FM), KAAX(FM), KAJP(FM), and KZPE(FM);

5. To determine whether William L. Zawila, AES, and/or CVES willfully or repeatedly violated 47 CFR 17.57, by failing to notify the Commission within 24 hours of completion of construction of towers for which Antenna Registration Numbers had been assigned, or of changes in the structures' heights, for the towers on which the antennas of KNGS(FM), KAAX(FM), and KAJP(FM) were to have been mounted;

6. To determine whether William L. Zawila was an undisclosed real party in interest in FCB's application for license, or whether William L. Zawila and/or FCB willfully or repeatedly violated section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. 310(d), and/or 47 CFR 73.3540(a), by Zawila's assuming control of KZPE(FM) without prior Commission authorization; and

7. To determine, in light of the evidence adduced under the foregoing issues, whether William L. Zawila, AES, CVES, and/or FCB possess the requisite qualifications to be or remain permittees of their respective radio stations.

Pursuant to sections 312(a) and 312(c) of the Communications Act of 1934, as amended, 47 U.S.C. 312(a) and (c), and 47 CFR 1.91(a), William L. Zawila and Linda Ware d/b/a Lindsay Broadcasting ("LB") or her successor(s) in interest are directed to show cause why the license for KZPO(FM), Lindsay, California should not be revoked and all authority to operate said station terminated, at a hearing before an F.C.C. Administrative Law Judge, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether William L. Zawila, individually and/or on behalf of LB, misrepresented facts to and/or lacked candor with the Commission in his statements regarding the construction and operation of the facilities of KZPO(FM), and in his statements in response to official Commission inquiries regarding the operation of said station, in violation of section 312(a)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 312(a)(1), and/or 47 CFR 73.1015;

2. To determine whether William L. Zawila and/or LB willfully or repeatedly violated section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. 310(d) and/or 47 CFR 73.3540(a) of the rules, by Zawila's assuming control of KZPO(FM) without prior Commission authorization;

3. To determine whether Zawila and/or LB willfully or repeatedly violated 47

CFR 11.15, 11.35(a), 11.35(c), and 11.52(d), by failing to maintain proper EAS equipment and proper EAS logs;

4. To determine whether William L. Zawila and/or LB willfully or repeatedly violated 47 CFR 73.1125 by failing to maintain a properly staffed main studio for KZPO(FM);

5. To determine whether Zawila and/or LB willfully or repeatedly violated 47 CFR 73.1800(a), 73.1225(a), 73.1225(c)(5), and 73.1226(a), by failing to maintain station logs and to make station logs and facilities available on request for inspection by the Commission;

6. To determine whether Zawila and/or LB willfully or repeatedly violated 47 CFR 73.1560(b), by operating station KZPO(FM) at a transmitter output power greater than 105% of authorized power;

7. To determine whether Zawila and/or LB willfully or repeatedly violated 47 CFR 73.1225(c)(2), 73.1226(c)(4), 73.1870(b)(3), and 73.1870(c)(3), by failing to maintain and make available for inspection records pertaining to the chief operator of station KZPO(FM), to post the written designation of chief operator, to maintain in the public inspection file agreements with the chief operator, and to have the chief operator review and sign station records and logs;

8. To determine whether Zawila and/or LB willfully or repeatedly violated 47 CFR 73.1350(a), by failing to maintain and operate KZPO(FM) in a manner that complies with the technical rules set forth in our rules and in accordance with its station authorization; and

9. To determine, in light of the evidence adduced under the foregoing issues, whether William L. Zawila and/or LB possess the requisite qualifications to be or remain licensees of KZPO(FM).

Pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e), the application of Western Pacific Broadcasting, Inc. ("WPBI") for renewal of license for KKFO(AM), Coalinga, California, File No. BR-19970804Y, is designated for hearing before an F.C.C. Administrative Law Judge, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether William L. Zawila, individually and/or on behalf of WPBI, misrepresented facts to and/or lacked candor with the Commission in his statements regarding the operation of the facilities of KKFO(AM), and in his statements in response to official Commission inquiries regarding the operation of said station, in violation of section 312(a)(1) of the Communications

Act of 1934, as amended, 47 U.S.C. 312(a)(1), and/or 47 CFR 73.1015;

2. To determine whether William L. Zawila, individually and/or on behalf of WPBI, willfully or repeatedly violated 47 CFR 73.1125, by failing to maintain properly staffed main studios for KKFO(AM);

3. To determine whether William L. Zawila, individually and/or on behalf of WPBI, willfully or repeatedly violated 47 CFR 73.1800(a), 73.1225(a), 73.1225(c)(5), and 73.1226(a), by failing to maintain station logs and to make station logs available on request for inspection by the Commission, by failing to make KKFO(AM) available for inspection by representatives of the Commission during the station's business hours, and by failing to provide records and information to Commission representatives upon request;

4. To determine whether William L. Zawila, individually and/or on behalf of WPBI, willfully or repeatedly violated 47 CFR 73.1740(a)(4), by failing to notify the Commission not later than the tenth day of limited or discontinued operation that KKFO(AM) was not adhering to a minimum operating schedule, or by failing to make an informal written request for such additional time as may be necessary to restore the minimum operating schedule;

5. To determine whether William L. Zawila, individually and/or on behalf of WPBI, willfully or repeatedly violated 47 CFR 73.3526, by failing to maintain a complete public file at the main studio of KKFO(AM) or at an accessibly place in the community of license, which is available for public inspection at any time during regular business hours;

6. To determine whether William L. Zawila, individually and/or on behalf of WPBI, willfully or repeatedly violated 47 CFR 73.1590, by failing to make equipment performance measurements upon installation of a new or replacement main transmitter, and annually thereafter;

7. To determine whether William L. Zawila, individually and/or on behalf of WPBI, willfully or repeatedly violated 47 CFR 73.1350(a), by failing to maintain and operate KKFO(AM) in a manner that complies with the technical rules set forth in the Commission's rules and in accordance with its station authorization;

8. To determine whether station KKFO(AM) failed to transmit broadcast signals for a period of over twelve consecutive months, thus causing expiration of its license under section 312(g) of the Communications Act of 1934, as amended, 47 U.S.C. 312(g), and 47 CFR 73.1740(c); and

9. To determine, in light of the evidence adduced under the foregoing issues, whether the license for KKFO(AM) has expired pursuant to section 312(g) of the Communications Act of 1934, as amended, 47 U.S.C. 312(g), and 47 CFR 73.1740(c), or whether William L. Zawila and/or WPBI possess the requisite qualifications to be or remain licensees of KKFO(AM).

*Appearances by Parties:* William L. Zawila, Avenal Educational Services, Inc., Central Valley Educational Services, Inc., H.L. Charles d/b/a Ford City Broadcasting, and Linda Ware d/b/a/ Lindsay Broadcasting shall, within thirty (30) days of July 16, 2003, file a written appearance stating that they will appear at the hearing and present evidence on the matters specified in the Order to Show Cause.

Western Pacific Broadcasting, Inc. must, within twenty (20) days of mailing of notice of its designation as a party, file a written appearance in triplicate, stating that it will appear at the hearing on the date fixed for hearing and will present evidence on the issues specified in the Hearing Designation Order.

The full text of the Order to Show Cause, Notice of Opportunity for Hearing, and Hearing Designation Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-03-158A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-03-158A1.pdf). Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418-0260 or TTY (202) 418-2555.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 03-21508 Filed 8-21-03; 8:45 am]

BILLING CODE 6712-01-P

---

## FEDERAL MARITIME COMMISSION

[Petition No. P5-03]

### Petition of the National Customs Brokers and Forwarders Association of America, Inc. for Limited Exemption From Certain Tariff Requirements of the Shipping Act of 1984; Extension of Time

The Commission published notice of Petition No. P5-03 filed by the National

Customs Brokers and Forwarders Association of America, Inc. ("NCBFAA"), in the **Federal Register** on August 19, 2003 (68 FR 49775). That notice requested comments to the Petition by September 5, 2003. The World Shipping Counsel ("WSC") has requested an extension of time until September 24, 2003, for all parties to file comments in reply to this Petition. WSC advises that it has been authorized by NCBFAA's counsel to state that the Petitioner does not object to the requested extension. The Commission has determined to grant the request. Accordingly, comments are now due by September 24, 2003.

By the Commission.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 03-21580 Filed 8-21-03; 8:45 am]

BILLING CODE 6730-01-P

---

## FEDERAL MARITIME COMMISSION

[Petition No. P3-03]

### Petition of United Parcel Service, Inc. for Exemption Pursuant to Section 16 of the Shipping Act of 1984 to Permit Negotiation, Entry and Performance of Service Contracts; Extension of Time

The Commission published notice of Petition No. P3-03 filed by United Parcel Service, Inc. ("UPS"), in the **Federal Register** on August 4, 2003 (68 FR 45820). That notice requested comments to the Petition by August 22, 2003. The World Shipping Counsel ("WSC") has requested an extension of time until September 24, 2003, for all parties to file comments in reply to this Petition. WSC advises that it has been authorized by UPS's counsel to state that the Petitioner does not object to the requested extension. The Commission has determined to grant the request. Accordingly, comments are now due by September 24, 2003.

By the Commission.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 03-21581 Filed 8-21-03; 8:45 am]

BILLING CODE 6730-01-P

---

## FEDERAL RESERVE SYSTEM

### Federal Open Market Committee; Domestic Policy Directive of June 24-25, 2003

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open

Market Committee at its meeting held on June 24-25, 2003.<sup>1</sup>

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with reducing the federal funds rate at an average of around 1 percent.

By order of the Federal Open Market Committee, August 18, 2003.

**Vincent R. Reinhart,**

*Secretary, Federal Open Market Committee.*

[FR Doc. 03-21568 Filed 8-21-03; 8:45 am]

BILLING CODE 6210-01-S

---

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

<sup>1</sup> Copies of the Minutes of the Federal Open Market Committee meeting on June 24-25, 2003, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 15, 2003.

**A. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Prosperity Bancshares, Inc.* Houston, Texas; to merge with MainBancorp, Inc., Austin, Texas, and thereby indirectly acquire voting shares of Main Bank, National Association, Dallas, Texas.

Board of Governors of the Federal Reserve System, August 18, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03-21570 Filed 8-21-03; 8:45 am]

**BILLING CODE 6210-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Meeting of the President's Council on Bioethics on September 4-5, 2003

**AGENCY:** The President's Council on Bioethics, HHS.

**ACTION:** Notice.

**SUMMARY:** The President's Council on Bioethics will hold its thirteenth meeting, at which, among other things, it will hear and discuss presentations on the ethics and implementation of embryonic stem cell research funding, including testimony by Elias Zerhouni, MD, director, U.S. National Institutes of Health (NIH), Mark B. McClellan, MD, commissioner, U.S. Food and Drug Administration (FDA), and several interested parties from the private sector. The Council will also continue discussion of its "beyond therapy" and "biotechnology and public policy" projects. Subjects discussed at past Council meetings (and potentially touched on at this meeting) include: human cloning, embryo research, lifespan-extension research, organ procurement for transplantation, and extra-therapeutic powers to enhance or improve human mood, memory, or muscles. The Council may also discuss issues surrounding the regulation of assisted reproduction and reproductive genetics (including IVF, ICSI, PGD; sex selection, inheritable genetic modification; and the patentability of human genes, tissues, and organisms).

**DATES:** The meeting will take place Thursday, September 4, 2003, from 9 a.m. to 5:15 pm ET; and Friday,

September 5, 2003, from 8:30 am to 12:30 pm ET.

**ADDRESSES:** Hotel Wyndham Washington DC, 1400 M Street NW., Washington, DC 20005.

*Public Comments:* The meeting agenda will be posted at <http://www.bioethics.gov>. Members of the public may comment, either in person or in writing. A period of time will be set aside during the meeting to receive comments from the public, beginning at 11:30 am, on Friday, September 5. Comments will be limited to no more than five minutes per speaker or organization. Please inform Ms. Diane Gianelli, Director of Communications, in advance of your intention to make a public statement, and please give her your name, affiliation, and a brief description of the topic or nature of your comments. To submit a written statement, mail or e-mail it to Ms. Gianelli at one of the addresses given below.

**FOR FURTHER INFORMATION CONTACT:** Ms. Diane Gianelli, Director of Communications, The President's Council on Bioethics, Suite 700, 1801 Pennsylvania Avenue, Washington, DC 20006. Telephone: 202/296-4669. e-mail: [info@bioethics.gov](mailto:info@bioethics.gov). Web site: <http://www.bioethics.gov>.

Dated: August 11, 2003.

**Dean Clancy,**

*Executive Director, The President's Council on Bioethics.*

[FR Doc. 03-21476 Filed 8-21-03; 8:45 am]

**BILLING CODE 4161-90-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease

#### Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92-463) of October 6, 1972, that the Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry, of the Department of Health and Human Services, has been renewed for a 2-year period extending through July 28, 2005.

For further information, contact Robert Spengler, Sc.D., Executive Secretary, Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., M/S E-28, Atlanta, Georgia 30333, telephone 404/498-0003 or fax 404/498-0081.

The Director, Management and 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: August 18, 2003.

**Diane C. Allen,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 03-21511 Filed 8-21-03; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[60Day-03-111]

#### 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: Prevention Research Center Information System—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

The Prevention Research Center Information System will collect in electronic format: (a) Data needed to measure progress toward, or achievement of, newly developed performance indicators, (b) information on Prevention Research Centers that is currently being reported in hard-copy documents, and (c) data on research projects that are currently submitted electronically via a spreadsheet.

In 1984, Congress passed Public Law 98-551 directing the Department of Health and Human Services (DHHS) to establish Centers for Research and Development of Health Promotion and Disease Prevention. In 1986, CDC was given lead responsibility for this program, referred to now as the Prevention Research Centers program. Currently, CDC provides funding to 28

Prevention Research Centers (PRCs) selected through competitive peer review process and managed as CDC cooperative agreements. Awards are made for five (5) years and may be renewed through a competitive RFA process. PRCs (which can be housed in a school of public health, medicine, or osteopathy) conduct multi-disciplinary, community-based, outcomes-oriented research on a broad range of topics related to health promotion and disease prevention.

In spring 2003, CDC published RFA #04003 (FY20004-20009) for the Prevention Research Centers program. The RFA introduces a set of performance indicators that have developed collaboratively with the PRCs and other program stakeholders and are consistent with federal requirements

that all agencies, in response to the Government Performance and Results Act of 1993, prepare performance plans and collect program-specific performance measures.

An Internet-based information system will allow CDC to monitor, and report on, PRC activities more efficiently. Data reported to CDC through the PRC information system will be used by CDC to identify training and technical assistance needs, monitor compliance with cooperative agreement requirements, evaluate the progress made in achieving center-specific goals, and obtain information needed to respond to Congressional and other inquiries regarding program activities and effectiveness.

There are no costs to respondents.

Respondents	No. of respondents	No. of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Clerical .....	28	2	164/60	153
Directors .....	28	2	90/60	84
<b>Total</b> .....				<b>237</b>

Dated: August 18, 2003.

**Nancy E. Cheal,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.*

[FR Doc. 03-21515 Filed 8-21-03; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

[30Day-61-03]

**Proposed Data Collections Submitted for Public Comment and Recommendations**

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 or by fax to (202) 395-6974. Written comments should be received within 30 days of this notice.

**Proposed Project**

School Associated Violent Death Surveillance System—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

The Division of Violence Prevention (DVP), National Center for Injury Prevention and Control (NCIPC) proposes to develop a system for the surveillance of school-associated homicides and suicides. The system will rely on existing public records and interviews with law enforcement officials and school officials. The purpose of the system is to (1) estimate the rate of school-associated violent death in the United States and (2) identify common features of school-associated violent deaths. The proposed system will contribute to the understanding of fatal violence associated with schools, guide further research in the area, and help direct ongoing and future prevention programs.

Violence is the leading cause of death among young people, and increasingly recognized as an important public health and social issue. In 1998, over 3,500 school aged children (5 to 18 years old) in the United States died violent deaths due to suicide, homicide, and unintentional firearm injuries. The vast majority of these fatal injuries were not school associated. However,

whenever a homicide or suicide occurs in or around school, it becomes a matter of particularly intense public interest and concern. NCIPC conducted the first scientific study of school-associated violent deaths during the 1992-99 academic years to establish the true extent of this highly visible problem.

Despite the important role of schools as a setting for violence research and prevention interventions, relatively little scientific or systematic work has been done to describe the nature and level of fatal violence associated with schools. Until NCIPC conducted the first nationwide investigation of violent deaths associated with schools, public health and education officials had to rely on limited local studies and estimated numbers to describe the extent of school-associated violent death.

The proposed system will draw cases from the entire United States in attempting to capture all cases of school-associated violent deaths that have occurred. Investigators will review public records and published press reports concerning each school-associated violent death. For each identified case, investigators will also interview an investigating law enforcement official (defined as a police officer, police chief, or district attorney), and a school official (defined as a school principal, school superintendent, school counselor, school teacher, or school

support staff) who are knowledgeable about the case in question. Researchers will request information on both the victim and alleged offender(s)—including demographic data, their academic and criminal records, and

their relationship to one another. They will also collect data on the time and location of the death; the circumstances, motive, and method of the fatal injury; and the security and violence prevention activities in the school and

community where the death occurred, before and after the fatal injury event. The total burden hours are estimated to be 70.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)
School Officials .....	35	1	1
Police Officials .....	35	1	1

Dated: August 18, 2003.

**Nancy E. Cheal,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.*

[FR Doc. 03-21516 Filed 8-21-03; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

[30 Day-65-03]

**Proposed Data Collections Submitted for Public Comment and Recommendations**

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 or by fax to (202) 395-6974. Written comments should be received within 30 days of this notice.

*Proposed Project:* Levels of Selected Drinking Water Disinfection By-

products in Whole Blood after Showering: The Effect of Genetic Polymorphisms—NEW—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Chlorine is the most commonly used chemical for disinfecting U.S. water supplies; however, chlorine reacts with organic compounds in the water to produce halogenated hydrocarbon by-products. Exposure to these disinfection by-products (DBPs) has been associated with liver and bladder cancer in humans and is suspected of other adverse health outcomes. We recently completed a study of household exposure to one class of DBPs in tap water, trihalomethanes (THMs) (Backer *et al.*, 2000). We found an increase in whole blood levels of one class of (THMs) after people showered or bathed in tap water. We also found that the increases fell roughly into two groups; one group was clustered around a higher level, the other a lower level. It is possible that this clustering is the result of individual variations in physiological characteristics or it could be the result of differences in the ability to metabolize THMs.

Since several polymorphically expressed enzymes are linked to the metabolism of DBPs, these physiologic and genetic differences may be important in determining an individual's risk for cancer and other

health risks associated with exposure to these compounds. We plan to measure the change in blood concentration of DBPs after showering. We will then examine the association between people with different enzyme variants and post-exposure blood THM levels. The study will be conducted in two parts. Part 1 will involve recruiting 250 volunteers who do not have a history of lung problems and who are willing to participate in all aspects of the study. These 250 will be asked to provide some demographic information. They will also provide a buccal cell sample that will be analyzed in order to find a pool of 100 volunteers who have the genetic polymorphisms of interest. Part 2 will involve the 100 study subjects giving three blood samples before and three blood samples after taking a shower. A urine sample will be collected and stored for future use in evaluating urine levels of haloacetic acids (HAAs), another important class of drinking water DBPs. Air and water samples will also be collected.

Subjects will complete a brief questionnaire in order to obtain personal information that might impact the dose of volatized DBPs they receive. This data will be analyzed to determine whether the physiologic and genetic differences among individuals result in differences in blood THM levels after similar exposure. There are no costs to respondents.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hours)
Screening Interview .....	250	1	20/60
Consent Form .....	100	1	20/60
Questionnaire .....	100	1	20/60
Blood Samples .....	100	6	5/60
Shower .....	100	1	20/60
Urine Sample .....	100	2	10/60
Tap Water Sample .....	100	1	10/60
Misc. Study Activities .....	100	1	40/60
Remain at Study Site .....	100	1	2

Dated: August 18, 2003.

Nancy E. Cheal,

Acting Deputy Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03-21517 Filed 8-21-03; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### [Program Announcement 04011]

#### Grants for Injury Control Research Centers; Notice of Availability of Funds

*Application Deadline:* September 22, 2003.

#### A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a) and 391(a) of the Public Health Service Act, (42 U.S.C. sections 280b(a) and 391(a)), as amended. The Catalog of Federal Domestic Assistance number is 93.136.

#### B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2004 funds for grants for Injury Control Research Centers (ICRC). This program addresses the "Healthy People 2010" focus area of Injury and Violence Prevention. A copy of "Healthy People 2010" is available at the following Internet address: <http://www.health.gov/healthypeople>.

The purposes of this program are:

1. To support injury prevention and control research on priority issues as delineated in: "Healthy People 2010"; "Reducing the Burden of Injury: Advancing Prevention and Treatment"; and the research priorities published in the CDC Injury Research Agenda, located at <http://www.cdc.gov/ncipc>.

2. To integrate, in the context of a national program, the disciplines of epidemiology, medicine, biomechanics and other engineering, biostatistics, public health, law and criminal justice, and behavioral and social sciences in order to prevent and control injuries more effectively.

3. To define the injury problem; identify risk and protective factors; develop and evaluate prevention and control interventions and strategies; and ensure widespread adoption of effective interventions and strategies.

4. To provide technical assistance to injury prevention and control programs within a geographic region.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control (NCIPC): Develop new or improved approaches for preventing and controlling death and disability due to injuries.

#### C. Eligible Applicants

This announcement will provide funding for applicants in regions that do not have funded Injury Control Research Centers (ICRCs) and for applicants in regions that have funded Centers that must re-compete for funding.

Eligible applicants include nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, faith-based organizations, tribal organizations, State, Tribal, and local health departments, and small, minority and/or women-owned businesses are eligible for these grants. Non-academic applicant institutions should provide evidence of a collaborative relationship with an academic institution.

Eligible applicants are limited to organizations in Department of Health and Human Services (DHHS) Region II (New Jersey, New York, Puerto Rico, and Virgin Islands), Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia), Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee), Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas), Region IX (Arizona, California, Hawaii, Nevada, American Samoa, Guam, Mariana Islands, Marshall Islands, Micronesia, and Palau), and Region X (Alaska, Idaho, Oregon, and Washington).

**Note:** ICRC grant awards are made to the applicant institution/organization, not the Principal Investigator. Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

#### B. Funding

##### Availability of Funds

Approximately \$4,527,500 is expected to be available in FY 2004 to fund five awards. It is expected that each award will be \$905,500 (total of direct and indirect costs). Applicants will be allowed to apply for \$1,055,500 (\$150,000 above the expected award amount to allow for the inclusion of the description of an additional large

project as described in Section F. Content 4.b. (2).), but each award will be no more than \$905,500 (total of direct and indirect costs). It is expected that each award will begin on or about September 1, 2004, and will be made for a 12-month budget period within a project period of up to five years. Applications that exceed the funding cap noted above will be excluded from the competition and returned to the applicant. Funding estimates may change.

Consideration will also be given to current grantees that submit a competitive supplement requesting one year of funding to enhance or expand existing projects, or to conduct one-year pilot studies. These awards will not exceed \$150,000, including both direct and indirect costs. Supplemental awards will be made for the budget period to coincide with the actual budget period of the grant and are based on the availability of funds.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

##### Use of Funds

Center funding is to be designated for two types of activities. One type of activity is considered core and includes administration, management, general support services (e.g., statistical, library, media relations, and advocacy) as well as activities associated with research development, technical assistance, and education (e.g., seed projects, training activities, and collaborative and technical assistance activities with other groups). Funds may be allocated for trainee stipends, tuition remission, and trainee travel in accordance with the current rates for the United States Public Health Service agencies. Indirect costs for these trainee-related activities are limited to eight percent.

Defined research projects constitute the second type of activity, and ICRCs are encouraged to work toward addressing the breadth of the field. Core activities and defined research projects may each constitute between 25 percent and 75 percent of the operating budget, and should be balanced in such a way that the ICRC demonstrates productivity in research as well as teaching and service. Applicants with less demonstrated expertise in research are encouraged to devote a larger percentage of funds to defined research projects in order to establish their capability as research centers of excellence.

Grant funds will not be made available to support the provision of direct care. Studies may be supported

which evaluate methods of acute care and rehabilitation for potential reductions in injury effects and costs. Studies may be supported which identify the effect on injury outcomes and cost of systems for pre-hospital, hospital, and rehabilitative care and independent living.

Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement, dated April 1, 1994), as necessary to meet the requirements of the program and strengthen the overall application.

#### *Funding Preferences*

At the discretion of the Director, NCIPC, additional consideration may be given to re-competing ICRCs. These centers represent a long-term investment for NCIPC and an established resource for injury control-related issues for their States and regions.

#### *Recipient Financial Participation*

Matching funds are not required for this program announcement, however other sources of funding must be documented.

#### **E. Program Requirements**

In conducting activities to achieve the purpose of this program, applicants will be responsible for the following activities.

1. Applicants must demonstrate expertise and experience in conducting and publishing injury research in at least one of the three phases of injury control (prevention, acute care, or rehabilitation) and are encouraged to be comprehensive.

2. Applicants must document ongoing injury control-related research projects and activities currently supported by other sources of funding.

3. Applicants must provide a director (Principal Investigator) who has specific authority and responsibility to carry out the project. The director must report to an appropriate institutional official, *e.g.*, dean of a school, vice president of a university, or commissioner of health. The director must have no less than thirty percent effort devoted solely to this project with an anticipated range of thirty percent to fifty percent.

4. Applicants must provide evidence of working relationships, including consultation and technical assistance, with outside agencies and other entities in the region in which the ICRC is located which will allow for implementation and evaluation of any proposed intervention activities.

5. Applicants must provide evidence of involvement of specialists or experts

in medicine, biomechanics and other engineering, epidemiology, law and criminal justice, behavioral and social sciences, biostatistics, and public health as needed to complete the plans of the center. These are considered the disciplines and fields for ICRCs.

6. Applicants must have established curricula and graduate training programs in disciplines relevant to injury control (See Section E.5).

7. Applicants must disseminate injury control research findings, translate them into interventions (*i.e.*, programs or policies), and evaluate their effectiveness.

#### **F. Content**

##### *Letter of Intent (LOI)*

A LOI is strongly encouraged for this program. The program announcement title and number must appear in the LOI. The narrative should be no more than two single-spaced pages, printed on one side, with one-inch margins, and unreduced 12-point font. The letter should identify the name of the principal investigator, and briefly describe the scope and intent of the proposed research work. The letter of intent does not influence review or funding decisions, but the number of letters received will enable CDC to plan the review more effectively and efficiently.

##### *Application*

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Applications should include the following information, detailing activities to be conducted for the first budget year, while briefly addressing activities to be conducted over the entire five-year project period.

1. Face page
2. Description (abstract) and personnel
3. Table of contents
4. Detailed budget for the initial budget period: The budget should reflect the composite figures for the grant. In addition, separate budgets (direct and indirect costs) and justifications should be provided for the following categories of activities:

- a. Core activities, including management and administrative functions, other non-research activities (*e.g.*, education/training, consultation, technical assistance, translation/dissemination, program and policy development and evaluation, advocacy, and media activities, etc.), and small

seed projects of less than \$25,000 (total of direct and indirect costs) for one year or less.

b. Research Studies:

(1) Small studies of \$25,000–150,000/year (total of direct and indirect costs) for one to three years duration. These projects might be expansions of seed projects, either further developing methods or hypotheses in preparation for a larger investigation leading to the submission of an RO1 level proposal, or might be stand-alone investigations sufficient to yield results worthy of publication in a peer-reviewed journal and/or a technical report for a legislative body, governmental agency, or injury control program.

(2) Larger scale studies with annual budgets exceeding \$150,000/year (total of direct and indirect costs) and lasting up to five years. These projects typically will test hypotheses and employ more sophisticated methodologies and/or larger sample sizes than small studies.

For seed projects, only modest budget descriptions are required within the application. More detailed budget descriptions, commensurate with costs, are required for both small studies and large research projects.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application that are made available to outside reviewing groups. To exercise this option: on the original and two copies of the application, the applicant must use asterisks to indicate those individuals for whom salaries and fringe benefits are not shown; the subtotals must still be shown. In addition, the applicant must submit an additional copy of page four of Form PHS–398, completed in full, with the asterisks replaced by the salaries and fringe benefits. This budget page will be reserved for internal staff use only.

5. Budget for entire proposed project period including budgets pertaining to consortium/contractual arrangements.

6. Biographical sketches of key personnel, consultants, and collaborators, beginning with the Principal Investigator and core faculty.

7. Other support: This listing should include all other funds or resources pending or currently available. For each grant or contract include source of funds, amount of funding (indicate whether pending or current), date of funding (initiation and termination), and relationship to the proposed program.

8. Resources and environment.

9. Research plan:

a. ICRCs are to develop a range of research and other non-research

activities that are designed to advance the field of injury control through development of new scientific or surveillance methods, creation of new knowledge, and translation of knowledge into training, program and policy development and evaluation activities or other applications that will ultimately reduce injuries or their effects. ICRC applications should articulate how the activities of their program are integrated with each other.

b. A detailed research plan (design and methods), in accordance with NCIPC's performance goal as stated in section "B. Purpose", including hypothesis, expected outcome, value to the field, and measurable and time-framed objectives consistent with the activities for each project within the proposed grant.

(1) Initial seed projects require a short write-up describing the injury control context of the study, the objective, the design, the setting and participants, the intervention being addressed, main outcome measurements, expected results, time lines, cost (total of direct and indirect costs), plans for translation/dissemination, and clear definition of procedures used to select the projects. Clear definitions of procedures used to select future out-year seed projects are also required.

(2) Small research projects require a ten to fifteen page summary describing the accomplishment of all the steps, including a description of the significance of the project, the development and testing of methods and instruments, and the collection of preliminary data needed to take an innovative approach and develop it to the level of a larger investigation leading to the submission of an RO1 level proposal or a stand-alone investigation sufficient to yield results worthy of publication in a peer-reviewed journal and/or a technical report for a legislative body, governmental agency, or injury control program.

(3) Large research projects require an RO1 level summary as described in the PHS 398 (Revised 5/01 and updated 6/28/02) guidelines (See Attachment 2, as posted on the CDC website). The summary should be included as an appendix of the application.

In the research plan section of the application include a description for each small and large research project:

- (a) Title of Project
- (b) Project Director/Lead Investigator
- (c) Institution(s)
- (d) Categorization as Prevention, Acute Care, Rehabilitation, or Biomechanics
- (e) Categorization as to which NCIPC research agenda priority area the project

addresses. Also, a brief description on how it addresses that priority area. If a priority area is not addressed, provide an explanation of why it is important.

(f) Categorization as Seed Project, Small Project, or Large Project

(g) Categorization as New or Ongoing Project

(h) Cost/Year (total of direct and indirect costs)

(i) Research Training: Names, Degrees of Persons Trained or in Training

(j) Key Words

(k) Brief Summary of Project including Intended Application of Finding (Abstract)

c. A description of the core faculty and their roles in implementing and evaluating the proposed programs. The applicant should clearly specify how disciplines will be integrated to achieve the ICRCs objectives.

d. Charts showing the proposed organizational structure of the ICRC and its relationship to the broader institution of which it is a part and, where applicable, to affiliate institutions or collaborating organizations. These charts should clearly detail the lines of authority as they relate to the center, both structurally and operationally. ICRC directors should report to an appropriate organizational level (e.g. dean of a school, vice president of a university, or commissioner of health), demonstrating strong institution-wide support of ICRC activities and ensuring oversight of the process of interdisciplinary activity.

e. Documentation of the public health agencies and other public and private sector entities to be involved in the proposed program, including letters that detail commitments of support and a clear statement of the role, activities, and participating personnel of each agency or entity.

Beginning October 1, 2003, applicants will be required to have a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge.

You are encouraged to obtain a DUNS now if you believe you will be submitting an application to any Federal agency on or after October 1, 2003. Proactively obtaining a DUNS number at the current time will facilitate the receipt and acceptance of applications after September 2003.

To obtain a DUNS number, access the following web site: [www.dunandbradstreet.com](http://www.dunandbradstreet.com) OR call 1-866-705-5711.

## G. Submission and Deadline

### *Letter of Intent (LOI) Submission*

On or before September 8, 2003, submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

### *Application Forms*

Submit the original and two copies of PHS 398 (OMB Number 0925-0001) and one electronic disk copy and adhere to the instructions on the Errata Instruction sheet for PHS 398. Forms are available at the following Internet address: [www.cdc.gov/od/pgo/forminfo.htm](http://www.cdc.gov/od/pgo/forminfo.htm).

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section at: 770-488-2700. Application forms can be mailed to you.

### *Submission Date, Time, and Address*

The application must be received by 4:00 p.m. Eastern Time, November 20, 2003. Submit the application to: Technical Information Management Section-PA04011-CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, Georgia 30341. Applications may not be submitted electronically.

### *CDC Acknowledgment of Application Receipt*

A postcard will be mailed by PGO-TIM, notifying you that CDC has received your application.

### *Deadline*

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

## A. Evaluation Criteria

### Application

Applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the previous heading Program Requirements. Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration.

Applications which are complete and responsive will be subjected to a preliminary evaluation (streamline review) by the Injury Research Grant Review Committee (IRGRC) to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRGRC. Applications that are determined noncompetitive will not be considered, and NCIPC will promptly notify the investigator/program director and the official signing for the applicant organization. Applications determined to be competitive will be evaluated by a dual review process.

Competing supplemental grant awards may be made, when funds are available, to support research work or activities not previously approved by the IRGRC. Applications should be clearly labeled to denote their status as requesting supplemental funding support. These applications will be reviewed by the IRGRC and the secondary review group.

Awards will be made based on priority scores assigned to applications by the IRGRC, programmatic priorities and needs determined by a secondary review committee (the Advisory Committee for Injury Prevention and Control), and the availability of funds.

#### 1. Review by IRGRC

An initial streamline peer-review of ICRC grant applications will be conducted by the IRGRC. The IRGRC may recommend the application for a site visit review. For those applications recommended for a site visit review, a team of peer reviewers, including members of the IRGRC, will conduct on-site visits at each applicant institution, generate summary statements for the visits, and report the assessment to the IRGRC.

Factors to be considered by the IRGRC include:

a. The specific aims of the application, *e.g.*, the long-term objectives and intended accomplishments. Approval of small and large research projects (including new research projects proposed during the five-year funding cycle), in accordance with NCIPC's performance

goal as stated in section "B. Purpose", is subject to peer review.

(1) Seed projects will be evaluated collectively on the mechanism for solicitation of projects and on their technical/scientific merit review. Evaluation criteria have equal value.

(2) Small projects will be evaluated individually on the significance of the project, the innovative approach, and the proposed methods for achieving an investigation sufficient to support a submission of an RO1 level proposal and/or worthy of publication in a peer-reviewed journal and/or a technical report for a legislative body, governmental agency, or injury control program.

(3) Large projects will be evaluated individually according to existing RO1 level project standards as described in the PHS 398 (Revised 5/01 and updated 6/28/02) guidelines (See Attachment 2, as posted on the CDC website). The application must have a minimum of one large research project approved in order to be recommended for further consideration.

(4) At least 80 percent of the costs (total direct and indirect costs) of the approved small and large research projects must be in alignment with the "CDC Injury Research Agenda," <http://www.cdc.gov/ncipc> in order to be recommended for further consideration.

b. The scientific and technical merit of the overall application, including the significance and originality (*e.g.*, new topic, new method, new approach in a new population, or advancing understanding of the problem) of the proposed research.

c. The extent to which the evaluation plan will allow for the measurement of progress toward the achievement of stated objectives. Does the application specify how the effectiveness of the program will be measured?

d. Qualifications, adequacy, and appropriateness of personnel to accomplish the proposed activities.

e. The soundness of the proposed budget in terms of adequacy of resources and their allocation.

f. In addition to conducting defined research projects, ICRCs are expected to devote substantial attention to advancing the field through other activities that are designed to improve research capabilities and translate research into practice. Examples of activities include: consultation and technical assistance that are responsive to regional, State, national, or international priorities; professional training for researchers and practitioners; program development; and evaluation endeavors. The degree of effort devoted to these aspects of an

ICRCs program should be clearly stated in the justification and the budget. The degree of effort may be varied and should reflect the specific focus and goals of the ICRC.

g. Details of progress in the most recent funding period should be provided in the application if the applicant is submitting a re-competing application. Documented examples of success include: development of pilot projects; completion of high quality research projects; publication of findings in peer reviewed scientific and technical journals; number of professionals trained; awards received; ongoing provision of consultation and technical assistance; integration of disciplines; translation of research into implementation; and impact on injury control outcomes including legislation, regulation, treatment, and behavior modification interventions.

h. Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

i. Does the applicant meet the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes:

(1) The proposed plan for the inclusion of both sexes, racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community or communities and recognition of mutual benefits.

j. Does the application adequately address the requirements of the "PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions?"

k. Does the application include measures that are in accordance with CDC's performance plans?

#### 2. Review by the CDC Advisory Committee for Injury Prevention and Control (ACIPC)

Secondary review of ICRC grant applications with a priority score of 350 or better from the initial peer-review by the IRGRC will be conducted by the Science and Program Review Section (SPRS) of the ACIPC. The SPRS consists of ACIPC members, Federal Ex Officio participants, and organizational liaisons. The Federal Ex Officio participants will be responsible for

identifying proposals in overlapping areas of research interest so that unwarranted duplication in federally funded research can be avoided. The NCIPC Division Associate Directors for Science (ADS) or their designees will address the SPRS to assure that research priorities of the announcement are understood and to provide background regarding current research activities. The SPRS recommendations will be presented to the entire ACIPC in the form of a report by the Chairman of the SPRS. The ACIPC will vote to approve, disapprove, or modify these recommendations for funding consideration.

Factors to be considered by the ACIPC include:

- a. The results of the peer-review.
- b. The significance of the proposed activities as they relate to national program priorities, geographic balance, and the achievement of national objectives.
- c. The overall balance of the ICRC program in addressing the three phases of injury control (prevention, acute care, and rehabilitation); the control of injury among populations who are at increased risk, including racial/ethnic minority groups, the elderly and children; the major causes of intentional and unintentional injury; and the major disciplines of injury control.

d. Budgetary considerations. The ACIPC will recommend annual funding levels as detailed in section "D. Funds" of this announcement.

These recommendations, based on the results of the peer review by the IRGRC, the relevance and balance of the proposed research relative to the NCIPC programs and priorities, and the assurance of no duplication of federally-funded research, are presented to the Director, NCIPC, for funding decisions.

### 3. Continued Funding

Continuation awards within the project period will be made on the basis of the availability of funds and the following criteria:

- a. The accomplishments of the current budget period show that the applicant's objectives as prescribed in the yearly work plans are being met.
- b. The objectives for the new budget period are realistic, specific, and measurable.
- c. The methods described will clearly lead to achievement of these objectives.
- d. The evaluation plan allows management to monitor whether the methods are effective by having clearly defined process, impact, and outcome objectives, and the applicant demonstrates progress in implementing the evaluation plan.

e. The budget request is clearly explained, adequately justified, reasonable, and consistent with the intended use of grant funds.

### I. Other Requirements

#### Technical Reporting Requirements

Provide CDC with the original plus two copies of:

1. Annual progress report. The progress report will include a data requirement that demonstrates measures of effectiveness.
2. Financial status report, no more than 90 days after the end of the budget period.
3. Final financial status report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 of this announcement as posted on the CDC home Web site.

- AR-1 Human Subjects Certification
- AR-2 Requirements for inclusion of Women and Racial and Ethnic Minorities in Research
- AR-3 Animal Subjects Requirements
- AR-10 Smoke-Free Workplace Requirement
- AR-11 Healthy People 2010
- AR-12 Lobbying Restrictions
- AR-13 Prohibition on Use of CDC funds for Certain Gun Control Activities
- AR-20 Conference Activities within Grants/Cooperative Agreements
- AR-21 Small, Minority, and Women-owned Business
- AR-22 Research Integrity

Executive Order 12372 does not apply to this program.

### J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—<http://www.cdc.gov>. Click on "Funding" then "Grants and Cooperative Agreements".

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Rd Atlanta, GA 30341-4146, Telephone: 770-488-2700.

For business management and budget assistance, contact: Nancy Pillar, Grants Management Specialist, CDC Procurement and Grants Office 2920 Brandywine Rd, Atlanta, GA 30341-

4146, Telephone: 770-488-2721, E-mail: [nfp6@cdc.gov](mailto:nfp6@cdc.gov).

For business management and budget assistance in the territories, contact:

Charlotte Flitcraft, CDC Procurement and Grants Office 2920 Brandywine Rd., Atlanta, GA 30341-4146, Telephone: 770-488-2780, E-mail: [caf5@cdc.gov](mailto:caf5@cdc.gov).

For program technical assistance, contact: Tom Voglesonger, Program Manager, Office of the Associate Director for Science, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., (K58), Atlanta, GA 30341-3724, Telephone: 770-488-4823, E-mail: [tdv1@cdc.gov](mailto:tdv1@cdc.gov).

Dated: August 18, 2003.

**Sandra R. Manning,**

Director, Procurement and Grants Office, Centers for Disease Control and Prevention. [FR Doc. 03-21514 Filed 8-21-03; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Savannah River Site Health Effects Subcommittee (SRSSES)

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), and the Agency for Toxic Substances and Disease Registry (ATSDR) announce the following meeting.

*Name:* Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Savannah River Site Health Effects Subcommittee (SRSSES).

*Time and Date:* 8 a.m.—4:45 p.m., September 4, 2003. 8 a.m.—10:15 a.m., September 5, 2003.

*Place:* Westin Savannah Harbor, One Resort Drive, P.O. Box 427, Savannah, Georgia 31421, telephone 912-201-2000, fax 912-201-2077.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

*Background:* Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE, and replaced by MOUs signed in 1996 and 2000, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards

from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992, 1996, and in 2000, between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

**Purpose:** This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator ATSDR, regarding community concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community interaction and serve as a vehicle for community concerns to be expressed as advice and recommendations to CDC and ATSDR.

**Matters to be Discussed:** Agenda items include: Advanced Technology Laboratory Research Update; Update on Results from Regulatory Air and Water Sampling Data by the South Carolina Department of Health and Environmental Control; Logistics of an Epidemiologic Study, Screening, and Studies of Radionuclides at Sites other than SRS; and ATSDR Update and SRS Brochure. Agenda items are subject to change as priorities dictate.

**Contact Person for More Information:** Phillip Green, Executive Secretary, SRS/HES, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, CDC, 1600 Clifton Road, N.E. (E-39), Atlanta, Georgia 30333, telephone (404)498-1800, fax (404)498-1811.

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 CDC and ATSDR.

Dated: August 18, 2003.

**Diane C. Allen,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 03-21512 Filed 8-21-03; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

**Board of Scientific Counselors, National Institute for Occupational Safety and Health**

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:** Board of Scientific Counselors, National Institute for Occupational Safety and Health (NIOSH).

**Time and Date:** 9:00 a.m.—2:45 p.m., September 11, 2003.

**Place:** Washington Court Hotel on Capitol Hill, 525 New Jersey Avenue, NW., Washington, DC 20001, telephone (202) 628-2100, fax (202) 879-7938.

**Status:** Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

**Purpose:** The Secretary, the Assistant Secretary for Health, and by delegation the Director, CDC are authorized under sections 301 of the Public Health Service Act to conduct directly or by grants or contracts, research, experiments, and demonstrations relating to occupational safety and health and to mine health. The Board of Scientific Counselors, NIOSH shall provide advice to the Director, National Institute for Occupational Safety and Health on research and preventions programs. Specifically, the Board shall provide guidance on the Institute's research activities related to developing and evaluating hypotheses, systematically documenting findings and disseminating results. The Board shall evaluate the degree to which the activities of NIOSH: (1) Conform to appropriate scientific standards, (2) address current, relevant needs, and (3) produce intended results.

**Matters to be Discussed:** Agenda items include a report from the Director of NIOSH; evaluation options of the National Occupational Research Agenda (NORA); update on NIOSH Traumatic Injury Research; approaches to promoting a healthier U.S. Workforce; update on NIOSH Aerosols Research; and closing remarks.

Agenda items are subject to change as priorities dictate.

**Contact Person for More Information:** Roger Rosa, Executive Secretary, BSC, NIOSH, CDC, 200 Independence Avenue, SW., Room 715H, Washington, DC 20201, telephone (202) 205-7856, fax (202) 260-4464.

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: August 18, 2003.

**Diane C. Allen,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 03-21510 Filed 8-21-03; 8:45 am]

**BILLING CODE 4163-19-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

**Fees for Sanitation Inspections of Cruise Ships**

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** This notice announces fees for vessel sanitation inspections for fiscal year 2004 (October 1, 2003, through September 30, 2004).

**EFFECTIVE DATE:** October 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** David L. Forney, Chief, Vessel Sanitation Program, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop F-16, Atlanta, Georgia 30341-3724, telephone (770) 488-7333, E-mail: [Dforney@cdc.gov](mailto:Dforney@cdc.gov).

**SUPPLEMENTARY INFORMATION:**

**Purpose and Background**

The fee schedule for sanitation inspections of passenger cruise ships inspected under the Vessel Sanitation Program (VSP) was first published in the **Federal Register** on November 24, 1987 (52 FR 45019), and CDC began collecting fees on March 1, 1988. Since then, CDC has published the fee schedule annually. This notice announces fees effective October 1, 2003.

The formula used to determine the fees is as follows:

$$\text{Average cost per inspection} = \frac{\text{Total cost of VSP}}{\text{Weighted number of annual inspections}}$$

The average cost per inspection is multiplied by a size/cost factor to determine the fee for vessels in each size category. The size/cost factor was established in the proposed fee schedule published in the **Federal Register** on July 17, 1987 (52 FR 27060), and revised in a schedule published in the **Federal Register** on November 28, 1989 (54 FR 48942). The revised size/cost factor is presented in Appendix A.

*Fee:* The fee schedule (Appendix A) will be effective October 1, 2003, through September 30, 2004. The fee schedule, which became effective October 1, 2001, will remain the same in 2004. If travel expenses continue to increase, the fees may need adjustment before September 30, 2004, because travel constitutes a sizable portion of VSP's costs. If an adjustment is necessary, a notice will be published in the **Federal Register** 30 days before the effective date.

*Applicability:* The fees will apply to all passenger cruise vessels for which inspections are conducted as part of CDC's VSP.

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: August 18, 2003.

**Diane C. Allen,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 03-21513 Filed 8-21-03; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare and Medicaid Services

[Document Identifier: CMS-10085]

#### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment.

Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Request:* Extension of a currently approved collection; *Type of Information Collection:* Medicaid Program; Demonstration to Improve the Direct Service Workforce; *CMS Form Number:* CMS-10085 (OMB# 0938-0896); *Use:* Executive Order 13217, "Community-Based Alternatives for Individuals with Disabilities" provides for the establishment of grants for states and community groups that develop and implement demonstration programs designed to increase the pool of direct care service workers, who help support people with disabilities in the community, through recruitment and retention strategies. State agencies and community groups will be applying for these grants; *Frequency:* On occasion; *Affected Public:* State, local, or tribal government; Not-for-profit institutions; *Number of Respondents:* 100; *Total Annual Responses:* 107; *Total Annual Burden Hours:* 6140.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at <http://cms.hhs.gov/regulations/pr/defult.asp>, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to [Paperwork@hcfa.gov](mailto:Paperwork@hcfa.gov), or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willingham, Room C5-14-03, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: August 14, 2003.

**Dawn Willingham,**

*Acting, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.*

[FR Doc. 03-21482 Filed 8-21-03; 8:45 am]

**BILLING CODE 4120-03-U**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[CMS-2166-N]

RIN 0938-ZA17

#### State Children's Health Insurance Program; Final Allotments to States, the District of Columbia, and U.S. Territories and Commonwealths for Fiscal Year 2004

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice.

**SUMMARY:** Title XXI of the Social Security Act (the Act) authorizes payment of Federal matching funds to States, the District of Columbia, and U.S. Territories and Commonwealths to initiate and expand health insurance coverage to uninsured, low-income children under the State Children's Health Insurance Program (SCHIP). This notice sets forth the final allotments of Federal funding available to each State, the District of Columbia, and each U.S. Territory and Commonwealth for fiscal year 2004. States may implement SCHIP through a separate State program under title XXI of the Act, an expansion of a State Medicaid program under title XIX of the Act, or a combination of both.

**EFFECTIVE DATE:** This notice is effective on September 22, 2003. Final allotments are available for expenditures after October 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Richard Strauss, (410) 786-2019.

**SUPPLEMENTARY INFORMATION:**

#### I. Purpose of This Notice

This notice sets forth the allotments available to each State, the District of Columbia, and each U.S. Territory and Commonwealth for fiscal year (FY) 2004 under Title XXI of the Social Security Act (the Act). Final allotments for a fiscal year are available to match expenditures under an approved State child health plan for 3 fiscal years, including the year for which the final allotment was provided. The FY 2004 allotments will be available to States for FY 2004, and unexpended amounts may

be carried over to 2005 and 2006. Federal funds appropriated for title XXI are limited, and the law specifies a formula to divide the total annual appropriation into individual allotments available for each State, the District of Columbia, and each U.S. Territory and Commonwealth with an approved child health plan.

Section 2104(b) of the Act requires States, the District of Columbia, and U.S. Territories and Commonwealths to have an approved child health plan for the fiscal year in order for the Secretary to provide an allotment for that fiscal year. All States, the District of Columbia, and U.S. Territories and Commonwealths have approved plans for FY 2004. Therefore, the FY 2004 allotments contained in this notice pertain to all States, the District of Columbia, and U.S. Territories and Commonwealths.

## II. Methodology for Determining Final Allotments for States, the District of Columbia, and U.S. Territories and Commonwealths.

This notice specifies, in the Table under section III, the final FY 2004 allotments available to individual States, the District of Columbia, and U.S. Territories and Commonwealths for either child health assistance expenditures under approved States child health plans or for claiming an enhanced Federal medical assistance percentage rate for certain SCHIP-related Medicaid expenditures. As discussed below, the FY 2004 final allotments have been calculated to reflect the methodology for determining an allotment amount for each State, the District of Columbia, and each U.S. Territory and Commonwealth as prescribed by section 2104(b) of the Act.

Section 2104(a) of the Act provides that, for purposes of providing allotments to the 50 States and the District of Columbia, the following amounts are appropriated: \$4,295,000,000 for FY 1998; \$4,275,000,000 for each FY 1999 through FY 2001; \$3,150,000,000 for each FY 2002 through FY 2004; \$4,050,000,000 for each FY 2005 through FY 2006; and \$5,000,000,000 for FY 2007. However, under section 2104(c) of the Act, 0.25 percent of the total amount appropriated each year is available for allotment to the U.S. Territories and Commonwealths of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands. The total amounts are allotted to the U.S. Territories and Commonwealths according to the following percentages: Puerto Rico, 91.6 percent; Guam, 3.5 percent; the Virgin

Islands, 2.6 percent; American Samoa, 1.2 percent; and the Northern Mariana Islands, 1.1 percent.

Section 2104(c)(4)(B) of the Act provides for additional amounts for allotment to the Territories and Commonwealths: \$34,200,000 for each FY 2000 through FY 2001; \$25,200,000 for each FY 2002 through FY 2004; \$32,400,000 for each FY 2005 through FY 2006; and \$40,000,000 for FY 2007. Since, for FY 2004, title XXI of the Act provides an additional \$25,200,000 for allotment to the U.S. Territories and Commonwealths, the total amount available for allotment to the U.S. Territories and Commonwealths in FY 2004 is \$33,075,000; that is, \$25,200,000 plus \$7,875,000 (0.25 percent of the FY 2004 appropriations of \$3,150,000,000).

Therefore, the total amount available nationally for allotment for the 50 States and the District of Columbia for FY 2004 was determined in accordance with the following formula:

$$A_T = S_{2104(a)} - T_{2104(c)}$$

$A_T$  = Total amount available for allotment to the 50 States and the District of Columbia for the fiscal year.

$S_{2104(a)}$  = Total appropriation for the fiscal year indicated in section 2104(a) of the Act. For FY 2004, this is \$3,150,000,000.

$T_{2104(c)}$  = Total amount available for allotment for the U.S. Territories and Commonwealths; determined under section 2104(c) of the Act as 0.25 percent of the total appropriation for the 50 States and the District of Columbia. For FY 2004, this is:  $.0025 \times \$3,150,000,000 = \$7,875,000$ .

Therefore, for FY 2004, the total amount available for allotment to the 50 States and the District of Columbia is \$3,142,125,000. This was determined as follows:

$$A_T (\$3,142,125,000) = S_{2104(a)} (\$3,150,000,000) - T_{2104(c)} (\$7,875,000)$$

For purposes of the following discussion, the term "State," as defined in section 2104(b)(1)(D)(ii) of the Act, "means one of the 50 States or the District of Columbia."

Under section 2104(b) of the Act, the determination of the number of children applied in determining the SCHIP allotment for a particular fiscal year is based on the three most recent March supplements to the Current Population Survey (CPS) of the Bureau of the Census officially available before the beginning of the calendar year in which the fiscal year begins. The determination of the State cost factor is based on the annual average wages per

employee in the health services industry, which is determined using the most recent 3 years of such wage data as reported and determined as final by the Bureau of Labor Statistics (BLS) of the Department of Labor to be officially available before the beginning of the calendar year in which the fiscal year begins. Since FY 2004 begins on October 1, 2003 (that is, in calendar year 2003), in determining the FY 2004 SCHIP allotments, we are using the most recent official data from the Bureau of the Census and the BLS, respectively, available before January 1 of calendar year 2003 (that is, through the end of December 31, 2002).

### Number of Children

For FY 2004, as specified by section 2104(b)(2)(A)(iii) of the Act, the number of children is calculated as the sum of 50 percent of the number of low-income, uninsured children in the State, and 50 percent of the number of low-income children in the State. The number of children factor for each State is developed from data provided by the Bureau of the Census based on the standard methodology used to determine official poverty status and uninsured status in the annual CPS on these topics. As part of a continuing formal process between the Centers for Medicare & Medicaid Services (CMS) and the Bureau of the Census, each fiscal year we obtain the number of children data officially from the Bureau of the Census.

Under section 2104(b)(2)(B) of the Act, the number of children for each State (provided in thousands) was determined and provided by the Bureau of the Census based on the arithmetic average of the number of low-income children and low-income children with no health insurance as calculated from the three most recent March supplements to the CPS officially available from the Bureau of the Census before the beginning of the 2003 calendar year. In particular, through December 31, 2002, the most recent official data available from the Bureau of the Census on the numbers of children were data from the three March CPSs conducted in March 2000, 2001, and 2002 (representing data for years 1999, 2000, and 2001).

### State Cost Factor

The State cost factor is based on annual average wages in the health services industry in the State. The State cost factor for a State is equal to the sum of: 0.15 and 0.85 multiplied by the ratio of the annual average wages in the health industry per employee for the State to the annual wages per employee

in the health industry for the 50 States and the District of Columbia.

Under section 2104(b)(3)(B) of the Act, as amended by the Balanced Budget Refinement Act of 1999 (BBRA) Pub. L. 106-113, enacted on November 29, 1999, the State cost factor for each State for a fiscal year is calculated based on the average of the annual wages for employees in the health industry for each State using data for each of the most recent 3 years as reported and determined as final by the BLS in the Department of Labor and available before the beginning of the calendar year in which the fiscal year begins. Therefore, the State cost factor for FY 2004 is based on the most recent 3 years of BLS data officially available as final before January 1, 2003 (the beginning of the calendar year in which FY 2004 begins); that is, it is based on the BLS data available as final through December 31, 2002. In accordance with these requirements, we used the final State cost factor data available from BLS for 1999, 2000, and 2001 in calculating the FY 2004 final allotments.

The State cost factor is determined based on the calculation of the ratio of each State's average annual wages in the health industry to the national average annual wages in the health care industry. Since BLS is required to suppress certain State-specific data in providing us with the State-specific average wages per health services industry employee due to the Privacy Act, we calculated the national average wages directly from the State-specific data provided by BLS. As part of a continuing formal process between CMS and the BLS, each fiscal year CMS obtains these wage data officially from the BLS.

Section 2104(b)(3)(B) of the Act, as amended by the BBRA, refers to wage data as reported by BLS under the "Standard Industrial Classification" (SIC) system. However, in calendar year 2002, BLS phased-out the SIC wage and employment reporting system and replaced it with the "North American Industry Classification System" (NAICS). In accordance with section 2104(b)(3)(B) of the Act, for purposes of calculating the FY 2004 allotments, BLS would need to provide wage data for the 3 most recent years as available through December 31, 2002; in this case, the 3 years of wage data are 1999, 2000, and 2001. However, because of the change from the SIC system to NAICS, wage data for 2001 are not available under the SIC reporting system. Wage data for 1999 and 2000 under the SIC reporting system are available from BLS. Therefore, the BLS wage data used in calculating the FY 2004 SCHIP

allotments necessarily reflect 2 years of SIC system data (1999 and 2000) and one year of NAICS data (2001) to obtain the 3-year average required for the allotments.

Under the SIC system, BLS provided CMS with wage data for each State under the SIC Code 80 for the years 1999 and 2000. However, the wage data codes under the SIC system do not map exactly to the wage data codes under the NAICS. As a result, for the year 2001 BLS provided us with wage data using three NAICS wage data codes that represent approximately 98 percent of the wage data that would have been provided under the related SIC Code 80. Specifically, in lieu of SIC Code 80 data, for the year 2001 BLS provided CMS data that are based on the following three NAICS codes: NAICS Code 621 (Ambulatory health care services), Code 622 (Hospitals), and Code 623 (Nursing and residential care facilities).

Under section 2104(b)(4) of the Act, each State and the District of Columbia is allotted a "proportion" of the total amount available nationally for allotment to the States. The term "proportion" is defined in section 2104(b)(4)(D)(i) of the Act and refers to a State's share of the total amount available for allotment for any given fiscal year. In order for the entire total amount available to be allotted to the States, the sum of the proportions for all States must exactly equal one. Under the statutory definition, a State's proportion for a fiscal year is equal to the State's allotment for the fiscal year divided by the total amount available nationally for allotment for the fiscal year. In general, a State's allotment for a fiscal year is calculated by multiplying the State's proportion for the fiscal year by the national total amount available for allotment for that fiscal year in accordance with the following formula:

$$SA_i = P_i \times A_T$$

$SA_i$  = Allotment for a State or District of Columbia for a fiscal year.

$P_i$  = Proportion for a State or District of Columbia for a fiscal year.

$A_T$  = Total amount available for allotment to the 50 States and the District of Columbia for the fiscal year. For FY 2004, this is \$3,142,125,000.

In accordance with the statutory formula for determining allotments, the State proportions are determined under two steps, which are described below in further detail.

Under the first step, each State's proportion is calculated by multiplying the State's Number of Children and the State Cost Factor to determine a "product" for each State. The products

for all States are then summed. Finally, the product for a State is divided by the sum of the products for all States, thereby yielding the State's preadjusted proportion.

#### *Application of Floors and Ceilings*

Under the second step, the preadjusted proportions are subject to the application of proportion floors, ceilings, and a reconciliation process, as appropriate. The SCHIP statute specifies three proportion floors, or minimum proportions, that apply in determining States' allotments. The first proportion floor is equal to \$2,000,000 divided by the total of the amount available nationally for the fiscal year. This proportion ensures that a State's minimum allotment would be \$2,000,000. For FY 2004, no State's preadjusted proportion is below this floor. The second proportion floor is equal to 90 percent of the allotment proportion for the State for the previous fiscal year; that is, a State's proportion for a fiscal year must not be lower than 10 percent below the previous fiscal year's proportion. The third proportion floor is equal to 70 percent of the allotment proportion for the State for FY 1999; that is, the proportion for a fiscal year must not be lower than 30 percent below the FY 1999 proportion.

Each State's allotment proportion for a fiscal year is also limited by a maximum ceiling amount, equal to 145 percent of the State's proportion for FY 1999; that is, a State's proportion for a fiscal year must be no higher than 45 percent above the State's proportion for FY 1999. The floors and ceilings are intended to minimize the fluctuation of State allotments from year to year and over the life of the program as compared to FY 1999. The floors and ceilings on proportions are not applicable in determining the allotments of the U.S. Territories and Commonwealths; they receive a fixed percentage specified in the statute of the total allotment available to the U.S. Territories and Commonwealths.

As determined under the first step for determining the States' preadjusted proportions, which is applied before the application of any floors or ceilings, the sum of the proportions for all the States and the District of Columbia will be equal to exactly one. However, the application of the floors and ceilings under the second step may change the proportions for certain States; that is, some States' proportions may need to be raised to the floors, while other States' proportions may need to be lowered to the maximum ceiling. If this occurs, the sum of the proportions for all States and the District of Columbia may not exactly

equal one. In that case, the statute requires the proportions to be adjusted, under a method that is determined by whether the sum of the proportions is greater or less than one.

The sum of the proportions would be greater than one if the application of the floors and ceilings resulted in raising the proportions of some States (due to the application of the floors) to a greater degree than the proportions of other States were lowered (due to the application of the ceiling). If, after application of the floors and ceiling, the sum of the proportions is greater than one, the statute requires the Secretary to determine a maximum percentage increase limit, which, when applied to the State proportions, would result in the sum of the proportions being exactly one.

If, after the application of the floors and ceiling, the sum of the proportions is less than one, the statute requires the States' proportions to be increased in a "pro rata" manner so that the sum of the proportions again equals one. Finally, it is also possible, although unlikely, that the sum of the proportions (after the application of the floors and ceiling) will be exactly one; in that case, the proportions would require no further adjustment.

#### *Determination of Preadjusted Proportions*

The following is an explanation of how we applied the two State-related factors specified in the statute to determine the States' "preadjusted" proportions for FY 2004. The term "preadjusted," as used here, refers to the States' proportions before the application of the floors and ceiling and adjustments, as specified in the SCHIP statute. The determination of each State and the District of Columbia's preadjusted proportion for FY 2004 is in accordance with the following formula:

$$PP_i = (C_i \times SCF_i) / \sigma(C_i \times SCF_i)$$

$PP_i$  = Preadjusted proportion for a State or District of Columbia for a fiscal year.

$C_i$  = Number of children in a State (section 2104(b)(1)(A)(i) of the Act) for a fiscal year. This number is based on the number of low-income children for a State for a fiscal year and the number of low-income uninsured children for a State for a fiscal year determined on the basis of the arithmetic average of the number of such children as reported and defined in the three most recent March supplements to the CPS of the Bureau of the Census, officially available before the beginning of the calendar year

in which the fiscal year begins. (See section 2104(b)(2)(B) of the Act.)

For fiscal year 2004, the number of children is equal to the sum of 50 percent of the number of low-income uninsured children in the State for the fiscal year and 50 percent of the number of low-income children in the State for the fiscal year. (See section 2104(b)(2)(A)(iii) of the Act.)

$SCF_i$  = State Cost Factor for a State (section 2104(b)(1)(A)(ii) of the Act). For a fiscal year, this is equal to:  $0.15 + 0.85 \times (W_i/W_N)$ .

$W_i$  = The annual average wages per employee for a State for such year (section 2104(b)(3)(A)(ii)(I) of the Act).

$W_N$  = The annual average wages per employee for the 50 States and the District of Columbia (section 2104(b)(3)(A)(ii)(II) of the Act). The annual average wages per employee for a State or for all States and the District of Columbia for a fiscal year is equal to the average of such wages for employees in the health services industry, as reported and determined as final by the BLS of the Department of Labor for each of the most recent 3 years officially available before the beginning of the calendar year in which the fiscal year begins. (See section 2104(b)(3)(B) of the Act.)

$\Sigma(C_i \times SCF_i)$  = The sum of the products of  $(C_i \times SCF_i)$  for each State (section 2104(b)(1)(B) of the Act).

The resulting proportions would then be subject to the application of the floors and ceilings specified in the SCHIP statute and reconciled, as necessary, to eliminate any deficit or surplus of the allotments because the sum of the proportions was either greater than or less than one.

Section 2104(e) of the Act requires that the amounts allotted to a state for a fiscal year be available to the State for a total of 3 years; the fiscal year for which the amounts are allotted, and the 2 following fiscal years.

### **III. Table of State Children's Health Insurance Program Final Allotments for FY 2004**

#### *Key to Table*

##### *Column/Description*

Column A = State. Name of State, District of Columbia, U.S. Commonwealth or Territory.

Column B = Number of Children. The number of children for each State (provided in thousands) was determined and provided by the Bureau of the Census based on the arithmetic average of the number of low-income children and low-income uninsured children,

and is based on the three most recent March supplements to the CPS of the Bureau of the Census officially available before the beginning of the calendar year in which the fiscal year begins. The FY 2004 allotments were based on the 2000, 2001, and 2002 March supplements to the CPS. These data represent the number of people in each State under 19 years of age whose family income is at or below 200 percent of the poverty threshold appropriate for that family, and who are reported to be without health insurance coverage. The number of children for each State was developed by the Bureau of the Census based on the standard methodology used to determine official poverty status and uninsured status in its annual March CPS on these topics.

For FY 2004, the number of children is equal to the sum of 50 percent of the number of low-income uninsured children in the State and 50 percent of the number of low-income children in the State.

Column C = State Cost Factor. The State cost factor for a State is equal to the sum of: 0.15, and 0.85 multiplied by the ratio of the annual average wages in the health industry per employee for the State to the annual wages per employee in the health industry for the 50 States and the District of Columbia. The State cost factor for each State was calculated based on such wage data for each State as reported and determined as final by the BLS in the Department of Labor for each of the most recent 3 years and available before the beginning of the calendar year in which the fiscal year begins. The FY 2004 allotments were based on final BLS wage data for 1999, 2000, and 2001.

Column D = Product. The Product for each State was calculated by multiplying the Number of Children in Column B by the State Cost Factor in Column C. The sum of the Products for all 50 States and the District of Columbia is below the Products for each State in Column D. The Product for each State and the sum of the Products for all States provides the basis for allotment to States and the District of Columbia.

Column E = Proportion of Total. This is the calculated percentage share for each State of the total allotment available to the 50 States and the District of Columbia. The Percent Share of Total is calculated as the ratio of the Product for each State in Column D to the sum of the Products for all 50 States and the District of Columbia below the Products for each State in Column D.

Column F = Adjusted Proportion of Total. This is the calculated percentage share for each State of the total allotment available after the application

of the floors and ceilings and after any further reconciliation needed to ensure that the sum of the State proportions is equal to one. The three floors specified in the statute are: (1) The percentage calculated by dividing \$2,000,000 by the total of the amount available for all allotments for the fiscal year; (2) an annual floor of 90 percent of (that is, 10 percent below) the preceding fiscal year's allotment proportion; and (3) a cumulative floor of 70 percent of (that is, 30 percent below) the FY 1999 allotment proportion. There is also a cumulative ceiling of 145 percent of (that is, 45 percent above) the FY 1999 allotment proportion.

Column G = *Allotment*. This is the SCHIP allotment for each State, Commonwealth, or Territory for the fiscal year. For each of the 50 States and the District of Columbia, that is determined as the Adjusted Proportion of Total in Column F for the State multiplied by the total amount available for allotment for the 50 States and the District of Columbia for the fiscal year.

For each of the U.S. Territory and Commonwealths, the allotment is determined as the Proportion of Total in Column E multiplied by the total amount available for allotment to the U.S. Territories and Commonwealths. For the U.S. Territories and

Commonwealths, the Proportion of Total in Column E is specified in section 2104(c) of the Act. The total amount is then allotted to the U.S. Territories and Commonwealths according to the percentages specified in section 2104 of the Act. There is no adjustment made to the allotments of the U.S. Territories and Commonwealths as they are not subject to the application of the floors and ceiling. As a result, Column F in the table, the Adjusted Proportion of Total, is empty for the U.S. Territories and Commonwealths.

**BILLING CODE 4120-01-P**

STATE CHILDREN'S HEALTH INSURANCE PROGRAM ALLOTMENTS FOR FEDERAL FISCAL YEAR:						2004
A	B	C	D	E	F	G
STATE	NUMBER OF CHILDREN (000)	STATE COST FACTOR	PRODUCT	PROPORTION OF TOTAL (3)	ADJUSTED PROPORTION OF TOTAL (3)	ALLOTMENT (1)
ALABAMA	314	0.9651	302.5447	1.7328%	1.7402%	\$54,679,333
ALASKA	38	1.0421	39.5996	0.2268%	0.2278%	\$7,156,891
ARIZONA	453	1.0629	481.5082	2.7696%	2.7696%	\$87,023,654
ARKANSAS	215	0.9047	194.0635	1.1115%	1.1162%	\$35,073,372
CALIFORNIA	2,701	1.0941	2,954.6099	16.9220%	16.9946%	\$533,990,797
COLORADO	241	1.0301	248.2437	1.4218%	1.4279%	\$44,865,429
CONNECTICUT	141	1.1017	154.7884	0.8865%	0.8903%	\$27,975,129
DELAWARE	35	1.1199	39.1972	0.2245%	0.2488%	\$7,817,461
DISTRICT OF COLUMBIA	33	1.2070	39.8323	0.2281%	0.2291%	\$7,198,952
FLORIDA	1,054	1.0169	1,071.2850	6.1356%	6.1619%	\$193,614,837
GEORGIA	574	1.0023	574.8473	3.2923%	3.3065%	\$103,892,954
HAWAII	66	1.1178	73.7720	0.4225%	0.3071%	\$9,647,963
IDAHO	106	0.8894	93.8299	0.5374%	0.5397%	\$16,958,002
ILLINOIS	661	1.0134	669.3338	3.8335%	3.8499%	\$120,969,643
INDIANA	317	0.9445	298.9336	1.7121%	1.7194%	\$54,026,680
IOWA	125	0.8722	109.0205	0.6244%	0.6271%	\$19,703,423
KANSAS	147	0.8891	130.2592	0.7460%	0.7492%	\$23,541,920
KENTUCKY	232	0.9390	217.3764	1.2450%	1.2503%	\$39,286,749
LOUISIANA	407	0.8772	357.0114	2.0447%	2.0535%	\$64,523,178
MAINE	57	0.9197	52.4233	0.3002%	0.3015%	\$9,474,540
MARYLAND	192	1.0437	199.8620	1.1447%	1.1496%	\$36,121,348
MASSACHUSETTS	279	1.0651	297.1598	1.7019%	1.4704%	\$46,201,047
MICHIGAN	488	1.0107	493.2086	2.8248%	2.8369%	\$89,138,280
MINNESOTA	171	1.0074	171.7662	0.9838%	0.9747%	\$30,626,504
MISSISSIPPI	229	0.8915	204.1556	1.1693%	1.1743%	\$36,897,326
MISSOURI	250	0.9279	231.9657	1.3285%	1.3342%	\$41,923,481
MONTANA	66	0.8587	56.2440	0.3221%	0.3244%	\$10,193,881
NEBRASKA	85	0.8925	75.8655	0.4345%	0.4415%	\$13,872,884
NEVADA	149	1.1612	172.4324	0.9876%	0.9918%	\$31,163,957
NEW HAMPSHIRE	42	1.0108	41.9467	0.2402%	0.2550%	\$8,013,366
NEW JERSEY	322	1.1082	356.2728	2.0405%	2.0492%	\$64,389,677
NEW MEXICO	186	0.9383	174.5154	0.9995%	1.0435%	\$32,788,606
NEW YORK	1,130	1.0604	1,197.6656	6.8594%	6.8888%	\$216,455,790
NORTH CAROLINA	511	0.9905	505.6368	2.8959%	2.7292%	\$85,753,907
NORTH DAKOTA	35	0.8665	30.3277	0.1737%	0.1730%	\$5,436,695
OHIO	602	0.9549	574.3513	3.2895%	3.3036%	\$103,803,316
OKLAHOMA	257	0.8593	220.8462	1.2649%	1.4201%	\$44,621,756
OREGON	208	1.0124	210.5710	1.2060%	1.2112%	\$38,056,795
PENNSYLVANIA	556	0.9836	546.3788	3.1293%	3.1427%	\$98,747,809
RHODE ISLAND	43	0.9608	40.8340	0.2339%	0.2349%	\$7,379,988
SOUTH CAROLINA	241	0.9974	239.8867	1.3739%	1.3798%	\$43,355,057
SOUTH DAKOTA	36	0.8899	32.0373	0.1835%	0.1843%	\$5,790,144
TENNESSEE	320	1.0021	320.6857	1.8367%	1.8445%	\$57,957,983
TEXAS	1,937	0.9451	1,830.6255	10.4846%	10.5295%	\$330,851,514
UTAH	148	0.9007	133.2978	0.7634%	0.7667%	\$24,091,106
VERMONT	27	0.8961	23.7474	0.1360%	0.1214%	\$3,813,156
VIRGINIA	314	0.9818	308.2741	1.7656%	1.7732%	\$55,714,814
WASHINGTON	306	0.9662	295.1792	1.6906%	1.6017%	\$50,326,484
WEST VIRGINIA	116	0.8948	103.8024	0.5945%	0.5971%	\$18,760,354
WISCONSIN	248	0.9726	240.7161	1.3787%	1.3846%	\$43,504,958
WYOMING	30	0.9133	27.4004	0.1569%	0.1576%	\$4,952,110
<b>TOTAL STATES ONLY</b>			<b>17,460.1388</b>	<b>100.0000%</b>	<b>100.0000%</b>	<b>\$3,142,125,000</b>
<b>ALLOTMENTS FOR COMMONWEALTHS AND TERRITORIES (2)</b>						
PUERTO RICO				91.6%		\$30,296,700
GUAM				3.5%		\$1,157,625
VIRGIN ISLANDS				2.6%		\$859,950
AMERICAN SAMOA				1.2%		\$396,900
N. MARIANA ISLANDS				1.1%		\$363,825
<b>TOTAL COMMONWEALTHS AND TERRITORIES ONLY</b>				<b>100.0%</b>		<b>\$33,075,000</b>
<b>TOTAL STATES AND COMMONWEALTHS AND TERRITORIES</b>						<b>\$3,175,200,000</b>
<b>FOOTNOTES</b>						
The numbers in Columns B - F are rounded for presentation purposes; the actual numbers used in the allotment calculations are not rounded						
(1) Total amount available for allotment to the 50 States and the District of Columbia is \$3,142,125,000; determined as the fiscal year appropriation (\$3,150,000,000) reduced by the total amount available for allotment to the Commonwealths and Territories under section 2104(c) of the Act (\$7,875,000)						
(2) Total amount available for allotment to the Commonwealths and Territories is \$7,875,000 (.25 percent of \$3,150,000,000, the fiscal year appropriation), plus \$25,200,000, as specified in section 2104(c)(4)(B) of the Act						
(3) Percent share of total amount available for allotment to the Commonwealths and Territories is as specified in section 2104(c) of the Act						

BILLING CODE 4120-01-C

**IV. Impact Statement**

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory

Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96-354), section 1102(b) of the Social Security Act, the Unfunded

Mandates Reform Act of 1995 (Pub. L. 104-4), and Executive Order 13132.

We examined the impact of this notice as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rules are necessary, to select regulatory approaches that maximize net benefits (including potential economic environments, public health and safety, other advantages, distributive impacts, and equity). We believe that this notice is consistent with the regulatory philosophy and principles identified in the Executive Order. The formula for the allotments is specified in the statute. Since the formula is specified in the statute, we have no discretion in determining the allotments. This notice merely announces the results of our application of this formula, and therefore does not reach the economic significance threshold of \$100 million in any one year.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of \$6 million to \$29 million in any one year. Individuals and States are not included in the definition of a small entity; therefore, this requirement does not apply.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

The Unfunded Mandates Reform Act of 1995 requires that agencies prepare an assessment of anticipated costs and benefits before publishing any notice that may result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$110 million or more (adjusted each year for inflation) in any one year. This notice will not create an unfunded mandate on States, tribal, or local governments because it merely notifies states of their SCHIP allotment for FY 2004 and does not mandate any additional expenditures by these governments. Therefore, we are not required to perform an assessment of the

costs and benefits of this notice, in accordance with the Unfunded Mandates Reform Act.

Low-income children will benefit from payments under SCHIP through increased opportunities for health insurance coverage. We believe this notice will have an overall positive impact by informing States, the District of Columbia, and U.S. Territories and Commonwealths of the extent to which they are permitted to expend funds under their child health plans using their FY 2004 allotments.

Under Executive Order 13132, we are required to adhere to certain criteria regarding Federalism. We have reviewed this notice and determined that it does not significantly affect States' rights, roles, and responsibilities because it does not set forth any new policies.

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this notice will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Section 1102 of the Social Security Act (42 U.S.C. 1302))

(Catalog of Federal Domestic Assistance Program No. 93.767, State Children's Health Insurance Program)

Dated: April 2, 2003.

**Thomas A. Scully**,  
*Administrator, Centers for Medicare & Medicaid Services.*

Dated: April 29, 2003.

**Tommy G. Thompson**,  
*Secretary.*

[FR Doc. 03-21439 Filed 8-21-03; 8:45 am]

**BILLING CODE 4120-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[CMS-2136-FN]

RIN 0938-AL79

### Medicaid Program; State Allotments for Payment of Medicare Part B Premiums for Qualifying Individuals: Federal Fiscal Year 2002

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Final notice.

**SUMMARY:** In this notice, we are adopting as final the proposed expenditures allotted under sections 1902(a)(10)(E)(iv)(I) and (II) of the Social Security Act (the Act) to participating State agencies to pay all, or some portion of, Medicare Part B premium costs for a specified category of eligible low-income Medicare beneficiaries called qualifying individuals (QIs) during Federal fiscal year 2002. The proposed notice announcing the update was published in the August 30, 2002 **Federal Register**. Federal fiscal year 2002 is the final year that these allotments are authorized under the Act. However, the Congress has extended funding at the same level for one group of QIs for fiscal year 2003.

**EFFECTIVE DATE:** This final notice is effective on October 21, 2003.

**FOR FURTHER INFORMATION CONTACT:** Robert Nakielny, (410) 786-4466.

## I. Background

### A. Before the Balanced Budget Act of 1997

Before enactment of the Balanced Budget Act of 1997 (BBA), section 1902(a)(10)(E) of the Social Security Act specified that State Medicaid plans must provide Medicare cost-sharing for three groups of eligible low-income Medicare beneficiaries. These three groups include: qualified Medicare beneficiaries (QMBs), specified low-income Medicare beneficiaries (SLMBs), and qualified disabled and working individuals (QDWIs).

A QMB is an individual entitled to Medicare Part A (Hospital Insurance) with an income that falls at or below the Federal poverty level and resources below \$4,000 for an individual and \$6,000 for a couple. An SLMB is an individual who meets the QMB criteria, except that his or her income is between a State-established level (at or below the Federal poverty level) and 120 percent of the Federal poverty level. A QDWI is an individual who is entitled to enroll in Medicare Part A, whose income does not exceed 200 percent of the Federal poverty level for a family of the size involved, whose resources do not exceed twice the amount allowed under the Supplementary Security Income program, and who is not otherwise eligible for Medicaid.

The definition of Medicare cost-sharing at section 1905(p)(3) of the Act includes payment for Medicare premiums, although QDWIs only qualify to have Medicaid pay their Medicare Part A premiums, and SLMBs only qualify to have Medicaid pay their Medicare Part B premiums.

*B. After Enactment of the Balanced Budget Act of 1997*

Section 4732 of the BBA amended section 1902(a)(10)(E) of the Act to require that States provide for Medicaid payment of all, or a portion of, Medicare Part B (Supplementary Medical Insurance) premiums, during the period beginning January 1998 through December 2002, for selected members of two eligibility groups of low-income Medicare beneficiaries, referred to as qualifying individuals (QIs).

Under section 1902(a)(10)(E)(iv)(I) of the Act, State agencies are required to pay the full amount of the Medicare Part B premium for selected QIs who would be QMBs except that their income level is at least 120 percent but less than 135 percent of the Federal poverty level for a family of the size involved. These individuals cannot otherwise be eligible for medical assistance under the approved State Medicaid plan.

The second group of QIs, under section 1902(a)(10)(E)(iv)(II) of the Act, includes Medicare beneficiaries who would be QMBs except that their income is at least 135 percent but less than 175 percent of the Federal poverty level for a family of the size involved. These QIs may not be otherwise eligible for Medicaid under the approved State plan, but are eligible for a portion of Medicare cost-sharing consisting only of a percentage of the increase in the Medicare Part B premium attributable to the shift of Medicare home health coverage from Part A to Part B (as provided in section 4611 of the BBA).

Section 4732(c) of the BBA also added section 1933 of the Act, which specifies the provisions for State coverage of the Medicare cost-sharing for additional low-income Medicare beneficiaries.

Section 1933(a) of the Act specifies that a State agency must provide, through a State plan amendment, for medical assistance to pay for the cost of Medicare cost-sharing on behalf of QIs who are selected to receive assistance.

Section 1933(b) of the Act sets forth the rules that State agencies must follow in selecting QIs and providing payment for Medicare Part B premiums. Specifically, the State agency must permit all QIs to apply for assistance and must select individuals on a first-come, first-served basis in the order in which they apply.

Section 1933(c) of the Act limits the total amount of Federal funds available for payment of Part B premiums each fiscal year and specifies the formula to be used to determine an allotment for each State from this total amount. For State agencies that execute a State plan amendment in accordance with section 1933(a) of the Act, a total of \$1.5 billion was allocated over 5 years as follows: \$200 million in FY 1998; \$250 million in FY 1999; \$300 million in FY 2000; \$350 million in FY 2001; and \$400 million in FY 2002.

The Federal matching rate for Medicaid payment of Medicare Part B premiums for QIs is 100 percent for expenditures up to the amount of the State's allotment. No Federal matching funds are available for expenditures in excess of the State's allotment amount. Administrative expenses associated with the payment of Medicare Part B premiums for QIs remain at the 50 percent matching level and may not be taken from the State's allotment.

The amount available for each fiscal year was allocated among States according to the formula set forth in section 1933(c)(2) of the Act.

**II. Provisions of the Proposed Notice**

The August 30, 2002 (67 FR 55851) proposed notice announced the proposed allotments that were made available to individual States for Federal fiscal year 2002 for the Medicaid payment of Medicare Part B premiums for QIs identified under sections 1902(a)(10)(E)(iv)(I) and (II) of the Act. Specifically, the Federal fiscal year 2002 allotments have been calculated as follows:

- $A_T$  = Total amount to be allocated
- $M1_i$  = 3-year average of the number of Medicare beneficiaries in State *i* who are not enrolled in Medicaid and whose incomes are at least 120 percent but less than 135 percent of Federal poverty line
- $M2_i$  = 3-year average of the number of Medicare beneficiaries in State *i* who are not enrolled in Medicaid and whose incomes are at least 135 percent but less than 175 percent of Federal poverty line.

Then, the allotment reserved for State *i* is determined by the following formula:

$$A_i = \left[ \frac{2 \cdot M1_i + M2_i}{\sum_j (2 \cdot M1_j + M2_j)} \right] \cdot A_T$$

We note that the formula used to calculate these allotments is the same we have used since 1998 for calculating the annual QI allotments. In applying the formula for the allotments presented in this document, we have used the latest data available to us as of August 30, 2002, the date we published our proposed allotments for Fiscal Year 2002.

FY 2002 STATE ALLOTMENTS FOR PAYMENT OF PART B PREMIUMS UNDER SEC. 4732 OF THE BBA OF 1997

State	(a) M1 <sup>1</sup>	(b) M2 <sup>2</sup>	(c) 2 × (a) + (b)	State Share of (c)	State FY 2002 allocation (\$000)
AK .....	1	3	5	0.08%	321
AL .....	25	68	118	1.90	7,584
AR .....	23	46	92	1.48	5,913
AZ .....	20	63	103	1.65	6,620
CA .....	114	307	535	8.60	34,383
CO .....	11	37	59	0.95	3,792
CT .....	11	55	77	1.24	4,949
DC .....	3	5	11	0.18	707
DE .....	5	10	20	0.32	1,285
FL .....	114	249	477	7.66	30,656
GA .....	31	69	131	2.10	8,419
HI .....	3	13	19	0.31	1,221
IA .....	20	49	89	1.43	5,720
ID .....	7	18	32	0.51	2,057
IL .....	38	138	214	3.44	13,753
IN .....	46	88	180	2.89	11,568
KS .....	12	33	57	0.92	3,663
KY .....	19	65	103	1.65	6,620

FY 2002 STATE ALLOTMENTS FOR PAYMENT OF PART B PREMIUMS UNDER SEC. 4732 OF THE BBA OF 1997—  
Continued

State	(a) M1 <sup>1</sup>	(b) M2 <sup>2</sup>	(c) 2 × (a) + (b)	State Share of (c)	State FY 2002 allocation (\$000)
LA .....	27	57	111	1.78	7,134
MA .....	40	85	165	2.65	10,604
MD .....	26	49	101	1.62	6,491
ME .....	7	23	37	0.59	2,378
MI .....	42	127	211	3.39	13,560
MN .....	27	46	100	1.61	6,427
MO .....	29	60	118	1.90	7,584
MS .....	17	44	78	1.25	5,013
MT .....	5	11	21	0.34	1,350
NC .....	49	89	187	3.00	12,018
ND .....	5	13	23	0.37	1,478
NE .....	9	34	52	0.84	3,342
NH .....	3	14	20	0.32	1,285
NJ .....	35	109	179	2.88	11,504
NM .....	11	28	50	0.80	3,213
NV .....	7	23	37	0.59	2,378
NY .....	92	233	417	6.70	26,799
OH .....	52	167	271	4.35	17,416
OK .....	14	65	93	1.49	5,977
OR .....	15	32	62	1.00	3,985
PA .....	81	187	349	5.61	22,429
RI .....	7	13	27	0.43	1,735
SC .....	34	58	126	2.02	8,098
SD .....	4	13	21	0.34	1,350
TN .....	37	61	135	2.17	8,676
TX .....	82	218	382	6.14	24,550
UT .....	7	16	30	0.48	1,928
VA .....	45	83	173	2.78	11,118
VT .....	3	8	14	0.22	900
WA .....	21	56	98	1.57	6,298
WI .....	24	87	135	2.17	8,676
WV .....	11	44	66	1.06	4,242
WY .....	3	7	13	0.21	835
<b>Total .....</b>	<b>1374</b>	<b>3476</b>	<b>6224</b>	<b>100.00</b>	<b>\$400,000</b>

<sup>1</sup> Three-year average (1999–2001) of number (000) of Medicare beneficiaries in State who are not enrolled in Medicaid but whose incomes are at least 120% but less than 135% of the Federal Poverty Level (FPL).

<sup>2</sup> Three-year average (1999–2001) of number (000) of Medicare beneficiaries in State who are not enrolled in Medicaid but whose incomes are at least 135% but less than 175% of the Federal Poverty Level (FPL).

### III. Analysis of and Responses to Public Comments and Provisions of the Final Notice

We received no public comments on the August 30, 2002 **Federal Register** proposed notice. We are adopting the provisions of the proposed notice as final.

### IV. Regulatory Impact Statement

We have examined the impacts of this final notice as required by Executive Order 12866 (September 1993, Regulatory planning and review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all

costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year).

We have determined this notice is not a major rule because we are simply giving notice of FY 2002 allotments that were available to States of up to \$400 million for a specialized category of low-income Medicare beneficiaries. We note that these funds were already budgeted and expended. In fact, State expenditures claimed for fiscal year 2002 were less than 25 percent of the total amount allotted, which is below the \$100 million threshold for economically significant rulemaking

under Executive Order 12866.

Therefore, consistent with Executive Order 12866, we are not providing an impact analysis.

The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of \$6 million to \$29 million in any 1 year. Individuals and States are not included in the definition of a small entity.

This final notice will allocate, among the States, Federal funds to provide Medicaid payment for Medicare Part B premiums for QIs. The total amount of Federal funds available during a Federal fiscal year and the formula for determining individual State allotments are specified in the law. Because the formula for determination of State

allotments is specified in the statute, there were no other options to be considered. Therefore, we have applied the statutory formula for the State allotments except for the use of specified data. Because the data specified in the law were not available, we have used comparable data from the United States Census Bureau on the number of possible QIs in the States, as described in detail in the January 26, 1998 **Federal Register**. Since the statutory formula calls for an estimate of individuals who could qualify for QI status rather than the number of individuals who actually have that status, the exact numbers of those individuals will always be uncertain. These new allotments for FY 2002 incorporated the latest data from the United States Census Bureau from 1999 to 2001, as specified in the footnotes to the preceding table.

We believe that announcing the final allocations in this notice will have a positive effect on States and individuals. Federal funding at the 100 percent matching rate was available for Medicare Part B premiums (or for a portion of those premiums) for QIs.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 100 beds.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or any the private sector, of \$110 million. This final notice does not mandate expenditure by State, local or tribal governments in the aggregate or the private sector of \$110 million.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications.

Because this final notice provides notice of funding ceilings, as determined under the statute, we have determined that this final notice will not significantly affect the rights, roles, and responsibilities of States.

We are not preparing analyses for either the RFA or section 1102(b) of the Act, because we have determined, and we certify, that this final notice will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this final notice was reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: April 18, 2003.

**Thomas A. Scully,**

*Administrator, Centers for Medicare & Medicaid Services.*

Dated: May 13, 2003.

**Tommy G. Thompson,**

*Secretary.*

[FR Doc. 03-21440 Filed 8-21-03; 8:45 am]

**BILLING CODE 4120-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[CMS-4053-N]

#### Medicare Program: Meeting of the Advisory Panel on Medicare Education—September 18, 2003

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, section 10(a) (Public Law 92-463), this notice announces a meeting of the Advisory Panel on Medicare Education (the Panel) on September 18, 2003. The Panel advises and makes recommendations to the Secretary of the Department of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program. This meeting is open to the public.

**DATES:** The meeting is scheduled for September 18, 2003 from 9:15 a.m. to 4 p.m., e.d.t.

**Deadline for Presentations and Comments:** September 11, 2003, 12 noon, e.d.t.

**ADDRESSES:** The meeting will be held at the Wyndham Washington Hotel, 1400

M Street, NW., Washington, DC 20005, (202) 429-1700.

#### FOR FURTHER INFORMATION CONTACT:

Lynne Johnson, Health Insurance Specialist, Division of Partnership Development, Center for Beneficiary Choices, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, mail stop S2-23-05, Baltimore, MD 21244-1850, (410) 786-0090. Please refer to the CMS Advisory Committees' Information Line (1-877-449-5659 toll free)/(410-786-9379 local) or the Internet (<http://www.cms.hhs.gov/faca/apme/default.asp>) for additional information and updates on committee activities, or contact Ms. Johnson via e-mail at [ljohnson3@cms.hhs.gov](mailto:ljohnson3@cms.hhs.gov). Press inquiries are handled through the CMS Press Office at (202) 690-6145.

**SUPPLEMENTARY INFORMATION:** Section 222 of the Public Health Service Act (42 U.S.C. 217a), as amended, grants to the Secretary of the Department of Health and Human Services (the Secretary) the authority to establish an advisory panel if the Secretary finds the panel necessary and in the public interest. The Secretary signed the charter establishing this Panel on January 21, 1999 (64 FR 7849), and approved the renewal of the charter on January 21, 2003. The Panel advises and makes recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program.

The goals of the Panel are as follows:

- To develop and implement a national Medicare education program that describes the options for selecting a health plan under Medicare.
- To enhance the Federal government's effectiveness in informing the Medicare consumer, including the appropriate use of public-private partnerships.
- To expand outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of a national Medicare education program.
- To assemble an information base of best practices for helping consumers evaluate health plan options and build a community infrastructure for information, counseling, and assistance.

The current members of the Panel are: Dr. Jane Delgado, Chief Executive Officer, National Alliance for Hispanic Health; Joyce Dubow, Senior Policy Advisor, Public Policy Institute, American Association of Retired Persons (AARP); Clayton Fong, President and Chief Executive Officer,

National Asian Pacific Center on Aging; Timothy Fuller, Executive Director, National Gray Panthers; John Graham IV, Chief Executive Officer, American Diabetes Association; Dr. William Haggett, Senior Vice President, Government Programs, Independence Blue Cross; Thomas Hall, Chairman and Chief Executive Officer, Cardio-Kinetics, Inc.; David Knutson, Director, Health System Studies, Park Nicollet Institute for Research and Education; Brian Lindberg, Executive Director, Consumer Coalition for Quality Health Care; Katherine Metzger, Director, Medicare and Medicaid Programs, Fallon Community Health Plan; Dr. Laurie Powers, Co-Director, Center on Self-Determination, Oregon Health Sciences University; Dr. Marlon Priest, Professor of Emergency Medicine, University of Alabama at Birmingham; Dr. Susan Reinhard, Co-Director, Center for State Health Policy, Rutgers University and Chairperson of the Advisory Panel on Medicare Education; Dr. Everard Rutledge, Vice President of Community Health, Bon Secours Health Systems, Inc.; Jay Sackman, Executive Vice President, 1199 Service Employees International Union; Dallas Salisbury, President and Chief Executive Officer, Employee Benefit Research Institute; Rosemarie Sweeney, Vice President, Socioeconomic Affairs and Policy Analysis, American Academy of Family Physicians; and Bruce Taylor, Director, Employee Benefit Policy and Plans, Verizon Communications.

The agenda for the September 18, 2003 meeting will include the following:

- Recap of the previous (May 21, 2003) meeting.
- Centers for Medicare & Medicaid Services Update and Center for Beneficiary Choices Update.
  - CMS Demonstrations.
  - Medicare Reform Update.
  - Research and Evaluation: Sharing Research with Stakeholders.
  - Public Comment.
  - Listening Session with CMS Leadership.
  - Next Steps.

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should submit a written copy of the oral presentation to Lynne Johnson, Health Insurance Specialist, Division of Partnership Development, Center for Beneficiary Choices, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail stop S2-23-05, Baltimore, MD 21244-1850 or by e-mail at [ljohnson3@cms.hhs.gov](mailto:ljohnson3@cms.hhs.gov) no later than 12 noon, e.d.t., September 11, 2003. The number of oral presentations may be limited by the time available.

Individuals not wishing to make a presentation may submit written comments to Ms. Johnson by 12 noon, September 11, 2003. The meeting is open to the public, but attendance is limited to the space available.

**Special Accommodation:** Individuals requiring sign language interpretation or other special accommodations should contact Ms. Johnson at least 15 days before the meeting.

**Authority:** Sec. 222 of the Public Health Service Act (42 U.S.C. 217a) and sec. 10(a) of Pub. L. 92-463 (5 U.S.C. App. 2, sec. 10(a) and 41 CFR 102-3).

(Catalog of Federal Domestic Assistance Program No. 93.733, Medicare—Hospital Insurance Program; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 7, 2003.

**Thomas A. Scully,**

*Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 03-21438 Filed 8-21-03; 8:45 am]

**BILLING CODE 4120-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[CMS-1236-N]

#### Medicare Program; September 15 and 16, 2003, Meeting of the Practicing Physicians Advisory Council and Request for Nominations

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice.

**SUMMARY:** In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council (the Council) and invites all organizations representing physicians to submit nominees for membership on the Council. There will be several vacancies on the Council as of February 28, 2004. The Council will be meeting to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary of the Department of Health and Human Services (the Secretary). These meetings are open to the public.

**Meeting Registration:** Persons wishing to attend this meeting must register for the meeting at least 72 hours in advance by contacting one of the Designated Federal Officials (DFO): Diana Motsiopoulos, by e-mail at [dmotsiopoulos@cms.hhs.gov](mailto:dmotsiopoulos@cms.hhs.gov), or by telephone at (410) 786-3379; or Keri

Boston, by e-mail at [kboston@cms.hhs.gov](mailto:kboston@cms.hhs.gov), or by telephone at 410-786-6631. Persons who are not registered in advance will not be permitted into the Humphrey Building, and thus will not be able to attend the meeting. Persons attending the meeting will be required to show a photographic identification, preferably a valid driver's license, before entering the building.

**DATES:** The meeting is scheduled for September 15, 2003 from 8:30 a.m. until 5 p.m. e.d.t. and September 16, 2003 from 8:30 a.m. until 1 p.m. e.d.t.

**ADDRESSES:** The meeting will be held in Room 800, at the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

**Nominations** will be considered if received at the appropriate address, no later than 5 p.m. e.d.t., September 30, 2003. Mail or deliver nominations to the following address: Centers for Medicare & Medicaid Services, Center for Medicare Management, Division of Provider Relations and Evaluations, Attention: Diana Motsiopoulos, Designated Federal Official, Practicing Physicians Advisory Council, 7500 Security Boulevard, Mail Stop C4-11-27, Baltimore, MD 21244-1850.

#### FOR FURTHER INFORMATION CONTACT:

Kenneth Simon, M.D., Executive Director, Practicing Physicians Advisory Council, 7500 Security Boulevard, Mail Stop C4-10-07, Baltimore, MD 21244-1850, (410) 786-3379. Please refer to the CMS Advisory Committees Information Line: (1-877-449-5659 toll free)/(410-786-9379 local) or the Internet at <http://www.cms.hhs.gov/faca/ppac/default.asp> for additional information and updates on committee activities. News media representatives should contact the CMS Press Office, (202) 690-6145.

**SUPPLEMENTARY INFORMATION:** The Secretary of the Department of Health and Human Services (the Secretary) is mandated by section 1868 of the Social Security Act (the Act) to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation must occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Centers for

Medicare & Medicaid Services not later than December 31 of each year.

The Council consists of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under Medicare in the previous year. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 members of the Council must be physicians described in section 1861(r)(1) of the Act; that is, State-licensed doctors of medicine or osteopathy. The remaining 4 members may include dentists, podiatrists, optometrists, and chiropractors. Members serve for overlapping 4-year terms; terms of more than 2 years are contingent upon the renewal of the Council by appropriate action before its termination. Section 1868(a) of the Act provides that nominations to the Secretary for Council membership must be made by medical organizations representing physicians.

The Council held its first meeting on May 11, 1992. The current members are: James Bergeron, M.D.; Ronald Castallanos, M.D.; Rebecca Gaughan, M.D.; Carlos R. Hamilton, M.D.; Joseph Heyman, M.D.; Dennis K. Iglar, M.D.; Christopher Leggett, M.D.; Joe Johnson, D.O.; Barbara McAneny, M.D.; Angelyn L. Moultrie-Lizana, D.O.; Laura B. Powers, M.D.; Michael T. Rapp, M.D.; Amilu Rothhammer, M.D.; Robert L. Urata, M.D.; and Douglas L. Wood, M.D. Council members will be updated on the status of recommendations made during the past year.

The agenda will provide for discussion and comment on the following topics:

- Physician's Regulatory Issues Team (PRIT) update.
- Physicians Group Practice Demonstrations and proposals for future demonstrations.
- Lowering Medicare Costs: Regions or Beneficiaries?
- Provider Enrollment.
- Authority for Policies on Coverage Procedures and Devices Results in Inequities.
- Practice Patterns for Physicians.
- Doctors' Office Quality Update.
- Overview Prescription Drug Benefit.
- Health Insurance Portability and Accountability Act.
- Limited English Proficiency Requirement.
- Revisions to the Average Wholesale Price Methodology Regulation.

For additional information and clarification on the topics listed, call the contact person in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Individual physicians or medical organizations that represent physicians wishing to make 5-minute oral presentations on agenda issues should contact one of the Designated Federal Officials by 12 noon, Friday, September 5, 2003, to be scheduled. Testimony is limited to agenda topics. The number of oral presentations may be limited by the time available. A written copy of the presenter's oral remarks should be submitted to Diana Motsiopoulos at [dmotsiopoulos@cms.hhs.gov](mailto:dmotsiopoulos@cms.hhs.gov) no later than 12 noon, September 5, 2003, for distribution to Council members for review before the meeting. Physicians and organizations not scheduled to speak may also submit written comments to the Executive Director and Council members. The meeting is open to the public, but attendance is limited to the space available. Individuals requiring sign language interpretation for the hearing impaired or other special accommodation should contact Diana Motsiopoulos at [dmotsiopoulos@cms.hhs.gov](mailto:dmotsiopoulos@cms.hhs.gov) or (410) 786-3379 at least 10 days before the meeting.

This notice also serves as an invitation to all organizations representing physicians to submit nominees for membership on the Council. Each nomination must state that the nominee has expressed a willingness to serve as a Council member and must be accompanied by a short resume or description of the nominee's experience. To permit an evaluation of possible sources of conflicts of interest, potential candidates will be asked to provide detailed information concerning financial holdings, consultant positions, research grants, and contracts. Section 1868(b) of the Act provides that the Council meet quarterly to discuss certain proposed changes in regulations and manual issuances that relate to physicians' services, identified by the Secretary. Council members are expected to participate in all meetings. Section 1868(c) of the Act provides for payment of expenses and a per diem allowance for Council members at a rate equal to payment provided members of other advisory committees. In addition to making these payments, the Department of Health and Human Services/Centers for Medicare & Medicaid Services provides management and support services to the Council. The Secretary will appoint new members to the Council from among those candidates determined to have the expertise required to meet specific agency needs and in a manner to ensure

appropriate balance of the Council's membership.

**Authority:** (Sec. 1868 of the Social Security Act (42 U.S.C. 1395ee) and sec. 10(a) of Pub. L. 92-463 (5 U.S.C. App. 2, sects. 10(a) and 14).

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

Dated: August 7, 2003.

**Thomas A. Scully,**

*Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 03-21442 Filed 8-21-03; 8:45 am]

**BILLING CODE 4120-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare and Medicaid Services

#### Privacy Act of 1974; Report of New System

**AGENCY:** Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services (HHS).

**ACTION:** Notice of new system of records.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records. The proposed system is titled, "ASPEN Complaints/Incidents Tracking System (ACTS), HHS/CMS/CMSO, 09-70-1519." The primary purpose of the system of records is to track and process complaints and incidents reported against Medicare/Medicaid/CLIA providers and suppliers, and to maintain information on laboratory directors and owners. ACTS is a windows-based, program designed to track and process complaints and incidents reported against health care facilities regulated by the Centers for Medicare and Medicaid Services (CMS). It is designed to manage all operations associated with complaint/incident tracking and processing, from initial intake and investigation through the final disposition. ACTS allows CMS to track complaints/incidents, allegations, investigations, disposition and certain information for CLIA laboratories.

Information retrieved from this system of records will also be used to aid in the administration of the survey and certification of Medicare/Medicaid/CLIA providers and suppliers; support agencies of the State governments to determine, evaluate and assess overall effectiveness and quality of provider/supplier services provided in the State; aid in the administration of Federal and

State programs within the State; support constituent requests made to a Congressional representative, support litigation involving the agency, and facilitate research on the quality and effectiveness of care provided. We have provided background information about the proposed system in the

**SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that the "routine use" portion of the system be published for comment, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

**EFFECTIVE DATES:** CMS filed a new system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on August 8, 2003.

**ADDRESSES:** The public should address comments to: Director, Division of Privacy Compliance Data Development (DPCDD), CMS, Room N2-04-27, 7500 Security Boulevard, Baltimore, Maryland 21244-1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.-3 p.m., eastern time zone.

**FOR FURTHER INFORMATION CONTACT:** Wayne Smith, Finance, Systems and Budget Group, Center for Medicaid and State Operations, Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Room S3-18-11, Baltimore, Maryland 21244-1850, Telephone Number: (410) 786-3258.

Steven Pelovitz, Survey and Certification Group, Center for Medicaid and State Operations, Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Room S2-12-25, Baltimore, Maryland 21244-1850, Telephone Number: (410) 786-3160.

**SUPPLEMENTARY INFORMATION:**

**I. Description of the Proposed System of Records**

*A. Glossary of Terms*

*ACTS*—ASPEN Complaints/Incidents Tracking System.

*ASPEN*—Automated Survey Processing Environment.

*CLIA*—Clinical Laboratory Improvement Amendments of 1988.

*OSCAR*—Online Survey Certification and Reporting System.

*B. Background*

The implementation of ACTS is critical to CMS's mission of assuring that beneficiaries receive quality care in

a safe environment. Several reports in recent years have highlighted this need. In March 1999, the General Accounting Office (GAO) issued a report entitled, "Complaint Investigation Processes Often Inadequate to Protect Residents." GAO assessed the effectiveness of State complaint investigation practices and the role of CMS in establishing standards and conducting oversight. The GAO recommended stronger requirements, increased federal monitoring and improved tracking of findings for complaints. In addition, in 1999, the Office of the Inspector General (OIG) issued a report entitled "The External Review of Hospital Quality." OIG recommended that CMS hold accreditation agencies and State agencies more fully accountable for their performance in reviewing hospitals. One of the areas that OIG made specific recommendations about was the handling of complaints. ACTS is part of CMS' response to these recommendations.

The ACTS responds to the concerns and problems found by the GAO, OIG and CMS' own needs. The ability to capture data that are useful, analyze data in a meaningful way, and use the products of the analysis to make refinements and improvements is critical to continuous quality improvement. Before ACTS, complaint data was maintained in the OSCAR Complaint System. The OSCAR Complaint System collected a minimal amount of data that was the result of an onsite survey. The data in ACTS is much more comprehensive than data that was maintained in the OSCAR Complaint System. ACTS automates complaint management operations. ACTS is a windows-based, client-server application that tracks, processes, and reports on complaints/incidents made against certified health care providers and suppliers. It is designed to manage all operations associated with complaints/incidents processing, from initial intake and investigation through final disposition. It is fully integrated into the ASPEN standard system architecture. Specific fields are configurable by individual states to accommodate a variety of operations environments.

ACTS is a national tracking system used by all States. It permits the collection procedures for complaints to be timely, consistent and complete. ACTS will eliminate redundant data collection systems, and it takes advantage of new technology and open systems architecture. ACTS will be used for all certified providers and suppliers. These providers and suppliers include: Skilled nursing facilities, nursing

facilities, hospitals, home health agencies, end-stage renal disease facilities, hospices, rural health clinics, comprehensive outpatient rehabilitation facilities, outpatient physical therapy services, community mental health centers, federally qualified health centers, ambulatory surgical centers, portable X-Ray facilities, intermediate care facilities for persons with mental retardation, and CLIA laboratories. Data in ACTS is collected and entered by the State Survey Agencies and CMS Regional Offices.

*C. Statutory and Regulatory Basis for System of Records*

Section 1864 of the Social Security Act (the Act) states the Secretary may use State agencies to determine compliance by providers of services with the conditions of participation. Under section 1864(a) the Act, the Secretary uses the help of State health agencies, or other appropriate agencies, when determining whether health care entities meet Federal Medicare standards. Also, section 1902(a)(9)(A) of the Act requires that a State use this same agency to set and maintain additional standards for the State Medicaid program. Section 1902(a)(33)(B) requires that the State use the agency utilized for Medicare or, if such agency is not the State agency responsible for licensing health institutions, the State use the agency responsible for such licensing to determine whether institutions meet all applicable Federal health standards for Medicaid participation, subject to validation by the Secretary. The State survey agencies perform both Federal certification and State licensure functions, including the investigation of complaints and entity-reported incidents. Sections 1819(d) and 1919(d) of the Act require licensure under applicable State and local laws.

Sections 1864 (c) and 1865 of the Act provides the basis for conducting complaint surveys of accredited hospitals and establishes the basic framework of complaint surveys for virtually all other accredited providers and suppliers. Regulations authorizing such surveys are found in 42 CFR 488.7(a)(2). 42 CFR 488.332 authorizes investigation of complaints of violations and monitoring of compliance. 42 CFR 488.335 authorizes actions on complaints of resident neglect and abuse, and misappropriation of resident property for nursing homes. 42 CFR 482.13(f) requires a hospital to report any death that occurs while a patient is restrained or in seclusion for behavior management, or where it is reasonable to assume that a patient's death is a

result of restraint or seclusion. 42 CFR 483.13 also requires nursing homes to ensure that all alleged violations involving mistreatment, neglect, abuse, including injuries of unknown source, and misappropriation of resident property are reported immediately to the administrator of the facility and to other officials in accordance with State law through established procedures, including to the State survey and certification agency. Section 353 of the Public Health Service Act (42 U.S.C. 263a) authorizes collection of information from any person or entity seeking certification under CLIA.

The Privacy Act of 1974 requires Federal agencies to implement and publish procedures for the collection, maintenance, and storage of personal information. It requires that the information be gathered only for lawful purposes and that the disclosure of personally identifiable records must be limited and safeguarded. The Privacy Act allows disclosure of an individual's data without consent, given that the data will be used for a purpose that is compatible with the purpose for which the information was collected.

## II. Collection and Maintenance of Data in the System

### A. Scope of the Data Collected

ACTS tracks allegations of complaints made against providers and suppliers. ACTS includes demographic data for identification of providers/suppliers, such as the Medicare identification number, name of the facility, address, city, state and ZIP code. ACTS contains data for identification of complainants, residents/patients, contacts/witnesses, alleged perpetrators, survey team members, laboratory directors, and laboratory owners. Complainant information includes: Name, title, address, city, state, ZIP code, telephone numbers, e-mail address, and relationship to beneficiary, if applicable. Contacts/Witnesses information includes: Name, title, address, city, state, ZIP code, telephone numbers, fax, and a field to indicate if the individual is a possible witness. Resident/patient information includes: Name, title, date of birth, gender, date admitted, date discharged, location, and room. ACTS also contains information related to any resident/patient deaths that are associated with the use of restraints or seclusion. This information includes: Name, death type (restraint or seclusion) and date of death. Alleged Perpetrator information includes: Name, title, address, city, state, ZIP code, telephone numbers, license number, social security number and Alias name, if any.

Survey Team information includes: Name, title, and surveyor identification number. Contact/Witnesses, Resident/Patient and Alleged Perpetrator are not mandatory fields in the ACTS database. These are optional data fields. ACTS will also maintain information for CLIA laboratories. Identifiable information for CLIA laboratories includes: Laboratory director's name, laboratory owner's name and Federal Tax Identification Number.

ACTS will maintain Federal complaint information, as well as state licensure complaint information. State licensure information is both relevant and necessary to meet CMS' purposes. Under section 1864(a) of the Social Security Act (the Act), the Secretary uses the help of State health agencies, or other appropriate agencies, when determining whether health care entities meet Federal Medicare standards. Also, section 1902(a)(9)(A) of the Act requires that a State use this same agency to set and maintain additional standards for the State Medicaid program. Section 1902(a)(33)(B) requires that the State use the agency utilized for Medicare or, if such agency is not the State agency responsible for licensing health institutions, the State use the agency responsible for such licensing to determine whether institutions meet all applicable Federal health standards for Medicaid participation, subject to validation by the Secretary. The State survey agencies perform both Federal certification and State licensure functions, including the investigation of complaints and entity-reported incidents. In fact, sections 1819(d) and 1919(d) of the Act require licensure under applicable State and local laws. In order to encourage efficiency in State operations, ACTS permits collection of Federal and State information, so that the States may maintain only one database, instead of multiple systems. CMS does seek to eliminate duplicative processes and unnecessary burden, to the extent possible, so that the States can achieve more effective management of their certification and licensure responsibilities.

There are mechanisms in ACTS that allow users to distinguish between information that is collected for the purpose of meeting the 1864 Agreement from information that is collected for State licensure purposes. ACTS supports the entry of both Federal and State licensure information, thus reflecting the actual business practices of State agencies as they track complaints and incidents. In many areas, ACTS allows entry of both types of information while still maintaining discrete records to support separate and

different views, reports and statistics. Federal and State licensure data are stored in the same tables in the database. However, Federal and State licensure data is easily discernable and separate. For reporting purposes, ACTS allows users to exclude complaint and incidents against state licensure only facilities using Facility Type filters. Report customization features in ACTS also allow users to include or exclude complaints or incidents that contain only State-licensure elements.

### B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose, which is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a "routine use." CMS has the following policies, procedures and restrictions on routine use disclosures of information that will be maintained in the system. In general, disclosure of information from the system of records will be approved only for the minimum information necessary to accomplish the purpose of the disclosure after CMS:

(a) Determines that the use or disclosure is consistent with the reason that the data is being collected, e.g., track and process complaints and incidents reported against Medicare/Medicaid/CLIA providers and suppliers, and to maintain information on laboratory directors and owners.

(b) Determines:

(1) That the purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

(2) That the purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

(3) That there is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

(c) Requires the information recipient to:

(1) Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

(2) Remove or destroy at the earliest time all patient-identifiable information; and

(3) Agree not to use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

(d) Determines that the data are valid and reliable.

(e) Secure a written statement or agreement from the prospective recipient if the information whereby the prospective recipient attests to an understanding of, and willingness to abide by, the foregoing provisions and any additional provisions that CMS deems appropriate in the particular circumstance.

### III. Proposed Routine Use Disclosures of Data in the System

#### A. Entities Who May Receive Disclosure Under Routine Use

The routine use disclosures of identifiable data for ACTS may occur to the following categories of entities. In addition, our policy will be to prohibit release even of non-identifiable data beyond the listed categories, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes.

1. To the Department of Justice (DOJ), court or adjudicatory body when

(a) The agency or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity whether the DOJ has agreed to represent the employee; or

(d) The United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and the use of such records by the DOJ, court or adjudicatory body is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

Whenever CMS is involved in litigation, and occasionally when another party is involved in litigation and CMS' policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved. A determination would be made in each instance that, under the circumstances involved, the purposes served by the use of the information in the particular litigation is compatible with a purpose for which CMS collects the information.

2. To agency contractors, or consultants who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 52a(m).

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or similar agreement with a third party to assist in accomplishing CMS functions relating to purposes for this system of records. CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract and requires the contractor to return or destroy all information at the completion of the contract.

3. To a CMS contractor (including, but not limited to fiscal intermediaries and carriers) that assists in the administration of a CMS administered health benefits program, or to a grantee of a CMS administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or similar agreement with a third party to assist in accomplishing CMS functions relating to purposes for this system of records.

4. To a Quality Improvement Organization (QIO) in order to assist the QIO to perform Title XI and Title XVIII functions relating to assessing and improving quality of care. QIO's work to implement quality improvement programs; provide consultation to CMS, its contractors, and to State agencies. The QIO's provide a supportive role to health care facilities in their endeavors to comply with Medicare Conditions of Participation; assist State agencies in related monitoring and enforcement efforts; assist CMS in program integrity assessment; and prepare summary information about the nation's health care for release to beneficiaries.

5. To the agency of a State Government, or established by State law, for purposes of determining, evaluating and/or assessing overall or aggregate cost, effectiveness, and/or the quality of services provided in the State; for developing and operating Medicaid reimbursement systems; or for the purpose of administration of Federal/ State program within the State. Data will be released to the State only on those individuals who are either

patients within the State, or are legal residents of the State, regardless of the location of the facility in which the patient is receiving services.

6. To a Federal or State agency (e.g., State Medicaid agencies) to contribute to the accuracy of CMS's health insurance operations (payment, treatment and coverage) and/or to support State agencies in the evaluation and monitoring of care. Data may be released to State agencies such as State Ombudsmen, State Licensing Boards, and Adult Protective Services.

Other Federal or State agencies in their administration of a Federal health program may require ACTS information in order to support evaluations and monitoring of Medicare claims information of beneficiaries. Releases of information would be allowed if the proposed use(s) for the information proved compatible with the purpose for which CMS collects the information.

7. To another Federal agency (e.g., Office of the Inspector General, General Accounting Office) or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies (e.g., Medicaid Fraud Control Units) may require ACTS information for combating fraud and abuse in such federally funded programs. Releases of information would be allowed if the proposed use(s) for the information proved compatible with the purposes of collecting the information.

8. To an individual or organization for research, evaluation, or epidemiological project related to the prevention of disease or disability, or the restoration or maintenance of health, and for payment related projects.

CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare and Medicaid patients and the policy that governs the care. CMS understands the concerns about the privacy and confidentiality of the release of data for a research use. Disclosure of ACTS data for research and evaluation purposes will usually involve aggregate data rather than individual-specific data.

9. To a member of Congress or to a congressional staff member in response to an inquiry of the Congressional Office made at the written request of the constituent about whom the record is maintained.

Beneficiaries, as well as other individuals, may request the help of a member of Congress in resolving an issue relating to a matter before CMS. The member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

10. To a national accreditation organization that has been granted deeming authority by CMS for the purpose of improving the quality of care provided through the provision of health care accreditation and related services that support performance improvement and monitors the quality of deemed providers/suppliers through the investigation of complaints (e.g., JCAHO, AOA, AAAASF, AAAHC, AABB, ASHI, CAP, CARF, CHAP, COLA).

11. To a Protection and Advocacy Group that provides legal representation and other advocacy services for the purposes of monitoring, investigating and attempting to remedy adverse conditions, and for responding to allegations of abuse, neglect and violations of the rights of persons with disabilities.

12. To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local law enforcement agencies) for a civil or criminal law enforcement activity (e.g., police, FBI, State Attorney General's office).

#### *B. Additional Provisions Affecting Routine Use Disclosures*

In addition, CMS policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

This System of Records contains Protected Health Information as defined by the Department of Health and Human Services' regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR parts 160 and 164, 65 FR 82462 (12-28-00), subparts A and E. Disclosures of Protected Health Information authorized by these routine uses may only be made

if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information."

#### **IV. Safeguards**

The ACTS system conforms to applicable laws and policy governing the privacy and security of Federal automated information systems. These include but are not limited to: the Privacy Act of 1974, Computer Security Act of 1987, the Paperwork Reduction Act of 1995, the Clinger-Cohen Act of 1996, and OMB Circular A-130, Appendix III, "Security of Federal Automated Information Resources". CMS has prepared a comprehensive System Security Plan as required by OMB Circular A-130, Appendix III. This plan conforms to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800-18, "Guide for Developing Security Plans for Information Technology Systems." Paragraphs A-C of this section highlight some of the specific methods that CMS is using to ensure the security of this system and the information within it.

##### *A. Authorized Users and Access Control*

Personnel having access to the system have been trained in Privacy Act and system security requirements. Employees and contractors who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. In addition, CMS monitors authorized users to ensure against excessive or unauthorized use. Records are used in a designated work area and system location is attended at all times during working hours.

To ensure security of the data, authentication and access control profiles are maintained within both the database and the ACTS application system used to view information in the database. Within the database access, control is implemented by assigning the proper access profile for each individual user as determined at the State agency level. This prevents unauthorized users from accessing and modifying critical data using other system tools not provided by CMS.

*Database-level Protections:* The State database upon which ACTS operates includes five classes of database users:

- Database Administrator class owns the database objects; e.g., tables, triggers, indexes, stored procedures, packages

and has database administration privileges to these objects;

- Quality Control Administrator class has read and write access to key fields in the database;

- ASPEN User class provides read and write access to tables and fields, which are required to support complaint, survey and related activities.

- Quality Indicator Report Generator class has read-only access to all fields and tables;

- Policy Research class has query access to tables, but are not allowed to access confidential patient identification information.

*ACTS Application-Level Protections:* All ASPEN applications, including ACTS, provide user login/password authentication, which is tied directly to each State's internal network user login process. Internal application access controls, which secure system functions to pre-approved user groups, are also a key safeguard controlling user access to functions and data. ACTS application and related database safeguards include:

- *Application login:* All ASPEN users must be authenticated to their State or CMS regional office network as a pre-requisite for starting an ASPEN application. This is enforced internally by the ASPEN application. Thus, only known, pre-authenticated users may start an ASPEN application.

- *Application access control:* Once authenticated, ASPEN users may only view information and perform tasks according to pre-assigned security and access control profiles determined by the system administrator. Security profiles may be assigned down to the level of individual menu functions, action buttons and form displays. This means ASPEN allows State and CMS RO administrators to finely tune which users may view certain information and perform specific tasks within the system (such as adding or modifying complaint information). Thus, while a complaint investigator may be able to update findings for a specific complaint, they may be prohibited through their security profile from removing complaints from the system.

- *Provider Type Access Control:* In addition to the data and access control security just described, ASPEN allows administrators to specify user access to information based on provider category. For example, while an investigator may have a security profile that enables the investigator to add findings to a complaint, the system administrator may limit this user to specific categories of providers/suppliers, such as nursing homes—thus, preventing the user from changing findings of complaints for other types of providers/suppliers. An

ASPEN user must have both a security profile that allows a specific function to be performed, and be assigned to appropriate Provider Type access before a specific system action may be taken against a provider/supplier type.

- *Secondary Database Access*

*Control:* Since ASPEN provides an Application-centric security model, it is not necessary to assign each ASPEN user an individual Oracle user name, password and Oracle profile. Instead, all ASPEN users share a single Oracle login whose password is known only by CMS. This protects against a significant threat to data integrity: access to the Oracle database using non-ASPEN system tools; thus, preventing accidental or malicious bypassing of the ASPEN security controls through third-party system tools which may be capable of connecting to Oracle databases. ACTS users may only access ASPEN data via the security-controlled environment of the ACTS application.

- *Audit trail:* ACTS maintains an audit trail for key information elements in the database. Any changes made to these elements via the ACTS system are logged. The log includes information on which element was changed, who changed it, the time of change and prior and current values for the element.

#### B. Physical Safeguards

All server sites have implemented the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the ACTS system:

Access to all servers is controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server requires a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card, key and/or combination that grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information Systems resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the system administration workstations and the Windows 2000 servers, which house the ACTS Oracle database, include:

- *User Log-ons*—Authentication is performed by the Windows 2000

Primary Domain Controller/Backup Domain Controller of the log-on domain.

- *Workstation Names*—Workstation naming conventions may be defined and implemented at the State agency level.

- *Hours of Operation*—May be restricted by Windows 2000. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are determined and implemented at the State agency level.

- *Inactivity Log-out*—Access to the 2000 workstation is automatically logged out after a specified period of inactivity.

- *Warnings*—Legal notices and security warnings display on all servers and workstations.

There are several levels of security found in the overall ASPEN system. Windows 2000 servers provide much of the overall system security. The Windows 2000 security model is designed to meet the C2-level criteria as defined by the U.S. Department of Defense's Trusted Computer System Evaluation Criteria document (DoD 5200.28-STD, December 1985). Other non-ACTS CMS functions are supported on the same Windows 2000/Oracle servers as ACTS—such as MDS submission from facilities. Such operations are performed via separate Netscape Enterprise Server, which provides an additional layer of user authentication, security and access control. In this case, Netscape controls all CMS information access requests. Anti-virus system is applied at both the system administration workstation and Windows 2000 server levels.

Access to different areas on the Windows NT server is maintained through the use of file, directory and share level permissions. These different levels of access control provide security that is managed at the user and group level within the Windows 2000 server domain. The file and directory level access controls rely on the presence of a Windows NT File System (NTFS) hard drive partition. This provides the most robust security and is tied directly to the file system. Windows 2000 security is applied at both the workstation and Windows 2000 server levels.

Firewalls have been installed on each State server. Appendix A lists the location of each State server. A firewall is a security feature that does not allow unwanted or unsolicited network traffic to flow to certain parts of the system. A Cisco 3640 router is installed at each state. These routers have been programmed to allow the state IP addresses to access certain locations

within the CMS network. CMS contractors set up and manage the routers. Using CMS specifications, they have installed the allowed IP's to the router tables. If an unauthorized IP tries to access the CMS data, the firewall (router) will pass the request away from its intended destination. That is, if the firewall does not match the IP of the request to an allowed IP in its table, the request will not be fulfilled. CMS contractors monitor the firewalls and review them for anomalies that could represent a hacking attempt or a hardware problem.

#### C. Procedural Safeguards

All automated systems must comply with Federal and State laws, guidance, and policies for information systems security, as stated previously in this section. Each State must ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

#### V. Effects of the Proposed System of Records on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records. CMS and the State Survey Agencies will monitor the collection and reporting of ACTS data.

CMS and the State Survey Agencies will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of individuals whose data are maintained in the system. CMS will collect only that information necessary to perform the system's functions.

To ensure data that resides in a CMS Privacy Act System of Records; to ensure the integrity, security, and confidentiality of information maintained by CMS; and to permit appropriate disclosure and use of such data as permitted by law, CMS and the non-CMS recipient of the data, hereafter termed "User," enter into an agreement to comply with the following specific requirements. The agreement addresses the conditions under which CMS will disclose and the user will obtain and use the information contained in the system of records. The parties mutually agree that CMS retains ownership rights to the data and that the user does not

obtain any right, title, or interest in any of the data furnished by CMS. The user represents and warrants further that the facts and statements made in any study or research protocol or project plan submitted to CMS for each purpose are complete and accurate. The user shall not disclose, release, reveal, show, sell, rent, lease, loan, or otherwise grant access to the data disclosed from the system of records to any person. The user agrees that access to the data shall be limited to the minimum number of individuals necessary to achieve the purpose stated in the protocol and to those individuals on a need to know basis only. If CMS determines or has reasonable belief that the user has made an unauthorized disclosure of the data, CMS in its sole discretion may require the user to: (a) Promptly investigate and report to CMS any alleged or actual unauthorized disclosures; (b) promptly resolve any problems identified by the investigation; (c) submit a formal response to any allegation of unauthorized disclosures; (d) submit a corrective action plan with steps to prevent any future unauthorized disclosures; and (e) return data files to CMS. If CMS determines or has reasonable belief that unauthorized disclosures have taken place, CMS may refuse to release further CMS data to the user for a period to be determined by CMS.

The Privacy Act provides criminal penalties for certain violations. The Act provides that "Any officer or employee of an agency, who by virtue of his (or her) employment or official position, has possession of, or access to agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established there under, and who knowing that disclosure of the specific materials is so prohibited, willfully discloses the material in any manner to a person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000" (5 U.S.C. 552a(i)(1)). The Act also provides that "Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000" (5 U.S.C. 552a(i)(3)). The agency's contractor and any contractors' employees who are covered by 5 U.S.C. 552a(m)(1) are considered employees of the agency for the purposes of these criminal penalties.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: August 8, 2003.

**Thomas A. Scully,**

*Administrator, Centers for Medicare & Medicaid Services.*

**System No. 09-70-1519**

**SYSTEM NAME:**

ASPEN Complaints/Incidents Tracking System (ACTS).

**SECURITY CLASSIFICATION:**

Level Three Privacy Act Sensitive Data.

**SYSTEM LOCATION:**

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244-1850. Federal Servers are located at each State agency. Appendix A lists the location of each State server.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Identifiable information will be retained in the system of records for individuals who are complainants, residents/clients, contacts/witnesses, alleged perpetrators, survey team members, laboratory directors, and laboratory owners.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

ACTS contains information related to allegations of complaints and incidents filed against Medicare, Medicaid or CLIA certified providers or suppliers. The system contains demographic and identifying data, as well as survey and deficiency data. Identifying data includes: Names, title, address, city, state, ZIP code, e-mail address, telephone numbers, fax number, licensure number, social security number, Federal tax identification number, alias names, date of birth, gender, date admitted and/or date discharged.

ACTS maintains Federal complaint information, as well as state licensure complaint information. State licensure information is both relevant and necessary to meet CMS' purposes. CMS uses the help of State health agencies, or other appropriate agencies, when determining whether health care entities meet Federal Medicare standards. The State survey agencies perform both Federal certification and State licensure functions, including the investigation of complaints and entity-reported incidents. The Social Security Act requires that providers/suppliers receive licensure under applicable State and local laws. In order to encourage efficiency in State operations, ACTS permits collection of Federal and State information. ACTS allows users to distinguish between Federal

information and information that is collected for State licensure purposes. ACTS supports the entry of both Federal and state licensure information, thus reflecting the actual business practices of state agencies as they track complaints and incidents. In many areas, ACTS allows entry of both types of information while still maintaining discrete records to support separate and different views, reports and statistics.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Sections 11819(d), 1864, 1865, 1902(a)(9)(A), 1902(a)(33)(B), and 1919(d) of the Social Security Act. Section 353 of the Public Health Service Act (42 U.S.C. 263a), 42 CFR 482.13(f), 42 CFR 483.13, 42 CFR 488.7(a)(2), 42 CFR 488.332, and 42 CFR 488.335.

**PURPOSE(S):**

The primary purpose of the system of records is to track and process complaints and incidents reported against Medicare/Medicaid/CLIA providers and suppliers, and to maintain information on laboratory directors and owners.

ACTS provides access to survey and provider/supplier information for data-driven analysis and evaluation. This system will improve CMS's ability to monitor the performance of State Survey Agencies including analyzing program variations and more effectively managing program costs. Information retrieved from this system of records will be used to aid in the administration of the survey and certification of Medicare/Medicaid/CLIA providers and suppliers; support agencies of the State governments to determine, evaluate and assess overall effectiveness and quality of provider/supplier services provided in the State; aid in the administration of Federal and State programs within the State; support constituent requests made to a Congressional representative, support litigation involving the agency, and facilitate research on the quality and effectiveness of care provided.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:**

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To the Department of Justice (DOJ), court or adjudicatory body when:

(a) The agency or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity when the DOJ has agreed to represent the employee; or

(d) The United States Government; is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and the use of such records by the DOJ, court or adjudicatory body is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

2. To agency contractors, or consultants who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity.

3. To a CMS contractor (including, but not necessarily limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administrated health benefits program, or to a grantee of a CMS-administered health benefits program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

4. To a Quality Improvement Organization (QIO) in order to assist the QIO to perform Title XI and Title XVIII functions relating to assessing and improving quality of care.

5. To the agency of a State Government, or established by State law, for purposes of determining, evaluating and/or assessing overall or aggregate cost, effectiveness, and/or the quality of services provided in the State; for developing and operating Medicaid reimbursement systems; or for the purpose of administration of Federal/State programs within the State.

6. To a Federal or State agency (*e.g.*, State Medicaid agencies) to contribute to the accuracy of CMS's health insurance operations (payment, treatment and coverage) and/or to support State agencies in the evaluation and monitoring of care.

7. To another Federal agency (*e.g.*, Office of the Inspection General, General Accounting Office, Medicaid Fraud Control Unit) or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency) that administers, or that has the authority to investigate potential fraud or abuse in a health benefits program funded in

whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

8. To an individual or organization for research, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

9. To a member of Congress or to a congressional staff member in response to an inquiry of the Congressional Office made at the written request of the constituent about whom the record is maintained.

10. To a national accreditation organization that has been granted deeming authority by CMS for the purpose of improving the quality of care provided through the provision of health care accreditation and related services that support performance improvement and monitors the quality of deemed providers/suppliers through the investigation of complaints.

11. To a Protection and Advocacy Group that provides legal representation and other advocacy services for the purposes of monitoring, investigating and attempting to remedy adverse conditions, and for responding to allegations of abuse, neglect, and violations of the rights of persons with disabilities.

12. To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local law enforcement agencies) for a civil or criminal law enforcement activity (*e.g.*, police, FBI, State Attorney General's office).

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

All records are stored on the magnetic disk sub-system of the Windows 2000 server. Furthermore, these records are saved to magnetic tape backup on a nightly basis.

**RETRIEVABILITY:**

The Medicare, Medicaid, and CLIA records are retrieved by name of provider/supplier, Medicare provider number, ACTS Complaint number, State assigned Medicaid number, or other CMS assigned numbers, complainant's name, resident/patient's name, contact/witnesses name, alleged perpetrator's name, survey team member's name, surveyor identification number, laboratory director's name, laboratory

owner's name or federal tax identification number.

**SAFEGUARDS:**

CMS has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, CMS has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the ACTS system. For computerized records, safeguards have been established in accordance with the Department Health and Human Services standards and National Institute of Standards and Technology guidelines, *e.g.*, security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management Circular #10, Automated Information System Security Program; CMS Automated Information Systems (AIS) Guide, Systems Securities Policies, and OMB Circular No. A-130 (revised), Appendix III.

**RETENTION AND DISPOSAL:**

CMS will retain identifiable ACTS data for a total period not to exceed 15 years.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Finance, Systems and Budget Group, Center for Medicaid and State Operations, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Director, Survey and Certification Group, Center for Medicaid and State Operations, Center for Medicaid and State Operations, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

**NOTIFICATION PROCEDURE:**

For the purpose of accessing records based on individual identifiable data, the subject individual should write to the system manager who will require the system name, Medicare provider/supplier identification number, provider/supplier's name and address, and for verification purposes the subject

individual's name, social security number (SSN) (furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay), address, date of birth and sex.

#### RECORD ACCESS PROCEDURE:

For accessing records based on individual identifiable data, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2).)

#### CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

#### RECORD SOURCE CATEGORIES:

The following forms and the ACTS software are used to collect ACTS data. Medicare/Medicaid/CLIA Complaint Form (CMS-562).

Statement of Deficiencies and Plan of Correction (CMS-2567).

Post-Certification Revisit Report (CMS-2567B).

Survey Team Composition and Workload Report (CMS-670).

Request for Validation of Accreditation Survey for Hospital (CMS-2802).

Request for Validation of Accreditation Survey for Laboratory (CMS-2802A).

Request for Validation of Accreditation Survey for Hospice (CMS-2802B).

Request for Validation of Accreditation Survey for Home Health Agency (CMS-2802C).

Request for Validation of Accreditation Survey for Ambulatory Surgical Center (CMS-2802D).

Request for Survey of 489.20 and 489.24 Essentials of Provider Agreements:

Responsibilities of Medicare Participating Hospitals in Emergency Cases (CMS-1541A).

CMS-116—CLIA Laboratory Application.

#### SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Waiver of 40 day waiting period.

#### Appendix A Location of State Servers

North Dakota Department of Health Resources, 600 East Boulevard Avenue, Suite 206, Bismarck, ND 58505.

Department of Health, Facility Licensing and Certification Bureau, 2040 South Pacheco, Colgate Building 2nd Floor, Santa Fe, NM 87505.

Utah Department of Health, M/M Program Certification, 288 North, 1460 West, Salt Lake City, UT 84114-2905.

Department of Public Health and Human Services, Senior and Long Term Care Division, 111 Sanders Avenue, Suite 210, P.O. Box 4210, Helena, MT 59601.

Division of Medicaid, Bureau of Facility Standards, Myers & Stauffer, 8555 West Hackamore Dr., Suite 100, Boise, ID 83709-1665.

Rhode Island Department of Health, Three Capitol Hill, Cannon Building, Room 306, Providence, RI 02908-5097.

State of Connecticut, Department of Public Health, 410 Capitol Avenue MS#13DPR, P.O. Box 340308, Hartford, CT 06134-0308.

Minnesota Department of Health, F&PC Division, 85 East 7th Place-Suite 300, P.O. Box 64900, St. Paul, MN 55101.

Bureau of Quality Assurance, Department of Health and Family Services, 1 West Wilson Street, Suite 150, P.O. Box 7850, Madison, WI 53701-0309.

Louisiana Department of Health and Hospitals, Health Standards Section, 500 Laurel Street, Suite 100, Baton Rouge, LA 70801.

Texas Department of Human Services (TDHS), 701 West 51st Street, P.O. Box 149030, MC W-519, Austin, TX 78751.

Alabama Department of Public Health, Division of Health Care Facilities, 201 Monroe Street, Suite 840, P.O. Box 303017, Montgomery, AL 36104-3017.

Division of Emergency Medical Services, 570 East Woodrow Wilson Blvd., Third Floor A-300, Jackson, MS 39215.

State of New Jersey, Department of Health and Senior Services Long Term Care. Systems Development and Quality, 120 S Stockton Street, lower level, Trenton, NJ 08625.

Office of Health Facilities Licensing and Certification, LTC Residents Protection, Three Mill Road, Suite 308, Wilmington, DE 19806.

Colorado Department of Public Health and Environment, Health Facilities Division, HFD-a2, 4300 Cherry Creek Drive, South, Second Floor, Denver, CO 80246-1530.

Office of Health Quality, 2020 Carey Avenue, First Bank Building, 8th Floor, Cheyenne, WY 82002.

Department of Health & Human Services Division of Facility Services Licensure and Certification Section, 805 Briggs Drive, Raleigh, NC 27603.

SCDHEC, Division of Certification, 1777 Saint Julian Place, Suite 302, Columbia, SC 29204.

Seniors and People with Disabilities, 875 Union St.—4th Fl., Salem, OR 97310.

AASA—Division of Residential Services, 0B2 1115 North Washington, Olympia, WA 98503.

Myers and Stauffer, 6380 Flank Drive, Suite 100, Harrisburg, PA 17112.

DHHR, Management Information Services, 350 Capital Street, Room 206, Third Floor Computer Room, Charleston, WV 25301-3178.

Office of Regulatory Services, Georgia Department of Human Resources, 2 Peachtree Street North West, Suite 24, Atlanta, GA 30303-3167.

Management Information Systems, Agency for Health Care Administration, 2727 Mahan Dr, Fort Knox, Bldg 3, Room 100, MS9a, Tallahassee, FL 32308-5403.

Illinois Department of Public Aid, Division of Medical Programs, 201 South Grand Avenue, East, Prescott Bloom Bldg. 2nd floor, Springfield, IL 62763.

Indiana State Department of Health, 2 North Meridian Street, Indianapolis, IN 46204.

Cabinet for Health Services Office of Inspector General, 275 East Main Street 5E-A, Frankfurt, KY 40621.

Tennessee Department of Health, Division of Health Care Facilities, 426 5th Avenue, North, Cordell Hull Building, 1st Floor, Nashville, TN 37247-0508.

Massachusetts Department of Public Health, Division of Health Care Quality, 10 West Street, 5th floor, Boston, MA 02111.

Division of Licensing and Protection, 103 South Main Street, Ladd Hall room 898, Waterbury, VT 05671.

Missouri Department of Social Services, Division of Aging, 615 Howerton Court, Jefferson City, MO 65109.

Department of Human Services DMS/OLTC/ Reimbursement Unit, 700 Main, 4th Floor, PO Box 8059—Slot 407, Little Rock, AR 72203-8059.

Oklahoma State Department of Health, SHS, 1000 North East 10th Street, Oklahoma City, OK 73117-1299.

Myers & Stauffer Consulting Services, 4123 Southwest Gage Center Drive, Suite 200, Topeka, KS 66604.

Bureau of Licensure and Certification, 1550 East College Parkway, Suite 158, Carson City, NV 89706.

Arizona Department of Health Services, 1647 East Morten Ave., Suite 200, Phoenix, AZ 85020.

Virginia Department of Health, 1500 East Main Street, Room 211, Main Street Station, Richmond, VA 23219.

Department of Consumer and Regulatory Affairs, Service Facility Regulation Administration, 825 N Capitol Street NE., 2nd Floor LRA—Room 221, Washington, DC 20002.

Michigan Department of Community Health, 300 East Michigan, Chandler River Plaza Building, Lansing, MI 48933.

Ohio Department of Health, 246 N. High St., 3rd Floor, Columbus, OH 43215.

Dept of Human Services, 442 Civic Center Drive, Augusta, ME 04330.

Department of Health and Human Services, Office of Program Support, Office of Information Systems, 129 Pleasant Street, Brown Bldg., Concord, NH 03301-3857.

Office of Health Care Assurance, 601 Kamokila, RM 395, Kapolei, HI 96707.

South Dakota Department of Social Services, Office of Adult Services and Aging, 700 Governors Drive, Pierre, SD 57501.

California Department of Health Services, Licensing and Certification, 630 Bercut Dr. Suite B, Sacramento, CA 95814.

State of Maryland, Department of Health Care Quality, 55 Wade Avenue, Spring Grove

Center, Bland Bryant Bldg., Fourth Floor, Catonsville, MD 21228.

Department of Health and Human Services, Medicaid Division, P.O. Box 95026—301 Centennial Mall, South, 5th Floor, Lincoln, NE 68509.

DHHS Div of Med. Assistance Health Facilities Licensing and Certification, 4730 Business Park Boulevard, Suite 18, Anchorage, AK 99503.

NYS Dept. of Health, Empire State Plaza, Concourse Room 148, Albany, NY 12237.

Virgin Islands, IFMC, 6000 Westown Parkway, West Des Moines, IA 50266.

Puerto Rico Department of Health, Assistant Secretariat for the Regulation and Accreditation of Health Facilities, Former Ruez Soler Hospital Road #2, Bayamon, PR 00959.

[FR Doc. 03-21444 Filed 8-21-03; 8:45 am]

BILLING CODE 4120-03-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 1999D-4577]

#### Guidance for Industry: Application of Current Statutory Authority to Nucleic Acid Testing of Pooled Plasma; Withdrawal of Draft Guidance

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; withdrawal.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the withdrawal of a draft guidance entitled "Guidance for Industry: Application of Current Statutory Authority to Nucleic Acid Testing of Pooled Plasma" dated November 1999, that was announced in the **Federal Register** on November 26, 1999. In the draft guidance, FDA sought public comment on the development and implementation of nucleic acid testing (NAT) for infectious diseases.

**DATES:** Effective September 22, 2003.

**FOR FURTHER INFORMATION CONTACT:** Astrid L. Szeto, Center for Biologics Evaluation and Research (HFM-17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-827-6210.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of November 26, 1999 (64 FR 66481), FDA announced the availability of a draft guidance entitled "Guidance for Industry: Application of Current Statutory Authority to Nucleic Acid Testing of Pooled Plasma" dated November 1999. This draft guidance responded to industry's request for guidance in the development and implementation of NAT of pooled plasma in further improving the safety

of the nation's blood products. No NAT test kit manufacturers were licensed at that time. A number of manufacturers have subsequently been licensed for NAT, making the request for guidance in the development of NAT testing of pooled plasma for infectious agents now moot. This draft guidance is therefore being withdrawn as of September 22, 2003, because it is obsolete.

Dated: August 14, 2003.

**William K. Hubbard,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. 03-21477 Filed 8-21-03; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Receipt of Applications for Permit

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of Receipt of Applications for Permit.

**SUMMARY:** The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

**DATES:** Written data, comments or requests must be received by September 22, 2003.

**ADDRESSES:** Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358-2281.

**FOR FURTHER INFORMATION CONTACT:** Division of Management Authority, telephone 703/358-2104.

#### SUPPLEMENTARY INFORMATION:

##### Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

*Applicant:* Miami Metrozoo, Miami, FL, PRT-069826.

The applicant requests a permit to export one male captive-born Baird's tapir (*Tapirus bairdii*) to the Parque Ecoarqueologico Xcaret, Mexico, for the purpose of enhancement of the survival of the species through captive propagation and conservation education.

*Applicant:* Yale University, New Haven, CT, PRT-072747.

The applicant requests a permit to import biological samples from sifaka (*Propithecus verreauxi verreauxi*) collected in the wild in Madagascar, for scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

*Applicant:* Texas Memorial Museum, Austin, TX, PRT-072019.

The applicant requests a permit to import biological samples from Coahuilan box turtles (*Terrapene coahuila*) collected in the wild in Mexico, for scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

*Applicant:* Susan C. Gardner, c/o U.S. Environmental Protection Agency, Cincinnati, OH, PRT-073075.

The applicant requests a permit to import samples and non-viable eggs obtained from green sea turtle (*Chelonia mydas*), olive ridley sea turtle (*Lepidochelys olivacea*), hawksbill sea turtle (*Eretmochelys imbricata*), and leather back sea turtle (*Dermochelys coriacea*), in Mexico, for the purpose of enhancement of the species through scientific research. This notification covers activities to be conducted by the applicant over a five year period.

*Applicant:* Dr. Lisa K. Yon, University of California, Davis, CA, PRT-075293.

The applicant requests a permit to import serum, urine, and fecal samples obtained from 6 bull Asian elephants (*Elephas maximus*) captive-held at the Ayutthaya Elephant Palace and Royal Kraal, Thailand, for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

*Applicant:* Florida Museum of Natural History, Gainesville, FL, PRT-677336.

The applicant requests renewal of their permit to import export and re-export non-living museum specimens of endangered and threatened species of plants and animals previously accessioned into the applicant's collection for scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

*Applicant:* Adam M. Vinatieri, North Attleboro, MA, PRT-075567.

The applicant request a permit to import the sport hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

#### Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered marine mammals and/or marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete application or requests for a public hearing on this application should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

*Applicant:* U.S. Geological Survey, Western Ecological Research Center, San Simeon, CA, PRT-672624.

The applicant request a permit to increase the number of animals out of 500 takes for drugging, vestigial tooth extraction and blood taking; for surgical implant of radio transmitters; and for TDR implants for the purpose of scientific research. This notification covers activities to be conducted by the applicant until October 5, 2007.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Dated: August 8, 2003.

**Monica Farris,**

*Senior Permit Biologist, Branch of Permits, Division of Management Authority.*

[FR Doc. 03-21488 Filed 8-21-03; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[WY920-1430FM, WYW148816]

#### Notice of availability of a Final Environmental Impact Statement on the Proposed Pittsburg and Midway Coal Mining Company Coal Exchange

**AGENCY:** Bureau of Land Management, Interior. Cooperating Agencies—Forest

Service, Agriculture; Office of Surface Mining, Interior.

**ACTION:** Notice of Availability of a Final Environmental Impact Statement (FEIS) on the proposed Pittsburg and Midway Coal Mining Company Coal Exchange; Lincoln, Carbon, and Sheridan Counties, Wyoming.

**SUMMARY:** Under the National Environmental Policy Act (NEPA), the Federal Policy and Management Act of 1976 (FLPMA) and associated regulations, the Bureau of Land Management (BLM) announces the availability of a FEIS that evaluates, analyzes, and discloses to the public direct, indirect, and cumulative environmental impacts of a proposed land-for-coal exchange between the Pittsburg and Midway (P&M) Coal Mining Company, the USDA Forest Service Bridger-Teton National Forest, and the Wyoming BLM, (Serial Number WYW148816).

The FEIS analyzes a proposal made by P&M to exchange approximately 5,859 acres of privately owned surface and coal resources for an amount of Federal coal of approximately equal value underlying privately owned lands. For all, or some portion, of an estimated 107 million tons of Federal coal in Sheridan County, Wyoming, P&M would exchange to the United States private land and mineral resources in Lincoln, Carbon, and Sheridan Counties, Wyoming. The USDA Forest Service and the Office of Surface Mining are cooperating agencies.

**DATES:** Comments on the FEIS will be accepted for 30 days following the date that the Environmental Protection Agency (EPA) publishes their notice of availability of the FEIS in the **Federal Register**. The BLM asks that those submitting comments on the FEIS make them as specific as possible with reference to page numbers and chapters of the document. Comments that contain only opinions, or preferences, will not receive a formal response, however, they will be considered, and included, as part of the BLM decision-making process. Comments, including names and street addresses of respondents, will be available for public review at the Bureau of Land Management, Casper Field Office, 2987 Prospector Drive, Casper, Wyoming, during regular business hours (8 a.m. to 4:30 p.m.), Monday through Friday, except holidays, and may be published as part of the Final EIS.

**ADDRESSES:** Please address questions, comments, or requests for copies of the FEIS to the Casper Field Office, Bureau of Land Management, Attn: Nancy

Doelger, 2987 Prospector Drive, Casper, Wyoming 82604; or you may mail them electronically to the attention of Nancy Doelger at [casper\\_wymail@blm.gov](mailto:casper_wymail@blm.gov); or fax them to (307) 261-7587. A copy of the FEIS has been sent to affected Federal, State, local government agencies, and to those persons who responded to the BLM indicating that they wished to receive a copy of the FEIS. Copies of the FEIS are available for public inspection at the following BLM and USDA Forest Service office locations:

- Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, WY 82009
- Bureau of Land Management, Casper Field Office, 2987 Prospector Drive, Casper, WY 82604-2968
- Bureau of Land Management, Pinedale Field Office, 432 E. Mill Street, Pinedale, WY 82941
- Bureau of Land Management, Rawlins Field Office, 1300 N. Third Street, Rawlins, WY 82301
- USDA Forest Service, Intermountain Region, 324 25th Street, Ogden, UT 84401
- USDA Bridger-Teton National Forest, Kemmerer Ranger District, 308 Highway 189 North, Kemmerer, WY 83101
- Bureau of Land Management, Buffalo Field Office, 1425 Fort Street, Buffalo, WY 82834

#### FOR FURTHER INFORMATION CONTACT:

Nancy Doelger or Mike Karbs at the above Casper Field Office address, or telephone: (307) 261-7600.

**SUPPLEMENTARY INFORMATION:** The FEIS analyzes a proposal by P&M to exchange privately owned land and some mineral resources for Federal coal. The proposed exchange includes the surface and mineral estate on the parcels that would become Federal estate administered by the USDA Forest Service, Bridger-Teton National Forest (BTNF), (2,447.88 acres); and on 638.37 acres to be administered by BLM and adjacent to the BTNF. BLM would acquire 2,772.25 acres of surface to be administered in the Rawlins and Buffalo Field Offices and 807.69 acres of coal to be administered by the Buffalo Field Office. A description of the lands and resources offered to the United States Government by P&M and the tract of Federal coal selected by P&M follows.

#### Bridger Lands, Lincoln County, Wyoming

Of the parcels north of Kemmerer, Wyoming, known as "the Bridger Lands," approximately 2,447 acres are inholdings within in the administrative

boundaries of the Bridger-Teton National Forest, Kemmerer Ranger District, Wyoming. The addition of this acreage to the National Forest System (NFS) would be consistent with, and managed under, the *Bridger-Teton National Forest Land and Resource Management Plan*, (1990). This would also be consistent with USDA Forest Service national policy to acquire private in-holdings whenever possible to facilitate management and administration of NFS lands and resources. Acquisition of these parcels would be beneficial to wildlife species, would increase public recreation opportunities, and protect surrounding NFS lands from the impacts of human development.

The remaining parcels in Lincoln County are located outside of, and immediately adjacent to the Bridger-Teton National Forest and are contiguous to the 2,447 acres that would become part of NFS lands. The approximately 638 acres are due west of LaBarge, Wyoming, and would become public lands administered by the BLM, Pinedale Field Office. If the exchange is completed and BLM acquires the 638 acres of land, the Pinedale Resource Management Plan (1988) would be maintained to extend existing management direction to the Bridger Lands.

*Lands and Surface Resources To Be Administered by USDA Forest Service*

6th Principal Meridian, Wyoming

- T. 26 N., R. 116 W.,  
Tracts 39, 41, and 42.  
T. 26 N., R. 117 W.,  
Tracts 37–43  
T. 27 N., R. 117 W.,  
Tracts 37–42.

Containing 2,447.88 acres more or less.

*Lands and Minerals To Be Administered by BLM*

6th Principal Meridian, Wyoming

- T. 26 N., R. 115 W.,  
Tracts 49, 57, and 71.

Containing 638.37 acres more or less.

**JO Ranch Lands, Carbon County, Wyoming**

P&M is offering the parcel (1,233.55 acres) known as the “JO Ranch Lands” to the United States Government. The JO Ranch Lands are southwest of Rawlins, Wyoming. Cow Creek, an ephemeral drainage that drains the west foothills of the Sierra Madre Mountains, flows through the JO Ranch Lands. This section of Cow Creek has riparian grassland habitat, and provides mule deer and elk crucial winter range. The JO Ranch Lands also include the JO Ranch or Rankin Ranch buildings, which are eligible for National Historic

Site status. The JO Ranch Lands offered by P&M are surrounded by public lands and resources administered by the BLM Rawlins Field Office. If the exchange is completed and BLM acquires these lands, the Great Divide Resource Management Plan, (1990) would be maintained to extend existing management direction to the 1,233.55 acres of JO Ranch Lands.

Because P&M does not own, and therefore cannot offer, any of the mineral estate underlying the JO Ranch lands, the subsurface estate and its resources would remain in private ownership.

*Lands To Be Administered by BLM*

6th Principal Meridian, Wyoming

- T. 16 N., R. 90 W.,  
Sec. 6, lots 20, 23, 24, 27, NE $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
Sec. 17, SW $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
Sec. 18, NE $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
Tract 46.  
T. 16 N., R. 91 W.,  
Sec. 12, NE $\frac{1}{4}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ ,  
SW $\frac{1}{4}$ SW $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ , W $\frac{1}{2}$  SE $\frac{1}{4}$ ;  
Sec. 13, W $\frac{1}{2}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ ,  
NW $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
Sec. 14, SE $\frac{1}{4}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$ , S $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
Sec. 22, SE $\frac{1}{4}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ SE $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
Sec. 23, W $\frac{1}{2}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ ,  
SW $\frac{1}{4}$ SW $\frac{1}{4}$

Containing 1,233.55 acres more or less.

**Welch Ranch Lands, Sheridan County, Wyoming**

P&M is offering the United States Government the Welch Ranch parcel, approximately (1,538.70 acres). Approximately 1.5 miles of Tongue River frontage would be included. The Tongue River area of the “Welch Lands” contains significant wildlife and fisheries habitat and would provide the public access to the Tongue River and these resources. The Welch Lands are surrounded by private lands and private and Federal minerals that are administered by the BLM Buffalo Field Office. In addition to the identified Welch Lands, the United States Government would acquire ownership of about 807.69 acres of the coal estate currently owned by P&M. Upon acquisition, the coal would be administered by the BLM Buffalo Field Office. If the exchange is completed and the Welch Lands become public lands, BLM will prepare a site-specific plan for the 1,538.70 acres of Welch Ranch Lands that would amend the Buffalo Resource Management Plan (1985, updated 2001).

*Lands To Be Administered by BLM*

6th Principal Meridian, Wyoming

- T. 57 N., R. 84 W.,  
Sec. 1, S $\frac{1}{2}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ ,  
SW $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
Sec. 2, lots 2, 3, S $\frac{1}{2}$ N $\frac{1}{2}$ , S $\frac{1}{2}$ ;

Sec. 3, lots 3, 4, S $\frac{1}{2}$ N $\frac{1}{2}$ , N $\frac{1}{2}$ S $\frac{1}{2}$ ,  
SE $\frac{1}{4}$ SE $\frac{1}{4}$ ;

Sec. 4, lots 1–4, S $\frac{1}{2}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ ,  
N $\frac{1}{2}$ SE $\frac{1}{4}$ .

Containing approximately 1,538.7 acres more or less.

*Minerals To Be Administered by BLM*

P&M owns and is offering to exchange the coal estate underlying the following lands:

6th Principal Meridian, Wyoming

T. 57 N., R. 84 W.,

Sec. 1, S $\frac{1}{2}$ NE $\frac{1}{4}$  (excluding 25.51 acres),  
SE $\frac{1}{4}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$  (excluding 1.2  
acres);

Sec. 2, S $\frac{1}{2}$ NW $\frac{1}{4}$ , S $\frac{1}{2}$  (excluding 5.6 acres);

Sec. 3, S $\frac{1}{2}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$ ,  
SE $\frac{1}{4}$ SE $\frac{1}{4}$ .

Containing 807.69 acres, more or less.

P&M does not own, and is not offering, to exchange any other mineral rights underlying the Welch lands.

In exchange for the above described lands, P&M proposes to acquire some portion of the Federal coal in the PSO Tract, described below. There are 6.41 acres of publicly owned surface estate included in the PSO Tract, which is not included in the exchange proposal. The remainder of the surface estate included in the tract is privately owned, primarily by P&M.

**PSO Tract, Sheridan County, Wyoming**

The Federal coal that P&M is proposing to acquire is located immediately north of the Welch Ranch, underlying mostly P&M's private surface (“PSO Tract”) in Sheridan County. The Federal coal is found in two mineable coal seams, the Dietz 1, and Dietz 3. Recent exploration samples indicate that the Dietz 1 coal seam has an average BTU value of 9,279, and that the Dietz 3 has an average BTU value of 9,352. Up to approximately 107 million tons of Federal coal may be exchanged depending on the final appraised value of both the land and coal resources that the United States Government would receive from P&M, and the value of the Federal coal.

The legal description of the Federal coal being considered for exchange is as follows:

6th Principal Meridian, Wyoming

T. 58 N., R. 84 W.,

Sec. 15, lot 1;

Sec. 20, SE $\frac{1}{4}$ ;

Sec. 21, E $\frac{1}{2}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ ;

Sec. 22, NW $\frac{1}{4}$ , W $\frac{1}{2}$ SW $\frac{1}{4}$ ;

Sec. 23, lots 3 and 4;

Sec. 27, W $\frac{1}{2}$ NW $\frac{1}{4}$ , W $\frac{1}{2}$ SW $\frac{1}{4}$ ;

Sec. 28, All;

Sec. 29, NE $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$ ;

Sec. 33, N $\frac{1}{2}$ NE $\frac{1}{4}$ ;

Sec. 34, SW $\frac{1}{4}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$ NW $\frac{1}{4}$ .

Containing 2,045.53 acres more or less.

The FEIS evaluates the site-specific and cumulative environmental impacts of exchanging the land and coal resources offered by P&M for Federal coal. P&M proposes to mine the coal in the PSO Tract if the exchange is completed as proposed and they acquire ownership of the coal resources in the Tract. Therefore, the FEIS considers the environmental impacts of mining the Federal coal as a possible consequence of executing the proposed exchange. If the land-for-coal exchange is approved, neither the Record of Decision (ROD) nor the Final EIS would constitute authorization for commencement of mining operations.

Before land exchanges can be approved, they must meet two criteria: The exchange must be in the public interest as required under 43 CFR 2200.0-6(b); and the value of the interests being exchanged must be equal as required under 43 CFR 2200.0-6(c). This environmental analysis is being prepared as required under 43 CFR 2200.0-6(h). It will be used as a supporting study in making a determination as to whether this exchange is in the public interest. Following completion of this environmental analysis but prior to the issuance of ROD, a public meeting will be held to receive public comment on the public interest factors of the proposed exchange as required under 43 CFR 2203.3.

Both the USDA Forest Service and USDI BLM national land exchange review boards have technically reviewed P&M's proposal to exchange land for coal. Prior to a decision to approve, or disapprove, the exchange following the public interest determination meeting, the exchange will be subject to final review by each agency's national land exchange board, and the BLM Director, as well as the Department of Justice.

The FEIS analysis assumes that all the Federal coal within the PSO Tract as proposed by P&M would be exchanged for all of the lands being offered by P&M. In accordance with 43 CFR 2200 the actual amount of Federal coal offered for exchange would be the amount required to equal the value of the lands offered to the United States Government by P&M. To ensure that the lands, or interests, being exchanged are of equal value, the fair market value of the respective properties must be evaluated. In this case, the fair market value of the P&M lands will be determined through a fee appraisal by a BLM-approved qualified appraiser. BLM will determine the fair market value of the Federal coal. An independent

contract appraiser will review all appraisals.

The EIS analyzes two alternatives, the Proposed Action and Alternative 1, No Action. Under the Proposed Action, the exchange would be completed and the Bridger, JO Ranch, and Welch Lands would become Federal lands administered by the USDA Forest Service and BLM. BLM is considering several options to the Proposed Action that would modify the Welch Lands to exclude an active underground coal seam fire on those lands. Under the proposed action, or any option, P&M would acquire an amount of Federal coal underlying the PSO Tract that would be equal in value to the Bridger, JO Ranch, and Welch Lands. Alternative 1 is the No Action Alternative, which assumes that the proposal to exchange would be rejected.

*Agency-Preferred Alternative:* The BLM's preferred alternative is the Proposed Action. Because the Bridger Lands in Lincoln County include most of the remaining parcels of private land within the Bridger-Teton National Forest, Kemmerer Ranger District, the USDA Forest Service is a cooperating agency in the preparation of this FEIS. The USDA Forest Service's preferred alternative is the Proposed Action.

The Office of Surface Mining Reclamation and Enforcement (OSM) is an additional cooperating agency. OSM has primary responsibility to administer programs that regulate surface coal mining and the surface effects of underground coal mining operations. If the exchange is completed, the coal would no longer be Federally owned, however; OSM would retain some oversight responsibilities for the regulation of the proposed surface coal mine.

#### Land Use Plans

If the exchange is completed, the United States Government would acquire ownership of the lands and minerals offered by P&M for exchange. At that time, the USDA Forest Service would use the analysis documented in this FEIS to revise the land ownership status maps and extend management direction to the Bridger Lands that would become NFS lands. The BLM would use the analyses documented in this FEIS to maintain the Pinedale RMP and Rawlins RMP to extend management direction to the Bridger Lands and JO Ranch Lands that would become public land. The Buffalo Field Office would use the analyses to identify the isolated parcel (the Welch Ranch Lands) as public lands administered by the BLM under the Buffalo RMP. In addition, Buffalo Field

Office intends to use the analysis to prepare a site-specific plan for the Welch Lands to amend the BLM Buffalo RMP (1985, amended 2001).

Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submission from organizations or businesses, and from individuals identifying themselves as representatives of officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: June 11, 2003.

**Robert A. Bennett,**

*State Director.*

[FR Doc. 03-21636 Filed 8-21-03; 8:45 am]

**BILLING CODE 4310-22-P**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

#### Outer Continental Shelf, Pacific OCS Region, Environmental Document Prepared for Development of the Eastern Half of Lease OCS-P 0451

**AGENCY:** Minerals Management Service (MMS).

**ACTIONS:** Notice of availability of Environmental Assessment (EA) and Finding of No Significant Impact (FONSI).

**SUMMARY:** The MMS Pacific OCS Region has prepared an EA for Arguello Inc.'s revisions to the Point Arguello Field Development and Production Plans to include development of the eastern half of Lease OCS-P 0451 pursuant to the requirements of the National Environmental Policy Act (NEPA).

**DATES:** MMS completed the EA and issued a Finding of No Significant Impact (FONSI) on June 19, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mr. Maurice Hill, Minerals Management Service, Pacific OCS Region, 770 Paseo Camarillo, Camarillo, CA 93010, telephone (805) 389-7815. A digital copy of the EA on a Compact Disk may be requested by calling 1-800-6-PAC-OCS (1-800-672-2627), or by sending a request to the above address.

**SUPPLEMENTARY INFORMATION:** The MMS prepares EA's and Findings for Outer Continental Shelf (OCS) oil and gas exploration and development activities and other operations on the Pacific OCS. Arguello Inc. proposes to develop the

eastern half of Federal Lease OCS-P 0451 by drilling a maximum of eight extended-reach wells from two existing OCS platforms in the Point Arguello Unit, Platforms Hermosa and Hidalgo. The project area is located offshore about 13 km (8 mi) northwest of Point Conception, Santa Barbara County, California. Lease OCS-P 0451 is considered a developed lease by virtue of the existing production on the western half, in the Point Arguello Unit. Previously, the eastern half of Lease OCS-P 0451 was part of the Rocky Point Unit, but has since been contracted out of the Unit. Therefore, it is no longer unitized with the undeveloped leases of the Rocky Point Unit, and production from this portion of the lease will have no effect on holding the Rocky Point Unit leases, nor will it cause production of the undeveloped Rocky Point Unit leases.

The MMS distributed a copy of Arguello Inc.'s proposal for review and comment to five State agencies, eight Federal agencies, two local agencies, and two non-governmental organizations. The EA examines the potential environmental effects of Arguello Inc.'s proposed action and presents MMS findings regarding the significance of those effects. The MMS prepares EA's to determine whether proposed projects constitute a major Federal action that significantly affects the quality of the human environment in the sense of NEPA 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA. The MMS completed an EA and issued a FONSI for Arguello Inc.'s proposed action on June 19, 2003. This notice constitutes the public Notice of Availability of environmental documents required under the NEPA regulations.

Dated: July 3, 2003.

**Peter L. Tweedt,**

*Regional Manager, Pacific OCS Region,  
Minerals Management Service.*

[FR Doc. 03-21496 Filed 8-21-03; 8:45 am]

**BILLING CODE 4310-MR-P**

## **INTERNATIONAL TRADE COMMISSION**

[Inv. Nos. TA-131-25 and TA-2104-5]

### **U.S.-Dominican Republic Free Trade Agreement: Advice Concerning the Probable Economic Effect**

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of investigation and scheduling of public hearing.

**EFFECTIVE DATE:** August 15, 2003.

**SUMMARY:** Following receipt of a request on August 6, 2003, from the United States Trade Representative (USTR), the Commission instituted investigation Nos. TA-131-25 and TA-2104-5, *U.S.-Dominican Republic Free Trade Agreement: Advice Concerning the Probable Economic Effect*, under section 131 of the Trade Act of 1974 and section 2104(b)(2) of the Trade Act of 2002.

#### **FOR FURTHER INFORMATION CONTACT:**

Information specific to this investigation may be obtained from George Serletis, Project Leader, (202) 205-3315; [gserletis@usitc.gov](mailto:gserletis@usitc.gov), or Vincent Honnold, Deputy Project Leader, (202) 205-3314; [vhonnold@usitc.gov](mailto:vhonnold@usitc.gov), Office of Industries, United States International Trade Commission, Washington, DC 20436. For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel, (202) 205-3091; [wgearhart@usitc.gov](mailto:wgearhart@usitc.gov). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

#### **Background**

As requested by the USTR pursuant to section 131 of the Trade Act of 1974 (19 U.S.C. 2151), in its report the Commission will provide advice as to the probable economic effect of providing duty-free treatment for imports of products of the Dominican Republic (i) on industries in the United States producing like or directly competitive products, and (ii) on consumers. The import analysis will consider each article in chapters 1 through 97 of the Harmonized Tariff Schedule of the United States for which U.S. tariffs will remain after the United States fully implements its Uruguay Round tariff commitments. The import advice will be based on the 2003

Harmonized Tariff System nomenclature and 2002 trade data. The advice with respect to the removal of U.S. duties on imports from the Dominican Republic will assume that any known U.S. non-tariff barrier will not be applicable to such imports. The Commission will note in its report any instance in which the continued application of a U.S. non-tariff barrier to such imports would result in different advice with respect to the effect of the removal of the duty.

As also requested, pursuant to section 2104(b)(2) of the Trade Act of 2002 (19 U.S.C. 3804(b)(2)), the Commission will provide advice as to the probable economic effect of eliminating tariffs on imports of certain agricultural products of the Dominican Republic on (i) industries in the United States producing the product concerned, and (ii) the U.S. economy as a whole.

USTR indicated that the Commission's report will be classified and considered to be an inter-agency memorandum containing pre-decisional advice and subject to the deliberative process privilege. The Commission expects to provide its report to USTR by December 8, 2003.

#### **Public Hearing**

A public hearing in connection with this investigation will be held at the United States International Trade Commission Building, 500 E Street, SW., Washington, DC, beginning at 9:30 a.m. on October 7, 2003. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, no later than 5:15 p.m., September 22, 2003. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., September 25, 2003; the deadline for filing post-hearing briefs or statements is 5:15 p.m., October 16, 2003. In the event that, as of the close of business on September 22, 2003, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202-205-1806) after September 22, 2003, for information concerning whether the hearing will be held.

#### **Written Submissions**

In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements (original and 14 copies)

concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. The Commission may include such confidential business information in the report it sends to the USTR. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on October 16, 2003. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's Rules (19 CFR 201.8) (see Handbook for Electronic Filing Procedures, [ftp://usitc.gov/pub/reports/electronic\\_filing\\_handbook.pdf](ftp://usitc.gov/pub/reports/electronic_filing_handbook.pdf)).

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>).

By order of the Commission.  
Issued: August 18, 2003.

**Marilyn R. Abbott,**  
*Secretary.*

[FR Doc. 03-21495 Filed 8-21-03; 8:45 am]  
**BILLING CODE 7020-02-P**

## DEPARTMENT OF LABOR

### Office of The Secretary; Solicitation for Grant Application (SGA) 03-20; Strengthening Labor Systems in Central America

**AGENCY:** Bureau of International Labor Affairs, Labor.

**ACTION:** Notice of correction.

**SUMMARY:** In the *Federal Register*, Vol. 68, No. 139, Monday, July 21, 2003 the competition was announced and the

SGA printed in its entirety. The recent power outage in several states has caused the preparation and submission of proposals to be adversely affected. Due to this interruption, the deadline for submission of applications is extended. All applications must now be submitted to the U.S. Department of Labor, Procurement Services Center, Room N-5416, 200 Constitution Avenue, NW., Washington, DC 20210, not later than 4:45 pm EDT, August 25, 2003.

**FOR FURTHER INFORMATION CONTACT:** Lisa Harvey, Department of Labor, Telephone (202) 693-4570, e-mail: [harvey-Lisa@do.gov](mailto:harvey-Lisa@do.gov).

Signed at Washington, DC this 18th day of August, 2003.

**Lawrence J. Kuss,**

*Director, Procurement Services Center.*

[FR Doc. 03-21554 Filed 8-21-03; 8:45 am]

**BILLING CODE 4510-28-M**

## DEPARTMENT OF LABOR

### Office of the Secretary; Solicitation for Grant Applications (SGA) 03-18; Strengthening the Capacity of the Moroccan Labor Ministry

**AGENCY:** Bureau of International Labor Affairs, Labor.

**ACTION:** Notice of correction.

**SUMMARY:** In the *Federal Register*, Vol. 68, No. 139, Monday, July 21, 2003 the competition was announced and the SGA printed in its entirety. The recent power outage in several states has caused the preparation and submission of proposals to be adversely affected. Due to this interruption, the deadline for submission of applications is extended. All applications must now be submitted to the U.S. Department of Labor, Procurement Services Center, Room N-5416, 200 Constitution Avenue, NW. Washington, DC 20210, not later than 4:45 p.m. EDT, August 25, 2003.

**FOR FURTHER INFORMATION CONTACT:** Lisa Harvey, Department of Labor, Telephone (202) 693-4570, e-mail: [harvey-lisa@dol.gov](mailto:harvey-lisa@dol.gov).

Signed at Washington, DC this 18th day of August, 2003.

**Lawrence J. Kuss,**

*Director, Procurement Services Center.*

[FR Doc. 03-21553 Filed 8-21-03; 8:45 am]

**BILLING CODE 4510-28-M**

## DEPARTMENT OF LABOR

### Office of the Secretary; Solicitation for Grant Applications (SGA) 03-21; Strengthening the Labor Systems in Southern Africa; Correction

**AGENCY:** Bureau of International Labor Affairs, Labor.

**ACTION:** Notice of correction.

**SUMMARY:** In the *Federal Register*, Vol. 68, No. 139, Monday, July 21, 2003 the competition was announced and the SGA printed in its entirety. The recent power outage in several states has caused the preparation and submission of proposals to be adversely affected. Due to this interruption, the deadline for submission of applications is extended. All applications must now be submitted to the U.S. Department of Labor, Procurement Services Center, Room N-5416, 200 Constitution Avenue, NW., Washington, DC 20210, not later than 4:45 p.m. EDT, August 25, 2003.

**FOR FURTHER INFORMATION CONTACT:** Lisa Harvey, Department of Labor, Telephone (202) 693-4570, e-mail: [harvey-lisa@dol.gov](mailto:harvey-lisa@dol.gov).

Signed at Washington, DC this 18th day of August, 2003.

**Lawrence J. Kuss,**

*Director, Procurement Services Center.*

[FR Doc. 03-21552 Filed 8-21-03; 8:45 am]

**BILLING CODE 4510-28-M**

## DEPARTMENT OF LABOR

### Employment Standards Administration

#### Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended,

40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution

Avenue, NW., Room S-3014, Washington, DC 20210.

#### **Modification to General Wage Determination Decisions**

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I*

None.

*Volume II*

None.

*Volume III*

None.

*Volume IV*

None.

*Volume V*

None.

*Volume VI*

None.

*Volume VII*

None.

#### **General Wage Determination Publication**

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at <http://www.access.gpo.gov/davisbacon>. They are also available electronically by subscription to the Davis-Bacon Online Service (<http://davisbacon.fedworld.gov>) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1-800-363-2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing

Office, Washington, DC 20402, (202) 512-1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 14th day of August, 2003.

**Carl Poleskey,**

*Chief, Branch of Construction Wage Determinations.*

[FR Doc. 03-21248 Filed 8-21-03; 8:45 am]

**BILLING CODE 4510-27-M**

---

#### **NATIONAL SCIENCE FOUNDATION**

##### **Notice of Permit Application Received Under the Antarctic Conservation Act of 1978**

**AGENCY:** National Science Foundation.

**ACTION:** Notice of Permit Applications Received Under the Antarctic Conservation Act.

**SUMMARY:** Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for operation of remote field support and safety camps ashore while filming on the ice. The vessel Kapitan Dranitsyn will provide the main support of the expedition. The application is submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 22, 2003. Permit applications may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Nadene Kennedy at the above address or (703) 292-8030.

**SUPPLEMENTARY INFORMATION:** NSF's Antarctic Waste Regulation, 45 CFR part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation for

the operation of an expedition to Antarctica. EZ Productions, Inc. will conduct filming operations in Antarctica using the Kapitan Dranitsyn as the main support platform. Basic toilet facilities will be taken onto the sea ice for use during filming and in case of emergency. Food preparation will mainly take place on the ship. Snacks and buffet style food will be taken to the filming locations during the day. This application is for all wastes generated off the ship, associated with the filming work at Cape Washington and environs (or alternate location at Coulman Island). Anything taken ashore will be removed from Antarctica and disposed of in a substitutable port of disembarkation. Cooking stoves/fuel will be used only in an emergency. Conditions of the permit would include requirements to report on the removal of materials and any accidental releases, and management of all waste, including human waste, in accordance with Antarctic waste regulations.

Application for the permit is made by: Hawk Koch, Co-Producer, EZ Productions, Inc., 9100 Wilshire Boulevard, Suite 401E, Beverly Hills, California 90212.

*Location:* Antarctic Peninsula Area.

Dates: November 01, 2003 to March 31, 2006.

**Nadene G. Kennedy,**  
Permit Officer.

[FR Doc. 03-21473 Filed 8-21-03; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

### Notice of Extension of the Public Comment Period for Scoping Process To Prepare an Environmental Impact Statement for the License Renewal of Nuclear Power Plants

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has extended the public comment period for the scoping process on the update to the "Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants", NUREG-1437 (May 1996) and Addendum 1 (August 1999). The public comment period is extended to September 17, 2003.

The GEIS and Addendum 1 to the GEIS were prepared pursuant to 10 CFR part 51 and are available for public inspection at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records component

of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible at <http://www.nrc.gov/reading-rm/adams.html>, which provides access through the NRC's Public Electronic Reading Room (PERR) link. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1-800-397-4209, or 301-415-4737, or by e-mail to [PDR@nrc.gov](mailto:PDR@nrc.gov). The GEIS, Addendum 1, and Supplements may also be viewed on the Internet at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1437/>. The NRC prepares site-specific supplements to the GEIS for each license renewal application assessing the environmental impacts specific to that power plant location; these reports may be useful to scoping participants to understand the environmental review process and the environmental issues associated with the review for license renewal. The Supplements to the GEIS can also be viewed on the Internet in the context for each project and are listed by project at: <http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html>. The update of the GEIS is a generic activity and, therefore, is not the appropriate forum to consider site-specific issues or concerns.

Any interested party may send written comments on the environmental scope of the GEIS Update Project to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail stop T-6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Comments may also be delivered to Room T-6 D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. during Federal workdays. To be considered in the scoping process, written comments should be postmarked by September 17, 2003. Electronic comments may be sent by e-mail to the NRC at [LRGEISUpdate@nrc.gov](mailto:LRGEISUpdate@nrc.gov). Electronic submissions should be sent no later than September 17, 2003, to be considered timely in the scoping process. All comments received by the NRC will be available electronically and accessible through the NRC's PERR link at <http://www.nrc.gov/reading-rm/adams.html>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Barry Zalzman, Environmental Section, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington,

DC 20555. Mr. Zalzman may be contacted by telephone at 1-800-368-5642, extension 2419, or by e-mail at [LRGEISUpdate@nrc.gov](mailto:LRGEISUpdate@nrc.gov).

Dated at Rockville, Maryland, this 15th day of August, 2003.

For the Nuclear Regulatory Commission.

**John R. Tappert,**

*Acting Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.*

[FR Doc. 03-21524 Filed 8-21-03; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on September 10-13, 2003, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Monday, November 20, 2002 (67 FR 70094).

#### Wednesday, September 10, 2003

[The meeting on Wednesday, September 10, 2003 will be closed pursuant to 5 U.S.C. 552b(c)(1)]

*10:15 a.m.-7 p.m.: Safeguards and Security (Closed)*—The Committee will meet with representatives of the Office of Nuclear Regulatory Research and the Office of Nuclear Security and Incident Response to discuss safeguards and security matters. Also, the Committee will discuss a proposed ACRS report on safeguards and security matters.

#### Thursday, September 11, 2003, Conference Room T-2B3, Two White Flint North, Rockville, Maryland

*8:30 a.m.-8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)*—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

*8:35 a.m.-10 a.m.: Final Review of the St. Lucie License Renewal Application (Open)*—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Florida Power and Light Company regarding the St. Lucie license renewal application and the associated Final Safety Evaluation Report prepared by the staff.

*10:15 a.m.-11:30 a.m.: Draft Final Regulatory Guide DG-1122, "Determining the Technical Adequacy of PRA Results for Risk-Informed Activities" (Open)*—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the draft final version of Regulatory Guide DG-1122.

12:30 p.m.–2 p.m.: *Technical Assessment and Proposed Recommendations for Resolving GSI-186, "Potential Risk and Consequences of Heavy Load Drops in Nuclear Power Plants"* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the technical assessment and recommendations proposed by the Office of Nuclear Regulatory Research for resolving GSI-186.

2:15 p.m.–3:45 p.m.: *Draft Final Review Standard for Reviewing Core Power Uprate Applications* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the draft final review standard to be used by the staff for reviewing core power uprate applications.

4 p.m.–5:15 p.m.: *Draft Final Revision 3 to Regulatory Guide 1.82 (DG-1107), "Water Sources for Long-Term Recirculation Cooling Following a LOCA"* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding draft final revision 3 to Regulatory Guide 1.82 (DG-1107) including resolution of public comments, and related matters.

5:15 p.m.–6 p.m.: *Review of PIRT Process* (Open)—The Committee will hear a presentation by Dr. Nourbakhsh, ACRS Senior Fellow, regarding his review of the phenomena identification and ranking table (PIRT) process.

6:15 p.m.–7:30 p.m.: *Preparation of ACRS Reports* (Open/Closed)—The Committee will discuss proposed ACRS reports on matters considered during this meeting. In addition, the Committee will discuss a proposed ACRS report on safeguards and security matters (Closed).

**Friday, September 12, 2003, Conference Room T-2B3, Two White Flint North, Rockville, Maryland**

8:30 a.m.–8:35 a.m.: *Opening Remarks by the ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–9:30 a.m.: *Draft Final Revision 1 to Regulatory Guide 1.53, "Application of the Single Failure Criterion to Safety Systems"* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the draft final revision 1 to Regulatory Guide 1.53.

9:30 a.m.–11:15 a.m.: *Preparation for Meeting with the NRC Commissioners* (Open)—The Committee will discuss proposed topics for discussion during the ACRS meeting with the NRC Commissioners which is scheduled to be held on Wednesday, October 1, 2003, between 9:30 and 11:30 a.m.

11:15 a.m.–11:30 a.m.: *Subcommittee Report on Fire Protection Issues* (Open)—The Fire Protection Subcommittee Chairman will provide a brief report on matters discussed during the September 9, 2003 meeting.

11:30 a.m.–12:15 p.m.: *Future ACRS Activities/Report of the Planning and Procedures Subcommittee* (Open)—The Committee will discuss the recommendations of the Planning and Procedures

Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, including anticipated workload and member assignments.

12:15 p.m.–12:30 p.m.: *Reconciliation of ACRS Comments and Recommendations* (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

1:30 p.m.–7:30 p.m.: *Preparation of ACRS Reports* (Open/Closed)—The Committee will discuss proposed ACRS reports on matters considered during this meeting. In addition, the Committee will discuss a proposed ACRS report on safeguards and security (Closed).

**Saturday, September 13, 2003, Conference Room T-2B3, Two White Flint North, Rockville, Maryland**

8:30 a.m.–1 p.m.: *Preparation of ACRS Reports* (Open/Closed)—The Committee will continue discussion of the proposed ACRS reports.

1 p.m.–1:15 p.m.: *Miscellaneous* (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 11, 2002 (67 FR 63460). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Associate Director for Technical Support named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Associate Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Associate Director for Technical Support if such rescheduling would result in major inconvenience.

In accordance with subsection 10(d) Public Law 92-463, I have determined that it is necessary to close portions of this meeting noted above to discuss and protect information classified as national security information pursuant to 5 U.S.C. 552(b)(1).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the

opportunity to present oral statements and the time allotted therefor can be obtained by contacting Dr. Sher Bahadur, Associate Director for Technical Support (301-415-0138), between 7:30 a.m. and 4:15 p.m., e.t.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at [pdr@nrc.gov](mailto:pdr@nrc.gov), or by calling the PDR at 1-800-397-4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> or <http://www.nrc.gov/reading-rm/doc-collections/> (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301-415-8066), between 7:30 a.m. and 3:45 p.m., e.t., at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: August 18, 2003.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 03-21525 Filed 8-21-03; 8:45 am]

**BILLING CODE 7590-01-P**

**OFFICE OF PERSONNEL MANAGEMENT**

**Submission for OMB Review; Comment Request for a Revised Information Collection: SF-15, Application for 10-Point Veteran Preference**

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. The Application for 10-Point Veteran Preference (Standard Form 15) is used by agencies, OPM examining offices, and agency appointing officials to adjudicate individuals' claims for veterans' preference in accordance with the Veterans' Preference Act of 1944. OPM intends to update the form to reflect elimination of the Federal Personnel Manual and Standard Form 171 (Application for Federal Employment), and revised forms issued by the

Department of Veterans Affairs used to document service-connected disabilities.

Approximately 4,500 forms are completed annually. Each form takes approximately 10 minutes to complete. The annual estimated burden is 750 hours.

*Comments are particularly invited on:* Whether this information is necessary for the proper performance of functions of OPM, 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; 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.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, FAX (202) 418-3251 or e-mail to [mbtoomey@opm.gov](mailto:mbtoomey@opm.gov). Please be sure to include a mailing address with your request.

**DATES:** We will consider comments received on or before October 21, 2003.

**ADDRESSES:** Send or deliver written comments to: Leah Meisel, Deputy Associate Director for Talent and Capacity Policy, U.S. Office of Personnel Management, 1900 E Street NW., Room 6551, Washington, DC 20415.

Office of Personnel Management.

**Kay Coles James,**  
*Director.*

[FR Doc. 03-21416 Filed 8-21-03; 8:45 am]

**BILLING CODE 6325-38-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48355; File No. SR-BSE-2002-15]

### Self-Regulatory Organizations; Notice of Filing of Amendment No. 3 to the Proposed Rule Change by the Boston Stock Exchange, Inc. Establishing Trading Rules for the Boston Options Exchange Facility

August 15, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 15, 2003, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange

Commission ("Commission") Amendment No. 3 to the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. The BSE submitted the proposed rule change to the Commission on October 31, 2002. On December 18, 2002, the BSE filed Amendment No. 1 that entirely replaced the original rule filing.<sup>3</sup> On January 9, 2003, the BSE filed Amendment No. 2 that entirely replaced the original rule filing and Amendment No. 1.<sup>4</sup> Amendment No. 2 was published in the **Federal Register** on January 22, 2003 ("BOX Proposing Release").<sup>5</sup> The Commission received 43 comment letters.<sup>6</sup> In response to the concerns

<sup>3</sup> See Letter from George W. Mann, Jr., Executive Vice President and General Counsel, BSE, to Annette Nazareth, Director, Division of Market Regulation ("Division"), Commission, dated December 18, 2002 ("Amendment No. 1").

<sup>4</sup> See Letter from George W. Mann, Jr., Executive Vice President and General Counsel, BSE, to Annette Nazareth, Director, Division, Commission, dated January 8, 2003 ("Amendment No. 2").

<sup>5</sup> Securities Exchange Act Release No. 47186 (January 14, 2003), 68 FR 3062 ("BOX Proposing Release").

<sup>6</sup> See Letters to Jonathan G. Katz, Secretary, Commission, from Paul Fred, CEO, PFTC Trading, LLC, dated January 24, 2003; Myron Wood, Statistician, Changes, LLC, dated January 30, 2003; Mike Ianni, dated February 2, 2003; Shawn Gibson, Senior VP, Equity Derivatives, Scott & Stringfellow, dated February 6, 2003; CSFB Next Fund, Inc., Interactive Brokers Group, LLC, LabMorgan Corporation, Salomon Brothers Holding Company, Inc., UBS (USA) Inc., dated February 6, 2003; Sallerson-Troob, LLC, dated February 9, 2003; Christopher D. Bernard, dated February 10, 2003; George Papa, Director, PEAK6 Investments, dated February 10, 2003; Frank Hirsch, CBOE Market Maker, dated February 10, 2003; Richard W. Cusack, Operations Manager, Sparta Group of Chicago, LP, dated February 11, 2003; Paul Britton, CEO, MAKO Global Derivatives LLC, dated February 11, 2003; John Colletti, Samuelson Trading, dated February 11, 2003; Robert S. Smith, Chief Technology Officer, GETCO, LLC, dated February 11, 2003; Phillip Sylvester, CBOE Market Maker, dated February 11, 2003; Keith Fishe, DRW Holdings, LLC, dated February 11, 2003; Daniel C. Bigelow, president, Monadnock Capital Management, dated February 11, 2003; Erich Tengelsen, Chicago Trading Company, dated February 12, 2003; Thomas Peterffy, Chairman, David M. Battan, Vice President and General Counsel, Interactive Brokers LLC, dated February 12, 2003; John T. Thomas, Van Der Moolen USA LLC, dated February 12, 2003; Robert C. Sheehan, Electronic Brokerage Systems LLC, dated February 12, 2003; Thomas J. Murphy, TJM Investments, LLC, dated February 12, 2003; Meyer S. Frucher, Chairman and Chief Executive Officer, Philadelphia Stock Exchange, Inc., dated February 12, 2003; Michael Resch, dated February 12, 2003; Todd Silverberg, General Counsel, Susquehanna International Group LLP, dated February 12, 2003; Michael J. Simon, Senior Vice President and Secretary, International Securities Exchange, Inc. ("ISE"), dated February 12, 2003; Juan Carlos Pinilla, Managing Director, Equity Derivatives Trading, JP Morgan, dated February 12, 2003; Marc J. Liu, Options Specialist, AGS Specialist Partners, dated February 12, 2003; Jan-Joris Hoefnagel, President, Optiver Derivatives Trading, dated February 13, 2003; Steve Tumen, CEO, and David

raised in the comment letters and discussions with Commission staff, the BSE filed Amendment No. 3. The Commission is publishing this notice to solicit comments on Amendment No. 3 from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

As described in the BOX Proposing Release, the BSE proposes to create a new electronic options trading facility of the Exchange, called the Boston Options Exchange ("BOX"). The text of Amendment No. 3 to the proposed rule change is available for inspection at the Office of the Secretary, the BSE, the Commission's Public Reference Room, and on the Commission's Internet Web site (<http://www.sec.gov/rules/sro/shtml>).

#### 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

As discussed in detail in the BOX Proposing Release,<sup>7</sup> the BSE proposes to

Barclay, General Counsel, Equitec Group, LLC, dated February 14, 2003; Michael J. Ryan, Jr., Executive Vice President & General Counsel, American Stock Exchange LLC ("Amex"), dated February 14, 2003; Williams J. Brodsky, Chairman and Chief Executive Officer, Chicago Board Options Exchange, Inc. ("CBOE"), dated February 14, 2003; Paul Roesler, Lead Market Maker, Pacific Exchange, Inc. ("PCX"), dated February 14, 2003; Andrew W. Lo, dated February 15, 2003; Nicholas Bonn, Executive Vice President, State Street Global Markets, LLC, dated February 21, 2003; Robert Bellick, Christopher Gust, Wolverine Trading, LLC, dated February 27, 2003; Philip D. DeFeo, Chairman and CEO, PCX, dated February 27, 2003; Thomas N. McManus, Executive Director and Counsel, Morgan Stanley, dated March 3, 2003; Philip C. Smith, Jr., Vice President, Options, The Interstate Group, dated March 7, 2003; Bryan Rule, dated March 11, 2003; Michael J. Ryan, Jr., Executive Vice President & General Counsel, Amex, dated March 13, 2003; David Hultman, dated March 25, 2003; Stephen D. Barret, dated March 26, 2003; and John Welker, June 11, 2003.

<sup>7</sup> See *supra* note 5.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

establish rules for BOX,<sup>8</sup> a new exchange facility, as that term is defined in Section 3(a)(2) of the Act.<sup>9</sup> BOX would be operated by Boston Options Exchange Group, LLC ("BOX LLC"). BOX would administer a fully automated trading system for standardized equity options intended for the use of Options Participants.<sup>10</sup> It would conduct an auction market similar to the ones conducted by the options exchange markets currently in operation, although the BOX auction would occur electronically and not on a floor. BOX would provide automatic order execution capabilities in the options securities listed or traded on the BSE.

In Amendment No. 3, the BSE has made certain minor changes, like renumbering and fixing typographical errors. In addition, the BSE also proposes the following, more substantive changes to the proposed rules set forth in the BOX Proposing Release. For ease of reference, the BSE has referenced each section or paragraph, which has been added to, or changed, in any substantial way.

*Proposed Chapter I, Section 1* The BSE proposes to add or amend the following definitions:

*Proposed definition (21)* has been amended to state "The term "Directed Order" means any Customer Order to buy or sell which has been directed to a particular Market Maker by an OFP." This definition was added in order to clarify that an OFP may send an order to BOX and have it routed to a particular Market Maker for an opportunity for price improvement pursuant to proposed Chapter VI, Section 5.

*Proposed definition (46)* has been amended to state that "The terms 'Order Flow Provider' or 'OFP' mean those Options Participants representing as agent Customer Orders on BOX and those non-Market Maker Participants conducting proprietary trading." This definition was amended in order to clarify that OFPs may conduct business with the public on an agency basis and may also conduct a proprietary trading

business or may conduct only either business.

*Proposed definition (54)* has been amended to state that "The term "Request for Quote" or "RFQ" shall mean a message that may be issued by an Options Participant in order to signal an interest in an options series and request a response from other Participants. The RFQ contains only the series symbol and quantity and is broadcast to all Participants." This definition was added in order to delineate the meaning of the RFQ function pursuant to its use under Chapter VI, Section 6(b)(ii).

*Proposed Chapter II, Section 2(b)*—In order to eliminate any confusion that may have arisen from the interpretation of this rule regarding customer-carrying firms, the BSE has amended this paragraph so that Options Participants must be registered as broker-dealers. Additionally, as also discussed below under proposed Chapter XI, the BSE has clarified that its sales practice rules ("Doing Business with the Public") apply only to those Options Participants who are permitted under the BOX Rules to deal directly with the public, that is, OFPs. It was never the intention that participation in BOX be limited to customer-carrying firms.

*Proposed Chapter II, Section 2(e), (g), and (h)*—In several places, the BSE has added requirements regarding Options Participants. Primarily for the purpose of examinations, the BSE has set forth requirements for Options Participants who, though they must be U.S. registered broker-dealers, do not maintain an office within the United States and are responsible for preparing and maintaining financial and other reports required to be filed with the Commission, BOXR, and the Exchange. In such cases, the Options Participant must maintain all such documents in English and U.S. dollars, provide an individual fluent in English and knowledgeable in securities and financial matters, and reimburse the Exchange for any expense incurred in connection with examinations of the Participant to the extent that such expenses exceed the cost of examining a Participant located within the continental United States.

Also, the BSE has set forth that Options Participants must have as the principal purpose of being an Options Participant the conduct of a public securities business. These requirements are consistent with those in place on other options exchanges and which have been previously approved by the Commission.<sup>11</sup> In light of the current

focus in the market place on corporate governance, and non-U.S. based market participants, the BSE has determined that these provisions would serve to add important investor protections to the BOX Market, while not limiting or inhibiting the low barriers to access unique to BOX vis a vis the other options markets.

*Proposed Chapter V, Section 9*—The BSE realizes that in this section it had made a typographical error and used the term "Market-On-Open" Order, while in Chapter V, Section 14, the same order is called a "Market-On-Opening" Order. The BSE has corrected this error so that the name of the order in Section 9 is also "Market-On-Opening." In addition, the BSE notes that it has not changed any other parts of this section, including paragraph (b), which states "BOX will determine a single price at which a particular series will be opened."

*Proposed Chapter V, Section 14*—In this section, the BSE has changed the name of the Market Order. Formerly, the BSE proposed to define a Market Order as an order, which is "entered into the BOX Book and executed at the best price available in the market for the total quantity available from any contra bid(offer). Any residual volume is automatically converted to a limit order at the price at which the original market order was exhausted." Since this definition differs from the commonly used concept of "market order" in the U.S.-based options market, the BSE has changed the name of this order type to "BOX-Top" Order, to eliminate the possibility of confusion on the part of investors and other options market participants. The BOX Market will not have a "market order," as that term is typically used, that can be executed at successive price levels. A BOX-Top Order will not receive a price inferior to that which a typical market order would have received in the BOX Market. Moreover, as a result of BOX's trade-through filter process (see discussion below of Chapter V, Section 16(b)) and the Intermarket Linkage, no BOX-Top Order will receive a price inferior to the national best bid or offer ("NBBO"). Indeed, due to BOX's Price Improvement Period mechanism, orders submitted to BOX have the potential to be executed at a price superior to the NBBO.

In addition, the BSE has clarified the definition of Market-on-Opening Order by adding "any residual volume left after part of a Market-on-Opening Order has been executed is automatically converted to a limit order at the price at which the original Market-on-Opening Order was executed."

<sup>8</sup> The term "BOX" means the Boston Options Exchange or Boston Stock Exchange Options Exchange, an options trading facility of the Exchange under Section 3(a)(2) of the Act. Proposed BOX Rules, Chapter I, General Provisions, Section 1(a)(6) (definition of "BOX").

<sup>9</sup> 15 U.S.C. 78c(a)(2).

<sup>10</sup> The term "Options Participant" or "Participant" means a firm, or organization that is registered with the Exchange pursuant to Chapter II of the BOX Rules for purposes of participating in options trading on BOX as an "Order Flow Provider" or "Market Maker". See Proposed BOX Rules, Chapter I, General Provisions, Section 1(a)(39) (definition of "Options Participant").

<sup>11</sup> See e.g., ISE Rule 301.

*Proposed Chapter V, Section 16(b)*—The BSE has added to this section rules governing the BSE's proposed filtering of in-bound orders to prevent executions on the BOX at prices inferior to the NBBO. All in-bound orders to BOX from Customers as well as inbound Principal ("P") and Principal as Agent ("P/A") orders received via the InterMarket Linkage will be filtered by BOX prior to entry on the BOX Book in order to ensure that these orders will not execute at a price outside the current NBBO ("trade-throughs"). In this manner, the BSE believes that it has added an extra level of efficiency to its BOX trading engine, which will serve to enhance both the best execution of orders as well as BOX's participation in the Intermarket Linkage. The filter will operate by analyzing each in-bound Customer Order, P Order or P/A Order as follows:

Step 1: The filter will determine if the order is executable against the NBBO (by definition the answer is "yes" in the case of a BOX-Top Order).

- If NO, then the order would be placed on the BOX Book.
- If YES, then the filter will proceed to Step 2.

Step 2: The filter will determine whether there is a quote on BOX, which is equal to the NBBO.

- If NO, then the order is exposed on the BOX Book at the NBBO for a period of three seconds, during which time any Options Participant may execute against the order. At the conclusion of the three-second period, if there is any remaining quantity, the filter will proceed to Step 3.

- If YES, then the order would execute against the quote/orders on the BOX Book.

Step 3: If there is any unexecuted quantity at the end of three seconds, then:

- In the case of Public Customer orders, a P/A Order will be generated and sent to the away exchange that is displaying the NBBO.
- In the case of P and P/A Orders, any unexecuted portion will be returned to the originating exchange.

In determining the length of time for an exposure period for orders which might otherwise trade through NBBO, but are "caught" by the filter, the BSE has determined that three seconds is ample time, in an electronic trading environment, for an Options Participant to match the NBBO in those instances in which BOX is not quoting at the NBBO. This exposure period will give all the BOX Market Makers, as well as Participants in general, an opportunity to trade at the NBBO should they choose to do so.

*Proposed Chapter V, Section 17 (c)*—The BSE has eliminated the provision, which imposed a surcharge on Options Participants that submitted orders on behalf of broker-dealers in excess of two times the number of Public Customer contracts they executed in a given month. Similar to the rationale for the elimination of a charge to Market Makers set forth in Chapter VI, Section 4(e), discussed below, the BSE is concerned that such surcharges could be construed as a barrier to entry to BOX's flat and open marketplace.

*Proposed Chapter V, Section 17, Supplementary Material .03*—Concurrent with changes to certain sections regarding Information Barriers and Directed Orders (see discussion below of Chapter VI, Section 5(c)), the BSE has added a provision detailing the obligations of OFPs and Market Makers in regards to communications of information about orders being submitted to the PIP, or otherwise directed. The obligations are set forth as follows:

Prior to submitting an order to a PIP, an OFP cannot inform an Options Participant of any of the terms of the order, except as provided for in Chapter VI, Section 5(c) of these Rules. (See BSE Rules, Chapter II, "Dealings on the Exchange", Section 36, "Specialist Member Organizations Affiliated with an Approved Person").

The BSE is confident that these measures, along with other protections set forth elsewhere in the BOX Rules, will ensure that adequate measures are in place to protect against the use or misuse of any material, non-public information by any BOX Participant in regard to any order entrusted to him/her.

*Proposed Chapter V, Section 18(b)*—The Exchange is not changing or adding language to this section, but notes that this section is not intended to replace best execution principles. Rather, the BSE is supplementing best execution standards by the language set forth herein.

*Proposed Chapter V, Section 18(c)*—Similar to the above discussion, the BSE has added language in this section regarding orders for which matching business has been found. Previously, the provision limited Participants to only utilizing the PIP for these types of orders. To allow more flexibility to OFPs, the BSE has determined that OFPs can execute such orders on the BOX Book, but only after one of the following two prerequisites have been met "(i) agency orders are first exposed to the BOX book for at least thirty (30) seconds, or (ii) the OFP has been bidding or offering on BOX for at least thirty (30) seconds prior to receiving an

agency order that is executable against such bid or offer." These two alternatives are not applicable to Market Makers, rather they must abide by the requirements of Chapter VI, Section 5(b) and (c), regarding Directed Orders, discussed below. The first alternative in this section requires exposing the order on the BOX Book for a period of thirty seconds before attempting to execute against it. Under the second alternative, the OFP can execute the order immediately on the BOX Book if that OFP has been bidding or offering on the BOX Book for at least thirty seconds prior to receiving an agency order that is executable against such bid or offer. Additionally, the provisions state that an OFP must not otherwise deliberately attempt to effect a transaction, either under a single Participant or between two Participants, without following PIP procedures. With these provisions, the BSE is offering an OFP the flexibility of best-execution decision making, coupled with protections to ensure that Information Barriers are not breached, and that Participants are not acting in any way contrary to their customer's best interests.

*Proposed Chapter V, Section 18(e)*—In order to maximize the potential for price improvement of orders submitted to the PIP (which already, by definition, price improves all orders by at least one cent better than the NBBO), the BSE is requiring that in order for a PIP to commence there be at least three Market Makers quoting in a relevant series at the time a Participant submits a Primary Improvement Order to initiate a PIP. The BSE is confident that this requirement will be easily satisfied, given the accessibility to the BOX Market for Market Makers. Additionally, the BSE has clarified that a PIP will commence upon the dissemination of a broadcast message by BOX, which states "(1) that a Primary Improvement Order has been processed by BOX, (2) which contains information concerning series, size, price and side of market, and (3) states when a PIP will conclude."

*Proposed Chapter V, Section 18(g)*—The BSE has added a new paragraph to Chapter V, Section 18. This new paragraph provides that OFPs may access the PIP on behalf of customers that are not broker-dealers (i.e., Public Customers) via a new order type, the Customer PIP Order, or "CPO." CPOs shall include terms that state a price in standard increments (five or ten cents) at which the order will be placed on the BOX Book, as well as a price in pennies at which the Public Customer wishes to participate in any PIPs that may occur while his/her order is on the BOX Book. In order for a CPO to be eligible for

participation in a PIP, the CPO must be priced at or better than the NBBO. If a PIP commences in a relevant series and the CPO is at or better than the NBBO, then the OFP may, on behalf of the Public Customer, submit the CPO to the PIP for participation. Upon submission, the CPO will be treated similar to a Market Maker Improvement Order in the PIP; however, its terms cannot be cancelled or amended during the PIP.

The BSE believes that this provision will permit Public Customers greater control and flexibility in how their orders are handled on BOX. Public Customers will now be able to participate in PIPs. In addition, the BSE believes that offering to OFPs the prospect of this service on behalf of Public Customers will serve to increase the number of Participants competing in PIPs, ultimately leading to greater price improvement for orders on BOX.

The additions are as follows:

(a) "OFPs may provide access to the PIP on behalf of a customer that is not a broker-dealer ("Public Customer") in the form of a Customer PIP Order ("CPO") provided that:

i. The terms of each CPO shall include a price stated in rounded five cent or ten cent increments, as appropriate, ("standard tick") at which the order shall be placed in the BOX Book ("BOX Book Reference Price") as well as a specific price stated in one cent increments ("penny tick") at which the Public Customer wishes to participate in any PIPs ("CPO PIP Reference Price") that may occur while his order is on the BOX Book and displayed at the BOX Book Reference Price;

ii. The terms of each CPO shall include a specific order size ("CPO Total Size"). The number of contracts that may be entered into a PIP must be equal to the lesser of (a) the CPO Total Size remaining on the BOX Book or (b) the size of the Primary Improvement Order submitted to the PIP;

iii. In order for the CPO to be eligible for participation in a PIP in the subject options series, the BOX Book Reference Price for a CPO at the time a PIP commences must be equal to the NBBO.

iv. The CPO may only participate in a PIP on the same side of the market as the Primary Improvement Order.

v. Upon initiation of a PIP for which a CPO is eligible to participate pursuant to paragraphs (i)–(iv) above, the OFP who submitted the CPO to the BOX Book must submit a CPO to the PIP at the CPO PIP Reference Price.

vi. The terms of any CPO submitted to a PIP may not be amended or cancelled at any time during a PIP."

*Proposed Chapter V, Section 19(a)*—To clarify that a Market Maker Prime

cannot be both the Market Maker Prime and the party who initiated the process in the same PIP, thereby guarantying receipt of more than 40% of any allocation resulting from that PIP, the BSE has added a provision that "the Market Maker Prime must not have submitted the Primary Improvement Order to commence the relevant PIP."

*Proposed Chapter V, Section 27(b)(i)*—In order to remain consistent with similar rules regarding Complex Orders on other options exchanges, the BSE has added an exception which sets forth that Complex Orders with net price increments that are not multiples of the minimum increments are not entitled to trade ahead of other interest at the BOX best bid and offer.

*Proposed Chapter VI, Section 4 (e)*—The BSE deleted the provision, which imposed a monetary penalty on Market Makers who transacted business in classes outside of their appointments. Rather than a specific monetary penalty, which may have been construed as a barrier to entry to the BOX Market, the BSE has chosen to mirror provisions common on other options exchanges that permit Market Makers to trade outside of their appointments. This amendment also sets forth an execution percentage requirement that Market Makers must meet within the classes to which they are appointed. The additions are as follows:

Market Makers may transact business outside of their appointments, but the total number of contracts executed during a quarter by a Market Maker in options classes to which it is not appointed may not exceed twenty-five percent (25%) of the total number of contracts traded by such Market Maker.

*Proposed Chapter VI, Section 5(b) and (c); Section 10(g) and (h)*—To clarify the intention that Market Makers would be able to handle orders on an agency basis directed to them by OFPs, the BSE has changed "Customer Order" to "Directed Order" throughout Section 5, as well as in Section 10, which addresses Information Barriers. As previously discussed above, in the Definitions section of Chapter I, a Directed Order would be defined as an order directed to a Market Maker by an OFP. An OFP would send a Directed Order to BOX with a designation of the Market Maker to whom the order is to be directed. BOX would route the Directed Order to the appropriate Market Maker.

Proposed Sections 5(b) and (c) concern the requirements for a Market Maker who would handle a Directed Order. To address any concerns regarding informational barriers and the transfer of information, intended or not, which may accompany a Directed

Order, under proposed Section 5(c)(i) the BSE would prohibit a Market Maker from rejecting a Directed Order. Under proposed Section 5(c)(ii), a Market Maker has only two choices when he receives a Directed Order: (1) submit the order to the PIP process; or (2) send the order back to BOX for placement onto the BOX Book. If a Market Maker chooses to submit the Directed Order to the PIP process and he is currently quoting at a price equal to the NBBO, he must not adjust his quote prior to submitting such Directed Order to the PIP process.

Proposed Section 5(c)(iii) addresses the requirements when a Market Maker chooses not to enter the Directed Order into the PIP process, and therefore, must send the Directed Order to BOX for placement on the BOX Book. The following steps describe the Directed Order process from this point:

Step 1: Does the Market Maker who is sending the Directed Order to BOX have a quote on the opposite side of the Directed Order equal to the NBBO?

- If YES, then proceed to Step 4.
- If NO, then proceed to Step 2.

Step 2: The Market Maker would submit the Directed Order to BOX. The BOX trading engine would determine if the Directed Order were executable against the NBBO (the answer is "yes" in the case of a Directed Order that is also a BOX-Top Order).

- If NO, then BOX would place the Directed Order on the BOX Book to be treated as any other order.
- If YES, then BOX would proceed to Step 3.

Step 3: BOX would determine whether there are any quotes/orders on the BOX Book, which are equal to the NBBO.

- If NO, then BOX would submit the Directed Order to the trade-through filter process pursuant to proposed Chapter V, Section 16(b), described above.

- If YES, then BOX would execute the Directed Order against the quotes/orders on the BOX Book. If there is still any quantity remaining of the Directed Order, it would be filtered against trading through the NBBO according to the procedures set forth in Chapter V, Section 16(b) of these Rules and, if applicable, placed on the BOX Book.

Step 4: If a Market Maker's quote on the opposite side of the market from the Directed Order is equal to the NBBO, then the Market Maker would determine if the Directed Order is executable against the NBBO.

- If NO, then the Market Maker must send the Directed Order to BOX for placement on the BOX Book to be treated as any other order.

- If YES, then the Market Maker must guarantee execution of the Directed Order at the current NBBO for at least the size of his current quote. This guarantee would be defined as a Guaranteed Directed Order (“GDO”).

Step 5: The Market Maker must then immediately send the Directed Order and the GDO to BOX.

Step 6: Upon receipt of the Directed Order and the GDO, BOX would execute the Directed Order against any quotes/orders already on the BOX Book, except the quote of the Market Maker who submitted the Directed Order and GDO.

Step 7: If there were any quantity remaining of the Directed Order, then BOX would send to all BOX Participants a Directed Order Broadcast (“DOB”) message indicating the side (buy/sell), remaining size, and guaranteed price of the Directed Order.

Step 8: The Market Maker would be prohibited from executing for his proprietary account against the Directed Order for at least three seconds. During that time the Market Maker would not be allowed to decrement the size or worsen the price of his GDO. However, he would be able to increase the size of his GDO or improve its price (in standard five or ten cent increments only). During that period, any BOX Participant, except the Market Maker who submitted the Directed Order to BOX, may submit an order to the BOX Book in response to the DOB. Such a DOB response order would be treated as a BOX Limit Order. During that three-second period, any order submitted to the BOX Book that matches any order(s) on the BOX Book, except the Market Maker’s GDO, would be executed.

If the Market Maker received a subsequent Directed Order during this period, pursuant to subparagraphs (c)(ii) and (iii), he would be able to either submit it to the PIP process or send it to the BOX Book, following the same process as for the first Directed Order. BOX would process any subsequent Directed Orders in sequence as they are submitted to BOX for either the PIP process or for placement on the BOX Book. Any remaining quantity of a Directed Order that may be placed on the BOX Book, such as at the end of either step 3 (above) or step 9 (below), is treated like other orders placed on the BOX Book. Therefore, the remaining quantity may execute against another Directed Order on the opposite side of the market, whether that second Directed Order is submitted to the PIP process or placed on the BOX Book.

Step 9: Three seconds after sending the DOB, BOX would release the remaining quantity of the Directed Order to the BOX Book. At that time,

BOX would immediately execute any orders on the BOX Book, including those submitted in response to the DOB, against the Directed Order on a price-time priority basis. However, the BOX trading engine would ensure that the GDO would yield priority to all such competing orders at the same price. If there is still any quantity remaining of the Directed Order, it would be filtered against trading through the NBBO according to the procedures set forth in Chapter V, Section 16(b) of these Rules and, if applicable, placed on the BOX Book.

The BSE believes that use of the DOB and the exposure of the Directed Order to the BOX market will serve to ensure that a Market Maker would not be able to act against the Directed Order using any privileged or other information regarding that order. In addition, the BSE has eliminated the exemption in Section 10(g) and amended Section 10(h) in order to clarify that Market Makers must comply with all provisions of the Section 10 when they receive and handle Directed Orders. In total, these amendments will ensure that Directed Orders are not disadvantaged or treated inconsistent with the BOX or BSE Rules.

The pertinent rule additions are as follows: Section 5—

(c) When acting as agent for a Directed Order, a Market Maker must comply with subparagraphs (i)–(iii) of this Paragraph (c).

i. A Market Maker that receives a Directed Order shall not, under any circumstances, reject the Directed Order.

ii. Upon receipt of a Directed Order a Market Maker must either:

(1) Submit the Directed Order to the PIP process, pursuant to Chapter V, Section 18 of these Rules. Under this option, if the Market Maker is currently quoting at a price on the opposite side of the Directed Order equal to the NBBO, he is prohibited from adjusting his quotation prior to submitting the Directed Order to the PIP process.

-or-

(2) Send the Directed Order to the BOX Book pursuant to subparagraph (c)(iii) below.

iii. When a Market Maker chooses not to enter the Directed Order into the PIP process, and therefore, must send the Directed Order to BOX for placement on the BOX Book, the following requirements shall apply:

(1) If the Market Maker’s quotation on the opposite side of the market from the Directed Order is not equal to the NBBO, then the Market Maker must send the Directed Order to BOX.

a. The Trading Host will determine if the Directed Order is executable against the NBBO.

1. If the order is not executable against the NBBO, then the Trading Host will enter the Directed Order onto the BOX Book for processing consistent with all non-executable orders.

2. If the Directed Order is executable against the NBBO, then the Trading Host will determine if there are any orders on the BOX Book equal to the NBBO.

i. If there are no orders on the BOX Book equal to the NBBO, then the Trading Host will filter the Directed Order against trading through the NBBO according to the procedures set forth in Chapter V, Section 16(b) of these Rules.

ii. If there are orders on the BOX Book equal to the NBBO, then the Trading Host will execute the Directed Order against those orders. Any remaining quantity will be filtered against trading through the NBBO according to the procedures set forth in Chapter V, Section 16(b) of these Rules and, if applicable, placed on the BOX Book.

(2) If the Market Maker’s quotation on the opposite side of the market from the Directed Order is equal to the NBBO, then the Market Maker will determine if the Directed Order is executable against the NBBO.

a. If the order is not executable against the NBBO, then the Market Maker must send the Directed Order to BOX for placement on the BOX Book for processing consistent with all non-executable orders.

b. If the order is executable against the NBBO, then the Market Maker shall guarantee execution of the Directed Order at the current NBBO for at least the size of his quote. This guarantee shall be called a Guaranteed Directed Order (“GDO”). The Market Maker must immediately send the Directed Order with the GDO to the Trading Host.

1. The Market Maker who submitted the Directed Order and the GDO to the Trading Host:

i. Shall not submit to the BOX Book a contra order to the Directed Order for his proprietary account until the Directed Order is released to the BOX Book pursuant to subparagraph (c)(iii)(2)(b)(4) below.

ii. Shall not decrement the size or worsen the price of his GDO.

iii. May increase the size of his GDO.

iv. May improve the price of his GDO (only in five or ten cent minimum trading increments, as applicable pursuant to Chapter V, Section 6 of these Rules).

v. Upon receipt of a subsequent Directed Order, may either submit it to the PIP process or send it to the BOX

Book pursuant to subparagraphs (c)(ii) and (iii).

2. Upon receipt of the Directed Order, the Trading Host will execute the Directed Order against any matching orders on the BOX Book, except the order of the Market Maker who submitted the Directed Order.

3. If there is any quantity remaining of the Directed Order, then BOX will send to all BOX Participants a Directed Order Broadcast (“DOB”) message indicating the side (buy/sell), remaining size, and guaranteed price of the Directed Order. For the following three seconds, any BOX Participant, except the Market Maker who submitted the Directed Order, may submit an order to the BOX Book in response to the DOB. Such a DOB response order will be treated as a BOX Limit Order.

4. During the three-second period following the DOB, any order submitted to the BOX Book that matches an order already on the BOX Book will be executed. Three seconds after the DOB, the Trading Host will release the remaining quantity of the Directed Order to the BOX Book. At that time, the Trading Host will immediately execute any orders on the BOX Book against the Directed Order on a price-time priority basis. The GDO shall yield priority to all such competing orders at the same price. Any remaining quantity of the Directed Order will be filtered against trading through the NBBO according to the procedures set forth in Chapter V, Section 16(b) of these Rules and, if applicable, placed on the BOX Book.

*Proposed Chapter VI, Section 6(b) and (f)*—BOX Market Makers undertake a meaningful obligation to provide continuous two-sided markets. These obligations include the requirement that quotations be for a size of at least ten contracts, and within the legal width of the market. Under the amendments to the proposed rules, a Market Maker must respond to a Request for Quote (“RFQ”) message within fifteen seconds, with a similarly valid quotation. The Exchange believes that this fifteen-second period is ample time for a Market Maker to respond in an automated market, particularly given other BOX features, such as the PIP, which require a much shorter response time. Nevertheless, realizing that an RFQ may require a Market Maker to furnish a quote where he might not otherwise choose to, the BSE is proposing that fifteen seconds is a sufficient amount of time in which to enable a Market Maker to generate a meaningful quotation response. Although the BSE is confident that it has provided a marketplace, which will be robust and liquid, the delineated

responsibilities added to this section will serve to guarantee that Market Makers provide liquidity to the market, and do so on a continuous basis.

The added language to Section 6(b) is set forth as follows:

ii. If a Market Maker is not already posting a valid (*i.e.* for ten contracts, within the legal width of the market, as applicable) two-sided quote in a series in a class in which he is appointed as Market Maker, he must post a valid two-sided quote within fifteen (15) seconds of receiving any RFQ message issued. The valid two-sided quote so posted must be retained by the Market Maker for at least thirty (30) seconds.

iii. Every RFQ message issued, and every responsive quote, must be for a minimum size of at least ten contracts, and must be within the legal width of the market, as applicable.

In paragraph (f) the BSE has changed the time period to six months for which the Board would have exemptive authority to grant Market Makers exemptions from the requirements of paragraph (e)(iii) of this Section 6.

*Proposed Chapter VIII, Section 7*—The BSE has added anti-money laundering provisions similar to the rules in place on other exchanges.

*Proposed Chapter XI*—To clarify that OFPs, as opposed to Options Participants generally, are the only types of Participants that can deal directly with the public, the BSE has changed the references to “Options Participants” to “OFPs” throughout Chapter XI, “Doing Business with the Public.”

*Proposed Chapter XII*—As with all options exchanges, the BSE is adding Intermarket Linkage Rules to the BOX Rules. These rules are substantially similar to the rules in place on all of the options exchanges. Several Comment Letters expressed concern regarding BOX’s participation in the Intermarket Linkage Plan. Subject to Commission approval, BOX, through the BSE, would become a full participant in the Intermarket Linkage Plan (“Linkage” or “Plan”) for the options markets. As such, BSE would comply with the obligations of the Plan and has added Intermarket Linkage Rules to the BOX Rules. The following is an overview of how the BOX Market would interact in the Plan and is not intended to be a comprehensive discussion of how the proposed Intermarket Linkage Rules of Chapter XII of the BOX Rules<sup>12</sup> apply to Options Participants:

*Principal (“P”) Orders Sent From BOX to Away Markets.* A BOX Eligible

Market Maker (“BEMM”)<sup>13</sup> may submit a P order to the BOX trading engine for routing to one or more away markets provided the following conditions are satisfied:

- The BEMM is a BOX Market Maker on the class for which the P order is submitted.

- The BEMM has complied with the Plan’s “80/20 rule” for the previous calendar quarter.

- Prior to sending the P order, the BEMM is posting a bid and an offer for at least ten contracts within the allowable price spread for the class.

Provided the above conditions are met, the BOX trading engine would automatically route the BEMM’s P order to the designated exchange and transmit back any responses (*e.g.*, order executions, rejections) that BOX receives from the away market via OCC.

*P Orders Sent From Away Markets to BOX.* Orders sent to BOX by Eligible Market Makers (as set forth in the Plan) from away exchanges via the Linkage are processed as though they were orders received directly from a BOX Participant. That is, these orders would execute automatically on the BOX trading engine against any orders on the BOX Book up to either the quantity on the BOX Book at that price or the actual quantity of the P order, whichever is less, but in no event for less than ten contracts. BOX would automatically attempt to fill any remaining quantity by exposing the unexecuted portion at the NBBO for three seconds to all BOX Participants.

*Principal-as-Agent (“PA”) Orders Sent From BOX to Away Markets.* To ensure that there is an Eligible Market Maker per Eligible Class (as those terms are defined in the Plan) for the submission of PA and Satisfaction orders to away markets, BOX would specifically designate a BEMM in each Eligible Class traded on BOX responsible for such orders. The BEMM would adhere to the responsibilities of an Eligible Market Maker as set forth in the Plan.

Only orders submitted by BOX Participants on behalf of Public Customer accounts may generate a PA order. Each Public Customer order is checked against the NBBO using BOX’s trade-through filter mechanism as set forth in chapter V, section 16(b) (described above). If BOX is not matching the away best price, the order is exposed to BOX Participants for three seconds at the NBBO price.

At the end of this three-second period, if the order is not fully executed

<sup>12</sup> See Proposed BOX Rules, Chapter XII (Intermarket Linkage Rules).

<sup>13</sup> A BOX Market Maker who meets the requirements of an Eligible Market Maker as set forth in the Plan.

and a better price exists at an away exchange(s), a PA order is generated automatically by the BOX and routed to the away exchange with the required BEMM, clearing and valid-clearing-firm ("VCF") information included. Each execution received from an away exchange results in the automatic generation of a trade execution on BOX between the original Public Customer Order and the BEMM.

*PA Orders Sent From Away Markets to BOX.* In the case when BOX receives PA orders from away markets, but BOX is no longer quoting at the NBBO, then such PA orders are filtered against trade-throughs in the same manner as Public Customer orders submitted by BOX Participants as set forth in Chapter V, section 16(b), described above. If their execution would cause a trade-through, the PA orders are exposed to BOX Participants for three seconds at the NBBO price. If PA orders are not fully executed at the end of this period, the residual quantity is canceled back to the originating away exchange. In this manner, PA orders are afforded the same opportunity for execution as Box Public Customer orders.

*Satisfaction ("S") Orders Sent From BOX to Away Markets.* Each BOX Participant may request, on behalf of a Public Customer, that BOX route an S order to an away market for orders on BOX that were traded through by the away market. BOX would systemically verify the validity of the request (e.g., as to Public Customer status, time stamp of order prior to report of trade-through), and, if valid, generate an S order with the required BEMM, clearing and VCF information included. As execution confirmation is received from the away market, the BOX trading engine would automatically generate offsetting trades between the original BOX Public Customer order and the BEMM.

*Satisfaction Orders Sent From Away Markets to BOX.* S orders received from away markets are systemically verified (e.g., as to Public Customer status, time of trade-through on BOX). Once verified, the BOX Participant that caused the trade-through is identified and, within three minutes, the S order is executed against that BOX Participant. Where there were multiple S orders, the executions are made pro rata with the total not to exceed the lesser of the trade, which caused the trade-through or the total quantity of the S orders.

*Proposed Chapter XIII*—The BSE is adding a new Chapter, entitled "Margin Requirements," to its proposed BOX Rules. Similar to the approach of at least

one other options exchange,<sup>14</sup> the BSE proposes to require that BOX Participants and associated persons, among other things, adhere to the requirements of either the New York Stock Exchange ("NYSE") or the Chicago Board Options Exchange ("CBOE"), as those rules may be in existence from time to time. Additionally, in order to ensure that the BOX Rules adequately address situations involving Joint Back Office ("JBO") arrangements for Participants who are not an NYSE member and have elected to be bound by CBOE margin requirements, the BSE has included in the BOX margin requirements a set of rules specifically addressing JBO arrangements. In this way, the Exchange is ensuring that its margin rules cross-reference other exchanges' rules as appropriate, and, where not sufficient, adequately provide for the necessary requirements.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with the requirements under Section 6(b) of the Act,<sup>15</sup> in general, and furthers the objective of Section 6(b)(5) of the Act,<sup>16</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction 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.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change, as amended, 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*

The Exchange did not solicit or receive written comments on the proposed rule change, as amended.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether Amendment No. 3 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-BSE-2002-15 and should be submitted by September 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-21450 Filed 8-21-03; 8:45 am]

**BILLING CODE 8010-01-P**

<sup>14</sup> See e.g., ISE Rule 1202.

<sup>15</sup> 15 U.S.C. 78f(b).

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48342; File No. SR-PCX-2002-01]

### Self Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Pacific Exchange, Inc., Relating to Procedures for Obvious Errors in Options Transactions

August 14, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 3, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On July 28, 2003, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> On August 8, 2003, the Exchange submitted Amendment No. 2 to the proposed rule change.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to define an "obvious error" for options transactions and establish a procedure to follow in the event of an obvious error. Proposed new language is *italicized*; proposed deletions are in brackets.

\* \* \* \* \*

Rule 6.87 (g) *Trade Nullification and Price Adjustment Procedures* [Price Adjustments. Due to instantaneous execution, an incorrect quote appearing on a screen may result in an Auto-Ex trade at an incorrect price. An Auto-Ex trade executed at an erroneous quote should be treated as a trade reported at an erroneous price. The price of the

Auto-Ex trade should be adjusted to reflect accurately the market quote at the time of execution. This will result in public customers and market makers receiving correct fills at prevailing market quotes through Auto-Ex.]

(1) *Mutual Agreement*: The determination as to whether an Auto-Ex trade was executed at an erroneous price may [is to] be made by *mutual agreement of the affected parties to a particular transaction*. A trade may be *nullified or adjusted on the terms that all parties to a particular transaction agree*. In the absence of *mutual agreement by the parties*, a particular trade may only be nullified or adjusted when the transaction results from an *Obvious Error as provided in this Rule*. [two Floor Officials. In making their determination, the Floor Officials should consider such factors as:

(1) the length of time the allegedly incorrect quote was displayed;

(2) whether any non-Auto-Ex tracks were effected at the same price as the Auto-Ex transaction; and

(3) whether any members of the trading crowd were aware of orders actively being represented in the trading crowd that appear to have been "printed through" by the Auto-Ex trade.]

(2) *Obvious Error Subject to Trade Nullification or Price Adjustment*: *Absent mutual agreement as provided in Rule 6.87(g)(1), parties to a trade may have a trade nullified or its price adjusted if: (i) any such party makes a documented request within the time specified in Rule 6.87(g)(3); and (ii) one of the conditions below is met:*

A. *The trade resulted from a verifiable disruption or malfunction of an Exchange execution, dissemination, or communication system that caused a quote/order to trade in excess of its disseminated size (e.g. a quote/order that is frozen, because of an Exchange system error, and repeatedly traded) in which case trades in excess of the disseminated size may be nullified; or*

B. *The trade resulted from a verifiable disruption or malfunction of an Exchange dissemination or communication system that prevented a member from updating or canceling a quote/order for which the member is responsible where there is Exchange documentation providing that the member sought to update or cancel the quote/order; or*

C. *The trade resulted from an erroneous print disseminated by the underlying market which is later cancelled or corrected by the underlying market where such erroneous print resulted in a trade higher or lower than the average trade in the underlying*

*security during the time period encompassing two minutes before and after the erroneous print, by an amount at least five times greater than the average quote width for such underlying security during the time period encompassing two minutes before and after the erroneous print. For purposes of this Rule, the average trade in the underlying security shall be determined by adding the prices of each trade during the four minute time period referenced above (excluding the trade in question) and dividing by the number of trades during such time period (excluding the trade in question); or*

D. *The trade resulted from an erroneous quote in the Primary Market (as defined in Rule 6.1(b)(27)) for the underlying security that has a width of at least \$1.00 and that width is at least five times greater than the average quote width for such underlying security during the time period encompassing two minutes before and after the dissemination of such quote. For the purposes of this rule, the average quote width shall be determined by adding the quote widths of each separate quote during the four minute time period referenced above (excluding the quote in question) and dividing by the number of quotes during such time period (excluding the quote in question); or*

E. *The execution price of the trade is higher or lower than the mid-point of the Best Bid and Offer (among all of the exchanges other than the PCX) by an amount equal to at least the bid/ask spread provided in Rule 6.37(b)(1), or, in the event where the bid/ask spread in the underlying is greater than the bid/ask spread set forth in Rule 6.37(b)(1), by an amount as set forth in Rule 6.37(b)(3). For the purpose of this calculation, the Exchange will not apply a wider bid/ask spread as provided for LEAPS or for options subject to unusual market conditions;*

F. *The trade resulted in an execution price in a series quoted no bid and at least one strike price below (for calls) or above (for puts) in the same class were quoted no bid at the time of the erroneous execution.*

G. *The trade is automatically executed at a price where the Market Maker sells \$0.10 or more below parity. Parity describes an option contract's total premium when that premium is equal to its intrinsic value. Parity for calls is measured by reference to the offer price of the underlying security in the primary market at the time of the transaction minus the strike price for the call. Parity for puts is measured by the strike price of an underlying security minus its bid price in the primary market at the time of the transaction.*

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Letter from Mai S. Shiver, Senior Attorney, Regulatory Policy, Exchange, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 25, 2003 ("Amendment No. 1"). Amendment No. 1 supersedes and replaces the proposed rule change in its entirety.

<sup>4</sup> See Letter from Mai S. Shiver, Senior Attorney, Regulatory Policy, Exchange, to Nancy J. Sanow, Assistant Director, Division, Commission, dated August 7, 2003 ("Amendment No. 2"). Amendment No. 2 supersedes and replaces the proposed rule change and Amendment No. 1 in their entirety.

(3) *Obvious Error Procedure.* Two Floor Officials will administer the application of this Rule as follows:

A. *Notification.* If a Member on the Exchange believes that it participated in a transaction that was the result of an Obvious Error, it must notify two Floor Officials within five (5) minutes of the execution. If an Order Entry Firm representing a public customer believes an order it executed on the Exchange was the result of an Obvious Error, it must notify the Exchange within twenty (20) minutes of the execution. Absent unusual circumstances, two Floor Officials will not grant relief under this Rule unless notification is made within the prescribed time periods.

B. *Adjust or Nullify.* Two Floor Officials will determine whether the execution is subject to a trade nullification or price adjustment. If two Floor Officials determine that one of the conditions of Rule 6.87(g)(2) has been met and that the complaining party has timely documented a request for relief, then a trade will be adjusted or nullified as follows:

(1) Where each party to the transaction is a Market Maker on the Exchange, or the trade involves a limit order that may be adjusted to its limit, the Exchange will adjust the execution price of the transaction within ten (10) minutes of two Floor Officials making such determination. In such case, the adjusted price will be the last bid (offer) price, just prior to the trade, from the exchange providing the highest total contract volume in the option for the previous sixty (60) days with respect to an erroneous bid (offer) entered on the Exchange. If there is no quote for comparison purposes, then the adjusted price of an option will be determined by two Floor Officials; or

(2) Where at least one party to the transaction is not a Market Maker on the Exchange or where the trade does not involve a limit order that may be adjusted to its limit, the Exchange will nullify the transaction within ten (10) minutes of two Floor Officials making such determination.

(3) Upon taking final action, the two Floor Officials will promptly notify both parties to the trade.

#### Commentary

.01 In no case will the two Floor Officials involved in an obvious error determination include a person related to a party to the trade in question.

.02 All determinations made by the two Floor Officials under subsection (g)(2) will be rendered without prejudice as to the rights of the parties to the transaction to submit a dispute to arbitration.

.03 Nothing in this rule prevents a potentially aggrieved party from appealing the decision of two Floor Officials pursuant to Rule 11 of the Exchange rules.

\* \* \* \* \*

## 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

While the Exchange believes that it would be detrimental to allow market participants to adjust or nullify trades simply because they are based on poor trading decisions, it does believe that just and equitable principles of trade permit such adjustments or trade nullifications where one market participant would receive a windfall at the expense of another market participant that made an obvious error. In promulgating the basis for determining whether to adjust or nullify trades based upon obvious error, the Exchange believes that it must rely on objective standards to establish when a transaction was clearly the result of an obvious error, under what circumstances a trade will be adjusted or nullified, and to what price a trade will be adjusted if adjustment is appropriate under the circumstances.

As proposed, the affected parties to a particular transaction may determine, by mutual agreement, that an electronic trade was executed at an erroneous price and they may adjust the terms or nullify the trade as they agree. In the absence of mutual agreement by the parties, the proposed rule provides that two trading officials may nullify or adjust a trade if an affected party provides a documented request for relief within five minutes of the execution (or 20 minutes if the request is on behalf of a public customer) of the trade so long as one of following conditions is met:

- The trade resulted from a verifiable disruption or malfunction of an

Exchange execution, dissemination, or communication system that caused a quote/order to trade in excess of its disseminated size (e.g., a quote/order that is frozen, because of an Exchange system error, and repeatedly traded) in which case trades in excess of the disseminated size may be nullified; or

- The trade resulted from a verifiable disruption or malfunction of an Exchange dissemination or communication system that prevented a member from updating or canceling a quote/order for which the member is responsible where there is Exchange documentation providing that the member sought to update or cancel the quote/order; or
- The trade resulted from an erroneous print disseminated by the underlying market which is later cancelled or corrected by the underlying market where such erroneous print resulted in a trade higher or lower than the average trade in the underlying security during the time period encompassing two minutes before and after the erroneous print, by an amount at least five times greater than the average quote width for such underlying security during the time period encompassing two minutes before and after the erroneous print. For purposes of the proposed rule, the average trade in the underlying security shall be determined by adding the prices of each trade during the four minute time period referenced above (excluding the trade in question) and dividing by the number of trades during such time period (excluding the trade in question); or

- The trade resulted from an erroneous quote in the Primary Market (as defined in Rule 6.1(b)(27)) for the underlying security that has a width of at least \$1.00 and that width is at least five times greater than the average quote width for such underlying security during the time period encompassing two minutes before and after the dissemination of such quote. For purposes of the proposed rule, the average quote width shall be determined by adding the quote widths of each separate quote during the four minute time period referenced above (excluding the quote in question) and dividing by the number of quotes during such time period (excluding the quote in question); or

- The execution price of the trade is higher or lower than the mid-point of the Best Bid and Offer (among all of the exchanges other than the PCX) by an amount equal to at least the bid/ask spread provided in Rule 6.37(b)(1), or, in the event where the bid/ask spread in the underlying is greater than the bid/

ask spread set forth in Rule 6.37(b)(1), by an amount as set forth in Rule 6.37(b)(3). For the purpose of this calculation, the Exchange will not apply a wider bid/ask spread as provided for LEAPS or for options subject to unusual market conditions; or

- The trade resulted in an execution price in a series quoted no bid and at least one strike price below (for calls) or above (for puts) in the same class were quoted no bid at the time of the erroneous execution; or

- The trade is automatically executed at a price where the Market Maker sells \$0.10 or more below parity. Parity describes an option contract's total premium when that premium is equal to its intrinsic value. Parity for calls is measured by reference to the offer price of the underlying security in the primary market at the time of the transaction minus the strike price for the call. Parity for puts is measured by the strike price of an underlying security minus its bid price in the primary market at the time of the transaction.

Under the proposed rule change, when a Market Maker on the Exchange believes that it participated in a transaction that was the result of an obvious error, it must notify two Floor Officials<sup>5</sup> within five minutes of the execution. If an Order Entry Firm representing a public customer believes an order it executed on the Exchange was the result of an Obvious Error, it must notify the Exchange within twenty (20) minutes of the execution. Absent unusual circumstances, two Floor Officials will not grant relief under the proposed rule change unless notification is made within the prescribed time periods.

As proposed, two Floor Officials will determine whether the execution is subject to a trade nullification or price adjustment. If two Floor Officials determine that one of the above-stated conditions has occurred, and the complaining party has timely documented a request for relief, then the Floor Officials will take one of the following actions:

- (1) Where each party to the transaction is a Market Maker on the Exchange or the trade involves a limit order than may be adjusted to its limit, the execution price of the transaction will be adjusted within ten minutes of the Floor Officials making such a determination. In such case, the adjusted price will be the last bid (offer) price just prior to trade from the

exchange providing the highest total contract volume for the previous sixty (60) days in the option with respect to an erroneous bid (offer) entered on the Exchange. If there is no quote for comparison purposes, then the adjusted price of the option will be determined by two Floor Officials.

- (2) If at least one party to the transaction is not a Market Maker on the Exchange or where the trade does not involve a limit order that may be adjusted to its limit, the trade will be nullified within ten (10) minutes of two Floor Officials making such determination.

All determinations made by the two Floor Officials under the proposed rule change will be rendered without prejudice as to the rights of the parties to the transaction to submit a dispute to arbitration. The Exchange believes that the rule proposal promotes fair and equitable resolutions of erroneous trades.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>7</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, 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

The Exchange did not solicit or receive written comments on the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and

publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- (A) by order approve such proposed rule change, or

- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-PCX-2002-01 and should be submitted by September 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-21540 Filed 8-21-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48351; File No. SR-PCX-2003-34]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc., and Amendment No. 1 Thereto, Relating to its Arbitration Program

August 15, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 9,

<sup>5</sup> In no case will the two Floor Officials involved in an obvious error determination include a person related to a party to the trade in question.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

2003, 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 Exchange. On August 13, 2003, the Exchange filed Amendment No.1 to the proposed rule change.<sup>3</sup> The Commission received one comment letter regarding the proposed rule change in anticipation of its filing.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons described below, the Commission is granting accelerated approval to the proposed rule change.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX, on its own behalf and through its wholly-owned subsidiary PCX Equities, Inc. ("PCXE"), pursuant to delegated authority, is proposing to amend the PCX and PCXE arbitration rules. The proposed rule change will expand the applicability of the waiver requirements imposed in SR-PCX-2003-13<sup>5</sup> from certain pending PCX arbitrations to all PCX and PCXE arbitrations. Specifically, the proposed rule changes would require all parties to an arbitration filed pursuant to PCX or PCXE Rule 12 (other than those described below) to waive (1) the application of the California Rules of Court, Division VI of the Appendix, entitled "Ethics Standards of Neutral Arbitrations in Contractual Arbitration" (the "California Standards"), and (2) any

<sup>3</sup> See letter from Kathryn Beck, Senior Vice President, General Counsel, Chief Regulatory Officer and Corporate Secretary, PCX, to Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, dated August 12, 2003. In Amendment No. 1, PCX altered its description of the proposed rule change to reflect that a failure to execute required waivers by an industry party to arbitration would be referred for disciplinary action.

<sup>4</sup> See letter to the Secretary, SEC, from Raghavan Sathianathan, dated July 2, 2003. The commenter expressed concerns regarding PCX's administration of an arbitration in which he was a co-respondent, alleging that PCX did not follow its arbitration rules. The commenter asserted that the PCX had lost its right to make rule changes based on its administration of his arbitration. PCX submitted a letter in response in which it asserted that the commenter's case had been administered properly and in accordance with its rules. PCX also asserted that the proposed rule change reflects PCX's desire to provide an arbitration forum with a reduced risk of subsequent legal exposure to the organization. See letter dated July 30, 2003 from Kathryn Beck, Senior Vice President, PCX, to Florence Harmon, Senior Special Counsel, Division of Market Regulation, SEC.

<sup>5</sup> See Securities Exchange Act Release No. 47734 (April 24, 2003), 68 FR 23351 (May 1, 2003).

claims against the PCX or PCXE that the conduct of the arbitration violates the California Code of Civil Procedure Section 1281.92 ("CCCP Claims"). However, the parties would not be required to waive the CCCP claims in arbitrations solely between or among members, member organizations and persons associated therewith (or, as the case may be, solely between ETP Holders and persons associated therewith) that do not involve consumer-related or employment-related claims.<sup>6</sup> Both waivers (where required) must be made without condition and in the form required by the PCX and PCXE.<sup>7</sup> If any party to an arbitration fails to sign the required waivers, the PCX will decline jurisdiction over, dismiss and refund fees paid to PCX or PCXE by the parties for, that arbitration. Furthermore, it will be considered conduct inconsistent with just and equitable principles of trade for any member, member organization, ETP Holder or associated person therewith who is a party to a PCX or PCXE arbitration to fail to waive the California Standards and the CCCP Claims, where required.

Below is the text of the proposed rule change. Proposed new language is italicized, deleted text is in [brackets].

\* \* \* \* \*

#### PCX RULE 12

##### Arbitration

##### Matters Subject to Arbitration

Rule 12.1(a)-(g)—No change.  
Commentary:

.01 No change.

.02 It may be deemed conduct inconsistent with just and equitable principles of trade for a member, a member organization or a person associated with a member or member organization to:

(a) No change.

(b) Fail to waive the California Rules of Court, Division VI of the Appendix, entitled "Ethics Standards for Neutral Arbitrators in Contractual Arbitration" (the "California Standards"), *if the member, member organization or person associated with a member or member*

<sup>6</sup> PCX and PCXE believe that such arbitrations would not be considered "consumer arbitrations" as that term is used in the California Code of Civil Procedure.

<sup>7</sup> Copies of the prescribed waiver forms were filed as Exhibits A and B to the proposed rule change. These are the same as the waiver forms that were attached to rule filings previously approved by the Commission. See Securities Exchange Act Release No. 46881 (November 21, 2002), 67 FR 71224 (November 29, 2002) (waiver of California Standards); Securities Exchange Act Release No. 47734 (April 24, 2003), 68 FR 23351 (May 1, 2003) (waiver of CCCP Claims).

*organization is a party to an arbitration filed pursuant to this Rule 12* [if all the parties in the case who are customers have waived application of the California Standards in that case; or to fail to waive the California Standards if all associated persons with a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute have waived application of the California Standards in that case];

(c) fail to waive any claims against the Exchange that the conduct of the arbitration violates the California Code of Civil Procedure Section 1281.92 ("CCCP Claims"), *if the member, member organization or person associated with a member or member organization is a party to an arbitration filed pursuant to this Rule 12 (other than arbitrations solely between or among members, member organizations and/or persons associated with a member or member organization that do not involve consumer-related or employment-related claims)* [if all the parties in the case who are customers have waived the CCCP Claims in that case; or to fail to waive the CCCP Claims if all associated persons with a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute have waived the CCCP Claims in that case];

(d) No change.

(e) No change.

.03 No change.

\* \* \* \* \*

#### Rule 12.35 [Applicability of Arbitration Rules] Waivers

[(a) Reserved.]

[(b) Arbitrations Filed Prior to May 1, 2003. Arbitration claims that were filed prior to May 1, 2003 and remain pending will be administered as follows:]

[(i) The arbitration] *Arbitration* claims will be administered in accordance with this Rule[s] 12[.1 through 12.34] *only* [if]:

[(A) arbitrator(s) have been appointed as of May 1, 2003; and]

[(B)]all parties to the arbitration have waived, without condition and in the form required by the Exchange, the application of the California Standards and the CCCP Claims (as defined in Commentary .02 of Rule 12.1); *provided, however, that the parties are not required to waive the CCCP claims in arbitrations solely between or among members, member organizations and/or persons associated with a member or member organization that do not involve consumer-related or employment-related claims. PCX will decline jurisdiction over, dismiss and*

*refund fees paid to PCX by the parties for, any arbitration claims in which any of the parties to arbitration fail to sign both waivers, where required.*

\* \* \* \* \*

## PCXE Rule 12

### Arbitration

\* \* \* \* \*

Rule 12.2(a)–(g)—No change.

(h) It may be deemed conduct inconsistent with just and equitable principles of trade for an ETP Holder or a person associated with an ETP Holder to:

(i) fail to submit to arbitration on demand under the provisions of this Rule[, or];

(ii) to fail to waive the California Rules of Court, Division VI of the Appendix, entitled “Ethics Standards for Neutral Arbitrators in Contractual Arbitration” (the “California Standards”), if the ETP Holder or person associated with an ETP Holder is a party to an arbitration filed pursuant to this Rule 12 [if all the parties in the case who are customers have waived application of the California Standards in that case; or to fail to waive the California Standards if all associated persons with a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute have waived application of the California Standards in that case]; [or]

(iii) fail to waive any claims against the PCXE that the conduct of the arbitration violates the California Code of Civil Procedure Section 1281.92 (“CCCP Claims”), if the ETP Holder or person associated with an ETP Holder is a party to an arbitration filed pursuant to this Rule 12 (other than arbitrations solely between or among ETP Holders and/or persons associated with an ETP Holder that do not involve consumer-related or employment-related claims);

(iv) to fail to appear or to provide any document in his or her or its possession or control as directed pursuant to the provisions of this Rule; or

(v) to fail to honor an award of arbitrators properly rendered pursuant to the provisions of this Rule where a timely motion has not been made to vacate or modify such award pursuant to applicable law.

(i)–(j) No change.

\* \* \* \* \*

### Rule 12.35 Waivers

*Arbitration claims will be administered in accordance with this Rule 12 provided all parties to the arbitration have waived, without condition and in the form required by the PCXE, the application of the*

*California Standards and the CCCP Claims (as defined in Rule 12.1(h)); provided, however, that the parties are not required to waive the CCCP claims in arbitrations solely between or among ETP Holders and/or persons associated with an ETP Holder that do not involve consumer-related or employment-related claims. PCXE will decline jurisdiction over, dismiss and refund fees paid to PCXE by the parties for, any arbitration claims in which any of the parties to arbitration fail to sign both waivers, where required.*

\* \* \* \* \*

## 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.<sup>8</sup> The text of these statements may be examined at the places specified in Item III below. PCX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

PCX states that it makes every effort to serve investors who bring their claims to PCX by providing a fair, efficient, and economical arbitration forum. Recent changes in California law and the attendant litigation, however, have caused PCX to reevaluate how it administers its arbitration programs. Specifically, California recently adopted (1) Section 1281.92 of the California Code of Civil Procedure (“CCCP 1281.92”), which prohibits private arbitration providers from administering arbitrations, or providing any other services related to arbitration, if any party or attorney for a party has, or has had within the preceding year, any type of financial interest in the arbitration provider, and (2) the California Standards, which require arbitration providers to implement and maintain substantial new recordkeeping and disclosure requirements. Since their adoption, CCCP 1281.92 and the California Standards have become the subject of controversy or, in some cases, litigation regarding their interpretation

<sup>8</sup>The discussion in this section represents the Exchange's views on the situation in California and does not in any way represent a Commission position on this issue.

and application to arbitration programs administered by self-regulatory organizations.<sup>9</sup> To minimize any potential financial and litigation risk associated with these new provisions, PCX and PCXE have decided to require parties to PCX and PCXE arbitrations to waive the California Standards and CCCP Claims in order for the arbitrations to continue pursuant to PCX and PCXE Rule 12.

Once this proposed rule filing is effective, PCX and PCXE will notify parties to PCX and PCXE arbitrations of the rule change and provide them with the waiver forms and the opportunity to speak with PCX staff if they desire more information regarding the waivers. Industry parties to the arbitrations will be required to execute the waiver agreements. An industry party's failure to sign the waiver as required by the proposed rule change will be referred for disciplinary action.

#### 2. Statutory Basis

PCX believes that this proposal is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>11</sup> which requires 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, and, in general, to protect investors and the public interest.

### B. Self-Regulatory Organization's Statement on Burden on Competition

PCX 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.

<sup>9</sup> See, e.g., Brief of the Securities and Exchange Commission, Amicus Curiae, in Support of Plaintiffs' Motion for Declaratory Judgment, *NASD Dispute Resolution, Inc. and New York Stock Exchange, Inc., v. Judicial Council of California*, C023486 (No. District of California, September 18, 2002) (arguing that the California Standards conflict with, and thus are preempted by, the Commission's regulation of SRO arbitration under the Exchange Act and by the Federal Arbitration Act). The brief is available on the Commission Web site at: [www.sec.gov/litigation/briefs/nasddispute.pdf](http://www.sec.gov/litigation/briefs/nasddispute.pdf). See also Securities Exchange Act Release No. 46881 (Nov. 21, 2002), 67 FR 71224 (Nov. 29, 2002) (describing the controversy regarding new California arbitration provisions).

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received by PCX. However, the SEC received one comment letter on the proposed rule change.<sup>12</sup>

### III. 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-2003-34 and should be submitted by September 12, 2003.

### IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change, as Amended

The PCX requests that the Commission find good cause to accelerate effectiveness of this proposed rule change, as amended, pursuant to Section 19(b)(2) of the Act.<sup>13</sup> After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 of the Act.<sup>14</sup> Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act, which requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, as well as to remove impediments to and perfect the mechanism of a free

and open market, and, in general, to protect investors and the public interest.<sup>15</sup> The Commission believes that the proposed rules are designed to provide investors with a mechanism to help resolve their disputes with broker-dealers in an expeditious manner, and are designed to help ensure the certainty and finality of arbitration awards. Additionally, the Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. Accelerated approval is appropriate in that it will permit the PCX to make its forum for the resolution of such disputes available immediately.

### V. Conclusion

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-PCX-2003-34), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-21541 Filed 8-21-03; 8:45 am]

**BILLING CODE 8010-01-P**

## TENNESSEE VALLEY AUTHORITY

### Paperwork Reduction Act of 1995, as Amended by Public Law 104-13; Submission for Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** Tennessee Valley Authority.

**ACTION:** Submission for Office of Management and Budget (OMB) review; comment request.

**SUMMARY:** The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (EB 5B), Chattanooga, Tennessee 37402-2801; (423) 751-2523 (SC: 000YRFB).

<sup>15</sup> 15 U.S.C. 78f(b)(5).

<sup>16</sup> 15 U.S.C. 78s(b)(2).

<sup>17</sup> 17 CFR 200.30-3(a)(12).

Comments should be sent to OMB Office of Information and Regulatory Affairs, Attention: Desk Officer for Tennessee Valley Authority no later than September 22, 2003.

### SUPPLEMENTARY INFORMATION:

*Type of Request:* Regular submission, proposal to reinstate, with change, a previously approved collection for which approval has expired.

*Title of Information Collection:* Farmer Questionnaire—Vicinity of Nuclear Power Plants.

*Frequency of Use:* On occasion.

*Type of Affected Public:* Individuals or households, and farms.

*Small Businesses or Organizations Affected:* No.

*Federal Budget Functional Category Code:* 271.

*Estimated Number of Annual Responses:* 150.

*Estimated Total Annual Burden Hours:* 40.

*Estimated Average Burden Hours per Response:* 0.25.

*Need for and Use of Information:* This survey is used to locate, for monitoring purposes, rural residents, home gardens, and milk animals within a five mile radius of a nuclear power plant. The monitoring program is a mandatory requirement of the Nuclear Regulatory Commission set out in the technical specifications when the plants were licensed.

**Jacklyn J. Stephenson,**

*Senior Manager, Enterprise Operations, Information Services.*

[FR Doc. 03-21518 Filed 8-21-03; 8:45 am]

**BILLING CODE 8120-08-P**

## DEPARTMENT OF TRANSPORTATION

[Docket No. OST-2003-15962]

### Office of the Secretary; Notice of Request for Renewal of a Previously Approved Collection

**AGENCY:** Office of the Secretary.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Department of Transportation's (DOT) intention to request extension of a previously approved information collection.

**DATES:** Comments on this notice must be received by October 21, 2003.

**ADDRESSES:** You may submit comments [identified by DOT DMS Docket Number OST-2003-15962 by any of the following methods:

- Web Site: <http://dms.dot.gov>.

Follow the instructions for submitting

<sup>12</sup> See n. 4, *supra*.

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

comments on the DOT electronic docket site.

- Fax 1-202-493-2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington DC, between 9 am and 5 pm, Monday through Friday, except on Federal holidays.

Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

**Instructions:** All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to <http://dms.dot.gov> including any personal information provided. Please see the Privacy Act heading under Regulatory Notes.

**Docket:** For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Delores King, Air Carrier Fitness Division (X-56), Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2343.

**SUPPLEMENTARY INFORMATION:**

**Title:** Procedures and Evidence Rules For Air Carrier Authority Applications: 14 CFR Part 201—Air Carrier Authority under Subtitle VII of title 49 of the United States Code—(Amended); 14 CFR Part 204—Data to Support Fitness Determinations; 14 CFR Part 291—Cargo Operations in Interstate Air Transportation.

**OMB Control Number:** 2106-0023.

**Type of Request:** Extension without change, of previously approved collection.

**Abstract:** In order to determine the fitness of persons seeking authority to engage in air transportation, the Department collects information from them about their ownership,

citizenship, managerial competence, operating proposal, financial condition, and compliance history. The specific information to be filed by respondents is set forth in 14 CFR parts 201 and 204.

**Respondents:** Persons seeking initial or continuing authority to engage in air transportation of persons, property, and/or mail.

**Estimated Number of Respondents:** 127.

**Estimated Total Burden on Respondents:** 4,604 hours.

**Comments are invited on:** (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information collection; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

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.

Issued in Washington, DC on August 15, 2003.

**Randall D. Bennett,**

*Director, Office of Aviation Analysis.*

[FR Doc. 03-21487 Filed 8-21-03; 8:45 am]

**BILLING CODE 4910-62-P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

[Docket OST-02-12148]

### Electronic Transmission and Storage of Drug Testing Information Federal Advisory Committee; Meeting

**AGENCY:** Office of the Secretary, Department of Transportation.

**ACTION:** Notice of Federal Advisory Committee meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92-463, 86 Stat. 770) notice is hereby given that the Department of Transportation (DOT) Electronic Transmission and Storage of Drug Testing Information Federal Advisory Committee will meet for the third time in a public session on September 22-23, 2003, at the Key Bridge Marriott Hotel, 1401 Lee Highway, Arlington, VA 22209, (703) 524-6400, Guest Fax: (703) 524-8964. The purpose of the Committee is to recommend to the Department the type and level of

electronic security that should be used for the transmission and storage of drug testing information, to assess the type of format and methodology that would be appropriate, and to recommend the level and type of electronic signature technology that would support the procedures used in the DOT drug and alcohol program. The Committee has held two previous meetings. A list of the committee members and a copy of both meeting's transcripts are available in the docket posted on the Internet at <http://dms.dot.gov/search/>; the docket number is 12148.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Edgell or Minnie McDonald, Office of Drug and Alcohol Policy and Compliance (ODAPC), Office of the Secretary, Department of Transportation at voice (202) 366-3784, fax (202) 366-3897.

**SUPPLEMENTARY INFORMATION:** Since the beginning of drug testing, the DOT has sought ways to reduce the significant amount of paper documentation generated for the forensic accountability of drug test results. We are now in an era of various electronic capabilities that can further reduce the paper work burden. The transportation industry is asking us to move more in that direction. We want to accommodate this request, but we want to make sure that the integrity and confidentiality requirements of the program are maintained.

The Department made modest changes when 49 CFR Part 40 was updated and republished on December 19, 2000. We permitted greater use of faxes and scanned computer images for reporting test results. Additionally, for negative test results we permitted laboratories to send electronic reports to MROs, provided the laboratory and MRO ensured that the information is accurate and can be transmitted in such a manner as to prevent unauthorized access or release while it is transmitted or stored.

The Department believes that the increased use of electronic reporting is both inevitable and beneficial. At the same time, we want to make sure that there are good, consistent minimum standards for the use of this technology, in order to protect the important integrity and confidentiality requirements of the program. For these reasons, DOT established the Electronic Transmission and Storage of Drug Testing Information Federal Advisory Committee. The purpose of the Committee is to recommend regulatory modifications it deems necessary if Part 40 is to accommodate newer electronic technology. The Committee will assess

the current status of electronic security technology and will make recommendations about consistent minimum standards for its use in the transmission and storage of drug testing results. Additionally, the Committee will examine the formats and methodologies used in transmitting electronic information, as well as the concept, parameters, and procedures used in implementing electronic signature technology within the framework of the DOT drug and alcohol testing program. The Committee will advise DOT regarding these findings. The Department anticipates that, following the receipt of the Committee's final recommendations, DOT will propose changes to Part 40 through a notice of proposed rulemaking that will result in minimum standards for security in transmission and storage of drug testing information and would result in a more widespread use of electronic technology in the program.

The Committee held its first public meeting on June 18–19, 2002 in Washington, DC and the second on April 7–8, 2003 in Arlington, VA. The first meeting was used to introduce the Committee Members, review the purpose of the Committee, and to review some of the issues that the Committee needed to address as part of the process to develop appropriate recommendations to the DOT. Presentations from the major sections of interested stakeholders were conducted by Committee members, invited guests, and by the general public. Additionally, three sub-committees composed of Committee members were established to research, develop, and provide information to the whole Committee at future meetings. These sub-committees addressed the following three areas: 1. Format of electronic reports; 2. Security of electronic transmission and digital signatures; and 3. Storage security of electronic information. The second meeting focused on specific findings, issues, and recommendations of the sub-committees related to these three areas. A complete transcription of all discussions for both meetings is available at the above-cited Internet web site. Opportunity will be available at the upcoming meeting for the general public to comments on information presented by the committee members.

Tentative agenda: Monday, September 22, 2003, 08:30 a.m.–12 p.m.: General presentations by the sub-committee chairpersons, 12 p.m.–1:15 p.m.: Lunch, 1:15 p.m.–3:30 p.m.—Continued presentations, 3:30 p.m.–5 p.m.: Public Comments or Presentations, 5 p.m.—End of First Day. Tuesday, September 23, 2003, 08:30 a.m.–12:00 p.m.:

Discussion of Options and Future Committee Actions, 12 p.m.—Closing Comments, 2 p.m.—End of Meeting. A final agenda will be available to the public prior to the beginning of the meeting.

The meeting will be open to the public on a first-come first-seated basis. Anyone needing special accommodations for persons with disabilities please notify Minnie McDonald at (202) 366–3784 at least two weeks prior to the meeting.

Members of the public wishing to file a written statement with the DOT Electronic Transmission and Storage of Drug Testing Information Federal Advisory Committee may do so by submitting comments by mail or by delivering them to the Docket Clerk, Attn: Docket No. OST–02–12148, Department of Transportation, 400 7th Street, SW., Room PL401, Washington, DC, 20590. Comments may also be faxed to the Docket Clerk at (202) 493–2251. Persons wishing their comments to be acknowledged should enclose a stamped, self-addressed postcard with their comments. The docket clerk will date stamp the postcard and return it to the sender. For the convenience of persons wishing to review the docket, it is requested that paper comments be sent in triplicate in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Comments may be reviewed at the above address from 9 a.m. through 5 p.m. Monday through Friday. Commenters may also submit their comments electronically. Instructions for electronic submission may be found at the following Web address: <http://dms.dot.gov/submit/>. The public may also review docket comments electronically (docket number is 12148). The following web address provides instructions and access to the DOT electronic docket: <http://dms.dot.gov/search/>. Please use only one method for submission of your comments. Please do not send duplicates by submitting a written and an electronic version.

There will be a time allocated for the public to speak on any of the above agenda items. Please make your request for the opportunity to make a public comment in writing to Minnie McDonald, ODAPC, at (202) 366–3784, FAX (202) 366–3897, or e-mail address: [minnie.mcdonald@ost.dot.gov](mailto:minnie.mcdonald@ost.dot.gov) two weeks prior to the meeting. Your notification should contain your name and corporate designation, consumer affiliation, or government designation. Please include your address, telephone number and e-mail in case there is reason to contact you regarding your presentation. Those wanting to make a

verbal statement should also include a short statement describing the topic to be addressed. Requestors will ordinarily be allowed up to 10 minutes to present a topic, however, the time may be limited depending on the number of requestors. If you have submitted a written statement to the docket, there is no need to subsequently duplicate this information by an oral presentation.

The Committee meeting will be recorded and transcribed. Within a short time after the meeting, copies of the transcripts will be available on the DOT electronic docket.

**DATES AND TIME:** The Electronic Transmission and Storage of Drug Testing Information Federal Advisory Committee will meet in open session on September 22, 2003, from 8:30 a.m. to 5 p.m. and on September 23, 2003, from 8:30 a.m. to 2 p.m.

**ADDRESSES:** The meeting will take place at the Key Bridge Marriott Hotel, 1401 Lee Highway, Arlington, VA 22209, (703) 524–6400, Guest Fax: (703) 524–8964. The hotel is close to the Rosslyn, VA METRO stops and can be reached via the blue or yellow lines. Attendees, other than Committee members, who need lodging, may obtain a discounted room rate directly from the hotel by referring to the “DOT Federal Advisory Committee” meeting. The hotel reservation telephone number is (800) 228–9290. A limited number of rooms will be available at the discounted rate and reservations must be made by September 11, 2003.

Dated: August 18, 2003.

**Kenneth C. Edgell,**  
*Acting Director, Office of Drug and Alcohol, Policy and Compliance, Department of Transportation.*

[FR Doc. 03–21603 Filed 8–21–03; 8:45 am]

**BILLING CODE 4910–62–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

#### Preparation of Alternatives Analysis and Environmental Impact Statement for the Commuter Rail Project in Sonoma and Marin Counties, California

**AGENCY:** Federal Transit Administration (FTA), Department of Transportation (DOT).

**ACTION:** Notice of Intent to prepare an Alternatives Analysis and Draft Environmental Impact Statement (AA/DEIS).

**SUMMARY:** The Federal Transit Administration (FTA) as lead agency and the Sonoma Marin Area Rail Transit (SMART) Commission intend to

conduct an Alternatives Analysis and prepare a Draft Environmental Impact Statement (AA/DEIS) on a proposal by SMART for the proposed introduction of commuter rail service along an existing railroad right-of-way extending approximately 75-miles from Cloverdale in Sonoma County to a San Francisco/East Bay bound ferry terminal in Marin County. The EIS will be prepared as a joint EIS and Environmental Impact Report (EIR) to satisfy the requirements of both the National Environmental Policy Act of 1969 (NEPA) and the California Environmental Quality Act (CEQA).

The purpose of this notice is to notify interested individuals, organizations, and business entities, affected Native American Tribes and Federal, State, and local government agencies of the intent to prepare an AA/DEIS and to invite participation in the study. At present three alternatives are proposed for evaluation in the EIS/EIR. In addition, reasonable alternatives identified through the scoping process will be evaluated in the EIS/EIR.

Scoping will be accomplished through correspondence and discussion with interested persons, organizations, and Federal, State and local agencies, and through public and agency meetings.

**DATES: Comment Due Date:** Written comments on the scope of the alternatives and impacts to be considered should be received no later than October 1, 2003. Written comments should be sent to the SMART AA/DEIS/DEIR Outreach at the address given below in **ADDRESSES**.

**Scoping Meeting Dates:** Two public open-house scoping meetings will be held from 6 p.m. to 8 p.m. on September 4 and 10, 2003 at the location given below in **ADDRESSES**. An interagency scoping meeting will also be held on September 17, 2003 from 10 a.m. to 12 noon at Novato City Council Chambers located at 917 Sherman Avenue, Novato, California 94947.

The two scoping meetings will be held at the following dates and locations:

1. September 4, 2003 from 6 p.m. to 8 p.m. at the San Rafael Corporate Center located at 750 Lindero Street, San Rafael, California 94901.
2. September 10, 2003 from 6 p.m. to 8 p.m. at the Petaluma Community Center located at 320 N. McDowell Boulevard, Petaluma, California 94954.

All locations are accessible to people with disabilities.

**ADDRESSES:** Written comments should be sent to Ms. Lillian Hames, Project Director SMART (Sonoma Marin Area

Rail Transit), 520 Mendocino Avenue, Suite 240, Santa Rosa, California 95401. Phone: 415-461-00630 Fax: 415-464-1285. E-mail:

*LHames@sonomamarintrain.org*. To be added to the mailing list, contact Ms. Hames at the address listed above. Please specify the mailing list for the SMART Alternatives Analysis/Draft Environmental Impact Statement/Report (SMART AA/DEIS/R). Persons with special needs should leave a message at either of the phone numbers indicated above.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lorraine Lerman, Community Planner, FTA Region IX, 201 Mission Street, Suite 2210, San Francisco, CA 94105. Phone: (415) 744-2735 Fax: (415) 744-2726. Information about the project can also be obtained from the SMART Web site, <http://www.sonomamarintrain.org/>.

#### **SUPPLEMENTARY INFORMATION:**

#### **I. Description of Study Area**

The FTA, as joint lead agency with the SMART Commission, will prepare an AA/DEIS/DEIR on a proposal to provide commuter rail service along an existing railroad right-of-way extending approximately 75-miles in Sonoma and Marin counties. The study area begins in Cloverdale in Sonoma County. The southern terminus of the project area is in Marin County at a San Francisco/East Bay bound ferry terminal. Along the project route, the rail right-of-way runs parallel to Highway 101. The rail right-of-way south of Healdsburg has been transferred to a new statutorily-created entity, the Sonoma Marin Area Rail Transit District. North of Healdsburg the North Coast Railroad Authority (NCRA) owns it. The project area also includes the locations of up to 15 stations and maintenance facility sites. Conceptual engineering of the rail alignment, a pedestrian and bicycle path, the station facilities, and the maintenance facility will be included in AA/DEIS/DEIR that satisfies both NEPA and CEQA requirements. In addition, a financial plan will be developed that examines the capital and operating funding needs and sources.

#### **II. Purpose and Need**

Highway 101 is the primary mode of north-south movement connecting Sonoma and Marin counties with the City and County of San Francisco. The existing congested conditions in this corridor are expected to worsen as the area's population and job base continue to grow. The SMART corridor offers an opportunity to provide additional transportation capacity along a currently congested corridor. Implementation of

the proposed actions will provide transit service to key employment areas along the corridor, maximize and maintain the viability of residential communities, encourage smart growth in city centers along the corridor, and reduce reliance on private automobile usage and the congested Highway 101 corridor.

#### **III. Alternatives**

Alternatives proposed for evaluation include but are not limited to:

(1) No-build alternative, which consists of the existing highway and transit systems plus any ongoing or programmed improvements. It serves as the baseline condition against which the transportation, environmental, and community impacts of the other alternatives are compared.

(2) Introduction of commuter rail service along an existing railroad right-of-way extending approximately 75-miles from Cloverdale in Sonoma County to a San Francisco/East Bay bound ferry terminal in Marin County.

(3) Enhanced bus service on Highway 101 from Cloverdale in Sonoma County to Larkspur in Marin County, including bus enhancements and capital improvements along the Highway 101 corridor.

#### **IV. Probable Effects**

The purpose of the EIS/EIR is to fully disclose the environmental consequences of building and operating a major capital investment in the SMART corridor in advance of any decisions to commit substantial financial or other resources towards its implementation. The EIS/EIR will examine the transportation benefits and environmental impacts of the alternatives that emerge from the scoping process. In addition, it will discuss actions to reduce or eliminate such impacts.

Environmental issues to be analyzed in the EIS/EIR include: potential consistency with local plans and policies with regard to possible station sites; possible flooding along portions of the rail line and stations; potential traffic delays and change in traffic levels of service at several rail crossings; potential impacts to wetland areas paralleling the corridor; increased noise to sensitive receptors adjacent to the track; changes in views and vistas due to elevated structures; and potential impacts to historic and cultural resources. In addition, the EIS/EIR will examine potential impacts to population and housing; air quality; energy and mineral resources; contaminated property; public services; utilities; and recreation features; as well as

cumulative and growth-inducing impacts. Impacts will be evaluated for both the temporary construction period and for the long-term operation of each alternative. Measures to mitigate any adverse impacts will also be identified.

To ensure that the full range of issues related to this proposed action will be 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/EIR should be directed to the SMART Project Director as noted in the **ADDRESSES** section above.

#### V. FTA Procedures

To streamline the NEPA process and to avoid duplication of effort, the agencies involved in the scoping process will consider the results of any previous planning studies or financial feasibility studies prepared in support of the decision by the Metropolitan Transportation Commission (MTC) to include a particular alternative in the regional transportation plan. Prior transportation planning studies may be pertinent to establishing the purpose and need for the proposed action and the range of alternatives to be evaluated in detail in the EIS/EIR. The Draft EIS/EIR will be prepared simultaneously with conceptual engineering for the alternatives, including station and alignment options. The Draft EIS/EIR process will address the potential use of federal funds for the proposed action, as well as assessing social, economic, and environmental impacts of the station and alignment alternatives. Station designs and alignment alternatives will be refined to minimize and mitigate any adverse impacts. After publication, the Draft EIS/EIR will be available for public and agency review and comment, and a public hearing will be held. Based on the Draft EIS/EIR and comments received, SMART will select a Locally Preferred Alternative for further assessment in the Final EIS/EIR and will apply for FTA approval to initiate Preliminary Engineering of the preferred alternative.

Issued on: August 19, 2003.

**Leslie T. Rogers,**

*Regional Administrator.*

[FR Doc. 03-21604 Filed 8-21-03; 8:45 am]

**BILLING CODE 4910-57-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[Finance Docket No. 30186 (Sub-No. 3)]

#### Tongue River Railroad Co.— Construction and Operation—Western Alignment

**AGENCY:** Surface Transportation Board.

**ACTION:** Amended Final Scope of the Supplemental Environmental Impact Statement.

**SUMMARY:** On April 27, 1998, the Tongue River Railroad Company (TRRC) filed an application with the Surface Transportation Board (Board) under U.S.C. 10901 and 49 CFR 1150.1 through 1150.10 seeking authority to construct and operate a 17.3-mile line of railroad in Rosebud and Big Horn Counties, Montana, known as the "Western Alignment." The line that is the subject of this application is an alternative routing for the portion of the 41-mile Ashland to Decker, Montana rail line that was approved by the Board on November 8, 1996 in Finance Docket No. 30186 (Sub-No. 2), referred to as the "Four Mile Creek Alternative." On July 10, 1998, the Board's Section of Environmental Analysis (SEA) served a Notice of Intent to prepare a Supplemental Environmental Impact Statement (SEIS) to evaluate and consider the potential environmental impacts that might result from the construction and operation of the Western Alignment, and requested comments on the scope of the SEIS. SEA served its final scope of the SEIS on February 3, 1999. On March 2, 2000, before SEA completed its Draft SEIS, TRRC requested that SEA suspend its environmental work. On December 19, 2002, TRRC advised SEA that it was now in a position to move forward and asked SEA to resume its environmental review of the application. On January 17, 2003, TRRC filed a request with the Board seeking to update its previously submitted evidence on the transportation merits. The Board served its decision allowing TRRC to file its supplemental evidence on the transportation merits on March 11, 2003. On March 26, 2003, SEA served an amended Notice of Intent to prepare a SEIS and requested comments on the adequacy of the final scope of the SEIS dated February 3, 1999. SEA has reviewed and considered all eight of the comments received in preparing the amended final scope of the SEIS, which is discussed below.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Blodgett, (202) 565-1554. Federal Information Relay Service

(FIRS) for the hearing impaired: 1-800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### Proposed Action and Background

This proceeding involves an alternate route (the Western Alignment) to the route the Board previously approved (the Four Mile Creek Alternative) for the southernmost 17.3-mile portion of the Ashland to Decker, Montana line in *Tongue River II*.

In 1983, TRRC sought approval from the Interstate Commerce Commission (ICC, the Board's predecessor agency) to construct and operate 89 miles of railroad between Miles City, Montana, and two termini located near Ashland, Montana, subsequently referred to as *Tongue River I*. In a decision served May 9, 1986, the ICC approved *Tongue River I*. TRRC then sought, in *Tongue River II*, approval to construct a contiguous 41-mile line from Ashland to Decker, Montana. The Board approved *Tongue River II*, via the Four Mile Creek Alternative, in November 1996.<sup>1</sup>

The ICC/Board's environmental staff, now the Section of Environmental Analysis (SEA), prepared Environmental Impact Statements (EISs) for both *Tongue River I* and *Tongue River II*. TRRC has reported to the Board that it has conducted various preconstruction activities on both segments, but actual construction has not yet begun.

On April 27, 1998, TRRC filed an application with the Board in Finance Docket No. 30186 (Sub-No. 3) seeking authority to construct and operate the Western Alignment subsequently referred to as *Tongue River III*. In *Tongue River I* and *Tongue River II*, the Board determined that the public convenience and necessity required or permitted TRRC's proposed rail line construction and operation, in accordance with former 49 U.S.C. 10901, and the Board does not intend to reopen the transportation merits of the authority granted in these proceedings. The action proposed to be taken in *Tongue River III* necessitates SEA's review of associated potential environmental impacts and a subsequent decision by the Board as to whether the proposed Western Alignment satisfies the criteria of 49 U.S.C. 10901, as amended in the ICC Termination Act of 1995 (ICCTA).<sup>2</sup>

<sup>1</sup> Petitions for review of *Tongue River II* are pending in the Ninth Circuit. Those cases are being held in abeyance until this case is decided.

<sup>2</sup> Pub. L. 104-88 109 stat. 803 (1995). In ICCTA, Congress abolished the ICC and transferred its rail regulatory functions and proceedings to the Board. Section 10901(c), as amended by ICCTA, now

### Environmental Review Process and Course of Proceedings in Tongue River III

After the application in *Tongue River III* was filed, SEA and three cooperating agencies<sup>3</sup> began the environmental review process. On July 10, 1998, SEA issued a Notice of Intent (NOI) to prepare a SEIS to consider the potential environmental impacts of the proposed Western Alignment routing. The NOI also sought comments from the public on the scope of the SEIS. SEA received 34 comments from Federal, state, and local agencies, as well as TRRC, individual property owners, and community representatives. SEA published its final scope of the SEIS on February 3, 1999. That notice specified that the SEIS would evaluate the Western Alignment in full, as well as refinements to the alignments previously considered in *Tongue River I* and *Tongue River II*, where there have been significantly changed circumstances indicating that what was done before is no longer adequate.

On March 2, 2000, before SEA completed its Draft SEIS, TRRC requested that SEA suspend its environmental work. Almost three years later, on December 19, 2002, TRRC advised SEA that it was now in a position to move forward and asked SEA to resume its environmental review of *Tongue River III*. Shortly thereafter, on January 17, 2003, TRRC filed a request with the Board seeking to update its previously submitted evidence on the transportation aspects of the *Tongue River III* application. On March 11, 2003, the Board authorized TRRC to file the updated evidence. In its supplemental evidence filed on May 1, 2003, TRRC updated the record in the following five areas: (1) Transfer of the Otter Creek Tracts 1, 2, and 3 to the State of Montana; (2) tonnage forecasts, financial forecasts, and estimated construction costs; (3) TRRC's business structure, proposed financial structure, and plan for raising the funds required for construction; (4) supporting statements from Montana officials; and (5) the effects of the Board's recent approval of the Dakota, Minnesota, and Eastern Railroad's proposed

provides that the Board shall authorize the construction and operation of a proposed new rail line "unless the Board finds that such activities are inconsistent with the public convenience and necessity." Thus, there is now a presumption that a rail construction proposal will be approved.

<sup>3</sup> As discussed in more detail below, the cooperating agencies are the U.S. Army Corps of Engineers (Corps); the U.S. Department of the Interior, Bureau of Land Management (BLM); and the Montana Department of Natural Resources (MT DNRC). Future references to "SEA" encompass the efforts of the cooperating agencies.

construction of a new rail line to serve the southern Powder River Basin in Wyoming. See *Dakota, Minnesota & Eastern Railroad Corporation Construction into the Powder River Basin*, STB Finance Docket No. 33407 (STB served Jan. 30, 2002), *appeal filed, Mid States Coalition for Progress, et al., v. Surface Transportation Board*, No. 02-1359 *et al.* (8th Cir. Filed Feb 7, 2002). In addition, TRRC provided insight into its relationship with The Burlington Northern and Santa Fe Railway Company, with which the proposed line connects. The Draft SEIS will reflect the updated information that TRRC has submitted. The Board served a decision on July 7, 2003, establishing a procedural schedule for replies.

With respect to the environmental review process, on March 26, 2003, SEA served an amended NOI that announced that the environmental review of the *Tongue River III* application would now go forward. The amended NOI solicited comments from the public on the scope of the SEIS and asked whether the public had any new information to include in the SEIS. SEA received eight comments from Federal, state, and local agencies, individual property owners, and community representatives. A brief summary of the main points raised in the comment letters is provided below.

The Environmental Protection Agency (EPA), Region 8, commented on a variety of issues including the identification and discussion of water bodies with impaired uses; cumulative effects including coal bed methane development; potential air quality impacts on the Class I Northern Cheyenne Indian Reservation; required consultation with tribal governments and the need to assess all impacts on tribal trust lands; wetlands and riparian areas; and address pollution prevention, preferably at the source. Finally, EPA stated that the SEIS should include an effective strategy for public involvement of minority and low-income populations.

The Montana Natural Heritage Program (MNHP) commented that all state plant and animal species of concern should be discussed in the SEIS, in particular the bald eagle, snapping turtle, spiny softshell, woolly twinpod, Barr's milkvetch and nuttall desert-parsley. The MNHP also recommended that SEA contact the U.S. Fish and Wildlife Service for a current listing of threatened and endangered plant and animal species.

The Northern Plains Resource Council (NPRC) commented on the need for a discussion of cumulative effects, including coal bed methane well development. NPRC also indicated that

there is a need to assess potentially impaired water bodies, including the total maximum daily load (TMDL) designations currently being developed and assigned for the Tongue River area by the State of Montana. NPRC asked that the SEIS discuss any new species of concern that have been identified since 1999, and indicated that the Board should consider if there is any public convenience and necessity that justifies construction and operation of the project. Finally, NPRC suggested that a new NEPA document should be prepared that covers the entire 130-mile line between Miles City and Decker.

The Montana Environmental Information Center noted that wildlife inventories that were not performed for *Tongue River II* should be completed at this time. In addition, it requested that the SEIS assess the entire line for potential impacts to increased elk populations; discuss coal bed methane development and its ability to alter the character of the physical environment; and address when and if construction will actually occur. Furthermore, it indicated that SEA should conduct its own analysis of the economic merits of the proposal and that *Tongue River III* should not be examined as a supplement to the previous EISs, but that the entire 130-mile route from Miles City to Decker should be reexamined.

Terry Punt and Jeanie Alderson of the Bones Brothers Ranch commented that the purpose and need for the railroad line needs to be reassessed in light of the following factors: *Tongue River I* was proposed to serve the Montco mine, but this mine lost its permit in the 1990s; the recently-approved Dakota, Minnesota & Eastern (DM&E) rail line is meeting the current transportation need of the region and recent layoffs indicate a slower coal market; and Otter Creek coal is high in sodium and is not profitable. These commenters also echoed the need for coal bed methane well development to be taken into account.

Mark Fix commented that the impacts from the coal bed methane project are overwhelming and, with the proposed Tongue River railroad, would result in unacceptable environmental conditions. Mr. Fix also suggests that there is a need for a new NEPA document that covers the entire Tongue River railroad route as one project.

Beth Kaeding commented that the impacts of connected actions, including the coal bed methane development in Wyoming and Montana, new power plants in Wyoming, expanded coal mining in Wyoming, and proposed power plants in Montana need to be

considered cumulatively. Ms. Kaeding also commented that inventories for wildlife, fish, and plant species should be prepared from field studies. Ms. Kaeding expressed concerns about a variety of issues, including the amount of earth that would need to be moved for this project and the potential impacts from erosion and sedimentation; the amount of water required for the proposed construction and potential impacts to streams and the water table; and the amount of earth that will be exposed to the introduction of noxious weeds. Additional concerns include fire hazards from rail operations, death of livestock on the rail lines, noise, economic viability of the applicant, impacts to residents and land use in the event of a future abandonment, and impacts on the character of the region.

The State of Arkansas, Technical Review Committee, submitted form letters indicating that it does not have any comments on the proposed final scope of work for the SEIS.

SEA has prepared this amended final scope for the SEIS based on a careful review of all the comments to the amended NOI, consultations with appropriate Federal and state agencies, and review of the environmental documents and studies previously prepared in *Tongue River I* and *Tongue River II*. With one exception, the final scope has been amended, where necessary, to encompass all of the points raised in the comment letters. Regarding the request expressed by several commenters that a new NEPA document should be prepared which addresses the entire 130-mile line from Miles City to Decker, the Board does not believe it is necessary or appropriate to reopen and reconsider in their entirety the authority granted in *Tongue River I* and *Tongue River II*, both of which have long since become administratively final. Rather in the SEIS, SEA will evaluate the Western Alignment in full, as well as refinements to the alignments previously considered in *Tongue River I* and *Tongue River II*, where there have been significantly changed circumstances indicating that what was done before is no longer adequate.

The amended scope of this SEIS has been developed in consultation with the three cooperating agencies discussed above. The cooperating agencies have decision-making authority over *Tongue River III*, independent of the Board, and are the three principal agencies from whom TRRC must obtain separate approvals. To help these agencies fulfill their regulatory responsibilities and functions, and to avoid duplicative environmental analysis, SEA will

include in the SEIS environmental review of certain issues specifically requested by the cooperating agencies.

After completing their independent environmental analysis of the Western Alignment and those portions of *Tongue River I* and *Tongue River II* that need to be updated, SEA and the cooperating agencies will serve a Draft SEIS on all the names on the Board's service list for this proceeding and on appropriate Federal, state, and local agencies, and will publish notice of this document in the **Federal Register**. The public will be invited to review and comment on all aspects of the Draft SEIS. SEA and the cooperating agencies will then carefully consider all the timely comments received on the Draft SEIS, conduct any further environmental review that may be necessary, and will then prepare and issue a Final SEIS. A notice of the Final SEIS will also be published in the **Federal Register**. The Board will then take into account the Draft SEIS, the Final SEIS, and all comments received in issuing its final written decision in *Tongue River III*.

#### Final Amended Scope for the SEIS

The amended scope of the SEIS for the construction and operation of the Western Alignment will involve a detailed environmental analysis of the proposed new routing. The SEIS will discuss alternatives to the proposed new routing and will compare the potential effects of the Western Alignment to the Four Mile Creek Alternative approved in *Tongue River II*. SEA's analysis will include discussion of the following topics: biological and aquatic resources, land use, cultural resources, water quality, socioeconomics, environmental justice, transportation and safety, soils and geology, air quality, aesthetics, noise and vibration effects, recreation, and cumulative effects. Impacts on Native Americans, including sites of importance to them, will also be addressed.

The Draft SEIS will also incorporate the supplemental evidence submitted by TRRC on May 1, 2003, where it relates to the project description, the project's purpose and need, and/or the potential environmental impacts of the construction and operation of the proposed rail line.

#### Format of the SEIS

The Draft SEIS will be organized into three separate sections. The first section will evaluate the potential impacts associated with the proposed Western Alignment in *Tongue River III*. The second section will provide the updated analysis relating to *Tongue River I* and *Tongue River II*, as discussed above. A

third section will discuss cumulative effects associated with the construction and operation of the entire line from Miles City to Decker, Montana from both the Four Mile Creek Alternative and the Western Alignment. At their request, and to assist the cooperating agencies in their permitting processes, SEA will provide appendices that address further environmental issues needed by the individual cooperating agencies.

#### Assumptions

- To avoid duplication, the SEIS will refer to, utilize, and incorporate by reference the environmental analyses prepared for *Tongue River I* and *Tongue River II*, as appropriate.
- The SEIS will evaluate the impacts of the proposed Western Alignment in *Tongue River III*, and will compare those impacts to the impacts related to the Four Mile Creek Alternative approved in *Tongue River II*; the Four Mile Creek Alternative is the No-Build Alternative in *Tongue River III* because it has already been approved.

#### Section I

##### *Tongue River III*

##### *Potential Environmental Impacts Associated With the Construction and Operation of the Western Alignment*

#### 1. Transportation and Safety

The SEIS will:

A. Evaluate the safety aspects of proposed crossings of the County Road at Four Mile Creek (proposed as a grade separated crossing), and where the Western Alignment would connect with the approved *Tongue River II* route at the north end (proposed as an at-grade crossing).

B. Assess the potential for hazardous materials transport through the corridor, and the potential for the movement of more trains and coal than was envisioned in the July 17, 1992 Draft or Final EIS for *Tongue River II*.

C. Assess the potential for train derailments and grade crossing accidents.

D. Assess the safety, operational, and maintenance advantages submitted by TRRC regarding the Western Alignment as compared to the Four Mile Creek Alternative, including TRRC's improved overall grade, shorter travel distance, reduced long-term operating and maintenance costs, and reduced need for helper engines.

E. Assess the opportunities for access by local property owners.

F. Evaluate concerns regarding fire prevention and suppression.

G. Discuss the terms of the Memorandum of Agreement between

the Montana Department of Transportation and TRRC that relate to potential environmental impacts and the implementation of mitigation measures.

H. Develop any appropriate mitigation.

## 2. Land Use

The SEIS will:

A. Evaluate impacts to property owners along the Western Alignment in terms of property acquisition, agricultural productivity, and recreational activities.

B. Evaluate the impact to parcels with a future potential for mechanical irrigation.

C. Evaluate indirect or secondary impacts to land uses such as homes located upstream from creek and river crossings.

D. Evaluate the impact of sidings as well as the rail line itself.

E. Develop appropriate mitigation to address issues such as fencing, weed protection, cattle passes, and compensation for livestock killed by trains.

## 3. Biological and Aquatic Resources

The SEIS will:

A. Establish a baseline for diversity of species for the Tongue River Region. The SEIS will map existing habitats using aerial photography and will describe the existing resources in the Tongue River Valley, including vegetative communities, wildlife and wildlife movement (especially pronghorn, elk, and deer migration, and also the impact to the movement of smaller species such as turtles and other amphibians), fisheries, and Federally threatened or endangered species. Wildlife inventories will be verified through field surveys when and if acquisition of the project right-of-way is completed.

B. Include a Biological Assessment of species, updating information from *Tongue River II* as appropriate. Specifically, the assessment will investigate species identified by the U.S. Fish and Wildlife Service in the species list recently provided for this project.

C. Include a delineation of all prairie dog colonies to assist in determining the presence of the Black-Footed Ferret.

D. Include a survey of sensitive plant species, including the woolly twinpod, Barr's milkvetch, and nuttall desert-parsley.

E. Include wetland analysis for all wetlands, riparian areas, and waters of the U.S., including creek and river crossings.

F. Develop appropriate mitigation to address potential impacts to livestock

and to wildlife migration along the project corridor.

G. Develop appropriate mitigation to ensure adequate protection from the introduction and spread of noxious weeds.

H. Develop an appropriate mitigation plan for all wetlands and waters of the United States.

I. Develop appropriate mitigation plans for erosion control, riverbank stabilization, and the reclamation and replanting of cut/fill slopes.

## 4. Soils and Geology

The SEIS will:

A. Evaluate the potential for soil erosion during construction and long-term operation.

B. Evaluate soil composition and the need for blasting.

C. Evaluate the effect of blasting on the Tongue River Reservoir dam, and require a mitigation blasting plan if such activity is found to be necessary.

D. Evaluate the effect of topography changes on runoff and flooding.

E. Evaluate proposed engineering of bridges and culverts.

F. Develop any appropriate mitigation.

## 5. Water Quality

The SEIS will:

A. Include a hydrological analysis of the *Tongue River* and the potential impact of the construction and operation of *Tongue River III* upon it.

B. Evaluate the specific potential of erosion from cut/fill slopes to degrade the current water quality of the *Tongue River* and tributary streams, specifically as it relates to Total Maximum Daily Loads (TMDLs) established for these water bodies.

C. Develop any appropriate mitigation.

## 6. Cultural Resources

The SEIS will:

A. Evaluate potential impacts to cultural and paleontological resources.

B. Include the final terms of the Programmatic Agreement between the Montana State Historic Preservation Office, the Advisory Council on Historic Preservation, BLM, MT DNRC, the Corps, the Board, and TRRC. The Programmatic Agreement will provide a means for identifying and addressing impacts on cultural resources, including Native American resources.

C. Discuss the results of consultation with Native American tribal governments, specifically the Northern Cheyenne and the Crow, taking into consideration the following regulatory provisions and directives: The National Historic Preservation Act (as amended

in 1992); The American Indian Religious Freedom Act (as amended in 1993); The Religious Freedom Restoration Act (enacted in 1993); The Sacred Sites Executive Order (released in 1996).

D. Provide the results of consultation with representatives from the Northern Cheyenne and Crow tribes to solicit information about known properties, burials, or traditional use areas on or adjacent to *Tongue River III*.

E. Discuss the eligibility of the Spring Creek Archeological District for the National Register of Historic Places, and potential impacts to this resource resulting from construction and operation of *Tongue River III*.

## 7. Energy

The SEIS will evaluate potential impacts to energy resources, and develop any appropriate mitigation.

## 8. Air Quality

The SEIS will:

A. Evaluate construction-period dust emissions from project construction.

B. Evaluate the effect of dust emissions from the long-term operation of the railroad on local recreation areas, farms, and homes.

C. Evaluate particulate emission from locomotive operation, and potential air quality impacts on the Class I Northern Cheyenne Indian Reservation.

D. Develop any appropriate mitigation.

## 9. Noise and Vibration Effects

The SEIS will:

A. Evaluate the project's effect on local property owners, residences, and ranch operations.

B. Evaluate the project's effect on local recreational activities.

C. Evaluate the project's effect on livestock and wildlife.

D. If blasting is necessary for construction, evaluate the effect of such blasting and vibration for the project on the Tongue River Reservoir dam.

E. Develop any appropriate mitigation.

## 10. Socioeconomics

The SEIS will:

A. Using Census 2000 data, evaluate potential impacts of *Tongue River III* on local social and economic patterns derived from physical changes. More detailed analysis of socioeconomics can be addressed by the cooperating agencies in their own review process. This could include, as appropriate, potential impacts of the project on local population changes in terms of short-term and long-term employment; impacts of new students generated as a

result of construction workers moving into the region; increase in Taxable Value for each of the alternatives; any additional analysis conducted by BLM.

B. Develop any appropriate mitigation.

#### 11. Recreation

The SEIS will evaluate impacts to the Tongue River State Recreation Area, and develop any appropriate mitigation.

#### 12. Aesthetics

The SEIS will:

A. Evaluate the visibility of the project from the Tongue River State Recreation Area.

B. Evaluate the visibility of the project from county roads in the area.

C. Evaluate the visibility of the project and resulting impacts to aesthetics to local residents, Native Americans, hunters, recreational users, sightseers, etc.

D. Develop any appropriate mitigation.

#### 13. Environmental Justice

The SEIS will include analysis as required of potential environmental justice effects from construction and operation of the Western Alignment, particularly focused on impacts to Native Americans, including the Northern Cheyenne, and develop any appropriate mitigation. Pursuant to guidance provided by the Council on Environmental Quality, the preparation of the SEIS will include public outreach to ensure appropriate coordination with affected low-income and minority populations. The public outreach will ensure that affected communities have adequate opportunities for public participation and comment on the Draft SEIS.

### Section II

#### *Tongue River I and Tongue River II Tongue River I*

*Tongue River I* is TRRC's original application for construction and operation of 89 miles of railroad between Miles City, Montana, and two termini in Ashland, Montana, which was approved by the Board's predecessor agency in 1986.

The SEIS will:

A. Include a wetland analysis for all wetlands and waters of the U.S. including creek and river crossings because there was no requirement that one be done when the EIS in *Tongue River I* was prepared.

B. Update Biological Assessment information based on consultation with the U.S. Fish and Wildlife Service.

C. In consultation with the Montana State Historic Preservation Office, the

Advisory Council on Historic Preservation, BLM, MT DNRC, the Corps, and TRRC, finalize and implement an appropriate Programmatic Agreement which will apply to the entire line from Miles City to Decker, Montana.

D. As requested by MT DNRC, the Northern Cheyenne, and the Northern Plains Resource Council, provide a limited additional analysis of water quality to include a discussion of the designation of Otter Creek, and the upper and lower Tongue River as impaired water bodies by the state of Montana.

E. Evaluate effects on BLM property in the areas of wildlife habitat; vegetation; riparian/wetlands; livestock grazing; soil, water, and air; cultural resources; recreation; socioeconomic; access; wilderness; and, environmental justice.

F. Include an analysis of potential impacts to the sturgeon chub, and the sicklefin chub, and include mitigation to avoid construction during spawning/incubation periods.

G. Include additional analysis related to the proposed changes in the alignment that may result in potential impacts to the Miles City Fish Hatchery. The analysis will also consider changes to the hatchery, specifically the increase in the number of hatchery ponds and the initiation of a new recovery program for the pallid sturgeon.

#### *Tongue River II*

TRRC sought in *Tongue River II* to extend the rail line approved in *Tongue River I* another 41 miles from Ashland to Decker, Montana. In 1996, the Board approved *Tongue River II* via the Four Mile Creek Alternative.

The SEIS will:

A. Based on consultation with the Corps, update the existing wetland delineation and functional analysis information for all creek and river crossings to the extent necessary in connection with the Corps' permitting process.

B. Based on consultation with the U.S. Fish and Wildlife Service, update biological assessment information to the extent deemed necessary.

C. In consultation with the Montana State Historic Preservation Office, the Advisory Council on Historic Preservation, BLM, MT DNRC, the Corps, and TRRC finalize an appropriate Programmatic Agreement, which will apply to the entire line from Miles City to Decker, Montana.

D. As requested by the MT DNRC, the Northern Cheyenne, and the Northern Plains Resource Council, provide a limited analysis of water quality to

include a discussion of the designation of Hanging Woman Creek, and the upper and lower Tongue River as impaired water bodies by the state of Montana.

E. Include additional analysis, as required, of potential environmental justice effects from construction and operation of *Tongue River II* on *Tongue River III* and the Four Mile Creek Alternative, particularly focused on impacts to Native Americans, including the Northern Cheyenne.

### Section III

#### *Cumulative Effects*

Cumulative effects of the construction and operation of the entire line from Miles City to Decker, MT will be discussed in the SEIS. This cumulative impacts discussion will update the previous information contained in *Tongue River I* and *Tongue River II* to include Custer Forest timber sales projections, as well as a discussion of reasonably foreseeable developments, including BLM's recently approved management plan relating to the development of coal bed methane wells, as well as expanded coal mine development in Wyoming, new power plants construction in Wyoming and Montana, and the recently approved Dakota, Minnesota and Eastern rail line. In addition, more general information will be provided regarding future coal mine development in the Ashland, MT area and the air quality effects of the use of low sulfur coal in power production. Impacts to Native Americans will also be addressed.

By the Board, Victoria Rutson, Chief,  
Section of Environmental Analysis.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 03-21550 Filed 8-21-03; 8:45 am]

**BILLING CODE 4915-00-P**

### DEPARTMENT OF TRANSPORTATION

#### Surface Transportation Board

[STB Finance Docket No. 34388]

#### Union Pacific Railroad Company— Trackage Rights Exemption—Omaha Public Power District

Pursuant to a trackage rights agreement dated July 25, 2003,<sup>1</sup> between Union Pacific Railroad Company (UP)

<sup>1</sup> A redacted version of the trackage rights agreement between UP and OPPD was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. A protective order was served on August 14, 2003.

and Omaha Public Power District (OPPD), OPPD has agreed to grant to UP local trackage rights on OPPD's entire line of railroad between milepost 6.0 near Arbor, NE, and milepost 56.3 near College View, NE, a distance of approximately 56.65 miles.<sup>2</sup>

The transaction is scheduled to be consummated on January 1, 2004.

The purpose of the trackage rights is to permit UP to provide service to OPPD's Nebraska City Power Station and to other shippers located along the rail line.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it 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. 34388, 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 Robert T. Opal, General Commerce Counsel, 1416 Dodge Street, Room 830, Omaha, NE 68179.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: August 14, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**  
Secretary.

[FR Doc. 03-21298 Filed 8-21-03; 8:45 am]

**BILLING CODE 4915-00-P**

**DEPARTMENT OF THE TREASURY**

**Submission for OMB Review;  
Comment Request**

August 11, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before September 22, 2003 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545-0089.  
*Form Number:* IRS Form 1040NR.  
*Type of Review:* Revision.  
*Title:* U.S. Nonresident Alien Income Tax Return.

*Description:* Form 1040NR is used by nonresident alien individuals and foreign estates and trusts to report their income subject to tax and compute the correct tax liability. The information on the return is used to determine whether income, deductions, credits, payments, etc., are correctly figured. Affected public are nonresident alien individuals, estates, and trusts.

*Respondents:* Individuals or households, Business of other for-profit, Farms.

*Estimated Number of Respondents/Recordkeepers:* 309,170.

*Estimated Burden Per Respondent/Recordkeeper:*

Recordkeeping ..... 6 hr., 33 min.

Learning about the law or the form.	1 hr., 19 min.
Preparing the form .....	.6 hr., 28 min.
Copying, assembling, and sending the form to the IRS.	1 hr., 16 min.

*Frequency of Response:* Annually.  
*Estimated Total Reporting/Recordkeeping Burden:* 4,790,964 hours.

*OMB Number:* 1545-0123.

*Form Number:* IRS Form 1120 and Schedule D, H, N, and PH.

*Type of Review:* Extension.

*Title:* For 1120, U.S. Corporation Income Tax Return; Schedule D, Capital Gains and Losses; Schedule H, Section 280H Limitations for a Personal Service Corporation (PSC); Schedule N, Foreign Operations of the U.S. Corporations; and Schedule PH, U.S. Personal Holding.

*Description:* Form 1120 is used by corporations to compute their taxable income and tax liability. Schedule D (Form 1120) is used by corporations to report gains and losses from the sale of capital assets. Schedule PH (Form 1120) is used by personal holding companies to figure the personal holding company tax under section 541. Schedule H (Form 1120) is used by personal service corporations to determine if they have met the minimum distribution requirements of section 280H. Schedule N (Form 1120) is used by corporations that have assets in or business operations in a foreign country or a U.S. possession. The IRS uses these forms to determine whether corporations have correctly computed their tax liability.

*Respondents:* Business or other for-profit, Farms.

*Estimated Number of Respondent/Recordkeepers:* 1,990,783.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying assembling, and sending the form to the IRS
1120 .....	70 hr., 47 min .....	42 hr., 1 min .....	72 hr., 56 min .....	8 hr., 2 min.
1120-A .....	43 hr., 45 min .....	24 hr., 34 min .....	49 hr., 3 min .....	5 hr., 5 min.
Schedule D (1120) .....	6 hr., 56 min .....	3 hr., 55 min .....	6 hr., 3 min .....	32 min.
Schedule H (1120) .....	65 hr., 58 min .....	35 min .....	43 min .....	
Schedule N (1120) .....	3 hr., 35 min .....	1 hr., 7 min .....	3 hr., 6 min .....	32 min.
Schedule PH (1120) .....	15 hr., 18 min .....	6 hr., 12 min .....	8 hr., 35 min .....	32 min.

<sup>2</sup> UP indicates that the milepost designations of the end points do not reflect the actual length of the trackage rights segment because the trackage

rights segment includes two line segments with noncontiguous mileposts; a 5.3-mile segment from milepost 6.0 near Arbor to milepost 0.7 near

Nebraska City, and a connecting 51.35-mile segment from milepost 4.95 near Nebraska City to milepost 56.3 near College View.

*Frequency of Response:* Annually.  
*Estimated Total Reporting/Recordkeeping Burden:* 367,686,291 hours.  
*OMB Number:* 1545-0130.  
*Form Number:* IRS Form 1120S, Schedule D, and Schedule K-1.  
*Type of Review:* Revision.  
*Title:* Form 1120S, Income Tax Return for an S Corporation; Schedule D (Form 1120S), Capital Gains and Losses and

Built-In Gains; and Schedule K-1 (Form 1120S), Shareholder's Share of Income, Credits, Deductions, etc.  
*Description:* Form 1120S, Schedule D (Form 1120S), and Schedule K-1 (Form 1120S) are used by an S Corporation to figure its tax liability, and income and other tax-related information to pass through to its shareholders. Schedule K-1 is used to report to shareholders their share of the corporation's income,

deductions, credits, etc. IRS uses the information to determine the correct tax for the S corporation and its shareholders.  
*Respondents:* Business or other for-profit, Farms.  
*Estimated Number of Respondents/Recordkeepers:* 1,880,000.  
*Estimated Burden Hours Per Respondent/Recordkeeper:*

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying assembling, and sending the form to the IRS
1120 S .....	64 hr., 5 min .....	24 hr., 24 min .....	46 hr., 58 min .....	5 hr., 54 min.
1120 D (1120S) .....	10 hr., 2 min .....	4 hr., 31 min .....	9 hr., 32 min .....	1 hr., 20 min.
Schedule K-1 (1120S) .....	16 hr., 58 min .....	10 hr., 36 min .....	15 hr., 4 min .....	1 hr., 4 min.

*Frequency of Response:* Annually.  
*Estimated Total Reporting/Recordkeeping Burden:* 486,292,100 hours.  
*OMB Number:* 1545-0975.  
*Form Number:* Form 1120-W.  
*Type of Review:* Revision.

*Title:* Estimated Tax for Corporations.  
*Description:* Form 1120-W is used by corporations to figure estimated tax liability and the amount of each installment payment. Form 1120-W is a worksheet only. It is not to be filed with the Internal Revenue Service.

*Respondents:* Business or other for-profit.  
*Estimated Number of Respondents/Recordkeepers:* 900,000.  
*Estimated Burden Hours Per Respondent/Recordkeeper:*

Form	Recordkeeping	Learning about the law or the form	Preparing the form
1120-W .....	8 hr., 7 min. ....	1 hr., 0 min. ....	1 hr., 10 min.
1120-W, Schedule A (Part I) .....	22 hr., 43 min. ....	6 min. ....	28 min.
1120-W, Schedule A (Part II) .....	10 hr., 31 min. ....	35 min. ....	48 min.
1120-W, Schedule A (Part III) .....	6 hr., 13 min. ....	.....	6 min.

*Frequency of Response:* Annually.  
*Estimated Total Reporting/Recordkeeping Burden:* 9,316,190 hours.  
*Clearance Officer:* Glenn Kirkland (202) 622-3428, Internal Revenue Service, Room 6411-03, 1111 Constitution Avenue, NW., Washington, DC 20224.  
*OMB Reviewer:* Joseph F. Lackey, Jr. (202) 395-7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.  
*Dates:* Written comments should be received on or before September 22, 2003 to be assured of consideration.

*Respondents:* Business of other for-profit.  
*Estimated Number of Recordkeepers:* 50,000.  
*Estimated Burden Hours Recordkeeper:* 1 hour.  
*Estimated Total Recordkeeping Burden:* 50,000 hours.  
*OMB Number:* 1545-0950.  
*Form Number:* IRS Form 23.  
*Type of Review:* Extension.  
*Title:* Application for Enrollment to Practice Before the Internal Revenue Service.

**Lois K. Holland,**  
*Treasury PRA Clearance Officer.*  
 [FR Doc. 03-21536 Filed 8-21-03; 8:45 am]  
**BILLING CODE 4830-01-P**

**Internal Revenue Service**  
*OMB Number:* 1545-0945.  
*Regulation Project Number:* F1-255-82 NPRM and Temporary.  
*Type of Review:* Extension.  
*Title:* Registration Requirements With Respect to Debt Obligations.  
*Description:* The rule requires an issuer of a registration-required obligation and any person holding the obligation as a nominee or custodian on behalf of another to maintain ownership records in a manner which will permit examination by the IRS in connection with enforcement of the Internal Revenue laws.

*Description:* Form 23 must be completed by those who desire to be enrolled to practice before the Internal Revenue Service. The information on the form will be used by the Director of Practice to determine the qualifications and eligibility of applicants for enrollment.  
*Respondents:* Individuals or households, Federal Government.  
*Estimated Number of Respondents:* 2,400.  
*Estimated Burden Hours Per Respondent:* 1 hour.  
*Estimated Total Reporting Burden:* 2,400 hours.  
*OMB Number:* 1545-1538.

**DEPARTMENT OF THE TREASURY**

**Submission for OMB Review; Comment Request**

August 13, 2003.  
 The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the

*Notice Number:* Notice 97-34.

*Type of Review:* Extension.

*Title:* Information Reporting on Transactions With Foreign Trust and on Large Foreign Gifts.

*Description:* This notice provides guidance on the foreign trust and foreign gift information reporting provisions contained in the Small Business Job Protection Act of 1996.

*Respondents;* Business or other for-profit, Individuals or households, Not-for-profit institutions.

*Estimated Number of Respondents/Recordkeepers:* 5,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:* 45 minutes.

*Frequency of Response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 3,750 hours.

*OMB Number:* 1545-1556.

*Regulation Project Number:* REG-251985-96 Final.

*Type of Review:* Extension.

*Title:* Source of Income From Sales of Inventory Partly From Sources Within a Possession of the United States; Also, Source of Income Derived From Certain Purchases From a Corporation Electing Section 936.

*Description:* The information requested in section 1.863-3(f)(6) is necessary for the Service to audit taxpayers' returns to ensure taxpayers are properly determining the source of their income.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents:* 200.

*Estimated Burden Hours Per Respondent:* 2 hours and 30 minutes.

*Estimated Total Reporting Burden:* 500 hours.

*OMB Number:* 1545-1840.

*Regulation Project Number:* REG-107618 NPRM and Temporary.

*Type of Review:* Extension.

*Title:* Automatic Extension of Time to File Certain Information Returns and Exempt Organizations Returns.

*Description:* The regulations provide an automatic extension of time to file certain information returns and exempt organization returns. The regulations remove the requirement for a signature and an explanation to obtain an automatic extension of time to file information returns; they also remove the requirement for a signature and an explanation to obtain an automatic extension of time to file exempt organization returns. The regulations affect taxpayers required to file certain information returns and/or exempt organization returns who need an extension of time to file.

*Respondents:* Business or other for-profit, Not-for-profit institutions.

*Estimated Number of Respondents:* 1.

*Estimated Burden Hours Per*

*Respondent:* 1 hour.

*Estimated Total Reporting Burden:* 1 hour.

*Clearance Officer:* Glenn Kirkland (202) 622-3428, Internal Revenue Service, Room 6411-03, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Joseph F. Lackey, Jr. (202) 395-7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Treasury PRA Clearance Officer.*

[FR Doc. 03-21537 Filed 8-21-03; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the State of California)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 7 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

**DATES:** The meeting will be held Monday, September 23rd, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mary Peterson O'Brien at 1-888-912-1227, or 206-220-6098.

**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 7 Taxpayer Advocacy Panel will be held Monday, September 23rd, 2003 from Noon Pacific Time to 1 p.m. Pacific Time via a telephone conference call. 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) 220-6098, or write to Mary Peterson O'Brien, TAP Office, 915 2nd Avenue, MS W-406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting

must be made with Mary Peterson O'Brien. Ms. O'Brien can be reached at 1-888-912-1227 or (206) 220-6098.

The agenda will include the following: Various IRS issues.

**Deryle J. Temple,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 03-21605 Filed 8-21-03; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF VETERANS AFFAIRS

### Privacy Act of 1974; Notice of Matching Program

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a recurring computer program matching Internal Revenue Service (IRS) records with VA pension and parents' dependency and indemnity compensation (DIC) records.

The purpose of this match is to compare income status as reported to VA with records maintained by IRS. The legal authority for this match is section 6103(l)(7) of the Internal Revenue Code (26 U.S.C. 6103(l)(7)) and 38 U.S.C. 5317.

VA plans to match records of veterans, surviving spouses and children who receive pension, and parents who receive DIC, with data from the IRS income tax return information as it relates to unearned income.

VA will use this information to adjust VA benefit payments as prescribed by law. The proposed matching program will enable VA to ensure accurate reporting of income.

*Records To Be Matched:* VA records involved in the match are the VA system of records, Compensation, Pension, Education and Rehabilitation Records—VA (58 VA 21/22). The IRS records will come from the Wage and Information Returns (IRP) Processing File, Treas/IRS 22.061, hereafter referred to as the Information Return Master File (IRMF), as published at 66 FR 63797 (December 10, 2001) through the Disclosure of Information to Federal, State and Local Agencies (DIFSLA) program. In accordance with Title 5 U.S.C. subsection 552a(o)(2) and (r), copies of the agreement are being sent to both Houses of Congress and to the Office of Management and Budget (OMB).

This notice is provided in accordance with the provisions of the Privacy Act of 1974 as amended by P.L. 100-503.

**DATES:** The match will start no sooner than 30 days after publication of this

Notice in the **Federal Register**, or 40 days after copies of this Notice and the agreement of the parties are submitted to Congress and OMB, whichever is later, and end not more than 18 months after the agreement is properly implemented by the parties. The involved agencies' Data Integrity Boards (DIB) may extend this match for 12 months provided the agencies certify to their DIBs within three months of the ending date of the original match that the matching program will be conducted without change and that the matching program has been conducted in

compliance with the original matching program.

**ADDRESSES:** Mail or hand-deliver written comments to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1158, 810 Vermont Avenue, NW., Washington, DC 20420, between 8 a.m. and 4:30 p.m., Monday through Friday except holidays.

**FOR FURTHER INFORMATION CONTACT:** Paul Trowbridge (212B), (202) 273-7218.

**SUPPLEMENTARY INFORMATION:** This information is required by Title 5 U.S.C. 552a(e)(12), the Privacy Act of 1974. A copy of this notice has been provided to both Houses of Congress and OMB.

Approved: August 4, 2003.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

[FR Doc. 03-21566 Filed 8-21-03; 8:45 am]

**BILLING CODE 8320-01-M**

---

# Corrections

---

Federal Register

Vol. 68, No. 163

Friday, August 22, 2003

---

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

---

---

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 73****[Docket No. FAA-2003-13850; Airspace  
Docket No. 02-AEA-19]****RIN 2120-AA66****Proposed Amendment of Restricted  
Areas R-5802A and B; and  
Establishment of Restricted Areas R-  
5802C, D, and E, Fort Indiantown Gap,  
PA***Correction*

In proposed rule document 03-20772 beginning on page 48579 in the issue of

Thursday, August 14, 2003, make the following correction:

**§73.58 [Amended]**

On page 48581, in the first column, in §73.58, under the paragraph titled, “**R-5802E Fort Indiantown Gap, PA [New]**,” in the second line, “long. 74°42’59” W.” should read “long. 76°42’59” W.”.

[FR Doc. C3-20772 Filed 8-21-03; 8:45 am]

BILLING CODE 1505-01-D



# Federal Register

---

**Friday,  
August 22, 2003**

---

## **Part II**

### **Department of Health and Human Services**

---

**Centers for Medicare and Medicaid  
Services**

---

**42 CFR Parts 409, 417, and 422  
Medicare Program; Modifications to  
Managed Care Rules; Final Rule**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Parts 409, 417, and 422

[CMS-4041-F]

RIN 0938-AK71

### Medicare Program; Modifications to Managed Care Rules

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule responds to comments that we received on a proposed rule that was published in the **Federal Register** on October 25, 2002. It implements certain provisions relating to the Medicare+Choice (M+C) program that were enacted in the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection (BIPA) Act of 2000. It also addresses comments on, and makes revisions to, regulations that were discussed in the October 2002 proposed rule that were based on M+C program experience and feedback from M+C organizations.

**EFFECTIVE DATES:** This final rule is effective on September 22, 2003.

**FOR FURTHER INFORMATION CONTACT:** Tony Hausner, (410) 786-1093.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

##### A. *Balanced Budget Act of 1997*

Section 4001 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105-33), added sections 1851 through 1859 to the Social Security Act (the Act) establishing a new Part C of the Medicare program, known as the Medicare+Choice (M+C) program. Under section 1851(a)(1) of the Act, every individual entitled to Medicare Part A and enrolled under Part B, except for individuals with end-stage renal disease, could elect to receive benefits either through the original Medicare fee-for-service program or a M+C plan, if one was offered where he or she lived.

The primary goal of the M+C program was to provide Medicare beneficiaries with a wider range of health plan choices through which to obtain their Medicare benefits. The BBA authorized a variety of private health plan options for beneficiaries, including both the traditional managed care plans (such as those offered by health maintenance organizations (HMOs)) that had been offered under section 1876 of the Act, and new options that were not

previously authorized. Three types of M+C plans were authorized under the new Part C, as follows:

- M+C coordinated care plans, including HMO plans (with or without point-of-service options), provider-sponsored organization (PSO) plans, and preferred provider organization (PPO) plans.
- M+C medical savings account (MSA) plans (combinations of a high-deductible M+C health insurance plan and a contribution to an M+C MSA).
- M+C private fee-for-service plans.

##### B. *Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999*

The Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106-113) amended the M+C provisions of the Act. In a final rule that we published in the **Federal Register** on June 29, 2000 (65 FR 40170), we invited comments on many of the BBRA amendments. We noted in the October 25, 2002, proposed rule that we would respond to the comments relating to these BBRA provisions in this final rule.

We received comments from five organizations. Most of the comments were supportive of the changes brought about by the BBRA amendments and do not require our response. Most of the other comments addressed provisions other than the BBRA amendments. Rather they focused on the provisions of the final rules dealing with the BBA published on June 29, 2000. The following discussion responds to the comments made on BBRA.

*Comment:* Two major organizations commented on risk adjustment. One organization expressed concern that the collection of encounter data from physicians would be burdensome to physicians. A second organization indicated that they did not want to see a delay in implementation of the risk adjustment schedule as contained in BBRA.

*Response:* Legislation has determined the specifics of the schedules that CMS has implemented as to risk adjustment and the collection of encounter data. Section 511(a) of the BBRA amended section 1853(a) of the Act by providing for a risk adjustment transition schedule for calendar years (CY) 2000 and 2001 that differed from the one that we had provided as part of our risk adjustment methodology. The schedule was again modified in the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA). Other BBRA provisions were also changed by the BIPA.

The final rule published on March 22, 2002 revised the regulations to reflect the changes to the BBRA provided in sections 502, 511, and 512 of the BIPA.

##### C. *Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000*

The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (the BIPA) (Pub. L. 106-554), enacted December 21, 2000, further amended the M+C provisions of the Act. The final rule published on March 22, 2002 amended the regulations to reflect changes made by certain provisions of the BIPA, including those discussed in section I.B of this preamble, that amended provisions enacted in the BBRA. We published a proposed rule in the **Federal Register** on October 25, 2002 (67 FR 65672) that would revise M+C regulations to implement sections 605, 606, 611, 612, 615, 617, 620, 621, and 623 of the BIPA. In the October 2002 proposed rule, we also proposed modifying certain M+C regulatory provisions in response to program experience and feedback from M+C organizations.

##### D. *Organization of the Preamble*

The discussion of various policy issues in this final rule corresponds with the discussion of regulatory revisions that were presented in the October 2002 proposed rule. For the convenience of the reader, the analysis of comments and our responses are integrated with the discussion of each issue.

To accommodate the preamble's organization, we modified the numbering scheme accordingly. For example, roman numeral II is now Analysis of and Responses to Public Comments (instead of Provisions of this Proposed Rule), roman numeral III is Provisions of this Final Rule, and so forth.

We have also included a new section (II-A-10) discussing the fact that this final rule makes revisions to the regulations text to reflect changes to the statute made by section 616, which focuses on eliminating health disparities in the M+C program. We have provided a good cause statement for the inclusion of these revisions in this final rule to waive the requirement for notice and comment. As in the case of the revisions to the regulations made in the final rule published on March 22, 2002, notice and comment are not necessary since these revisions have no legal effect. Rather, they simply amend the text of the regulations to reflect statutory provisions whose applicability is

unaffected by these changes in regulation text. Although we are still sorting through implementation issues associated with this provision, we wanted to ensure that Congressional intent on this issue is reflected in M+C regulations.

In addition, we have made some minor revisions to Subpart O in an attempt to clarify information concerning our sanction authority. These changes do not add any new requirements, but serve to improve the regulatory language to more clearly affect the intent of the existing regulations (and statutory intent). We discuss these changes in the preamble and have modified the regulations accordingly.

## II. Analysis of and Responses to Public Comments

In addition to the Response to Comments made above in reference to the BBRA, we received 10 letters containing over 100 specific comments. Comment letters were received from trade associations that represent providers and consumers, managed care organizations, and one individual. Below is a list of the areas that generated the most concern.

- Part 422 Subpart M—Grievances, Organization Determinations, and Appeals
- Part 422 Subpart C—Benefits and Beneficiary Protections
- Part 422 Subpart B—Eligibility, Election, and Enrollment
- Part 417 Subpart L—Medicare Contract Requirements.

### A. Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000

#### 1. Revision of Payment Rates for End-Stage Renal Disease (ESRD) Patients Enrolled in Medicare+Choice Plans

Section 605(a) of the BIPA amended section 1853(a)(1)(B) of the Act by requiring us to provide for appropriate adjustments to the M+C ESRD payment rates, effective January 1, 2002, to reflect the demonstration rate (including the risk adjustment methodology associated with the demonstration rate) of the social health maintenance organization ESRD capitation demonstration. This demonstration assessed whether it would be feasible to allow Medicare ESRD patients of all ages to enroll in M+C plans and to test risk-adjusted capitation payments for ESRD beneficiaries.

Before January 1, 2002, M+C ESRD capitation payments were based on State level base rates that were not risk-adjusted. The base payment rates were

based on a base year (1997) amount that represented 95 percent of projected State average fee-for-service costs, as determined at that time.

Under section 605(c) of the BIPA, we were required to publish for public comment a description of the adjustments we proposed to make in accordance with section 605(a) of the BIPA. We published a proposed notice on May 1, 2001 (66 FR 21770) soliciting comments on the proposed adjustments. Section 605(c) of the BIPA further required us to publish these adjustments in final form so that the amendment made by section 605(a) of the BIPA would be implemented consistent with section 605(b) of the BIPA (which provided that the adjustments were to become effective with payments made for January 2002). We published this final notice in the **Federal Register** on October 1, 2001 (66 FR 49958). The foregoing process was separate from this rulemaking. In the October 2002 proposed rule, however, we proposed revisions to § 422.250(a)(2)(i)(B) to reflect our approach to implementing the requirements of section 605(a) of the BIPA.

The new ESRD payment methodology set forth in the final notice published on October 1, 2001—

- Increased the ESRD base payment rate for CY 2002 by 3 percent. We determined in the final notice that a 3 percent increase in the base rate was the most appropriate proxy for 100 percent of the estimated per capita fee-for-service expenditures for ESRD beneficiaries, and the most appropriate way to reflect the demonstration rates; and
- Adjusted State per capita rates by age and sex factors, in order to reflect differences in costs among ESRD patients.

These adjustment factors and rates for CY 2002 for enrollees with ESRD can be found on our Web site at <http://www.cms.gov/stats/hmorates/aapccpg.htm#2002rates>.

For the purpose of M+C payment, ESRD beneficiaries include all beneficiaries with ESRD, whether entitled to Medicare because of ESRD, disability, or age. Under the new M+C ESRD payment methodology published on October 1, 2001, rates would continue to include the costs of beneficiaries with Medicare as Secondary Payer (MSP) status. (Costs to Medicare of M+C ESRD enrollees with MSP status do not include payments made by other primary payers such as employer group health plans or other insurers.)

Several organizations commented on the revision of § 422.250(a)(2)(i).

*Comment:* Several commenters believe that the proposed revision to ESRD rates at § 422.250(a)(2)(i) should include payments made by primary payers other than Medicare, such as employer group health plans or other insurers. Since the M+C ESRD rates include the costs of beneficiaries with Medicare as Secondary Payer (MSP) status but exclude payments made by other primary payers such as employer group health plans or other insurers, the M+C ESRD rates are artificially low and do not reflect the actual health care costs. Two commenters also contended that the proposed payment methodology appears to be contrary to the provisions set forth in section 605(a) of the BIPA, which requires us to “provide for appropriate adjustments to the M+C ESRD payment rates \* \* \* to reflect the demonstration rate of the social health maintenance organization ESRD capitation demonstration.” These commenters refer to a statement in the proposed Notice that the Demonstration rates were about 20 percent over rates paid outside the Demonstration because beneficiaries with MSP were not allowed to enroll in the Demonstration. The commenters conclude that the revisions to the ESRD payment methodology will significantly decrease the payment rates for M+C ESRD enrollees.

*Response:* As we stated in the October 1, 2001 final notice, we recognize that MSP for M+C ESRD enrollees is an issue. We noted that we would explore options within our payment system for addressing MSP status while proceeding to implement in CY 2002 the 3 percent base rate increase and the age and sex adjusters.

The ESRD Demonstration did not allow ESRD beneficiaries with MSP to enroll, and thus these beneficiaries were excluded from calculation of Demonstration payment rates. We are unable to exclude from the M+C program any beneficiaries with MSP who develop ESRD. Thus, we had to find a way to adapt the ESRD demonstration methodology to this different population. The provision for “adjustments” to “reflect” the demonstration rates and methodology does not mean that we must necessarily pay the same amount where the applicable circumstances, in this case the presence of beneficiaries with MSP, are different.

To assess whether the proposed M+C ESRD payment rates would increase or decrease payments to M+C organizations, the appropriate comparison would be M+C ESRD rates in effect prior to 2002, not the rates paid the ESRD Demonstration sites. The M+C

ESRD rates in effect prior to CY 2002 included the costs of beneficiaries with MSP, and we continued this approach. Two commenters are not correct in stating that the proposed M+C ESRD payment rates will significantly decrease payments to M+C organizations. In fact, the base rates were increased 3 percent under the method effective CY 2002. As we stated in the final notice, given current enrollment restrictions, we estimate that the age- and sex-adjusted average ESRD payment per beneficiary will result in a significant increase in payments to M+C organizations for their ESRD enrollees.

Accordingly, we are retaining the language we proposed which reflects the methodology we adopted through the 2001 notice process.

## 2. Permitting Premium Reductions as Additional Benefits Under Medicare+Choice Plans

Section 606 of the BIPA amended section 1854(f)(1) of the Act to permit M+C organizations to elect to reduce or eliminate standard Part B premiums for their M+C Medicare enrollees, as an additional benefit, if the M+C organization has an adjusted excess amount, as defined in § 422.312(a)(2), for that plan in a contract year, beginning in CY 2003. Under section 606 of the BIPA, M+C organizations can elect to accept lower payments from us and apply 80 percent of the reduction to reduce the standard Part B premiums of M+C beneficiaries enrolled in that plan. The amount of the reduction in payments to the M+C organizations may not exceed 125 percent of the Medicare standard Part B premium rate set by us for that year, which is the amount that would result in eliminating the average enrollee's liability for the Part B premium entirely. The reduction must be applied uniformly to all similarly situated enrollees of the M+C plan.

In addition, section 606 of the BIPA required that the list of information made available to each enrollee electing an M+C plan must also include a description of any reduction in the Part B premiums. We proposed revising § 422.2, § 422.111(f), § 422.250(a)(1), and § 422.312 to reflect these provisions in the regulations. We received one comment in support of these regulations and are finalizing them as proposed.

## 3. Payment of Additional Amounts for New Benefits Covered During a Contract Term

Section 611 of the BIPA amended sections 1852(a)(5) and 1853(c)(7) of the Act with the intent of limiting the financial impact on M+C organizations of new coverage requirements adopted

by the Congress. Before the enactment of the BIPA, section 1852(a)(5) provided that if a national coverage determination (NCD) of the Secretary which took effect after M+C payment rates were announced for a particular year, and that NCD would result in "a significant change in the costs to a Medicare+Choice organization," M+C organizations were not required to cover them under their contracts, but the services were instead paid for on a fee-for-service basis through our fiscal intermediaries or carriers, until the next annual M+C payment announcement is made following the coverage change. Under the pre-BIPA version of section 1853(c)(7) of the Act, if an NCD resulted in "significant" costs, we were required to "adjust appropriately" capitation payments to reflect the new costs.

Section 611 of BIPA extended these provisions to changes in coverage resulting from legislation, in addition to those resulting from NCDs. We proposed revisions to § 422.109 to reflect these amendments. We received several comments on our proposed revised regulations.

*Comment:* Several commenters expressed concern that people enrolled in M+C organizations may not understand that new benefits or services available as a result of a national coverage determination (NCD) or legislative change in benefits may be paid in a different manner than other covered benefits when we determine that the costs of NCDs or legislative changes in benefits are "significant." The commenters suggested that we publicize when new coverage is available, require M+C organizations to notify their members of the availability of the new benefits or services, and require M+C organizations to notify their members about the manner in which Medicare coverage and payment would take place. It was recommended that the notification should include a clear explanation of whether, and how much, the beneficiary might have to pay for the benefit or service until it is included in the M+C organization's capitation payment.

*Response:* We will continue to require M+C organizations to notify plan members when there is an NCD. If the NCD meets the "significant cost" threshold when the coverage is not included in the services, M+C organizations must cover the NCD under their contract in exchange for a monthly capitation payment. The M+C organization must notify plan members that original Medicare fee-for-service cost-sharing rules apply. M+C organizations are required to include an explanation of new NCDs in their next

regularly scheduled beneficiary communication. If the new NCD or legislative change in benefits meets the "significant cost" threshold per § 422.109(a), the written explanation to beneficiaries about the new coverage will include the fact that the service will be paid in accordance with original Medicare payment rules and will include information on financial liability enrollees will have.

*Comment:* One commenter suggested that the final rule require M+C organizations to provide a statement in their *Summary of Benefits* that new Medicare benefits will be paid under traditional Medicare. It was also suggested that an explanation of the method by which enrollees in an M+C plan can access new benefits and services be included in the model *Evidence of Coverage*.

*Response:* It would be misleading to state that any new Medicare benefits would be paid under traditional Medicare rules. Unless new benefits meet the "significant" cost threshold, the M+C organization is required to cover them under its contract in exchange for its capitation payment. As stated above, M+C organizations are already held responsible for notifying enrollees of new coverage and of any cost sharing liability related to a new service, if the new service meets the "significant cost" threshold. Therefore, we do not believe it is feasible or even necessary to include the notification with respect to specific NCDs in the standardized *Summary of Benefits* or the annual *Evidence of Coverage*, because NCDs can be effective at any time during the year. We believe our current policy of having M+C organizations inform enrollees of NCDs when they occur both protects beneficiaries and prevents confusion.

*Comment:* One commenter suggested that we explain, in our program memoranda on new benefits, the procedures for direct reimbursement by the fiscal intermediary and the carrier in cases that meet the "significant cost" threshold and therefore are not covered by the M+C organization.

*Response:* We will make every effort to provide the suggested explanation in program memoranda on new benefits, if direct reimbursement by fiscal intermediaries and carriers is required because the new coverage meets the "significant cost" threshold. However, because program memoranda about new benefits are sometimes released independent of, and prior to, a determination that the new benefits meet the "significant cost" threshold described in § 422.109(a), it is not always possible to include such an

explanation in these program memoranda.

*Comment:* One commenter requested that we clarify that enrollees in an M+C plan are entitled to receive a new benefit if it is medically necessary, and that the M+C organization is responsible for ensuring access to, but not necessarily payment for, all new benefits.

*Response:* In accordance with section 1852 of the Act and regulations at § 422.101, M+C organizations must provide coverage of all Medicare-covered benefits that are available to beneficiaries residing in the plan's service area by furnishing, arranging for, or making payment for the services.

If an NCD or legislative change in benefits *does not* meet the "significant cost" threshold described in § 422.109(a), the M+C organization is required to provide coverage of the NCD or legislative change in benefits by furnishing, arranging for, or making payment for the services as of the effective date stated in the NCD or specified in the legislation. The M+C organization must also assume risk for the costs of that service or benefit as of the effective date stated in the NCD or specified in the legislation.

If an NCD or legislative change in benefits *does* meet the "significant cost" threshold described in § 422.109(a), the M+C organization must provide coverage of the NCD or legislative change in benefits by furnishing or arranging for the NCD service or legislative change in benefits. However, the M+C organization is not required to pay or assume risk for the costs of that service or benefit until the contract year for which payments are adjusted to take into account the cost of the NCD service or legislative change in benefits. Medicare fee-for-service payment for the service is in addition to the capitation payment to the M+C organization and made directly by the fiscal intermediary and carrier to the M+C organization (or its designee, which may be the provider) in accordance with original Medicare payment rules, methods, and requirements.

*Comment:* One commenter recommended that we include the total costs resulting from all NCDs and legislative changes in benefits when making the "significant cost" determination. The commenter suggested that, if there is insufficient data for us to develop a reasonably reliable cost estimate for any NCD or legislatively mandated coverage, we should conclude that the costs for that new coverage have not been included in current M+C rates and that Medicare

fee-for-service payment should be available for such coverage.

*Response:* We agree with the commenter's first point that several NCDs or legislative changes in benefits that do not individually trigger the existing regulatory definition of "significant" could potentially impose a greater burden than a single change that meets this definition. It would not be practical, however, to attempt to aggregate the costs of NCDs or statutory coverage changes during the "transition" year governed by section 1852(a)(5) of the Act, before capitation payments are "adjust[ed] appropriately" by us in the next payment announcement as required under section 1853(c)(7) of the Act. In part, this is because it would not be clear whether any aggregate test has been met until the last NCD or legislative change in benefits to be aggregated is issued. By that time, it would be too late to make any adjustment with respect to the M+C organization's obligation to cover earlier NCDs.

More importantly, the period prior to an adjustment in capitation rates is by definition "temporary" and limited to a period of less than 12 months. We believe that costs that may not be "significant" when the M+C organization knows they are being incurred for a temporary period of a few months would become "significant" if left unaccounted for in future payments indefinitely. Accordingly, we believe that it is reasonable to adopt a different interpretation of "significant" for purposes of deciding under section 1852(a)(5) of the Act whether to make temporary fee-for-service payments than for purposes of deciding whether, under section 1853(c)(7), to permanently "adjust appropriately" capitation payments. Given the temporary nature of partial year costs, we believe that the existing definition of significant costs in § 422.109(c) is appropriate for purposes of deciding whether to pay for services on a fee-for-service basis until an adjustment can be made to capitation payments. We believe that an M+C organization could bear the cost of any individual NCD or legislative change that does not meet this definition for the limited period of time involved prior to an appropriate adjustment being made to capitation rates.

However we believe that costs of NCDs and legislative changes that may not be significant when only in place for a few months could, when considered in the aggregate, be quite significant if left unaccounted for indefinitely in future capitation payments. Thus, in response to the commenters suggestion that the costs of NCDs and legislative

changes be aggregated, we are providing for a different definition of "significant" costs to be used for purposes of the determination as to whether to make an adjustment under section 1853(c)(7) than applies for purposes of whether to pay on a fee-for-service basis under section 1852(a)(5) of the Act. We have revised the definition of significant cost (which was in § 422.109(c), but is now in § 422.109(a)) to provide that, for purposes of determining whether to make an adjustment under § 422.256, the tests in the definition of "significant cost" are applied to the aggregate costs of all NCDs and legislative changes in benefits made in the contract year. Under this test, the "average cost" of every NCD and legislative change in benefits would be added together. If the sum of all these average amounts exceeds the threshold under § 422.109(a)(1), then an adjustment to payment will be made under § 422.256 to reflect these costs. Alternatively, if the costs of the NCDs and legislative changes in benefits, in the aggregate, exceed the level set forth in § 422.109(a)(2), an adjustment to payment will be made under § 422.256.

We note that even when the "significant cost" threshold has been met under the existing definition, the current methodology for making the adjustment required under section 1853(c)(7) of the Act does not result in any adjustment in counties paid based on the minimum update rate (the so-called "2 percent minimum update" counties). The annual growth rate used to update M+C rates each year includes estimates of expenditures for new mid-year benefits. However, according to section 1853(c) of the Act, our Office of the Actuary uses the annual growth rate to update only the floor and blended rates, so the minimum 2 percent update rate does not reflect the costs of new benefits effective in the middle of the previous payment year. The impact is substantial because 64 percent of the 100 counties with the highest M+C enrollment in 2002 received the minimum update rate in the last three years, 2001 through 2003. The result is that M+C organizations have paid for almost all new benefits out of capitation payments that do not include payment for these new benefits.

We believe the Congress intended, in enacting section 1853(c)(7) of the Act, that payments to M+C organizations be adjusted to reflect the costs of new benefits when they are added through an NCD or legislative change. Since this does not occur under the current approach in the case of 2 percent counties, we are changing our method of making adjustments under section

1853(c)(7) of the Act. When the costs of NCDs and statutory coverage changes in a given year are determined to be "significant" under the new definition described above, these costs will be included in an "NCD adjustment factor" that will be added to the county rates in counties that will receive a 2 percent update. In other words, the 2 percent update will be applied to the newly adjusted rates. (The assumption is that the floor and blended rates are appropriately adjusted for new benefits because they are increased by the M+C growth rate that includes NCD and legislative changes in benefits estimates.) The "NCD adjustment factor" will be applied prospectively to the rate calculation for the year following the year after the NCDs and legislative benefit changes are effective. For example, NCDs and legislative changes determined to be significant in 2003 will be aggregated, and the "NCD adjustment factor" computed will be used to adjust payments for 2005. We have modified § 422.256(b) to codify in regulation this additional NCD adjustment factor adjustment to the M+C capitation rates.

*Comment:* One commenter supported the proposed rule and also asked whether the term "significant" would be defined as currently provided for in M+C regulations with a defined cost threshold.

*Response:* As discussed above, the proposed language at § 422.109(a) defining "significant cost" as it relates to the decision whether to make fee-for-service payment pursuant to section 1852(a)(5) of the Act is being retained.

As discussed above we are revising § 422.109 to provide that this definition will be applied to NCDs and legislative changes in benefits in the aggregate for purposes of the adjustments under § 422.256

#### 4. Restriction on Implementation of Significant New Regulatory Requirements Midyear

Section 612 of the BIPA amended section 1856(b) of the Act to prohibit us from imposing significant new regulatory requirements on an M+C organization or plan, other than at the beginning of a calendar year. Comments on this issue and our responses follow.

*Comment:* One commenter asked that we use the term "requirements" instead of "regulations" in § 422.521. The commenter's reasoning for suggesting the use of "requirements" was that most documents from our agency that impose significant new cost or burdens are not in the form of regulations but are in the form of memoranda, guidance, manual chapters and the like.

*Response:* We agree with the commenter that requirements are often imposed through vehicles other than regulations. Therefore, in response to this comment, we are revising § 422.521 to extend the prohibition in section 612 of the BIPA to all requirements, not just those imposed in regulations. We note that we had previously made this commitment administratively.

*Comment:* One commenter requested that we define significant cost or burden as it is used in § 422.521. The commenter also suggested that we base the definition on cost or operational assessments conducted by us and by M+C organizations.

*Response:* We generally agree with the commenter and will explore methods to better define the meaning of "cost and burden" as those terms are used in § 422.521. However, we are leaving the text of § 422.521 unchanged.

#### 5. Election of Uniform Local Coverage Policy for a Medicare+Choice Plan Covering Multiple Localities

Section 615 of the BIPA amended section 1852(a)(2) of the Act by adding a section that allows M+C organizations to achieve greater consistency of benefits for M+C plans covering multiple localities. In providing Medicare covered benefits to its enrollees, each M+C organization ordinarily must comply with, among other things, written coverage decisions of local carriers and intermediaries with jurisdiction for claims in the geographic area in which the services are covered under the M+C plan. Some M+C organizations have plans that cover a large area, either a State or multiple counties in a State. Section 615 of the BIPA allows M+C organizations that offer a plan in a geographic area to which more than one local coverage policy applies, to uniformly apply the local coverage policy that is most advantageous to M+C enrollees in the plan. We will make the final determination as to which local coverage policy is most beneficial to M+C enrollees.

By electing to use this uniform coverage policy, M+C organizations can benefit from economies of scale when printing and distributing marketing materials and descriptions of benefits for their M+C plans. This policy will also enable M+C organizations to standardize coverage decisions and provider contracts across entire plans, rather than having different policies apply in different geographic areas of the same plan. We received three comments on our proposed revision.

*Comment:* Two commenters suggested that we apply the newly allowed

uniform coverage policy rule across all M+C plans offered by an M+C organization and/or its subsidiaries. One commenter argued that such an expansion of the rule would serve both consistency and uniformity, as well as provide for significant cost-savings for multi-state M+C organizations.

*Response:* Section 615 of the BIPA is clear in restricting our authority to permit an M+C organization's election of a uniform local coverage policy to a specific plan offered by an M+C organization. The statute does not permit application of the uniform local coverage policy across different plans offered by a single M+C organization and/or its subsidiaries.

*Comment:* One commenter requested further guidance on the criteria that we will use to determine the local coverage policy that is most beneficial to M+C enrollees in a plan whose service area encompasses more than one local coverage policy area. The commenter also suggested allowing the M+C organization to identify the local coverage policy that it believes would be most beneficial to its enrollees. The M+C organization would notify us, providing justification for the local medical review policy selected as the most beneficial to its enrollees. If we did not disagree within 60 days of receipt of notice, the M+C organization's proposal would be deemed approved.

*Response:* We agree that clarification is needed for both the criteria that we will use in evaluating the local coverage policies that are most beneficial to M+C enrollees and the time frame within which that evaluation will occur. Since the benefits covered by a plan are essential to preparation of the adjusted community rate (ACR) proposal related to that plan (see § 422.306), an M+C organization proposing to adopt a uniform coverage policy for a plan must notify us 60 days prior to the date the ACR proposal for that plan is due. We believe that a 60-day window will permit us sufficient time to fully evaluate the proposed uniform coverage policy election related to a plan, and to notify the M+C organization of our decision, while still allowing sufficient time for the M+C organization to prepare and submit its ACR proposal in a timely manner. Therefore, we have added a new section § 422.101(b)(3)(i) which explains the time frame within which an M+C organization must notify us of its intent to adopt a uniform local coverage policy for a plan. In addition, we have added § 422.101(b)(3)(ii) which establishes the factors we will consider to evaluate the local coverage policy that is most beneficial to M+C enrollees. We, in turn, will notify the M+C

organization of our determination as to the most advantageous local coverage policy. The statute is clear in requiring us "to identify" the most advantageous local coverage policy; we therefore do not believe we could take the passive role of deeming approval through a non-response. Additionally, a positive response from us ensures that there can be no ambiguity as to which of the competing local coverage policies actually applies to all enrollees of the plan.

#### 6. Medicare+Choice Program Compatibility With Employer or Union Group Health Plans

Section 617 of the BIPA amended section 1857 of the Act by adding a new subsection (i), which provides us broad authority to waive or modify requirements that hinder the design of, the offering of, or the enrollment in M+C plans under contracts between M+C organizations and employers, labor organizations, or the trustees of a fund established to furnish benefits to an entity's employees.

Previously, M+C organizations that contracted with an employer group or with a State Medicaid agency to provide benefits had to comply with all requirements of the regulations found in part 422. The authority in section 617 of the BIPA was first available for CY 2001. We informed M+C organizations that, in order to facilitate the offering of M+C plans under contracts with employers, labor organizations, or the trustees of a benefits trust fund, upon receiving a written request from an M+C organization, we have the option to waive or modify those requirements in part 422 of the regulations that would hinder the design of, the offering of, or the enrollment in an M+C plan. As indicated in the proposed rule, after we have approved a request for a waiver, the requesting M+C plan, and any other M+C organization, will be able to use the waiver in developing their ACR proposal. Any M+C plan using the waiver must include that information in the cover letter of its ACR proposal submission to us. The waiver or modification will take effect once the ACR proposal has been approved.

To date, we have approved the following three types of waivers under the authority granted us in section 617 of the BIPA:

- **Employer-Only Plans:** We are allowing M+C organizations to offer employer-only plans (that is, M+C plans not available to the individual market). M+C organizations are not required to market these plans to individuals. In addition, M+C organizations will not be required to submit the marketing

materials for employer-only plans for our pre-review and approval.

- **Actuarial Swaps:** We are allowing M+C organizations to swap benefits not covered by Medicare of approximately equal value when an employer asks for a benefit package that differs from the package offered by the M+C organization to the individual market.

- **Actuarial Equivalence:** We are allowing M+C organizations to raise the co-payments for certain benefits but to provide a higher benefit level or a modification to the premium charged, as long as projected beneficiary liability was actuarially equivalent.

We received two substantive comments on the employer group waiver provisions.

*Comment:* A commenter asked that we confirm whether our waiver authority can be used in areas such as ACR proposals, and enrollment and disenrollment processes (for example, the use of electronic enrollment and disenrollment for employer group members). The commenter also suggested that we revise the regulation to ensure that it is flexible enough to accommodate such waivers, including clarification that requests to use approved waivers that are not related to benefit and rate proposals may be submitted at any time during the year.

*Response:* As noted above, Section 617 of the BIPA provides broad authority for us to waive or modify requirements that hinder the design of, the offering of, or the enrollment in M+C plans under contracts between M+C organizations and employers or unions. Accordingly, under this authority, we have broad discretion to approve employer group waivers in all areas of the M+C program, including both enrollment and disenrollment and benefit and rate proposals. We do not believe that any change to the regulatory language implementing the waiver authority is necessary. The regulatory language implementing this waiver authority is consistent with the statutory language in section 1857(i) of the Act, which provides us wide latitude to approve appropriate waivers. In reviewing proposed waivers, we will balance the objective of promoting M+C enrollment by employer group members with the need to ensure that adequate protections are in place to ensure that employer group members enrolled in M+C plans have access to the Medicare covered benefits consistent with Medicare standards. Waiver requests by M+C organizations may be submitted at any time of the year.

*Comment:* Another commenter asked for clarification of § 422.106(a)(2) which states that employer group benefits that

"complement" an M+C plan and the marketing materials associated with those benefits are not subject to our approval. The commenter was not clear as to what "complement" means in this context. The commenter further notes that paragraph (a)(2) continues, "M+C plan benefits provided to enrollees of the employer \* \* \* and the associated marketing materials, are subject to CMS review and approval." According to the commenter, these two sentences within paragraph (a)(2) are internally inconsistent and confusing, and the commenter suggested that the benefit package of an employer-only M+C plan was subject to our review and approval. The commenter also requested that we clarify that employer group benefits or marketing materials will not be subject to prior review as long as the M+C organization certifies, in its ACR, that an employer-only M+C plan benefit package contains all Medicare-covered items and services. The commenter also suggested that M+C organizations should not be required to send copies of employer group-marketing materials to us after printing.

*Response:* We agree that § 422.106(a)(1) and (a)(2) need to be clarified. The purpose of § 422.106(a)(2) is to highlight the fact that the M+C regulations apply to those benefits that are included under our approved M+C benefit package and that the regulations do *not* apply to what are referred to in the regulation as "complementary" benefits.

Complementary benefits are employer-sponsored benefits, which are outside of the ACR proposal and are independently arranged by an employer on behalf of its employer group members for the purpose of enhancing the M+C benefit package. Therefore, we have modified § 422.106(a)(2) to clarify that we do not regulate or approve employer-sponsored benefits.

Employer group plans are required to provide an ACR proposal that includes all Medicare Part A and Part B services. There are no additional "prior review" requirements for approving the M+C benefit package for employer group members. We have already approved a waiver related to prior review of marketing material of employer-only plans. However, all M+C organizations will continue to be required to send informational copies of the employer-only plan's marketing materials to our Regional Office that is the "lead region." The employer group waivers are posted at our website at the following web address: <http://www.cms.hhs.gov/healthplans/employers/>.

#### 7. Permitting End-Stage Renal Disease Beneficiaries To Enroll in Another Medicare+Choice Plan if the Plan in Which They Are Enrolled Is Terminated

Section 620 of the BIPA amended section 1851(a)(3)(B) of the Act to permit beneficiaries with end-stage renal disease (ESRD) to enroll in any other available M+C plan if the plan in which they are enrolled is terminated or the M+C organization discontinues the plan in the area in which the beneficiary lives. Before the BIPA, beneficiaries with ESRD who were affected by an M+C plan termination were only able to elect another plan offered by the same M+C organization or return to the original Medicare fee-for-service program.

Under this provision, if the beneficiary enrolls in another M+C plan, and that plan is subsequently terminated, he or she is able to elect another M+C plan (offered by the same M+C organization or a different organization) based upon that termination. This would be true for any subsequent M+C plan terminations or discontinuations that result in the enrollee's disenrollment. Thus, if the enrollee's plan is subsequently terminated or discontinued, the individual would have another opportunity to elect another M+C plan. The individual may use this election immediately, or may do so during a subsequent election period. Once the individual has made such an election, he or she may not join another M+C plan offered by another M+C organization unless his or her plan is terminated or discontinued. Thus, if the beneficiary exhausts his or her one election, and then later seeks to disenroll from the plan for reasons other than its termination, he or she may only enroll in another M+C plan offered by the same M+C organization, or return to original fee-for-service Medicare. If the beneficiary returns to original Medicare, he or she will not be able to later enroll in an M+C plan.

*Comment:* One commenter expressed concern that the preamble to the proposed rule could be misconstrued to mean that a beneficiary who is enrolled in an M+C plan and subsequently disenrolls from the plan for reasons other than the plan's termination or discontinuation can return to the original fee-for-service Medicare program and at some future date reenroll in a different plan offered by the same M+C organization.

*Response:* As explained above, we are clarifying that a beneficiary who elects another M+C plan as provided for under section 620 of the BIPA and later

decides to disenroll from the plan for reasons other than its termination or discontinuation, may only elect another M+C plan offered by the same M+C organization at the time he or she is enrolled with that organization under some health plan it offers. In the commenters example, the beneficiary has spent time in original fee-for-service Medicare while not an enrollee with the organizations under any option. Under this circumstance, the enrollee would not be eligible to enroll in any M+C plan, including one offered by the M+C organization with which he or she was formerly enrolled.

*Comment:* Several commenters requested clarification as to whether or not the beneficiary had to elect a new M+C plan within a certain time frame. One commenter supported the establishment of a time limit, while others opposed any such time limit.

*Response:* In the preamble to the proposed rule, we indicated that we do not interpret section 1851(a)(3)(B) of the Act to require an enrollee to elect a new M+C plan immediately upon the termination or discontinuation of the M+C plan in which he or she is enrolled. This is based on section 620(b)(2) of the BIPA, which specifically extends this provision to individuals who had been enrolled in terminating or discontinued plans any time after December 31, 1998. In accordance with this section, and section 620(a) of the BIPA, these individuals are treated as M+C eligible individuals for purposes of electing to continue enrollment in another M+C plan. Because the statute clearly contemplates enrollment by individuals not currently enrolled in an M+C plan, we believe that the phrase "continue enrollment" in section 620(a) of the BIPA does not necessarily mean "continue without interruption" and, therefore, should not be time-limited. As stated above, the beneficiary may use his or her election immediately upon the plan's termination, or may use this election during a subsequent election period.

#### 8. Providing Choice for Skilled Nursing Facility Services Under the Medicare+Choice Program

Section 621 of the BIPA amended section 1852 of the Act by adding a new subsection (l). This new subsection ensures that an M+C organization will give a Medicare beneficiary who is a resident of a skilled nursing facility (SNF) the option of returning to his or her "home SNF" for post-hospital extended care services upon discharge from a hospital when certain conditions are met.

The term "home skilled nursing facility" is defined as—

- The SNF in which the beneficiary resided at the time of admission to the hospital;
- A SNF providing post-hospital extended care services through a continuing care retirement community that provided residence to the beneficiary at the time of admission to the hospital; or
- The SNF in which the spouse of the beneficiary is residing at the time of discharge from the hospital.

In order for a home SNF to be offered under this section, the SNF to which the beneficiary will be returned must either have a contract with the M+C organization to provide post-hospital services or must agree to accept substantially similar payment under the same terms and conditions that apply to SNFs under contract with the M+C organization. The coverage provided must be no less favorable to the beneficiary than coverage of post-hospital services that are otherwise covered under the M+C plan.

The requirement to return the beneficiary to his or her home SNF would not apply if the applicable SNF is not qualified to provide benefits under Medicare Part A to beneficiaries not enrolled in an M+C plan. A SNF that is not contractually bound to do so could refuse to accept an M+C beneficiary or impose conditions on the acceptance of the beneficiary for post-hospital extended care services.

The requirements of this new subsection (l) first became applicable under contracts entered into or renewed on or after December 20, 2000.

We received one comment relating to this provision.

*Comment:* The commenter expressed concern regarding potential quality issues when a plan member uses the "return home" benefit to enter a non-plan SNF. In addition, the commenter believes that this provision "binds" the internal operations of an M+C organization and could set a precedent for other areas of care in the future.

*Response:* We agree that an M+C organization does not have the same ability to verify the quality of non-contract SNFs as it does contract SNFs. For this reason, we will allow an M+C organization to advise members who are obtaining services in a non-contract SNF under the "return home" benefit that the M+C plan cannot guarantee the quality of care that members will receive in the non-contract SNF. However, we also note that an M+C organization can only refer members to Medicare certified SNFs. The "return home" SNF benefit was established

legislatively and, thus, does not set a precedent for other benefits of this type unless the Congress extends the benefit to other benefits by similar legislation.

#### 9. Increased Civil Money Penalty for Medicare+Choice Organizations That Terminate Contracts Mid-Year

Section 1857(g)(3) of the Act provides us with the authority to impose intermediate sanctions, including civil money penalties, on M+C organizations for the same reasons for which we can terminate an M+C organization's contract. Section 1857(c)(2) of the Act provides that we may, at any time, terminate an M+C organization's contract if we determine that the M+C organization—

- Failed substantially to carry out the contract;
- Is carrying out the contract in a manner inconsistent with the efficient and effective administration of the M+C program; or
- No longer substantially meets the applicable conditions of the M+C program.

Section 623 of the BIPA amended section 1857(g)(3) of the Act by providing us the authority to establish and levy separate and distinct civil money penalties when we determine that an M+C organization has failed to substantially carry out the terms of its contract based upon the M+C organization's termination of its contract with us in a manner other than that provided in the M+C contract and in § 422.512.

Under section 1857(g)(3)(D) of the Act, in such cases, we may impose a civil money penalty of "\$100,000 or such higher amount as the Secretary may establish by regulation." We believe that the Congress provided us with the authority to provide for a higher civil money penalty amount than \$100,000 in recognition of the fact that the \$100,000 specified in the Act may not provide an effective deterrent in some instances to discourage M+C organizations from terminating their contracts in a manner inconsistent with the procedures described in the regulations. In developing regulations providing for a potentially higher civil money penalty amount, it is appropriate for us to consider the number of Medicare beneficiaries who could be adversely affected by an M+C organization's decision to terminate its contract with us in a manner that violates M+C rules.

Thus, we proposed to establish the amount of this civil money penalty as either \$250 per Medicare member enrolled in the terminated M+C plan or plans at the time the M+C organization

terminated its contract with us, or \$100,000, whichever is greater. We added the "whichever is greater" provision to discourage violations of the contract termination provisions by M+C organizations with lower M+C plan enrollment. In either instance, this new civil money penalty represents a substantial increase over the current civil money penalty of \$25,000 for similar violations, and serves as an effective deterrent against M+C contract terminations violations that could potentially harm Medicare beneficiaries.

We received one comment on this change in civil money penalties.

*Comment:* The commenter seeks affirmation that we will not impose civil money penalties when the mid-year termination is caused by an event that is not within the control of the M+C organization (for example, substantial loss of network capability).

*Response:* We will not create an exception to waive the civil money penalties at § 422.758(b) because an M+C organization is experiencing network problems. If an M+C organization loses network capacity during the year, we expect that the M+C organization will establish new provider contracts or pay for services on a fee-for-service basis. There may be situations that require us to terminate a contract mid-year. For example, we have used our immediate termination authority at § 422.510(a)(5) to protect beneficiary access to health care when an M+C organization experiences financial difficulties so severe that access to health care is endangered. Section 623 of the BIPA was not written to permit us to levy a civil money penalty if we, not the M+C organization, take the termination action. The law was designed to prohibit M+C organizations from inappropriately ending their contractual commitments without our consent.

#### 10. Eliminating Health Disparities in Medicare+Choice Program

Section 616 of the BIPA amended section 1852(e) of the Act by requiring that an M+C organization's Quality Assurance Program have a separate focus on racial and ethnic minorities. This provision was not included in the October 2002 proposed rule because we had not developed any policies to propose. Although we are still evaluating implementation issues, we are adding a new paragraph (4) to § 422.152(f) to reflect this BIPA provision. Prior notice and comment is not necessary in the case of this change, because merely adding the statutory requirements to the regulations text has no legal effect. We have included a good

cause statement below for waiving prior notice and comment with respect to this change.

#### B. Skilled Nursing Facility Care Under Medicare+Choice

Under section 1814(a)(2)(B) of the Act, the Medicare extended care skilled nursing facility (SNF) benefit covers skilled nursing care or other skilled rehabilitation services that the beneficiary requires on a daily basis and that are only available in a SNF on an inpatient basis.

Generally, we will only cover this benefit following a hospital stay of not less than 3 days. Under section 1812(f) of the Act, however, we may authorize coverage of SNF care without a prior hospital stay if two conditions are met. First, the coverage of these services must not result in any increase in Medicare program payments, and second, the coverage must not alter the acute care nature of the benefit.

We have determined that these conditions are met in the case of SNF services furnished by an M+C organization that covers SNF services. Accordingly, we proposed changes in the regulations to reflect this determination, specifically, adding a new § 409.20(c)(4), revising § 409.30(b) and § 409.31(b), and adding a new § 422.101(c).

Several organizations, representing both providers and consumers, stated that they agreed with our proposed changes.

*Comment:* One commenter recommended that we clarify that after voluntarily disenrolling from the M+C program, the beneficiary may receive Part A SNF care if he or she meets the skilled level of care requirement.

*Response:* The commenter is correct that under this final rule, Part A SNF care would be covered for an individual who meets the skilled level of care requirement if he or she voluntarily disenrolls from a M+C program that was covering the care without a prior 3-day hospital stay. We believe that § 409.30(b)(2)(ii) makes this sufficiently clear that no further clarification is needed.

*Comment:* A major organization recommended that we clarify that when a beneficiary converts from a M+C stay in a SNF to a fee-for-service stay, a new 100 day period begins, unless the prior days under M+C were skilled care.

*Response:* We agree with this recommendation. If skilled care is provided to the beneficiary while he or she is enrolled in the M+C organization, then this time period counts towards the 100 days. If it is unknown whether or not skilled care is provided or the care

is unskilled, then the 100 days starts when the fee-for-service stay begins. We will clarify this provision in the Intermediary Manual.

*Comment:* Two commenters proposed that the waiver of the 3-day hospital requirement for SNF care also be applied to cost contractors (health maintenance organizations and competitive medical plans) under section 1876 of the Act. One commenter argued “\* \* \* that expanding the provision to cost contractors will result in a substantial reduction in Medicare costs for inpatient hospitalization. These savings will more than counterbalance any increases in SNF costs. We believe that inpatient admissions may occur when perhaps the more appropriate level of care is in a skilled nursing facility. We believe that allowing an exception to the three-day prior hospitalization requirement will result in net savings to the Medicare program.”

Another commenter noted that, “Organizations participating in the Medicare program as cost plans are structured in the same manner as M+C organizations and have the same inherent incentives for the provision of quality care in the most appropriate setting. Since this structure promotes similar patterns of practice regardless of the type of Medicare contract, we believe that the criteria described above would be met if this policy were applied to cost plans.”

*Response:* M+C organizations are paid on a capitated basis, so they have an incentive to contain costs. However, cost contractors under section 1876 of the Act do not have such an incentive. We have no evidence to indicate that they would reduce hospital admissions if we were to waive the 3-day prior hospital stay requirement. Therefore, we have decided not to accept this recommendation at this time.

### C. Disenrollment by the M+C Organization

Section 422.74(d)(4) provides that, except where continuation of enrollment under § 422.54 applies, an individual must be disenrolled from an M+C plan if he or she is out of the service area for over 6 months. The proposed rule included a revision to § 422.74(d)(4) creating an exception to this 6-month rule for “visitor” or “traveler” type programs. Under the proposed exception, M+C organizations could continue to offer extended “visitor” or “traveler” programs to members who have been out of the service area for up to 12 months, provided that the plan included the full range of services available to other

members. M+C organizations offering these programs may limit their availability to certain areas and may impose restrictions on obtaining benefits, except for urgent, emergent, and post-stabilization care, and renal dialysis. These organizations do not have to disenroll members in these extended programs who remain out of the service area for up to 12 months. However, those M+C organizations without this program must continue to disenroll members once they have been out of the service area for more than 6 months. We received one comment supporting this change, and are adopting it as proposed.

### D. Reporting Requirements for Physician Incentive Plans

Section 1852(j)(4)(A)(iii) of the Act requires M+C organizations to provide us with descriptive information regarding their physician incentive plans (PIP) sufficient to permit us to determine whether the plan is in compliance with the applicable requirements. The current regulations interpreted this provision to require that an M+C organization submit the CMS PIP Disclosure Form (OMB No. 0938–0700) to us with its contract application and annually thereafter. We are changing the reporting requirement to allow M+C organizations to maintain the required PIP information in their files and submit that information to us upon request. Several commenters agreed with this change.

*Comment:* A commenter requested that we provide clear guidance on what information managed care organizations should maintain in their files.

*Response:* Section 417.479(h)(3) and § 422.210(b) provide details on the information that should be maintained in either the contractor or subcontractor files for purposes of responding to inquiries from beneficiaries. Since there will no longer be routine reporting of PIP information to us, the cost-contracting health maintenance organizations/competitive medical plans and M+C organizations should simply maintain sufficient information “...to permit CMS to determine whether the plan is in compliance with the applicable requirements,” should we request it.

*Comment:* A commenter requested that, under the cost program, two types of entities, health maintenance organizations and competitive medical plans, are eligible for contracting. The proposal omits a reference to competitive medical plans.

*Response:* We will revise the regulation to cover competitive medical plans.

*Comment:* A commenter suggested that the instructions for amending § 417.479(h) appear incorrect. The disclosure to beneficiaries provision is in paragraph (h)(3), not (h)(2). Thus, we should replace paragraph (h)(1) and (h)(2) with the new (h)(1). Then paragraph (h)(3) would be designated (h)(2).

*Response:* The commenter is correct in noting an inconsistency in our proposed revision. Therefore, § 417.479(h)(1) will remain as written in the proposed regulation, with the addition of a reference to competitive medical plans, as noted above. Section 417.479(h)(2) will be revised to include only the rules on pooling of patients. Finally, § 417.479(h)(3), related to disclosure to Medicare beneficiaries, will remain as part of the regulation with a minor, editorial change.

### E. M+C Appeals Process

#### 1. Defining Who Can Request Organization Determinations

Currently, the M+C regulations at § 422.566(c) specify that any of the parties listed in § 422.574 can request an M+C organization determination. It has come to our attention that, in some cases, the use of this cross-reference has been misconstrued to mean that, in order to request an organization determination on behalf of an enrollee, an affiliated provider would need to be an authorized representative, and a non-affiliated provider would need to be an assignee. Although we discussed this issue in our June 29, 2000 final rule (65 FR 40282), some confusion has continued.

We have always intended for requests for organization determinations to be more inclusive than requests for appeals. To clarify this point, we have eliminated the existing cross-reference to § 422.574 and we are listing those who may request an M+C organization determination under § 422.566(c). Determination requests may be made by—

- The enrollee (including his or her authorized representative);
- Any provider that furnished, or intends to furnish, services to the enrollee; or
- The legal representative of a deceased enrollee’s estate.

The fact that an individual or entity may request an organization determination does not necessarily entitle that individual or entity the right to request an appeal, unless the conditions for party status under § 422.574 are met.

*Comment:* We received two comments regarding who can request an

organization determination under § 422.566(c). One commenter supported the elimination of the cross-reference with the provision that only treating or attending providers involved with the enrollee's health care should be allowed to request organization determinations.

Another commenter believed that in an effort to discourage inappropriate use of the process, providers should only be allowed to make requests for organization determinations with the full knowledge and agreement of the enrollee. The commenter recommended that we establish this distinction in the preamble or regulation, and, if an enrollee indicates that a requested organization determination is inconsistent with his or her wishes, then the M+C organization should be able to cease action on the request.

*Response:* We believe that the text, "any provider that furnishes, or intends to furnish, services to the enrollee," already addresses the commenter's concern that the provider requesting an organization determination be involved with the enrollee's health care. Because enrollees in some M+C plans are free to seek care from providers within or outside of the M+C organization's network and all enrollees may go out of network for emergency and certain other services, we believe it is appropriate to use the all-inclusive term "any," instead of "treating," to describe the providers furnishing, or intending to furnish, services to enrollees.

We agree with the second commenter that providers should request organization determinations only with the full knowledge and agreement of enrollees. This is particularly important for unaffiliated providers that might seek payment for services already furnished to enrollees. In addition, an M+C organization may cease action on a provider's request for an organization determination that is inconsistent with an enrollee's wishes.

## 2. Effectuation Times When M+C Organizations File Appeals

The current regulations at § 422.618 and § 422.619 establish effectuation times when an M+C organization's denial of coverage or payment is overturned, either through its own reconsideration process or by an independent outside entity. Effectuate means to authorize, pay for, or provide coverage. The M+C organization may not appeal the independent outside entity's decision. Section 422.618 also requires that, if the independent outside entity's determination is reversed (in whole or in part) by an administrative law judge (ALJ), or at a higher level of appeal, the M+C organization must pay

for, authorize, or provide the service under dispute as expeditiously as the enrollee's health condition requires, but no later than 60 calendar days from the date the M+C organization receives notice reversing the determination. In these situations, the M+C organization, like an enrollee, has 60 days to appeal.

The ambiguity in the current regulations, which require effectuation of a determination within 60 days, but also permit further appeal within the same time frame, results in confusion. To reconcile these two regulatory provisions, we proposed to revise the rules so that M+C organizations may await the outcome of a Departmental Appeals Board (the Board) review before effectuating a decision of an ALJ. This change would serve to balance the M+C organization's right to appeal with the need to ensure that an enrollee would not be faced with a potentially large debt in the event that the Board overturns the ALJ after the service has been furnished to the enrollee.

In § 422.618(c), we proposed to retain, as the general rule, the 60-day effectuation requirement for reversals by an ALJ or higher level of appeal. This is because we did not want to effectively negate the M+C organization's 60-day right to request an appeal to the Board or higher level. However, our expectation was that M+C organizations would not take the maximum 60 days to effectuate a decision they do not intend to appeal. We proposed to redesignate the current § 422.618(c), as § 422.618(c)(1) and provide that the 60-day deadline for effectuation was the "general rule." We then proposed to add a new § 422.618(c)(2) which would allow for an exception to the 60-day standard if the M+C organization decided to request a Board review consistent with § 422.608. We proposed to allow the M+C organization to await the outcome of the Board review before it pays for, authorizes, or provides the service under dispute. Under the provision, we would require an M+C organization that files an appeal with the Board concurrently to send a copy of its request and any accompanying documents to the enrollee. Additionally, in the proposed rule, the M+C organization was required to notify the independent review entity of the requested appeal.

Consistent with this change, we also proposed to revise § 422.619(c) with regard to effectuating expedited reconsidered determinations. As in standard appeals, we proposed to allow an exception for the M+C organization to await the outcome of the Board's review before the M+C organization authorizes or provides the service under

dispute. Additionally, an M+C organization that files an appeal with the Board would be required concurrently to send a copy of its request and any accompanying documents to the enrollee, as well as notifying the independent review entity of the requested appeal.

*Comment:* Some commenters believe that the 60-day time frame for an M+C organization to decide whether to appeal (and ultimately pay for or provide a service) is too long. One commenter suggested that the time frame to allow an M+C organization to appeal to the Departmental Appeals Board (DAB) should be reduced to 30 days. Another commenter believes that M+C organizations generally know well before 60 days whether they intend to appeal an administrative law judge's (ALJ's) decision. Instead, an M+C organization more likely would need a 60-day time frame to gather evidence in support of an appeal. The commenter argued that, since enrollees already wait a long time for ALJ decisions, enrollees should not be made to wait another 60 days to receive care.

Other commenters supported our attempt to reconcile the provisions that, on the one hand, allow an M+C organization the right to appeal an ALJ's decision, but, on the other hand, require the M+C organization to effectuate the decision before a final DAB decision. One commenter supported a 60-day, rather than a 72-hour, effectuation time frame for expedited reviews.

*Response:* Currently, § 422.618(c)(1) and § 422.619(c)(1) require an M+C organization to pay for, authorize, or provide the service under dispute as expeditiously as the enrollee's health condition requires, but no later than 60 calendar days from the date that the M+C organization receives a decision reversing a determination. Section 422.608 also provides for an appeal by the M+C organization within the same 60-day time period that effectuation must occur. While we appreciate the commenters' concerns that 60 days seems like a long time for M+C organizations to appeal, we believe that we should allow M+C organizations the same 60-day time frame afforded to other parties when they file appeals. Thus, we will maintain the current 60-day standard at § 422.608 for all parties seeking review by the DAB.

We recognize that an enrollee may encounter a delay in obtaining a service if an M+C organization appeals; however, both the DAB and the ALJ hearing offices have procedures to screen cases and to give priority to pre-service denial cases, including immediate assignment and resolution of

cases involving imminent health risks. Thus, as proposed, we are adding § 422.618(c)(2) and § 422.619(c)(2) to allow for an exception to the 60-day effectuation standard when an M+C organization requests DAB review. An M+C organization may await the outcome of the DAB's review before it pays for, authorizes or provides the service under dispute.

*Comment:* One commenter was concerned with our statement that “\* \* \* the M+C organization would have to meet the medical exigency standard for providing or authorizing services as expeditiously as the enrollee's health condition requires regardless of the 60-day time frame.” The commenter interpreted this statement to mean that a M+C organization that intends to appeal an ALJ decision would still have to apply the medical exigency standard, and provide services if warranted under this standard notwithstanding the filing of a DAB appeal. The commenter thought that this would undercut the exception to the effectuation time frames and undermine a M+C organization's right under both the appeals process and, though it is not clear to us why, the Administrative Procedure Act (APA). Instead, the commenter recommends that we permit the exception to the effectuation rule under all circumstances, and promulgate an expedited review process for the DAB to follow in medically exigent cases. Another commenter urged us to monitor whether M+C organizations take the maximum 60 days to implement a decision that they do not intend to appeal.

*Response:* The section of the proposed rule that the commenter references is a discussion about our reason for maintaining a 60-day effectuation requirement for expedited appeals, as opposed to 72 hours. We wanted to make clear that, despite our intention to maintain the 60-day requirement, M+C organizations still would be held to the medical exigency standard if they did not intend to pursue an appeal of an ALJ decision. In other words, just because we had retained the 60-day time-frame for appealing, this did not mean that an M+C organization could take 60 days to effectuate if it was not pursuing an appeal. Rather, in this instance, it must authorize or provide the service under dispute as expeditiously as the enrollee's health condition requires, but no later than 60 calendar days from the date it receives notice reversing the determination.

We agree with the commenter, however, that when a M+C organization is appealing the ALJ decision, it should

not be required to effectuate the ALJ decision, and would not apply the medical exigency standard until it was time to effectuate a decision from the DAB. We also agree with the commenter that the DAB should expedite cases in which there is a medical exigency, and inform the commenter that the DAB has procedures in place to do so. Finally, with respect to monitoring, we agree that M+C organizations should be monitored to see whether they are delaying effectuation 60 days in cases in which they are not appealing the ALJ decision.

*Comment:* Some commenters were pleased with our proposal that M+C organizations notify enrollees and the independent review entity (IRE) in the event of an appeal to the DAB. They believed that such notification would enable enrollees to file evidence, arguments or legal memoranda to the DAB in support of an ALJ decision.

*Response:* We agree with the commenters and are retaining this proposal which requires a M+C organization to concurrently send a copy of its appeal request and the accompanying documents to the enrollee and the IRE at § 422.618(c)(2) and § 422.619(c)(2) in this final rule.

*Comment:* One commenter recommended that we apply an exception to the effectuation provision for cases in which the M+C organization intends to dispute determinations made by the IRE.

*Response:* The regulations only provide for appeals by M+C organizations at the ALJ level or higher. The only way for an M+C organization to “challenge” the IRE's decision is to request a reopening in accordance with § 422.616. A reopening is an administrative action outside of the realm of the appeals process and we do not believe that delaying effectuation under these circumstances is warranted.

#### *F. Requiring Health Care Prepayment Plans (HCPPs) and Remaining Cost Plans To Follow the M+C Appeals Process*

In the proposed rule, we solicited comments on whether HCPPs and the remaining cost plans should follow the M+C appeals and grievance processes under subpart M of part 422. We have not included these provisions in this final regulation, because we need more time to analyze the comments and evaluate implementation issues.

#### *G. Technical Clarifications*

##### **1. Grace Period for Late Premium Payments**

We are making a technical change to address concerns that M+C

organizations have raised concerning the starting date for the 90-day grace period for late premium payments. Section 422.74(d)(1)(ii) provides that an M+C organization may disenroll a Medicare beneficiary when the organization has not received payment within 90 days after it has sent a written notice of nonpayment to the individual. Several M+C organizations requested that the 90-day grace period start on the day the premium payment was due, rather than the day the notice was sent. Since the notice has to be provided within 20 days of the premium due date, starting the grace period on the premium due date would ensure that the beneficiary has at least 70 days following receipt of the notice to pay the premium and avoid disenrollment. We believe that this constitutes an appropriate grace period and proposed to change the regulation accordingly. We received one comment supporting this change and are adopting it as proposed.

##### **2. Payment for Hospice Care**

In the proposed rule, we proposed to clarify information concerning changes in M+C payments when an individual has elected hospice care.

Specifically, we proposed to revise § 422.266(d) to make clear that when enrollees of M+C plans elect to receive hospice care under § 418.24, we will not make any payment for the hospice care to the M+C plan beginning with the next month's payment after the election, except for the portion of the payment applicable to additional benefits, as described in § 422.312. Currently, the regulation refers to capitation payments being reduced to this amount which produces the same result. However, this language was changed from the language that applies to health maintenance organizations and competitive medical plans, and we believe the latter language makes the policy clearer.

We received no comments on this change and have revised § 422.266(c) to reflect this clarification.

##### **3. Clarification of Subpart O to Effectuate Statutory Intent**

We are making minor changes to Subpart O in an attempt to clarify information regarding our sanction authority. These changes do not add any new requirements. They serve to improve the wording of certain areas to more clearly reflect statutory intent.

Section 1857(g)(1) of the Act contemplates violations that are generally considered “fraud and abuse.” This section further states, “\* \* \* the Secretary may provide, in addition to

any other remedies authorized by law, for any of the remedies described in paragraph (2) \* \* \* .” Because the OIG has the traditional authority to investigate fraud complaints, the regulation should ensure that it is understood that the OIG stands in the place of “the Secretary” when civil money penalties are imposed for such violations. We (CMS) would have authority for other intermediate sanctions under M+C. Currently, § 422.752(a) states, “For the violations listed below, CMS may impose *any* of the sanctions specified in § 422.750 \* \* \* .” Any of the sanctions presupposes that we may freeze marketing, enrollment, payment *and impose civil money penalties*. This stands in contrast to the statutory intent and it clearly contrasts with § 422.756(f)(2) where, in discussing civil money penalties, the regulation currently reads, “In the case of a violation described in § 422.752(a) \* \* \* in accordance with 42 CFR parts 1003 and 1005, the OIG may impose CMPs on M+C organizations \* \* \* .” We are changing § 422.752(a) to clarify when the OIG has the sole authority to impose civil money penalties.

Section 422.756(f)(3) references the OIG’s regulations at parts 1003 and 1005. This cross-reference creates confusion without further clarification. The civil money penalty provisions included in the OIG’s regulations at parts 1003 and 1005 implement section 1876 of the Act, not the M+C program under the BBA. We are proposing a regulatory change to eliminate any reference to part 1003 for information about which level of civil money penalty might apply.

Section 422.758 states that civil money penalties can be \$25,000 or \$10,000 per each determination. According to the statute at section 1857(g) of the Act, the actual amount could be lower. For example, section 1857(g)(3)(A) of the Act states that we may impose civil money penalties “of not more than \$25,000.” The same applies to § 422.758(b), which references “up to \$10,000” not “\$10,000.” Section 422.750 states that the OIG can impose civil money penalties ranging from \$10,000 to \$100,000. Section 1128A of the Act continually uses the “up to” language. We are revising the regulatory language to clarify statutory intent.

#### 4. Correcting a Cross-Reference in Subpart E (Relationships With Providers)

In § 422.202(a)(4), a change is needed to correct a cross-reference. Specifically, the text “must conform to the rules in

§ 422.204(c)” is being revised to read “must conform to the rules in § 422.202(d).” (§ 422.204(c) does not exist.)

### III. Provisions of This Final Rule

The provisions of this final rule are as follows:

- In § 409.20, we added paragraph (c)(4) to define the term “post-hospital SNF care” to include SNF care that does not follow a hospital stay if the beneficiary is enrolled in an M+C plan.
- In § 409.30, we revised paragraph (b)(2) to add an exception to the preadmission requirements for enrollees of M+C organization plans.
- In § 409.31, we added paragraph (b)(2)(iii) to add a condition to the level of care requirements which states that, for an M+C enrollee, a physician has determined that a direct admission to a SNF without an inpatient hospital stay would be medically appropriate.
- In § 417.479, we revised paragraph (h) to modify the reporting requirements concerning physician incentive plans.
- In § 422.2, we revised the definition of additional benefits to include a reduction in the Medicare beneficiary’s standard Part B premium.
- In § 422.50, we revised paragraph (a)(2) to include a new condition in the exception that a beneficiary with ESRD is not eligible to elect an M+C plan. An individual with ESRD whose enrollment in an M+C plan is discontinued because we or the M+C organization terminated the organization’s contract for the plan, is now eligible to elect another M+C plan, if the original enrollment was terminated after December 31, 1998.
- In § 422.74, we revised paragraph (d)(1)(ii) to reflect that an M+C organization may only disenroll a Medicare enrollee when the organization has not received payment within 90 days after the date the premium payment was due.
- In § 422.74, we revised paragraph (d)(4) to allow M+C organizations to operate “visitor” or “traveler” programs that provide benefits beyond urgent and emergent care to their enrollees who are out of the service area for more than 6 months but less than 12 months.
- In § 422.101, we revised paragraph (b)(3) to reflect the provisions in section 1852(a)(2)(C) of the Act that permit M+C organizations with plans that cover large areas encompassing more than one local coverage policy area to elect to have the local coverage policy for the part of the area that is the most beneficial to the M+C enrollees apply to all M+C enrollees in the plan. his policy allows M+C organizations to standardize coverage decisions and provider contracts across the entire plan, rather

than having different policies apply to different geographic areas of the same plan.

- In § 422.101, we added paragraph (c) to include in the requirements relating to Medicare covered benefits the option to provide for coverage as a Medicare benefit post-hospital SNF care in the absence of a prior hospital stay.
- In § 422.106, we added new paragraph (c) to reflect the provisions in section 1857(i) of the Act that permits us to grant a waiver or modification of requirements in part 422 that hinder the design of, the offering of, or the enrollment in, M+C plans under contracts between M+C organizations and employers, labor organizations, or the trustees of benefits funds.
- In § 422.109, we revised the definition of “significant cost” (which was in § 422.109(c), but is now in § 422.109(a)) to provide that, for purposes of determining whether to make an adjustment under § 422.256, the tests in definition of “significant cost” are applied to the aggregate costs of all NCDs and legislative changes in benefits made in the contract year. Under this test, the “average cost” of every NCD and legislative change in benefits would be added together. If the sum of all these average amounts exceeds the threshold under § 422.109(a)(1), then an adjustment to payment will be made under § 422.256 to reflect these costs. Alternatively, if the costs of the NCDs and legislative changes in benefits, in the aggregate, exceed the level set forth in § 422.109(a)(2), an adjustment to payment will be made under § 422.526. We also added language to explain that an NCD or legislative change in benefits that does not meet the “significant cost” threshold must be provided, and paid for, by the M+C organization as of the effective date of the NCD or legislative change in benefits.
- In § 422.111, we added paragraph (f)(8)(iii) to add any reduction in Part B premiums to the list of information that must be disclosed to each enrollee electing an M+C plan.
- We added § 422.133 to contain the new requirement that M+C organizations return residents of SNFs to their home SNF for post-hospital extended care services after discharge from a hospital. This new section contains the definition of home SNF, the requirements for return to the home SNF, and the exceptions to the general rule.
- In § 422.152(f), we added section (4) to reflect the requirement that M+C organizations’ Quality Assurance Programs have a separate focus on racial and ethnic minorities.

- In § 422.202(a)(4), we corrected a cross-reference.
- In § 422.210, we revised paragraph (a) to reflect changes to the reporting requirements concerning physician incentive plans.
- In § 422.250, we revised paragraph (a)(1) to reflect that, beginning with the initial payment for CY 2003, monthly payments to M+C organizations may be reduced by the amount described in new § 422.312(d) for the reduction of the beneficiary's standard Part B premium.
- In § 422.250, we also revised paragraph (a)(2) to redesignate paragraph (a)(2)(i)(B) as (a)(2)(i)(C) and to add new paragraph (a)(2)(i)(B) to reflect that, when we establish ESRD rates, we will apply appropriate adjustments, including risk adjustment factors.
- In § 422.256, we revised paragraph (b) to reflect that we will make appropriate payment adjustments for new benefits covered during a contract term due to NCDs and legislative changes in benefits that result in a significant increase in costs to M+C organizations, based on an analysis by our chief actuary. We also revised this section to reflect that we will apply a "NCD adjustment factor" in calculating rates for counties receiving the two percent minimum update. This factor will represent the percent of total Medicare cost attributed to the aggregate costs of all NCDs and legislative changes in benefits in the previous year.
- In § 422.266, we revised paragraph (c) to clarify that when enrollees of M+C plans elect to receive hospice care under § 418.24, we will not make any payment for the hospice care to the M+C plan beginning with the next month's payment after the election, except for the portion of the payment applicable to additional benefits, as described in § 422.312.
- In § 422.312, we redesignated paragraph (d) as paragraph (e) and added new paragraph (d) to reflect that an M+C organization may apply adjusted excess amounts to additional benefits and accept lower payments from us, which would allow a reduction of standard Part B premiums for its enrollees. The reduction in standard Part B premiums could not equal more than 80 percent of the reduction in payments to the M+C organization and the payment reduction could not exceed 125 percent of the standard Part B premium. In addition, the reduction in premium would have to be applied uniformly to all similarly situated enrollees.
- We added new § 422.521 to indicate that we will not implement, other than

at the beginning of a calendar year, requirements that would impose new cost or burden on M+C organizations or plans, unless a different effective date is required by statute.

- In § 422.566, we revised paragraph (c) to delete the cross-reference to § 422.574 and to delineate who can request an organization determination.
- In § 422.618, we revised paragraph (c) to add an effectuation exception when the M+C organization files an appeal with the DAB in the case of a standard reconsidered determination.
- In § 422.619, we revised paragraph (c) to add an effectuation exception when the M+C organization files an appeal with the DAB in the case of an expedited reconsidered determination.
- In § 422.758, we revised paragraph (b) to include the new maximum amount of the civil money penalties that we would impose on M+C organizations that terminate their contracts in a manner other than that described in § 422.512. The new penalty amount will be \$100,000 or \$250 per Medicare enrollee from the terminated plan or plans, whichever is greater.

#### IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on revisions to regulations. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. We followed this procedure with respect to all but one of the regulatory revisions made in this final rule. As noted above, the proposed rule did not include the revision to § 422.152(f) that we are making in this final rule that adds a new paragraph (4) reflecting the provisions of section 616 of the BIPA. The requirement that we issue regulations in proposed form for public comment can be waived, however, if an agency finds good cause that notice and comment procedures are impracticable, unnecessary, or contrary to the public interest, and it incorporates a statement of the finding and its reasons in the rule issued.

We find that publishing the new paragraph (4) in § 422.152(f) in proposed form is unnecessary, because this provision only revises the regulations text to reflect the provisions of section 616 of the BIPA, and has no legal effect. These provisions were enacted by the Congress, and took effect on the date mandated by the legislation without regard to whether they are reflected in conforming changes to the regulation text. In the new

§ 422.152(f)(4), we merely have revised the regulation text to reflect section 616. Therefore, we do not believe that publishing a notice of proposed rulemaking is necessary and we find good cause to waive the notice of proposed rulemaking and to issue this final rule.

#### V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Section 417.479(h)—*Physician Incentive Plans*. In this final rule, we require HMOs to provide us, upon request, information concerning its physician incentive plans. HMOs are also required to provide this information to any Medicare beneficiary who requests it. While this requirement is subject to the PRA, the burden associated with this requirement is captured in approved collection 0938-0700.

Section 422.50(a)(2)—In this final rule, this section states that an individual who develops end-stage renal disease while enrolled in an M+C plan or in a health plan offered by an M+C organization is eligible to elect an M+C plan offered by that organization. Also, an individual with end-stage renal disease whose enrollment in an M+C plan is terminated or discontinued after December 31, 1998 because we or the M+C organization terminated the M+C organization's contract for the plan or discontinued the plan in the area in which the individual resides is eligible to elect another M+C plan. An individual who elects an M+C plan under paragraph (a)(2)(ii) of this section may elect another M+C plan if the plan elected under paragraph (a)(2)(ii) also is terminated or discontinued in the area in which the individual resides.

The burden associated with this requirement is the time and effort for the individual to submit a new election form. While this section is subject to the PRA, this burden is currently captured in approved collection 0938-0753.

*Section 422.74(d)(4)(i)*—In the final rule, this section states that unless continuation of enrollment is elected under § 422.54, the M+C organization must disenroll an individual if the M+C organization establishes, on the basis of a written statement from the individual or other evidence acceptable to us, that the individual has permanently moved.

This section requires that the individual must prepare and provide a written statement to the M+C organization that he or she has permanently moved. While this requirement is subject to the PRA, the burden associated with this requirement is captured in approved collection 0938-0753.

*Section 422.106(c)(1)*—M+C organizations may request, in writing, a waiver or modification of those requirements in part 422 that hinder the design of, the offering of, or the enrollment in, M+C plans under contracts between M+C organizations and employers, labor organizations, or the trustees of benefits funds.

We believe that the burden associated with this requirement is minimal. We anticipate approximately 100 requests for waivers or modifications submitted on an annual basis and that it will take approximately 2 hours to prepare each request. The total annual burden associated with this requirement is estimated to be 200 hours.

*Section 422.106(c)(2)*—In this final rule, this section states that approved waivers or modifications under this paragraph may be used by any M+C organization on developing its ACR proposal. Any M+C organization using a waiver or modification must include that information in the cover letter of its ACR proposal submission.

The burden associated with this requirement is the time and effort for the M+C organization to include the information in the cover letter of its ACR proposal submission. Although this requirement is subject to the PRA, the burden is minimal; therefore, the burden is captured in the analysis for § 422.106(c)(1).

*Section 422.111(f)(8)(iii)*—In this final rule, this section has been revised to add any reduction in Part B premiums to the list of information that must be disclosed to each enrollee electing an M+C plan.

The burden associated with this requirement is the time and effort for the M+C organization to disclose

information to each enrollee electing an M+C plan. Although this requirement is subject to the PRA, the burden associated with this requirement is captured in approved collection 0938-0778.

*Section 422.152(f)(4)*—We have added this section to reflect the statutory provision of requiring M+C organizations' quality assurance programs to have a separate focus on racial and ethnic minorities. We estimate that it will take each M+C organization approximately 2 hours to add a separate focus on racial and ethnic minorities to its quality assurance program. Since there are approximately 150 M+C organizations, we estimate the annual burden associated with this requirement to be approximately 300 hours.

*Section 422.210(a)(1)*—In the final rule, this section states that each M+C organization must provide to us upon request, descriptive information about its physician incentive plan in sufficient detail to enable us to determine whether that plan complies with the requirements of § 422.208.

This section requires the M+C organization to prepare and submit, upon request, descriptive information to us. While this requirement is subject to the PRA, the burden associated with this requirement is captured in approved collection 0938-0700.

*Section 422.266(a)*—In this final rule, an M+C organization that has a contract under subpart K of this part must inform each Medicare enrollee eligible to select hospice care under § 418.24 of this chapter about the availability of hospice care (in a manner that objectively presents all available hospice providers, including a statement of any ownership interest in a hospice held by the M+C organization or a related entity).

While this requirement is subject to the PRA, the burden associated with it is captured in approved collection 0938-0753.

In summary, the total burden hours for this proposed rule is calculated to be 500 hours. The breakdown is as follows:

*§ 417.479(h)*—burden captured in 0938-0700

*§ 422.50(a)(2)*—burden captured in 0938-0753

*§ 422.74(d)(4)(i)*—burden captured in 0938-0753

*§ 422.106(c)(1)*—200 hours

*§ 422.106(c)(2)*—burden captured in 422.106(c)(1)

*§ 422.111(f)(8)(iii)*—burden captured in 0938-0753

*§ 422.152(f)(4)*—300 hours

*§ 422.210(a)(1)*—burden captured in 0938-0700

*§ 422.266(a)*—burden captured in 0938-0753  
0938-0700 is approved for 450 hours and expires on April 30, 2004 and 0938-0753 is approved for 2,120,006 hours and expires on October 31, 2005.

## VI. Regulatory Impact Statement

### A. Overall Impact

We have examined the impacts of this final rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96-354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more annually).

This final rule, which changes M+C regulations in accordance with provisions set forth in the BIPA, is not a major rule with economically significant effects as defined in Title 5, U.S.C. section 804(2) and is not an economically significant rule under Executive Order 12866. This final rule will result in increases in total expenditures of less than \$100 million per year.

The budgetary impact of section 605 of the BIPA, which mandated revised ESRD payments, was estimated to be \$270 million over the 5 years between FY 2002 to FY 2006, based on the FY 2002 President's budget. These payments are in the current baseline and have no impact on the budget. In addition, these provisions have already been implemented through our 2002 annual payment notice. The additional cash expenditures for these M+C ESRD beneficiaries under this provision of the BIPA affected those M+C organizations that enrolled the approximately 18,000 ESRD beneficiaries in their plans. Additional expenditures for this provision have been incorporated into the M+C payment rates from CY 2002 forward.

This estimate assumed continuation of the current restrictions on enrollment in the M+C program for ESRD beneficiaries. This estimate also included the impact of adjusting for age and sex and the impact of raising the ESRD base rates by 3 percent. We estimate that the change in policy for

NCDs in this rule adds approximately \$48 million per year to the Federal budget.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status, or by having revenues of between \$6 million and \$29 million or less annually. (For details, see the Small Business Administration publication that sets forth size standards for health care industries at 65 FR 69432.)

Individuals and States are not included in the definition of small entities.

For purposes of the RFA, most managed care organizations are not considered to be small entities. We estimate that fewer than 5 out of 177 M+C organization contractors have annual revenues of \$7.5 million or less. Approximately 35 percent of M+C organization contractors have tax-exempt status, and thus, for purposes of the RFA, are considered to be small entities. We have examined the economic impact of this final rule on M+C organizations, including those that are tax-exempt, and, therefore, small entities. We find that overall the economic impact is positive, due to the revised ESRD rates mandated by section 605 of the BIPA, which are generating an increase in payments; the increase in payments due to the revised policy on NCDs, and the reductions in regulatory burden due to the premium reductions in section 606, the waivers of M+C rules specified in section 606 for employers and related organizations, the waiver of the 3 day hospital stay for SNF admissions, and the reduction of the physician incentive reporting requirements. Therefore, we certify that this final rule will not have a significant impact on a substantial number of small businesses. The data available do not allow us to determine the distributional effects of this increase. We have not considered alternatives to lessen the economic impact or regulatory burden of this final rule because the regulatory burden is reduced and payment to the plans is increased by this rule. The major change between the proposed and final rule is the method for computing a significant national coverage determination. This change will have a net benefit to M+C organizations. We certify that this final rule will not have a significant impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a final rule has a

significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area (MSA) and has fewer than 100 beds. Almost 2 percent of M+C enrollees reside in payment areas outside MSAs. Because information on the payment terms in contracts between M+C organizations and their providers is not available, data are not available on the level of this economic impact.

#### B. *The Unfunded Mandates Act*

Section 202 of the Unfunded Mandates Reform Act of 1998 (UMRA) requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of \$110 million. We have determined, and we certify that this final rule has no consequential effect on State, local, or tribal governments.

#### C. *Federalism*

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed or final rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule will impose no direct requirement costs on State and local government, will not preempt State law, or have any Federalism implications.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

#### List of Subjects

##### 42 CFR Part 409

Health facilities, Medicare.

##### 42 CFR Part 417

Administrative practice and procedure, Grants programs-health, Health care, Health insurance, Health maintenance organizations (HMO), Loan programs-health, Medicare, Reporting and recordkeeping requirements.

##### 42 CFR Part 422

Administrative practice and procedure, Health facilities, Health Maintenance Organizations (HMO), Medicare+Choice, Penalties, Privacy, Provider-sponsored organizations (PSO), Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

### PART 409—HOSPITAL INSURANCE BENEFITS

■ 1. The authority citation for part 409 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

#### Subpart C—Posthospital SNF Care

■ 2. In § 409.20, the following amendments are made as set forth below:

- a. Paragraph (c)(3) is revised.
- b. Paragraph (c)(4) is added.

#### § 409.20 Coverage of services.

\* \* \* \* \*

(c) \* \* \*  
(3) The term *swing-bed hospital* includes a CAH with swing-bed approval under subpart F of part 485 of this chapter.

(4) The term *post-hospital SNF care* includes SNF care that does not follow a hospital stay when the beneficiary is enrolled in a plan, as defined in § 422.4 of this chapter, offered by a Medicare+Choice (M+C) organization, that includes the benefits described in § 422.101(c) of this chapter.

#### Subpart D—Requirements for Coverage of Posthospital SNF Care

■ 3. In § 409.30, paragraph (b)(2) is revised to read as follows:

#### § 409.30 Basic requirements.

\* \* \* \* \*

(b) \* \* \*  
(2) The following exceptions apply—  
(i) A beneficiary for whom posthospital SNF care would not be medically appropriate within 30 days after discharge from the hospital or CAH, or a beneficiary enrolled in a Medicare+Choice (M+C) plan, may be admitted at the time it would be medically appropriate to begin an active course of treatment.

(ii) If, upon admission to the SNF, the beneficiary was enrolled in an M+C plan, as defined in § 422.4 of this chapter, offering the benefits described in § 422.101(c) of this chapter, the beneficiary will be considered to have met the requirements described in paragraphs (a) and (b) of this section, and also in § 409.31(b)(2), for the duration of the SNF stay.

■ 4. In § 409.31 paragraph (b)(2)(ii) is revised, and a new paragraph (b)(2)(iii) is added to read as follows:

**§ 409.31 Level of care requirement.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) Which arose while the beneficiary was receiving care in a SNF or swing-bed hospital or inpatient CAH services; or

(iii) For which, for an M+C enrollee described in § 409.20(c)(4), a physician has determined that a direct admission to a SNF without an inpatient hospital or inpatient CAH stay would be medically appropriate.

\* \* \* \* \*

**PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS**

■ 5. The authority citation for part 417 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), secs. 1301, 1306, and 1310 of the Public Health Service Act (42 U.S.C. 300e, 300e–5, and 300e–9), and 31 U.S.C. 9701.

**Subpart L—Medicare Contract Requirements**

**§ 417.479 [Amended]**

■ 6. In § 417.479, the following amendments are made as follows:

■ a. In paragraph (g)(2)(ii), the reference in the second sentence to “(h)(1)(v)” is removed and “(h)(2)” is inserted in its place.

■ b. The heading for paragraph (h) is revised.

■ c. Paragraph (h)(1) is revised.

■ d. Paragraph (h)(2) is revised.

■ e. The introductory text to paragraph (h)(3) is revised.

**§ 417.479 Requirements for physician incentive plans.**

\* \* \* \* \*

(h) *Disclosure and other requirements for organizations with physician incentive plans.* (1) Disclosure to CMS. Each health maintenance organization or competitive medical plan must provide to CMS information concerning its physician incentive plans as requested.

(2) *Pooling of patients.* Pooling of patients is permitted only if—(i) It is otherwise consistent with the relevant contracts governing the compensation arrangements for the physician or physician group;

(ii) The physician or physician group is at risk for referral services with respect to each of the categories of patients being pooled;

(iii) The terms of the compensation arrangements permit the physician or

physician group to spread the risk across the categories of patients being pooled;

(iv) The distribution of payments to physicians from the risk pool is not calculated separately by patient category; and

(v) The terms of the risk borne by the physicians or physician group are comparable for all categories of patients being pooled.

(3) *Disclosure to Medicare beneficiaries.* Each health maintenance organization or competitive medical plan must provide the following information to any Medicare beneficiary who requests it:

\* \* \* \* \*

**PART 422—MEDICARE+CHOICE PROGRAM**

■ 7. The authority citation for part 422 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

**Subpart A—General Provisions**

■ 8. In § 422.2, the introductory text is republished, and the definition of *Additional benefits* is revised to read as follows:

**§ 422.2 Definitions.**

As used in this part—

\* \* \* \* \*

*Additional benefits* are health care services not covered by Medicare, reductions in premiums or cost-sharing for Medicare covered services, and reductions in the Medicare beneficiary’s standard Part B premium, funded from adjusted excess amounts as calculated in the ACR.

\* \* \* \* \*

**Subpart B—Eligibility, Election, and Enrollment**

■ 9. In § 422.50, paragraph (a)(2) is revised to read as follows:

**§ 422.50 Eligibility to elect an M+C plan.**

(a) \* \* \*

(2) Has not been medically determined to have end-stage renal disease, except that—

(i) An individual who develops end-stage renal disease while enrolled in an M+C plan or in a health plan offered by the M+C organization is eligible to elect an M+C plan offered by that organization; and

(ii) An individual with end-stage renal disease whose enrollment in an M+C plan was terminated or discontinued after December 31, 1998, because CMS or the M+C organization

terminated the M+C organization’s contract for the plan or discontinued the plan in the area in which the individual resides, is eligible to elect another M+C plan. If the plan so elected is later terminated or discontinued in the area in which the individual resides, he or she may elect another M+C plan.

\* \* \* \* \*

■ 10. In § 422.74, the following amendments are made as set forth below:

■ a. Paragraph (d)(1)(i) is revised.

■ b. Paragraph (d)(4) is revised.

**§ 422.74 Disenrollment by the M+C organization.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(ii) The M+C organization has not received payment within 90 days after the date the premium was due.

\* \* \* \* \*

(d) \* \* \*

(4) *Individual no longer resides in the M+C plan’s service area.* (i) *Basis for disenrollment.* Unless continuation of enrollment is elected under § 422.54, the M+C organization must disenroll an individual if the M+C organization establishes, on the basis of a written statement from the individual or other evidence acceptable to CMS, that the individual has permanently moved—

(A) Out of the M+C plan’s service area; or

(B) From the residence in which the individual resided at the time of enrollment in the M+C plan to an area outside the M+C plan’s service area, for those individuals who enrolled in the M+C plan under the eligibility requirements at § 422.50(a)(3)(ii) or (a)(4).

(ii) *Special rule.* If the individual has not moved from the M+C plan’s service area (or residence, as described in paragraph (d)(4)(i)(B) of this section), but has left the service area (or residence) for more than 6 months, the M+C organization must disenroll the individual from the plan, unless the exception in paragraph (d)(4)(iii) of this section applies.

(iii) *Exception.* If the M+C plan covers services other than emergent, urgent, maintenance and poststabilization, and renal dialysis services (as described in § 422.100(b)(1)(iv) and § 422.113) when the individual is out of the service area for a period of consecutive days longer than 6 months but less than 12 months, but within the United States (as defined in § 400.200 of this chapter), the M+C organization may elect to offer to the individual the option of remaining enrolled in the M+C plan if—

(A) The individual is disenrolled on the first day of the 13th month after the

individual left the service area (or residence, if paragraph (d)(4)(i)(B) of this section applies);

(B) The individual understands and accepts any restrictions imposed by the M+C plan on obtaining these services while absent from the M+C plan's service area for the extended period; and

(C) The M+C organization makes this option available to all Medicare enrollees who are absent for an extended period from the M+C plan's service area. However, M+C organizations may limit this option to enrollees who travel to certain areas, as defined by the M+C organization, and who receive services from qualified providers who directly provide, arrange for, or pay for health care.

(iv) *Notice of disenrollment.* The M+C organization must give the individual a written notice of the disenrollment that meets the requirements set forth in paragraph (c) of this section.

\* \* \* \* \*

**Subpart C—Benefits and Beneficiary Protections**

■ 11. In § 422.101, the following amendments are made as follows:

■ a. Paragraph (b)(3) is revised.

■ b. Paragraph (c) is added.

**§ 422.101 Requirements relating to basic benefits.**

\* \* \* \* \*

(b) \* \* \*

(3) Written coverage decisions of local carriers and intermediaries with jurisdiction for claims in the geographic area in which services are covered under the M+C organization. If an M+C organization covers geographic areas encompassing more than one local coverage policy area, the M+C organization may elect to uniformly apply to plan enrollees in all areas the coverage policy that is the most beneficial to M+C enrollees. M+C organizations that elect this option must notify CMS before selecting the area that has local coverage policies that are most beneficial to M+C enrollees as follows:

(i) An M+C organization electing to adopt a uniform local coverage policy for a plan or plans must notify CMS at least 60 days before the date specified in § 422.306(a), which is 60 days before the date adjusted community rate proposals are due for the subsequent year. Such notice must identify the plan or plans and service area or services areas to which the uniform local coverage policy or policies will apply, the competing local coverage policies involved, and a justification explaining why the selected local coverage policy

or policies are most beneficial to M+C enrollees.

(ii) CMS will review notices provided under paragraph (b)(3)(i) of this section, evaluate the selected local coverage policy or policies based on such factors as cost, access, geographic distribution of enrollees, and health status of enrollees, and notify the M+C organization of its approval or denial of the selected uniform local coverage policy or policies.

(c) M+C organizations may elect to furnish, as part of their Medicare covered benefits, coverage of posthospital SNF care as described in subparts C and D of this part, in the absence of the prior qualifying hospital stay that would otherwise be required for coverage of this care.

■ 12. In § 422.106, the following amendments are made as follows:

■ a. The section heading is revised.

■ b. Paragraphs (a) introductory text, (a)(1), and (a)(2) are revised.

■ c. Paragraph (b) introductory text is revised.

■ d. A new paragraph (c) is added.

**§ 422.106 Coordination of benefits with employer or union group health plans and Medicaid.**

(a) *General rule.* If an M+C organization contracts with an employer, labor organization, or the trustees of a fund established by one or more employers or labor organizations that cover enrollees in an M+C plan, or contracts with a State Medicaid agency to provide Medicaid benefits to individuals who are eligible for both Medicare and Medicaid, and who are enrolled in an M+C plan, the enrollees must be provided the same benefits as all other enrollees in the M+C plan, with the employer, labor organization, fund trustees, or Medicaid benefits supplementing the M+C plan benefits. Jurisdiction regulating benefits under these circumstances is as follows:

(1) All requirements of this part that apply to the M+C program apply to the M+C plan coverage and benefits provided to enrollees eligible for benefits under an employer, labor organization, trustees of a fund established by one or more employers or labor organizations, or Medicaid contract.

(2) Employer benefits that complement an M+C plan, which are not part of the M+C plan, are not subject to review or approval by CMS.

\* \* \* \* \*

(b) *Examples.* Permissible employer, labor organization, benefit fund trustee, or Medicaid plan benefits include the following:

\* \* \* \* \*

(c) *Waiver or modification.* (1) M+C organizations may request, in writing, from CMS, a waiver or modification of those requirements in this part that hinder the design of, the offering of, or the enrollment in, M+C plans under contracts between M+C organizations and employers, labor organizations, or the trustees of funds established by one or more employers or labor organizations to furnish benefits to the entity's employees, former employees, or members or former members of the labor organizations.

(2) Approved waivers or modifications under this paragraph may be used by any M+C organization in developing its Adjusted Community Rate (ACR) proposal. Any M+C organization using a waiver or modification must include that information in the cover letter of its ACR proposal submission.

■ 13. Section 422.109 is revised to read as follows:

**§ 422.109 Effect of national coverage determinations (NCDs) and legislative changes in benefits.**

(a) *Definitions.* The term *significant cost*, as it relates to a particular NCD or legislative change in benefits, means either of the following:

(1) The average cost of furnishing a single service exceeds a cost threshold that—

(i) For calendar years 1998 and 1999, is \$100,000; and

(ii) For calendar year 2000 and subsequent calendar years, is the preceding year's dollar threshold adjusted to reflect the national per capita growth percentage described in § 422.254(b).

(2) The estimated cost of all Medicare services furnished as a result of a particular NCD or legislative change in benefits represents at least 0.1 percent of the national standardized annual capitation rate, as described in § 422.254(f), multiplied by the total number of Medicare beneficiaries for the applicable calendar year. For purposes of § 422.256 only, this test is applied to all NCDs or legislative changes in benefits, in the aggregate, for a given year. If the sum of the average cost of each NCD or legislative change in benefits exceeds the amount in paragraph (a)(1) of this section, or the aggregate costs of all NCDs and legislative changes for a year exceeds the percentage in paragraph (a)(2) of this section, the costs are considered "significant."

(b) *General rule.* If CMS determines and announces that an individual NCD or legislative change in benefits meets the criteria for significant cost described

in paragraph (a) of this section, a M+C organization is not required to assume risk for the costs of that service or benefit until the contract year for which payments are appropriately adjusted to take into account the cost of the NCD service or legislative change in benefits. If CMS determines that an NCD or legislative change in benefits does not meet the "significant cost" threshold described in § 422.109(a), the M+C organization is required to provide coverage for the NCD or legislative change in benefits and assume risk for the costs of that service or benefit as of the effective date stated in the NCD or specified in the legislation.

(c) *Before payment adjustments become effective.* Before the contract year that payment adjustments that take into account the significant cost of the NCD service or legislative change in benefits become effective, the service or benefit is not included in the M+C organization's contract with CMS, and is not a covered benefit under the contract. The following rules apply to these services or benefits:

(1) Medicare payment for the service or benefit is made directly by the fiscal intermediary and carrier to the provider furnishing the service or benefit in accordance with original Medicare payment rules, methods, and requirements.

(2) Costs for NCD services or legislative changes in benefits for which CMS intermediaries and carriers will not make payment and are the responsibility of the M+C organization are—

(i) Services necessary to diagnose a condition covered by the NCD or legislative changes in benefits;

(ii) Most services furnished as follow-up care to the NCD service or legislative change in benefits;

(iii) Any service that is already a Medicare-covered service and included in the annual M+C capitation rate or previously adjusted payments; and

(iv) Any service, including the costs of the NCD service or legislative change in benefits, to the extent the M+C organization is already obligated to cover it as an additional benefit under § 422.312 or supplemental benefit under § 422.102.

(3) Costs for significant cost NCD services or legislative changes in benefits for which CMS fiscal intermediaries and carriers will make payment are—

(i) Costs relating directly to the provision of services related to the NCD or legislative change in benefits that were noncovered services before the issuance of the NCD or legislative change in benefits; and

(ii) A service that is not included in the M+C capitation payment rate.

(4) Beneficiaries are liable for any applicable coinsurance amounts.

(d) *After payment adjustments become effective.* For the contract year in which payment adjustments that take into account the significant cost of the NCD service or legislative change in benefits are in effect, the service or benefit is included in the M+C organization's contract with CMS, and is a covered benefit under the contract. Subject to all applicable rules under this part, the M+C organization must furnish, arrange, or pay for the NCD service or legislative change in benefits. M+C organizations may establish separate plan rules for these services and benefits, subject to CMS review and approval. CMS may, at its discretion, issue overriding instructions limiting or revising the M+C plan rules, depending on the specific NCD or legislative change in benefits. For these services or benefits, the Medicare enrollee will be responsible for M+C plan cost sharing, as approved by CMS or unless otherwise instructed by CMS.

■ 14. In § 422.111, a new paragraph (f)(8)(iii) is added to read as follows:

**§ 422.111 Disclosure requirements.**

\* \* \* \* \*

(f) \* \* \*

(8) \* \* \*

(iii) The reduction in Part B premiums, if any.

\* \* \* \* \*

■ 15. A new § 422.133 is added to subpart C to read as follows:

**§ 422.133 Return to home skilled nursing facility.**

(a) *General rule.* M+C plans must provide coverage of posthospital extended care services to Medicare enrollees through a home skilled nursing facility if the enrollee elects to receive the coverage through the home skilled nursing facility, and if the home skilled nursing facility either has a contract with the M+C organization or agrees to accept substantially similar payment under the same terms and conditions that apply to similar skilled nursing facilities that contract with the M+C organization.

(b) *Definitions.* In this subpart, *home skilled nursing facility* means—

(1) The skilled nursing facility in which the enrollee resided at the time of admission to the hospital preceding the receipt of posthospital extended care services;

(2) A skilled nursing facility that is providing posthospital extended care services through a continuing care retirement community in which the

M+C plan enrollee was a resident at the time of admission to the hospital. A continuing care retirement community is an arrangement under which housing and health-related services are provided (or arranged) through an organization for the enrollee under an agreement that is effective for the life of the enrollee or for a specified period; or

(3) The skilled nursing facility in which the spouse of the enrollee is residing at the time of discharge from the hospital.

(c) *Coverage no less favorable.* The posthospital extended care scope of services, cost-sharing, and access to coverage provided by the home skilled nursing facility must be no less favorable to the enrollee than posthospital extended care services coverage that would be provided to the enrollee by a skilled nursing facility that would be otherwise covered under the M+C plan.

(d) *Exceptions.* The requirement to allow an M+C plan enrollee to elect to return to the home skilled nursing facility for posthospital extended care services after discharge from the hospital does not do the following:

(1) Require coverage through a skilled nursing facility that is not otherwise qualified to provide benefits under Part A for Medicare beneficiaries not enrolled in the M+C plan.

(2) Prevent a skilled nursing facility from refusing to accept, or imposing conditions on the acceptance of, an enrollee for the receipt of posthospital extended care services.

**Subpart D—Quality Assurance**

■ 16. In § 422.152, a new paragraph (f)(4) is added to read as follows:

**§ 422.152 Quality assessment and performance improvement program.**

\* \* \* \* \*

(f) \* \* \*

(4) *Focus on racial and ethnic minorities.* The M+C organization's Quality Assurance program must include a separate focus on racial and ethnic minorities.

**Subpart E—Relationships With Providers**

■ 17. In § 422.202, paragraph (a)(4) is revised to read as follows:

**§ 422.202 Participation procedures.**

(a) \* \* \*

(4) A process for appealing adverse participation procedures, including the right of physicians to present information and their views on the decision. In the case of termination or suspension of a provider contract by the

M+C organization, this process must conform to the rules in § 422.202(d).

■ 18. In § 422.210, paragraph (a) and the introductory text to paragraph (b) are revised to read as follows:

**§ 422.210 Disclosure of physician incentive plans.**

(a) *Disclosure to CMS.* Each M+C organization must provide to CMS information concerning its physician incentive plans as requested.

(b) *Disclosure to Medicare beneficiaries.* Each M+C organization must provide the following information to any Medicare beneficiary who requests it:

\* \* \* \* \*

**Subpart F—Payments to Medicare+Choice Organizations**

■ 19. In § 422.250, the following amendments are made as follows:

- a. Paragraph (a)(1) is revised.
- b. Paragraph (a)(2)(i)(B) is redesignated as (a)(2)(i)(C).
- c. A new paragraph (a)(2)(i)(B) is added.

**§ 422.250 General provisions.**

(a) *Monthly payments—(1) General rule.* (i) Except as provided in paragraphs (a)(2) or (f) of this section, CMS makes advance monthly payments equal to 1/12th of the annual M+C capitation rate for the payment area described in paragraph (c) of this section adjusted for such demographic risk factors as an individual's age, disability status, sex, institutional status, and other factors as it determines to be appropriate to ensure actuarial equivalence.

(ii) Effective January 1, 2000, CMS adjusts for health status as provided in § 422.256(c). When the new risk adjustment is implemented, 1/12th of the annual capitation rate for the payment area described in paragraph (c) of this section will be adjusted by the risk adjustment methodology under § 422.256(d).

(iii) Effective January 1, 2003, monthly payments may be reduced by the adjusted excess amount, as described in § 422.312(a)(2), and 80 percent of the reduction in monthly payments used to reduce the Medicare beneficiary's Part B premium, up to a total of 125 percent of Part B premium amount.

(2) \* \* \*

(i) \* \* \*

(B) CMS applies appropriate adjustments when establishing the rates, including risk adjustment factors. CMS also establishes annual changes in capitation rates using the methodology

described in § 422.252. Effective 2002, a special adjustment is made to increase ESRD rates to 100 percent of estimated per capita fee-for-service expenditures and rates are adjusted for age and sex. In subsequent years, rates are adjusted for age, sex, and other factors, if appropriate.

\* \* \* \* \*

■ 20. In § 422.256, paragraph (b) is revised to read as follows:

**§ 422.256 Adjustments to capitation rates and aggregate payments.**

\* \* \* \* \*

(b) *Adjustment for national coverage determination (NCD) services and legislative changes in benefits.* If CMS determines that the cost of furnishing an NCD service or legislative change in benefits is significant, as defined in § 422.109, CMS will adjust capitation rates or make other payment adjustments, to account for the cost of the service or legislative change in benefits. Until the new capitation rates are in effect, the M+C organization will be paid for the significant cost NCD service or legislative change in benefits on a fee-for-service basis as provided under § 422.109(b). The Office of the Actuary in CMS will apply a new NCD adjustment factor each year that reflects significant costs of NCDs and legislative changes in benefits for coverage effective in the second prior year. The new NCD adjustment factor will be applied to the 2 percent minimum update rate described in § 422.252(c).

\* \* \* \* \*

■ 21. In § 422.266, the following amendments are made as follows:

- a. Paragraph (a) introductory text is revised.
- b. Paragraph (c) is revised.

**§ 422.266 Special rules for hospice care.**

(a) *Information.* An M+C organization that has a contract under subpart K of this part must inform each Medicare enrollee eligible to select hospice care under § 418.24 of this chapter about the availability of hospice care (in a manner that objectively presents all available hospice providers, including a statement of any ownership interest in a hospice held by the M+C organization or a related entity) if—

\* \* \* \* \*

(c) *Payment.* (1) No payment is made to an M+C organization on behalf of a Medicare enrollee who has elected hospice care under § 418.24 of this chapter except for the portion of the payment applicable to the additional benefits described in § 422.312. This no-payment rule is effective from the first day of the month following the month

of election to receive hospice care, until the first day of the month following the month in which the election is terminated.

(2) During the time the hospice election is in effect, CMS's monthly capitation payment to the M+C organization is reduced to an amount equal to the adjusted excess amount determined under § 422.312. In addition, CMS pays through the original Medicare program (subject to the usual rules of payment)—

(i) The hospice program for hospice care furnished to the Medicare enrollee; and

(ii) The M+C organization, provider, or supplier for other Medicare-covered services to the enrollee.

**Subpart G—Premiums and Cost-Sharing**

■ 22. In § 422.312, the following amendments are made as follows:

- a. Paragraph (d) is redesignated as paragraph (e).
- b. A new paragraph (d) is added.

**§ 422.312 Requirement for additional benefits.**

\* \* \* \* \*

(d) *Reduction in payments.* As of January 1, 2003, as a part of providing additional benefits under paragraph (b) of this section, if there is an adjusted excess amount for the plan it offers, the M+C organization—

(1) May elect to receive a reduction (not to exceed 125 percent of the standard Part B premium amount) in its payments under § 422.250(a)(1), 80 percent of which will be applied to reduce the Part B premiums of its Medicare enrollees; and

(2) Must apply the reduction uniformly to all similarly situated enrollees of the M+C plan.

\* \* \* \* \*

**Subpart K—Contracts With Medicare+Choice Organizations**

■ 23. A new § 422.521 is added as set forth below:

**§ 422.521 Effective date of new significant regulatory requirements.**

CMS will not implement, other than at the beginning of a calendar year, requirements under this part that impose a new significant cost or burden on M+C organizations or plans, unless a different effective date is required by statute.

**Subpart M—Grievances, Organization Determinations and Appeals**

■ 24. In § 422.566, paragraph (c) is revised to read as set forth below:

**§ 422.566 Organization determinations.**

\* \* \* \* \*

(c) *Who can request an organization determination.* (1) Those individuals or entities who can request an organization determination are—

(i) The enrollee (including his or her authorized representative);

(ii) Any provider that furnishes, or intends to furnish, services to the enrollee; or

(iii) The legal representative of a deceased enrollee's estate.

(2) Those who can request an expedited determination are—

(i) An enrollee (including his or her authorized representative); or

(ii) A physician (regardless of whether the physician is affiliated with the M+C organization).

■ 25. In § 422.618, paragraph (c) is revised to read as set forth below:

**§ 422.618 How an M+C organization must effectuate standard reconsidered determinations or decisions.**

\* \* \* \* \*

(c) *Reversals other than by the M+C organization or the independent outside entity.*—(1) *General rule.* If the independent outside entity's determination is reversed in whole or in part by the ALJ, or at a higher level of appeal, the M+C organization must pay for, authorize, or provide the service under dispute as expeditiously as the enrollee's health condition requires, but no later than 60 calendar days from the date it receives notice reversing the determination. The M+C organization must inform the independent outside entity that the organization has effectuated the decision or that it has appealed the decision.

(2) *Effectuation exception when the M+C organization files an appeal with the Departmental Appeals Board.* If the M+C organization requests Departmental Appeals Board (the Board) review consistent with § 422.608, the M+C organization may await the outcome of the review before it pays for, authorizes, or provides the service under dispute. A M+C organization that files an appeal with the Board must concurrently send a copy of its appeal request and any accompanying documents to the enrollee and must notify the independent outside entity that it has requested an appeal.

■ 26. In § 422.619, paragraph (c) is revised to read as set forth below:

**§ 422.619 How a M+C organization must effectuate expedited reconsidered determinations.**

\* \* \* \* \*

(c) *Reversals other than by the M+C organization or the independent outside entity.*—(1) *General rule.* If the independent outside entity's expedited determination is reversed in whole or in part by the ALJ, or at a higher level of appeal, the M+C organization must authorize or provide the service under dispute as expeditiously as the enrollee's health condition requires, but no later than 60 days from the date it receives notice reversing the determination. The M+C organization must inform the independent outside entity that the organization has effectuated the decision.

(2) *Effectuation exception when the M+C organization files an appeal with the Departmental Appeals Board.* If the M+C organization requests Departmental Appeals Board (the Board) review consistent with § 422.608, the M+C organization may await the outcome of the review before it authorizes or provides the service under dispute. A M+C organization that files an appeal with the Board must concurrently send a copy of its appeal request and any accompanying documents to the enrollee and must notify the independent outside entity that it has requested an appeal.

**Subpart O—Intermediate Sanctions**

■ 27. In § 422.756, the following amendments are made as set forth below:

■ a. Paragraph (f)(2) is revised.

■ b. Paragraph (f)(3) is revised.

**§ 422.756 Procedures for imposing sanctions.**

\* \* \* \* \*

(f) \* \* \*

(2) In the case of a violation described in paragraph (a) of § 422.752, or a determination under paragraph (b) of § 422.752 based upon a violation under § 422.510(a)(4) (involving fraudulent or abusive activities), in accordance with the provisions of part 1005 of this title, the OIG may impose civil money penalties on the M+C organization in accordance with part 1005 of this title in addition to, or in place of, the sanctions that CMS may impose under paragraph (c) of this section.

(3) In the case of a determination under paragraph (b) of § 422.752 other

than a determination based upon a violation under § 422.510(a)(4), in accordance with the provisions of part 1005 of this title, CMS may impose civil money penalties on the M+C organization in the amounts specified in § 422.758 in addition to, or in place of, the sanctions that CMS may impose under paragraph (c) of this section.

■ 28. In § 422.758, the following amendments are made as set forth below:

■ a. The introductory text is designated as paragraph (a) introductory text.

■ b. Paragraph (a) is redesignated as paragraph (a)(1) and is revised.

■ c. Paragraph (b) is redesignated as paragraph (a)(2) and is revised.

■ d. A new paragraph (b) is added.

**§ 422.758 Maximum amount of civil money penalties imposed by CMS.**

(a) \* \* \*

(1) For the violations listed below, CMS may impose the sanctions specified in § 422.750(a)(2), (a)(3), or (a)(4) on any M+C organization that has a contract in effect. The M+C organization may also be subject to other applicable remedies available under law.

(2) For each week that a deficiency remains uncorrected after the week in which the M+C organization receives CMS's notice of the determination—up to \$10,000.

(b) If CMS makes a determination under § 422.752(b) and § 422.756(f)(3), based on a determination under § 422.510(a)(1) that an M+C organization has terminated its contract with CMS in a manner other than described under § 422.512—\$250 per Medicare enrollee from the terminated M+C plan or plans at the time the M+C organization terminated its contract, or \$100,000, whichever is greater.

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

Dated: April 3, 2003.

**Thomas A. Scully,**

*Administrator, Centers for Medicare & Medicaid Services.*

Dated: June 3, 2003.

**Tommy G. Thompson,**

*Secretary.*

[FR Doc. 03–20995 Filed 8–13–03; 3:19 pm]

BILLING CODE 4120–01–P



# Federal Register

---

**Friday,  
August 22, 2003**

---

**Part III**

## **Department of Housing and Urban Development**

---

**Federal Property Suitable as Facilities To  
Assist the Homeless; Notice**

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**
**[Docket No. FR-4809-N-34]**
**Federal Property Suitable as Facilities  
To Assist the Homeless**
**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**FOR FURTHER INFORMATION CONTACT:**

Mark Johnston, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-1234; TTY number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where

property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense.

Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Shirley Kramer, Division of Property Management, Program Support Center, HHS, room 5B-41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

 Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

 For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: **ARMY:** Ms. Julie Jones-Conte, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, Attn: DAIM-ME, Room 1E677, 600 Army Pentagon, Washington, DC 20310-0600; (703) 692-

 9223; **COE:** Ms. Shirley Middleswarth, Army Corps of Engineers, Civil Division, Directorate of Real Estate, 441 G Street, NW., Washington, DC 20314-1000; (202) 761-7425; **COAST GUARD:** United States Coast Guard, Attn: Teresa Sheinberg, Room 6109, 2100 Second Street, SW., Washington DC 20593-0001; (202) 267-6142; **ENERGY:** Mr. Tom Knox, Department of Energy, Office of Engineering & Construction Management, CR-80, Washington, DC 20585; (202) 586-8715; **GSA:** Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501-0052; **INTERIOR:** Ms. Linda Tribby, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., MS5512, Washington, DC 20240; (202) 219-0728; **NAVY:** Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374-5065; (202) 685-9200; **VA:** Ms. Amelia E. McLellan, Director, Real Property Service (183C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 419, Washington, DC 20420; (202) 565-5398; (These are not toll-free numbers).

Dated: August 14, 2003.

**John D. Garrity,**
*Director, Office of Special Needs Assistance Programs.*
**TITLE V, FEDERAL SURPLUS PROPERTY  
PROGRAM FEDERAL REGISTER REPORT  
FOR 8/22/03**
**Suitable/Available Properties**
*Buildings (by State)*

## California

 SSA Building  
1230 12th Street  
Modesto Co: CA 95354-  
Landholding Agency: GSA  
Property Number: 54200330003  
Status: Surplus

 Comment: 11,957 sq. ft., needs repair,  
presence of asbestos/lead paint, most  
recent use—office

GSA Number: 9-G-CA-1610

## Georgia

 Bldgs. 00064, 00065  
Camp Frank D. Merrill  
Dahlonega Co: Lumpkin GA 30597-  
Landholding Agency: Army  
Property Number: 21200330108  
Status: Unutilized

 Comment: 648 sq. ft. each, concrete block,  
most recent use—water support treatment  
bldg., off-site use only

## Idaho

 Bldg. CF603  
Idaho Natl Eng & Env Lab  
Scoville Co: Butte ID 83415-

- Landholding Agency: Energy  
Property Number: 41200020004  
Status: Excess  
Comment: 15,005 sq. ft. cinder block, presence of asbestos/lead paint, major rehab, off-site use only
- Indiana  
Bldg. 105, VAMC  
East 38th Street  
Marion Co: Grant IN 46952-  
Landholding Agency: VA  
Property Number: 97199230006  
Status: Excess  
Comment: 310 sq. ft., 1 story stone structure, no sanitary or heating facilities, Natl Register of Historic Places
- Bldg. 140, VAMC  
East 38th Street  
Marion Co: Grant IN 46952-  
Landholding Agency: VA  
Property Number: 97199230007  
Status: Excess  
Comment: 60 sq. ft., concrete block bldg., most recent use—trash house
- Bldg. 7  
VA Northern Indiana Health Care System  
Marion Campus, 1700 East 38th Street  
Marion Co: Grant IN 46953-  
Landholding Agency: VA  
Property Number: 97199810001  
Status: Underutilized  
Comment: 16,864 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places
- Bldg. 10  
VA Northern Indiana Health Care System  
Marion Campus, 1700 East 38th Street  
Marion Co: Grant IN 46953-  
Landholding Agency: VA  
Property Number: 97199810002  
Status: Underutilized  
Comment: 16,361 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places
- Bldg. 11  
VA Northern Indiana Health Care System  
Marion Campus, 1700 East 38th Street  
Marion Co: Grant IN 46953-  
Landholding Agency: VA  
Property Number: 97199810003  
Status: Underutilized  
Comment: 16,361 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places
- Bldg. 18  
VA Northern Indiana Health Care System  
Marion Campus, 1700 East 38th Street  
Marion Co: Grant IN 46953-  
Landholding Agency: VA  
Property Number: 97199810004  
Status: Underutilized  
Comment: 13,802 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places
- Bldg. 25  
VA Northern Indiana Health Care System  
Marion Campus, 1700 East 38th Street  
Marion Co: Grant IN 46953-  
Landholding Agency: VA  
Property Number: 97199810005  
Status: Unutilized  
Comment: 32,892 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places
- Bldg. 1  
N. Indiana Health Care System  
Marion Co: Grant IN 46952-  
Landholding Agency: VA  
Property Number: 97200310001  
Status: Unutilized  
Comment: 20,287 sq. ft., needs extensive repairs, presence of asbestos, most recent use—patient ward
- Bldg. 3  
N. Indiana Health Care System  
Marion Co: Grant IN 46952-  
Landholding Agency: VA  
Property Number: 97200310002  
Status: Unutilized  
Comment: 20,550 sq. ft., needs extensive repairs, presence of asbestos, most recent use—patient ward
- Bldg. 4  
N. Indiana Health Care System  
Marion Co: Grant IN 46952-  
Landholding Agency: VA  
Property Number: 97200310003  
Status: Unutilized  
Comment: 20,550 sq. ft., needs extensive repairs, presence of asbestos, most recent use—patient ward
- Bldg. 13  
N. Indiana Health Care System  
Marion Co: Grant IN 46952-  
Landholding Agency: VA  
Property Number: 97200310004  
Status: Unutilized  
Comment: 8971 sq. ft., needs extensive repairs, presence of asbestos, most recent use—office
- Bldg. 19  
N. Indiana Health Care System  
Marion Co: Grant IN 46952-  
Landholding Agency: VA  
Property Number: 97200310005  
Status: Unutilized  
Comment: 12,237 sq. ft., needs extensive repairs, presence of asbestos, most recent use—office
- Bldg. 20  
N. Indiana Health Care System  
Marion Co: Grant IN 46952-  
Landholding Agency: VA  
Property Number: 97200310006  
Status: Unutilized  
Comment: 14,039 sq. ft., needs extensive repairs, presence of asbestos, most recent use—office/storage
- Bldg. 42  
N. Indiana Health Care System  
Marion Co: Grant IN 46952-  
Landholding Agency: VA  
Property Number: 97200310007  
Status: Unutilized  
Comment: 5025 sq. ft., needs extensive repairs, presence of asbestos, most recent use—office
- Bldg. 60  
N. Indiana Health Care System  
Marion Co: Grant IN 46952-  
Landholding Agency: VA  
Property Number: 97200310008  
Status: Unutilized  
Comment: 18,126 sq. ft., needs extensive repairs, presence of asbestos, most recent use—office
- Bldg. 122  
N. Indiana Health Care System  
Marion Co: Grant IN 46952-  
Landholding Agency: VA  
Property Number: 97200310009  
Status: Unutilized  
Comment: 37,135 sq. ft., needs extensive repairs, presence of asbestos, most recent use—dining hall/kitchen
- Kentucky  
Green River Lock & Dam #3  
Rochester Co: Butler KY 42273-  
Location: SR 70 west from Morgantown, KY., approximately 7 miles to site.  
Landholding Agency: COE  
Property Number: 31199010022  
Status: Unutilized  
Comment: 980 sq. ft.; 2 story wood frame; two story residence; potential utilities; needs major rehab.
- Louisiana  
SSA Baton Rouge Dist. Ofc.  
350 Donmoor Avenue  
Baton Rouge Co: LA 70806-  
Landholding Agency: GSA  
Property Number: 54200330005  
Status: Surplus  
Comment: 9456 sq. ft., most recent use—office  
GSA Number: 7-G-LA-0567
- Maryland  
Bldg. 2728  
Fort Meade  
Ft. Meade Co: Anne Arundel MD 20755-  
Landholding Agency: Army  
Property Number: 21200330109  
Status: Unutilized  
Comment: 4072 sq. ft., most recent use—storage, off-site use only
- Bldgs. 00264, 00265  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005-  
Landholding Agency: Army  
Property Number: 21200330110  
Status: Unutilized  
Comment: 1322/1048 sq. ft., needs rehab, most recent use—storage, off-site use only
- Bldg. 00435  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005-  
Landholding Agency: Army  
Property Number: 21200330111  
Status: Unutilized  
Comment: 1191 sq. ft., needs rehab, most recent use—storage, off-site use only
- Bldg. 0449A  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005-  
Landholding Agency: Army  
Property Number: 21200330112  
Status: Unutilized  
Comment: 143 sq. ft., needs rehab, most recent use—substation switch bldg., off-site use only
- Bldgs. 00458, 00464  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005-  
Landholding Agency: Army  
Property Number: 21200330113  
Status: Unutilized  
Comment: 900/2647 sq. ft., needs rehab, most recent use—storage, off-site use only
- Bldg. 0460  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005-

Landholding Agency: Army  
Property Number: 21200330114  
Status: Unutilized  
Comment: 1800 sq. ft., needs rehab, most recent use—electrical EQ bldg., off-site use only  
Bldgs. 00506, 00509, 00605  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330115  
Status: Unutilized  
Comment: 38,690/1137 sq. ft., needs rehab, most recent use—storage, off-site use only  
Bldg. 00724  
Aberdeen Proving Ground  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330116  
Status: Unutilized  
Comment: off-site use only  
Bldgs. 00728, 00784  
Aberdeen Proving Ground  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330117  
Status: Unutilized  
Comment: 2100/232 sq. ft., needs rehab, most recent use—storage, off-site use only  
Bldg. 00914  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330118  
Status: Unutilized  
Comment: needs rehab, most recent use—safety shelter, off-site use only  
Bldg. 00915  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330119  
Status: Unutilized  
Comment: 247 sq. ft., needs rehab, most recent use—storage, off-site use only  
Bldg. 00931  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330120  
Status: Unutilized  
Comment: 1400 sq. ft., needs rehab, off-site use only  
Bldg. 01050  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330121  
Status: Unutilized  
Comment: 1050 sq. ft., needs rehab, most recent use—transmitter bldg., off-site use only  
Bldg. 1101A  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330122  
Status: Unutilized  
Comment: 1800 sq. ft., needs rehab, most recent use—ordnance bldg., off-site use only  
Bldg. 01169  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330123  
Status: Unutilized  
Comment: 440 sq. ft., needs rehab, most recent use—admin., off-site use only  
Bldg. 01170  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330124  
Status: Unutilized  
Comment: 600 sq. ft., needs rehab, most recent use—lab test bldg., off-site use only  
Bldg. 01171  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330125  
Status: Unutilized  
Comment: 2412 sq. ft., needs rehab, most recent use—changing facility, off-site use only  
Bldg. 01189  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330126  
Status: Unutilized  
Comment: 800 sq. ft., needs rehab, most recent use—range bldg., off-site use only  
Bldg. E1413  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330127  
Status: Unutilized  
Comment: needs rehab, most recent use—observation tower, off-site use only  
Bldgs. E1418, E2148  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330128  
Status: Unutilized  
Comment: 836/1092 sq. ft., needs rehab, most recent use—storage, off-site use only  
Bldg. E1486  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330129  
Status: Unutilized  
Comment: 388 sq. ft., needs rehab, most recent use—ordnance facility, off-site use only  
Bldg. E2314  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330130  
Status: Unutilized  
Comment: 11,279 sq. ft., needs rehab, most recent use—high explosive bldg., off-site use only  
Bldgs. 02350, 02357  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330131  
Status: Unutilized  
Comment: 163/920 sq. ft., needs rehab, most recent use—storage, off-site use only  
Bldg. E2350A  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330132  
Status: Unutilized  
Comment: 325 sq. ft., need rehab, most recent use—oil storage, off-site use only  
Bldg. 2456  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330133  
Status: Unutilized  
Comment: 4720 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—admin., off-site use only  
Bldg. E3175  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330134  
Status: Unutilized  
Comment: 1296 sq. ft., needs rehab, most recent use—hazard bldg., off-site use only  
4 Bldgs  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Location: E3224, E3228, E3230, E3232, E3234  
Landholding Agency: Army  
Property Number: 21200330135  
Status: Unutilized  
Comment: sq. ft. varies, needs rehab, most recent use—lab test bldgs., off-site use only  
Bldg. E3241  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330136  
Status: Unutilized  
Comment: 592 sq. ft., needs rehab, most recent use—medical res bldg., off-site use only  
Bldgs. E3265, E3266  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330137  
Status: Unutilized  
Comment: 5509/5397 sq. ft., needs rehab, most recent use—lab test bldg., off-site use only  
Bldgs. E3269, E3270  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330138  
Status: Unutilized  
Comment: 200/1200 sq. ft., needs rehab, most recent use—flam. storage, off-site use only  
Bldg. E3300  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330139  
Status: Unutilized  
Comment: 44,352 sq. ft., needs rehab, most recent use—chemistry lab, off-site use only  
Bldg. E3320  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330140  
Status: Unutilized  
Comment: 50,750 sq. ft., needs rehab, most recent use—admin., off-site use only

- Bldg. E3322  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330141  
Status: Unutilized  
Comment: 5906 sq. ft., needs rehab, most recent use—storage, off-site use only
- Bldg. E3326  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330142  
Status: Unutilized  
Comment: 2184 sq. ft., needs rehab, most recent use—admin., off-site use only
- 5 Bldgs.  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Location: E3329, E3334, E3344, E3350, E3370  
Landholding Agency: Army  
Property Number: 21200330143  
Status: Unutilized  
Comment: sq. ft. varies, needs rehab, most recent use—lab test bldgs., off-site use only
- Bldg. E3335  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330144  
Status: Unutilized  
Comment: 400 sq. ft., needs rehab, most recent use—storage, off-site use only
- Bldgs. E3360, E3362, E3464  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330145  
Status: Unutilized  
Comment: 3588/236 sq. ft., needs rehab, most recent use—storage, off-site use only
- Bldg. E3514  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330146  
Status: Unutilized  
Comment: 4416 sq. ft., needs rehab, most recent use—admin., off-site use only
- Bldgs. E3517, E3525  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005  
Landholding Agency: Army  
Property Number: 21200330147  
Status: Unutilized  
Comment: 1001/2175 sq. ft., needs rehab, most recent use—nonmet matl facility, off-site use only
- Bldg. E3542  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330148  
Status: Unutilized  
Comment: 1146 sq. ft., needs rehab, most recent use—lab test bldg., off-site use only
- Bldgs. 03554, 03556  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330149  
Status: Unutilized  
Comment: 18,000/9,000 sq. ft., needs rehab, most recent use—storage, off-site use only
- Bldgs. E3863, E3864, E4415  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330150  
Status: Unutilized  
Comment: sq. ft. varies needs rehab, most recent use—admin., off-site use only
- Bldg. E4420  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330151  
Status: Unutilized  
Comment: 14,997 sq. ft., needs rehab, most recent use—police bldg., off-site use only
- Bldg. E4733  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330152  
Status: Unutilized  
Comment: 2252 sq. ft., needs rehab, most recent use—flammable storage, off-site use only
- Bldg. E4734  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330153  
Status: Unutilized  
Comment: 1114 sq. ft., needs rehab, most recent use—private club, off-site use only
- 4 Bldgs.  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Location: E5005, E5049, E5050, E5051  
Landholding Agency: Army  
Property Number: 21200330154  
Status: Unutilized  
Comment: sq. ft. varies, needs rehab, most recent use—storage, off-site use only
- Bldg. E5068  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330155  
Status: Unutilized  
Comment: 1200 sq. ft., needs rehab, most recent use—fire station, off-site use only
- 4 Bldgs.  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Location: E5107, E5181, E5182, E5269  
Landholding Agency: Army  
Property Number: 21200330156  
Status: Unutilized  
Comment: sq. ft. varies, needs rehab, most recent use—storage, off-site use only
- Bldgs. E5329, E5374  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330157  
Status: Unutilized  
Comment: 1001/308 sq. ft., needs rehab, most recent use—fuel POL bldg., off-site use only
- Bldgs. E5425, 05426  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330158  
Status: Unutilized  
Comment: 1363/3888 sq. ft., needs rehab, most recent use—storage, off-site use only
- Bldg. 05446  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330159  
Status: Unutilized  
Comment: 1991 sq. ft., needs rehab, most recent use—admin., off-site use only
- Bldg. 05447  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330160  
Status: Unutilized  
Comment: 2464 sq. ft., needs rehab, most recent use—storage, off-site use only
- Bldgs. 05448, 05449  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330161  
Status: Unutilized  
Comment: 6431 sq. ft., needs rehab, most recent use—enlisted UHP, off-site use only
- Bldg. 05450  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330162  
Status: Unutilized  
Comment: 2730 sq. ft., needs rehab, most recent use—admin., off-site use only
- Bldgs. 05451, 05455  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330163  
Status: Unutilized  
Comment: 2730/6431 sq. ft., needs rehab, most recent use—storage, off-site use only
- Bldg. 05453  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330164  
Status: Unutilized  
Comment: 6431 sq. ft., needs rehab, most recent use—admin., off-site use only
- Bldgs. 05456, 05459, 05460  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330165  
Status: Unutilized  
Comment: 6431 sq. ft., needs rehab, most recent use—enlisted bldg., off-site use only
- Bldgs. 05457, 05458  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330166  
Status: Unutilized  
Comment: 2730 sq. ft., needs rehab, most recent use—admin., off-site use only
- Bldg. E5609  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330167  
Status: Unutilized  
Comment: 2053 sq. ft., needs rehab, most recent use—storage, off-site use only
- Bldg. E5611  
Aberdeen Proving Grounds

Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330168  
Status: Unutilized  
Comment: 11,242 sq. ft., needs rehab, most recent use—hazard bldg., off-site use only

Bldg. E5634  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330169  
Status: Unutilized  
Comment: 200 sq. ft., needs rehab, most recent use—flammable storage, off-site use only

Bldgs. E5648, E5697  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330170  
Status: Unutilized  
Comment: 6802/2595 sq. ft., needs rehab, most recent use—lab test bldg., off-site use only

Bldg. E5654  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330171  
Status: Unutilized  
Comment: 21,532 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E5779  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330172  
Status: Unutilized  
Comment: 174 sq. ft., needs rehab, most recent use—wash rack bldg., off-site use only

Bldgs. E5782, E5880  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330173  
Status: Unutilized  
Comment: 510/1528 sq. ft., needs rehab, most recent use—flammable storage, off-site use only

Bldg. E5854  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330174  
Status: Unutilized  
Comment: 5166 sq. ft., needs rehab, most recent use—eng/MTN bldg., off-site use only

Bldgs. E5870, E5890  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330175  
Status: Unutilized  
Comment: 1192/11,279 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E5942  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330176  
Status: Unutilized  
Comment: 2147 sq. ft., needs rehab, most recent use—igloo storage, off-site use only

Bldgs. E5952, E5953  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330177  
Status: Unutilized  
Comment: 100/24 sq. ft., needs rehab, most recent use—compressed air bldg., off-site use only

Bldgs. E7401, E7402  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330178  
Status: Unutilized  
Comment: 256/440 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E7407, E7408  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330179  
Status: Unutilized  
Comment: 1078/762 sq. ft., needs rehab, most recent use—decon facility, off-site use only

Bldg. E7500  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330180  
Status: Unutilized  
Comment: 256 sq. ft., needs rehab, most recent use—changing bldg., off-site use only

Bldgs. E7501, E7502  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330181  
Status: Unutilized  
Comment: 256/77 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E7931  
Aberdeen Proving Grounds  
Aberdeen Co: Harford MD 21005–  
Landholding Agency: Army  
Property Number: 21200330182  
Status: Unutilized  
Comment: needs rehab, most recent use—sewer treatment, off-site use only

Mississippi  
Quonset Bldg.  
Greenville Casting Plant  
Greenville Co: Washington MS 38701–  
Landholding Agency: COE  
Property Number: 31200220010  
Status: Unutilized  
Comment: 26,250 sq. ft., presence of asbestos/lead paint, most recent use—storage/office, off-site use only

Storage Bldg. #1  
Greenville Casting Plant  
Greenville Co: Washington MS 38701–  
Landholding Agency: COE  
Property Number: 31200220011  
Status: Unutilized  
Comment: 32,502 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Storage Bldg. #2  
Greenville Casting Plant  
Greenville Co: Washington MS 38701–  
Landholding Agency: COE  
Property Number: 31200220012

Status: Unutilized  
Comment: 16,170 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Yellow Office Bldg.  
Greenville Casting Plant  
Greenville Co: Washington MS 38701–  
Landholding Agency: COE  
Property Number: 31200220013  
Status: Unutilized  
Comment: 1820 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only

Storage Bldg.  
Greenville Casting Plant  
Greenville Co: Washington MS 38701–  
Landholding Agency: COE  
Property Number: 31200220014  
Status: Unutilized  
Comment: 1820 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only

Container Bldg.  
Greenville Casting Plant  
Greenville Co: Washington MS 38701–  
Landholding Agency: COE  
Property Number: 31200220015  
Status: Unutilized  
Comment: 270 sq. ft. presence, of lead paint, most recent use—storage, off-site use only

Montana  
Bldg. 1  
Butte Natl Guard  
Butte Co: Silverbow MT 59701–  
Landholding Agency: COE  
Property Number: 31200040010  
Status: Unutilized  
Comment: 22799 sq. ft., presence of asbestos, most recent use—cold storage, off-site use only

Bldg. 2  
Butte Natl Guard  
Butte Co: Silverbow MT 59701–  
Landholding Agency: COE  
Property Number: 31200040011  
Status: Unutilized  
Comment: 3292 sq. ft., most recent use—cold storage, off-site use only

Bldg. 3  
Butte Natl Guard  
Butte Co: Silverbow MT 59701–  
Landholding Agency: COE  
Property Number: 31200040012  
Status: Unutilized  
Comment: 964 sq. ft., most recent use—cold storage, off-site use only

Bldg. 4  
Butte Natl Guard  
Butte Co: Silverbow MT 59701–  
Landholding Agency: COE  
Property Number: 31200040013  
Status: Unutilized  
Comment: 72 sq. ft., most recent use—cold storage, off-site use only

Bldg. 5  
Butte Natl Guard  
Butte Co: Silverbow MT 59701–  
Landholding Agency: COE  
Property Number: 31200040014  
Status: Unutilized  
Comment: 1286 sq. ft., most recent use—cold storage, off-site use only

Nevada  
Young Fed Bldg/Courthouse

300 Booth Street  
Reno Co: NV 89502–  
Landholding Agency: GSA  
Property Number: 54200330006  
Status: Surplus  
Comment: 133,439 sq. ft. (85,637 sq. ft. available), presence of asbestos/lead paint  
GSA Number: 9–G–NV–529  
New York

Maint/Office Building  
Upper Lisle Road  
Whitney Point Co: Broome NY 23862–  
Landholding Agency: COE  
Property Number: 31200330005  
Status: Unutilized  
Comment: 3820 sq. ft., & 2160 sq. ft., steel frame, off-site use only

North Dakota

Office Bldg.  
Lake Oahe Project  
3rd & Main  
Ft. Yates Co: Sioux ND 58538–  
Landholding Agency: COE  
Property Number: 31200020001  
Status: Unutilized  
Comment: 1200 sq. ft., 2-story wood, off-site use only

Ohio

Barker Historic House  
Willow Island Locks and Dam  
Newport Co: Washington OH 45768–9801  
Location: Located at lock site, downstream of lock and dam structure  
Landholding Agency: COE  
Property Number: 31199120018  
Status: Unutilized  
Comment: 1600 sq. ft. bldg. with ½ acre of land, 2 story brick frame, needs rehab, on Natl Register of Historic Places, no utilities, off-site use only

Residence  
506 Reservoir Rd.  
Paint Creek Lake  
Bainbridge Co: Highland OH 45612–  
Landholding Agency: COE  
Property Number: 31200210008  
Status: Unutilized  
Comment: 1200 sq. ft., needs repair, off-site use only

Pennsylvania

Mahoning Creek Reservoir  
New Bethlehem Co: Armstrong PA 16242–  
Landholding Agency: COE  
Property Number: 31199210008  
Status: Unutilized  
Comment: 1015 sq. ft., 2 story brick residence, off-site use only

Dwelling  
Lock & Dam 6, Allegheny River, 1260 River Rd.  
Freeport Co: Armstrong PA 16229–2023  
Landholding Agency: COE  
Property Number: 31199620008  
Status: Unutilized  
Comment: 2652 sq. ft., 3-story brick house, in close proximity to Lock and Dam, available for interim use for nonresidential purposes

Govt. Dwelling  
Youghioghny River Lake  
Confluence Co: Fayette PA 15424–9103  
Landholding Agency: COE  
Property Number: 31199640002

Status: Unutilized  
Comment: 421 sq. ft., 2-story brick w/ basement, most recent use—residential  
Dwelling  
Lock & Dam 4, Allegheny River  
Natrona Co: Allegheny PA 15065–2609  
Landholding Agency: COE  
Property Number: 31199710009  
Status: Unutilized  
Comment: 1664 sq. ft., 2-story brick residence, needs repair, off-site use only

Dwelling #1  
Crooked Creek Lake  
Ford City Co: Armstrong PA 16226–8815  
Landholding Agency: COE  
Property Number: 31199740002  
Status: Excess  
Comment: 2030 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2  
Crooked Creek Lake  
Ford City Co: Armstrong PA 16226–8815  
Landholding Agency: COE  
Property Number: 31199740003  
Status: Excess  
Comment: 3045 sq. ft., most recent use—residential, good condition, off-site use only

Govt Dwelling  
East Branch Lake  
Wilcox Co: Elk PA 15870–9709  
Landholding Agency: COE  
Property Number: 31199740005  
Status: Underutilized  
Comment: approx. 5299 sq. ft., 1-story, most recent use—residence, off-site use only

Dwelling #1  
Loyalhanna Lake  
Saltsburg Co: Westmoreland PA 15681–9302  
Landholding Agency: COE  
Property Number: 31199740006  
Status: Excess  
Comment: 1996 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2  
Loyalhanna Lake  
Saltsburg Co: Westmoreland PA 15681–9302  
Landholding Agency: COE  
Property Number: 31199740007  
Status: Excess  
Comment: 1996 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #1  
Woodcock Creek Lake  
Saegertown Co: Crawford PA 16433–0629  
Landholding Agency: COE  
Property Number: 31199740008  
Status: Excess  
Comment: 2106 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2  
Lock & Dam 6, 1260 River Road  
Freeport Co: Armstrong PA 16229–2023  
Landholding Agency: COE  
Property Number: 31199740009  
Status: Excess  
Comment: 2652 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2  
Youghioghny River Lake

Confluence Co: Fayette PA 15424–9103  
Landholding Agency: COE  
Property Number: 31199830003  
Status: Excess  
Comment: 1421 sq. ft., 2-story + basement, most recent use—residential  
Bldg. 3, VAMC  
1700 South Lincoln Avenue  
Lebanon Co: Lebanon PA 17042–  
Landholding Agency: VA  
Property Number: 97199230012  
Status: Underutilized  
Comment: portion of bldg. (4046 sq. ft.), most recent use—storage, second floor—lacks elevator access

South Dakota

Residence  
Tract 514  
Ft. Pierre Co: Stanley SD  
Landholding Agency: COE  
Property Number: 31200240006  
Status: Excess  
Comment: 1426 sq. ft., off-site use only

Residence  
Tract 516  
Ft. Pierre Co: Stanley SD  
Landholding Agency: COE  
Property Number: 31200240007  
Status: Excess  
Comment: 2264 sq. ft., off-site use only

Residence/Tract 120  
Pierre Co: SD 57532–  
Landholding Agency: COE  
Property Number: 31200330007  
Status: Excess  
Comment: 1104 sq. ft., off-site use only

Residence/Tract 143  
Pierre Co: SD 57532–  
Landholding Agency: COE  
Property Number: 31200330008  
Status: Excess  
Comment: 960 sq. ft., off-site use only

Residence/Tract 157  
Pierre Co: SD 57532–  
Landholding Agency: COE  
Property Number: 31200330009  
Status: Excess  
Comment: 988 sq. ft., off-site use only

Residence/Tract 300  
Pierre Co: SD 57532–  
Landholding Agency: COE  
Property Number: 31200330010  
Status: Excess  
Comment: 960 sq. ft., off-site use only

Residence/Tract 413  
Pierre Co: SD 57532–  
Landholding Agency: COE  
Property Number: 31200330011  
Status: Excess  
Comment: 960 sq. ft., off-site use only

Residence/Tract 420  
Pierre Co: SD 57532–  
Landholding Agency: COE  
Property Number: 31200330012  
Status: Excess  
Comment: 1680 sq. ft., off-site use only

Texas

Bldgs. P6220, P6222  
Fort Sam Houston  
Camp Bullis  
San Antonio Co: Bexar TX–  
Landholding Agency: Army  
Property Number: 21200330197

Status: Unutilized  
 Comment: 384 sq. ft., most recent use—  
 carport/storage, off-site use only

Bldgs. P6224, P6226  
 Fort Sam Houston  
 Camp Bullis

San Antonio Co: Bexar TX  
 Landholding Agency: Army  
 Property Number: 21200330198  
 Status: Unutilized

Comment: 384 sq. ft., most recent use—  
 carport/storage, off-site use only

Utah

Federal Center Warehouse  
 Clearfield Federal Depot

Clearfield Co: UT 84016—  
 Landholding Agency: GSA  
 Property Number: 54200330008  
 Status: Excess

Comment: 118,320 sq. ft., roof replacement  
 necessary, presence of asbestos, most  
 recent use—storage

GSA Number : 7-G-UT-414-2

Virginia

Bldg. T-707

Fort Eustis

Ft. Eustis Co: VA 23604—  
 Landholding Agency: Army

Property Number: 21200330199  
 Status: Unutilized

Comment: 3763 sq. ft., most recent use—  
 chapel, off-site use only

Metal Bldg.

John H. Kerr Dam & Reservoir  
 Co: Boydton VA

Landholding Agency: COE  
 Property Number: 31199620009  
 Status: Excess

Comment: 800 sq. ft., most recent use—  
 storage, off-site use only

Wisconsin

Former Lockmaster's Dwelling  
 Cedar Locks

4527 East Wisconsin Road  
 Appleton Co: Outagamie WI 54911—

Landholding Agency: COE  
 Property Number: 31199011524  
 Status: Unutilized

Comment: 1224 sq. ft.; 2 story brick/wood  
 frame residence; needs rehab; secured area  
 with alternate access.

Former Lockmaster's Dwelling  
 Appleton 4th Lock  
 905 South Lowe Street

Appleton Co: Outagamie WI 54911—  
 Landholding Agency: COE

Property Number: 31199011525  
 Status: Unutilized

Comment: 908 sq. ft.; 2 story wood frame  
 residence; needs rehab

Former Lockmaster's Dwelling  
 Kaukauna 1st Lock  
 301 Canal Street

Kaukauna Co: Outagamie WI 54131—  
 Landholding Agency: COE

Property Number: 31199011527  
 Status: Unutilized

Comment: 1290 sq. ft.; 2 story wood frame  
 residence; needs rehab; secured area with  
 alternate access

Former Lockmaster's Dwelling  
 Appleton 1st Lock  
 905 South Oneida Street

Appleton Co: Outagamie WI 54911—

Landholding Agency: COE  
 Property Number: 31199011531

Status: Unutilized

Comment: 1300 sq. ft.; potential utilities; 2  
 story wood frame residence; needs rehab;  
 secured area with alternate access

Former Lockmaster's Dwelling

Rapid Croche Lock

Lock Road

Wrightstown Co: Outagamie WI 54180—

Location: 3 miles southwest of intersection  
 State Highway 96 and Canal Road

Landholding Agency: COE

Property Number: 31199011533  
 Status: Unutilized

Comment: 1952 sq. ft.; 2 story wood frame  
 residence; potential utilities; needs rehab

Former Lockmaster's Dwelling

Little KauKauna Lock

Little KauKauna

Lawrence Co: Brown WI 54130—

Location: 2 miles southeasterly from  
 intersection of Lost Dauphin Road (County  
 Trunk Highway "D") and River Street

Landholding Agency: COE

Property Number: 31199011535  
 Status: Unutilized

Comment: 1224 sq. ft.; 2 story brick/wood  
 frame residence; needs rehab

Former Lockmaster's Dwelling

Little Chute, 2nd Lock

214 Mill Street

Little Chute Co: Outagamie WI 54140—

Landholding Agency: COE

Property Number: 31199011536  
 Status: Unutilized

Comment: 1224 sq. ft.; 2 story brick/wood  
 frame residence; potential utilities; needs  
 rehab; secured area with alternate access

Bldg. 8

VA Medical Center

County Highway E

Tomah Co: Monroe WI 54660—

Landholding Agency: VA  
 Property Number: 97199010056

Status: Underutilized

Comment: 2200 sq. ft., 2 story wood frame,  
 possible asbestos, potential utilities,  
 structural deficiencies, needs rehab

#### *Land (by State)*

Alabama

VA Medical Center

VAMC

Tuskegee Co: Macon AL 36083—

Landholding Agency: VA  
 Property Number: 97199010053

Status: Underutilized

Comment: 40 acres, buffer to VA Medical  
 Center, potential utilities, undeveloped

Arkansas

Parcel 01

DeGray Lake

Section 12

Arkadelphia Co: Clark AR 71923-9361

Landholding Agency: COE

Property Number: 31199010071

Status: Unutilized

Comment: 77.6 acres

Parcel 02

DeGray Lake

Section 13

Arkadelphia Co: Clark AR 71923-9361

Landholding Agency: COE

Property Number: 31199010072

Status: Unutilized

Comment: 198.5 acres

Parcel 03

DeGray Lake

Section 18

Arkadelphia Co: Clark AR 71923-9361

Landholding Agency: COE

Property Number: 31199010073

Status: Unutilized

Comment: 50.46 acres

Parcel 04

DeGray Lake

Section 24, 25, 30 and 31

Arkadelphia Co: Clark AR 71923-9361

Landholding Agency: COE

Property Number: 31199010074

Status: Unutilized

Comment: 236.37 acres

Parcel 05

DeGray Lake

Section 16

Arkadelphia Co: Clark AR 71923-9361

Landholding Agency: COE

Property Number: 31199010075

Status: Unutilized

Comment: 187.30 acres

Parcel 06

DeGray Lake

Section 13

Arkadelphia Co: Clark AR 71923-9361

Landholding Agency: COE

Property Number: 31199010076

Status: Unutilized

Comment: 13.0 acres

Parcel 07

DeGray Lake

Section 34

Arkadelphia Co: Hot Spring AR 71923-9361

Landholding Agency: COE

Property Number: 31199010077

Status: Unutilized

Comment: 0.27 acres

Parcel 08

DeGray Lake

Section 13

Arkadelphia Co: Clark AR 71923-9361

Landholding Agency: COE

Property Number: 31199010078

Status: Unutilized

Comment: 14.6 acres

Parcel 09

DeGray Lake

Section 12

Arkadelphia Co: Hot Spring AR 71923-9361

Landholding Agency: COE

Property Number: 31199010079

Status: Unutilized

Comment: 6.60 acres

Parcel 10

DeGray Lake

Section 12

Arkadelphia Co: Hot Spring AR 71923-9361

Landholding Agency: COE

Property Number: 31199010080

Status: Unutilized

Comment: 4.5 acres

Parcel 11

DeGray Lake

Section 19

Arkadelphia Co: Hot Spring AR 71923-9361

Landholding Agency: COE

Property Number: 31199010081

Status: Unutilized  
 Comment: 19.50 acres  
 Lake Greeson  
 Section 7, 8 and 18  
 Murfreesboro Co: Pike AR 7195COE  
 Property Number: 31199010083  
 Status: Unutilized  
 Comment: 46 acres

California  
 Land  
 4150 Clement Street  
 San Francisco Co: San Francisco CA 94121-  
 Landholding Agency: VA  
 Property Number: 9719924000  
 Comment: 4 acres; landslide area

Iowa  
 Former Army Natl Guard  
 Waverly Co: Bremer IA 50677-  
 Landholding Agency: GSA  
 Property Number: 54200330004  
 Status: Surplus  
 Comment: 4.13 acres with 1.88 acres of easements  
 GSA Number : 7-D-IA-0463C  
 40.66 acres  
 VA Medical Center  
 1515 West Pleasant St.  
 Knoxville Co: Marion IA 50138-  
 Landholding Agency: VA  
 Property Number: 97199740002  
 Status: Unutilized  
 Comment: golf course, easement requirements

Kansas  
 Parcel 1  
 El Dorado Lake  
 Section 13, 24, and 18  
 (See County) Co: Butler KS  
 Landholding Agency: COE  
 Property Number: 31199010064  
 Status: Unutilized  
 Comment: 61 acres; most recent use—recreation

Kentucky  
 Tract 2625  
 Barkley Lake, Kentucky, and Tennessee  
 Cadiz Co: Trigg KY 42211-  
 Location: Adjoining the village of Rockcastle.  
 Landholding Agency: COE  
 Property Number: 31199010025  
 Status: Excess  
 Comment: 2.57 acres; rolling and wooded  
 Tract 2709-10 and 2710-2  
 Barkley Lake, Kentucky and Tennessee  
 Cadiz Co: Trigg KY 42211-  
 Location: 2½ miles in a southerly direction from the village of Rockcastle.  
 Landholding Agency: COE  
 Property Number: 31199010026  
 Status: Excess  
 Comment: 2.00 acres; steep and wooded  
 Tract 2708-1 and 2709-1  
 Barkley Lake, Kentucky and Tennessee  
 Cadiz Co: Trigg KY 42211-  
 Location: 2½ miles in a southerly direction from the village of Rockcastle  
 Landholding Agency: COE  
 Property Number: 31199010027  
 Status: Excess  
 Comment: 3.59 acres; rolling and wooded; no utilities  
 Tract 2800  
 Barkley Lake, Kentucky and Tennessee  
 Cadiz Co: Trigg KY 42211-  
 Location: 4½ miles in a southeasterly direction from the village of Rockcastle  
 Landholding Agency: COE  
 Property Number: 31199010028  
 Status: Excess  
 Comment: 5.44 acres; steep and wooded  
 Tract 2915  
 Barkley Lake, Kentucky and Tennessee  
 Cadiz Co: Trigg KY 42211-  
 Location: 6½ miles west of Cadiz  
 Landholding Agency: COE  
 Property Number: 31199010029  
 Status: Excess  
 Comment: 5.76 acres; steep and wooded; no utilities  
 Tract 2702  
 Barkley Lake, Kentucky and Tennessee  
 Cadiz Co: Trigg KY 42211-  
 Location: 1 mile in a southerly direction from the village of Rockcastle  
 Landholding Agency: COE  
 Property Number: 31199010031  
 Status: Excess  
 Comment: 4.90 acres; wooded; no utilities  
 Tract 4318  
 Barkley Lake, Kentucky and Tennessee  
 Canton Co: Trigg KY 42212-  
 Location: Trigg Co. adjoining the city of Canton, KY, on the waters of Hopson Creek  
 Landholding Agency: COE  
 Property Number: 31199010032  
 Status: Excess  
 Comment: 8.24 acres; steep and wooded  
 Tract 4502  
 Barkley Lake, Kentucky and Tennessee  
 Canton Co: Trigg KY 42212-  
 Location: 3½ miles in a southerly direction from Canton, KY  
 Landholding Agency: COE  
 Property Number: 31199010033  
 Status: Excess  
 Comment: 4.26 acres; steep and wooded  
 Tract 4611  
 Barkley Lake, Kentucky and Tennessee  
 Canton Co: Trigg KY 42212-  
 Location: 5 miles south of Canton, KY  
 Landholding Agency: COE  
 Property Number: 31199010034  
 Status: Excess  
 Comment: 10.51 acres; steep and wooded; no utilities  
 Tract 4619  
 Barkley Lake, Kentucky and Tennessee  
 Canton Co: Trigg KY 42212-  
 Location: 4½ miles south from Canton, KY  
 Landholding Agency: COE  
 Property Number: 31199010035  
 Status: Excess  
 Comment: 2.02 acres; steep and wooded; no utilities  
 Tract 4817  
 Barkley Lake, Kentucky and Tennessee  
 Canton Co: Trigg KY 42212-  
 Location: 6½ miles south of Canton, KY  
 Landholding Agency: COE  
 Property Number: 31199010036  
 Status: Excess  
 Comment: 1.75 acres; wooded  
 Tract 1217  
 Barkley Lake, Kentucky and Tennessee  
 Eddyville Co: Lyon KY 42030-  
 Location: On the north side of the Illinois Central Railroad  
 Landholding Agency: COE  
 Property Number: 31199010042  
 Status: Excess  
 Comment: 5.80 acres; steep and wooded  
 Tract 1906  
 Barkley Lake, Kentucky and Tennessee  
 Eddyville Co: Lyon KY 42030-  
 Location: Approximately 4 miles east of Eddyville, KY  
 Landholding Agency: COE  
 Property Number: 31199010044  
 Status: Excess  
 Comment: 25.86 acres; rolling steep and partially wooded; no utilities  
 Tract 1907  
 Barkley Lake, Kentucky and Tennessee  
 Eddyville Co: Lyon KY 42038  
 Location: On the waters of Pilfen Creek, 4 miles east of Eddyville, KY  
 Landholding Agency: COE  
 Property Number: 31199010045  
 Status: Excess  
 Comment: 8.71 acres; rolling steep and wooded; no utilities  
 Tract 2001 #1  
 Barkley Lake, Kentucky and Tennessee  
 Eddyville Co: Lyon KY 42030-  
 Location: Approximately 4½ miles east of Eddyville, KY  
 Landholding Agency: COE  
 Property Number: 31199010046  
 Status: Excess  
 Comment: 47.42 acres; steep and wooded; no utilities  
 Tract 2001 #2  
 Barkley Lake, Kentucky and Tennessee  
 Eddyville Co: Lyon KY 42030-  
 Location: Approximately 4½ miles east of Eddyville, KY  
 Landholding Agency: COE  
 Property Number: 31199010047  
 Status: Excess  
 Comment: 8.64 acres; steep and wooded; no utilities  
 Tract 2005  
 Barkley Lake, Kentucky and Tennessee  
 Eddyville Co: Lyon KY 42030-  
 Location: Approximately 5½ miles east of Eddyville, KY  
 Landholding Agency: COE  
 Property Number: 31199010048  
 Status: Excess  
 Comment: 4.62 acres; steep and wooded; no utilities  
 Tract 2307  
 Barkley Lake, Kentucky and Tennessee  
 Eddyville Co: Lyon KY 42030-  
 Location: Approximately 7½ miles southeasterly of Eddyville, KY  
 Landholding Agency: COE  
 Property Number: 31199010049  
 Status: Excess  
 Comment: 11.43 acres; steep; rolling and wooded; no utilities  
 Tract 2403  
 Barkley Lake, Kentucky and Tennessee  
 Eddyville Co: Lyon KY 42030-  
 Location: 7 miles southeasterly of Eddyville, KY  
 Landholding Agency: COE  
 Property Number: 31199010050  
 Status: Excess  
 Comment: 1.56 acres; steep and wooded; no utilities  
 Tract 2504

- Barkley Lake, Kentucky and Tennessee  
Eddyville Co: Lyon KY 42030—  
Location: 9 miles southeasterly of Eddyville,  
KY  
Landholding Agency: COE  
Property Number: 31199010051  
Status: Excess  
Comment: 24.46 acres; steep and wooded; no  
utilities  
Tract 214  
Barkley Lake, Kentucky and Tennessee  
Grand Rivers Co: Lyon KY 42045—  
Location: South of the Illinois Central  
Railroad, 1 mile east of the Cumberland  
River.  
Landholding Agency: COE  
Property Number: 31199010052  
Status: Excess  
Comment: 5.5 acres; wooded; no utilities  
Tract 215  
Barkley Lake, Kentucky and Tennessee  
Grand Rivers Co: Lyon KY 42045—  
Location: 5 miles southwest of Kuttawa  
Landholding Agency: COE  
Property Number: 31199010053  
Status: Excess  
Comment: 1.40 acres; wooded; no utilities  
Tract 241  
Barkley Lake, Kentucky and Tennessee  
Grand Rivers Co: Lyon KY 42045—  
Location: Old Henson Ferry Road, 6 miles  
west of Kuttawa, KY  
Landholding Agency: COE  
Property Number: 31199010054  
Status: Excess  
Comment: 1.26 acres; steep and wooded; no  
utilities  
Tracts 306, 311, 315 and 325  
Barkley Lake, Kentucky and Tennessee  
Grand Rivers Co: Lyon KY 42045—  
Location: 2.5 miles southwest of Kuttawa, KY  
on the waters of Cypress Creek  
Landholding Agency: COE  
Property Number: 31199010055  
Status: Excess  
Comment: 38.77 acres; steep and wooded; no  
utilities  
Tracts 2305, 2306, and 2400—1  
Barkley Lake, Kentucky and Tennessee  
Eddyville Co: Lyon KY 42030—  
Location: 6½ miles southeasterly of  
Eddyville, KY  
Landholding Agency: COE  
Property Number: 31199010056  
Status: Excess  
Comment: 97.66 acres; steep rolling and  
wooded; no utilities  
Tracts 5203 and 5204  
Barkley Lake, Kentucky and Tennessee  
Linton Co: Trigg KY 42212—  
Location: Village of Linton, KY state highway  
1254.  
Landholding Agency: COE  
Property Number: 31199010058  
Status: Excess  
Comment: 0.93 acres; rolling, partially  
wooded; no utilities  
Tract 5240  
Barkley Lake, Kentucky and Tennessee  
Linton Co: Trigg KY 42212—  
Location: 1 mile northwest of Linton, KY  
Landholding Agency: COE  
Property Number: 31199010059  
Status: Excess  
Comment: 2.26 acres; steep and wooded; no  
utilities  
Tract 4628  
Barkley Lake, Kentucky and Tennessee  
Canton Co: Trigg KY 42212—  
Location: 4½ miles south from Canton, KY  
Landholding Agency: COE  
Property Number: 31199011621  
Status: Excess  
Comment: 3.71 acres; steep and wooded;  
subject to utility easements  
Tract 4619—B  
Barkley Lake, Kentucky and Tennessee  
Canton Co: Trigg KY 42212—  
Location: 4½ miles south from Canton, KY.  
Landholding Agency: COE  
Property Number: 31199011622  
Status: Excess  
Comment: 1.73 acres; steep and wooded;  
subject to utility easements  
Tract 2403—B  
Barkley Lake, Kentucky and Tennessee  
Eddyville Co: Lyon KY 42038—  
Location: 7 miles southeasterly from  
Eddyville, KY  
Landholding Agency: COE  
Property Number: 31199011623  
Status: Unutilized  
Comment: 0.70 acres, wooded; subject to  
utility easements  
Tract 241—B  
Barkley Lake, Kentucky and Tennessee  
Grand Rivers Co: Lyon KY 42045—  
Location: South of Old Henson Ferry Road,  
6 miles west of Kuttawa, KY  
Landholding Agency: COE  
Property Number: 31199011624  
Status: Excess  
Comment: 11.16 acres; steep and wooded;  
subject to utility easements  
Tracts 212 and 237  
Barkley Lake, Kentucky and Tennessee  
Grand Rivers Co: Lyon KY 42045—  
Location: Old Henson Ferry Road, 6 miles  
west of Kuttawa, KY  
Landholding Agency: COE  
Property Number: 31199011625  
Status: Excess  
Comment: 2.44 acres; steep and wooded;  
subject to utility easements  
Tract 215—B  
Barkley Lake, Kentucky and Tennessee  
Grand Rivers Co: Lyon KY 42045—  
Location: 5 miles southwest of Kuttawa  
Landholding Agency: COE  
Property Number: 31199011626  
Status: Excess  
Comment: 1.00 acres; wooded; subject to  
utility easements  
Tract 233  
Barkley Lake, Kentucky and Tennessee  
Grand Rivers Co: Lyon KY 42045—  
Location: 5 miles southwest of Kuttawa  
Landholding Agency: COE  
Property Number: 31199011627  
Status: Excess  
Comment: 1.00 acres; wooded; subject to  
utility easements  
Tract N—819  
Dale Hollow Lake & Dam Project  
Illwill Creek, Hwy 90  
Hobart Co: Clinton KY 42601—  
Landholding Agency: COE  
Property Number: 31199140009  
Status: Underutilized  
Comment: 91 acres, most recent use—  
hunting, subject to existing easements  
Portion of Lock & Dam No. 1  
Kentucky River  
Carrollton Co: Carroll KY 41008—0305  
Landholding Agency: COE  
Property Number: 31199320003  
Status: Unutilized  
Comment: approx. 3.5 acres (sloping), access  
monitored  
Tract No. F—610  
Buckhorn Lake Project  
Buckhorn Co: KY 41721—  
Landholding Agency: COE  
Property Number: 31200240001  
Status: Unutilized  
Comment: 0.64 acres, encroachments, most  
recent use—flood control purposes  
Louisiana  
Wallace Lake Dam and Reservoir  
Shreveport Co: Caddo LA 71103—  
Landholding Agency: COE  
Property Number: 31199011009  
Status: Unutilized  
Comment: 10.81 acres; wildlife/forestry; no  
utilities  
Bayou Bodcau Dam and Reservoir  
Haughton Co: Caddo LA 71037—9707  
Location: 35 miles Northeast of Shreveport,  
La.  
Landholding Agency: COE  
Property Number: 31199011010  
Status: Unutilized  
Comment: 203 acres; wildlife/forestry; no  
utilities  
Maryland  
VA Medical Center 9600 North Point Road  
Fort Howard Co: Baltimore MD 21052—  
Landholding Agency: VA  
Property Number: 97199010020  
Status: Underutilized  
Comment: Approx. 10 acres, wetland and  
periodically floods, most recent use—  
dump site for leaves  
Mississippi  
Parcel 7  
Grenada Lake  
Sections 22, 23, T24N  
Grenada Co: Yalobusha MS 38901—0903  
Landholding Agency: COE  
Property Number: 31199011019  
Status: Underutilized  
Comment: 100 acres; no utilities;  
intermittently used under lease—expires  
1994  
Parcel 8  
Grenada Lake  
Section 20, T24N  
Grenada Co: Yalobusha MS 38901—0903  
Landholding Agency: COE  
Property Number: 31199011020  
Status: Underutilized  
Comment: 30 acres; no utilities;  
intermittently used under lease—expires  
1994  
Parcel 9  
Grenada Lake  
Section 20, T24N, R7E  
Grenada Co: Yalobusha MS 38901—0903  
Landholding Agency: COE  
Property Number: 31199011021

- Status: Underutilized  
Comment: 23 acres; no utilities; intermittently used under lease—expires 1994
- Parcel 10  
Grenada Lake  
Sections 16, 17, 18 T24N R8E  
Grenada Co: Calhoun MS 38901-0903  
Landholding Agency: COE  
Property Number: 31199011022  
Status: Underutilized  
Comment: 490 acres; no utilities; intermittently used under lease—expires 1994
- Parcel 2  
Grenada Lake  
Section 20 and T23N, R5E  
Grenada Co: Grenada MS 38901-0903  
Landholding Agency: COE  
Property Number: 31199011023  
Status: Underutilized  
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management
- Parcel 3  
Grenada Lake  
Section 4, T23N, R5E  
Grenada Co: Yalobusha MS 38901-0903  
Landholding Agency: COE  
Property Number: 31199011024  
Status: Underutilized  
Comment: 120 acres; no utilities; most recent use—wildlife and forestry management; (13.5 acres/agriculture lease)
- Parcel 4  
Grenada Lake  
Section 2 and 3. T23N, R5E  
Grenada Co: Yalobusha MS 38901-0903  
Landholding Agency: COE  
Property Number: 31199011025  
Status: Underutilized  
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management
- Parcel 5  
Grenada Lake  
Section 7, T24N, R6E  
Grenada Co: Yalobusha MS 38901-0903  
Landholding Agency: COE  
Property Number: 31199011026  
Status: Underutilized  
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management; (14 acres/agriculture lease)
- Parcel 6  
Grenada Lake  
Section 9, T24N, R6E  
Grenada Co: Yalobusha MS 38903-0903  
Landholding Agency: COE  
Property Number: 31199011027  
Status: Underutilized  
Comment: 80 acres; no utilities; most recent use—wildlife and forestry management
- Parcel 11  
Grenada Lake  
Section 20, T24N, R8E  
Grenada Co: Calhoun MS 38901-0903  
Landholding Agency: COE  
Property Number: 31199011028  
Status: Underutilized  
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management
- Parcel 12  
Grenada Lake  
Section 25, T24N, R7E  
Grenada Co: Yalobusha MS 38390-0903
- Landholding Agency: COE  
Property Number: 31199011029  
Status: Underutilized  
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management
- Parcel 13  
Grenada Lake  
Section 34, T24N, R7E  
Grenada Co: Yalobusha MS 38903-0903  
Landholding Agency: COE  
Property Number: 31199011030  
Status: Underutilized  
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management; (11 acres/agriculture lease)
- Parcel 14  
Grenada Lake  
Section 3, T23N, R6E  
Grenada Co: Yalobusha MS 38901-0903  
Landholding Agency: COE  
Property Number: 31199011031  
Status: Underutilized  
Comment: 15 acres; no utilities; most recent use—wildlife and forestry management
- Parcel 15  
Grenada Lake  
Section 4, T24N, R6E  
Grenada Co: Yalobusha MS 38901-0903  
Landholding Agency: COE  
Property Number: 31199011032  
Status: Underutilized  
Comment: 40 acres; no utilities; most recent use—wildlife and forestry management
- Parcel 16  
Grenada Lake  
Section 9, T23N, R6E  
Grenada Co: Yalobusha MS 38901-0903  
Landholding Agency: COE  
Property Number: 31199011033  
Status: Underutilized  
Comment: 70 acres; no utilities; most recent use—wildlife and forestry management
- Parcel 17  
Grenada Lake  
Section 17, T23N, R7E  
Grenada Co: Grenada MS 28901-0903  
Landholding Agency: COE  
Property Number: 31199011034  
Status: Underutilized  
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management
- Parcel 18  
Grenada Lake  
Section 22, T23N, R7E  
Grenada Co: Grenada MS 28902-0903  
Landholding Agency: COE  
Property Number: 31199011035  
Status: Underutilized  
Comment: 10 acres; no utilities; most recent use—wildlife and forestry management
- Parcel 19  
Grenada Lake  
Section 9, T22N, R7E  
Grenada Co: Grenada MS 38901-0903  
Landholding Agency: COE  
Property Number: 31199011036  
Status: Underutilized  
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management
- Missouri  
Harry S Truman Dam & Reservoir  
Warsaw Co: Benton MO 65355-
- Location: Triangular shaped parcel southwest of access road "B", part of Bledsoe Ferry Park Tract 150.
- Landholding Agency: COE  
Property Number: 31199030014  
Status: Underutilized  
Comment: 1.7 acres; potential utilities
- Oklahoma  
Pine Creek Lake  
Section 27  
(See County) Co: McCurtain OK  
Landholding Agency: COE  
Property Number: 31199010923  
Status: Unutilized  
Comment: 3 acres; no utilities; subject to right of way for Oklahoma State Highway 3
- Pennsylvania  
Mahoning Creek Lake  
New Bethlehem Co: Armstrong PA 16242-9603  
Location: Route 28 north to Belknap, Road #4  
Landholding Agency: COE  
Property Number: 31199010018  
Status: Excess  
Comment: 2.58 acres; steep and densely wooded
- Tracts 610, 611, 612  
Shenango River Lake  
Sharpsville Co: Mercer PA 16150-  
Location: I-79 North, I-80 West, Exit Sharon, R18 North 4 miles, left on R518, right on Mercer Avenue  
Landholding Agency: COE  
Property Number: 31199011001  
Status: Excess  
Comment: 24.09 acres; subject to flowage easement
- Tracts L24, L26  
Crooked Creek Lake  
Co: Armstrong PA 03051-  
Location: Left bank—55 miles downstream of dam.  
Landholding Agency: COE  
Property Number: 31199011011  
Status: Unutilized  
Comment: 7.59 acres; potential for utilities
- Portion of Tract L-21A  
Crooked Creek Lake, LR 03051  
Ford City Co: Armstrong PA 16226-  
Landholding Agency: COE  
Property Number: 31199430012  
Status: Unutilized  
Comment: Approximately 1.72 acres of undeveloped land, subject to gas rights
- 3.5 acres  
Joseph Road  
Tract RA34  
New Salem Co: York PA 17403-  
Landholding Agency: COE  
Property Number: 31200330006  
Status: Unutilized  
Comment: approx. 3.5 acres, road access easement, habitat for wildlife management
- Tennessee  
Tract 6827  
Barkley Lake  
Dover Co: Stewart TN 37058-  
Location: 2½ miles west of Dover, TN  
Landholding Agency: COE  
Property Number: 31199010927  
Status: Excess  
Comment: .57 acres; subject to existing easements

- Tracts 6002-2 and 6010  
Barkley Lake  
Dover Co: Stewart TN 37058-  
Location: 3½ miles south of village of  
Tabaccoport  
Landholding Agency: COE  
Property Number: 31199010928  
Status: Excess  
Comment: 100.86 acres; subject to existing  
easements
- Tract 11516  
Barkley Lake  
Ashland City Co: Dickson TN 37015-  
Location: ½ mile downstream from  
Cheatham Dam  
Landholding Agency: COE  
Property Number: 31199010929  
Status: Excess  
Comment: 26.25 acres; subject to existing  
easements
- Tract 2319  
J. Percy Priest Dam and Reservoir  
Murfreesboro Co: Rutherford TN 37130-  
Location: West of Buckeye Bottom Road  
Landholding Agency: COE  
Property Number: 31199010930  
Status: Excess  
Comment: 14.48 acres; subject to existing  
easements
- Tract 2227  
J. Percy Priest Dam and Reservoir  
Murfreesboro Co: Rutherford TN 37130-  
Location: Old Jefferson Pike  
Landholding Agency: COE  
Property Number: 31199010931  
Status: Excess  
Comment: 2.27 acres; subject to existing  
easements
- Tract 2107  
J. Percy Priest Dam and Reservoir  
Murfreesboro Co: Rutherford TN 37130-  
Location: Across Fall Creek near Fall Creek  
camping area  
Landholding Agency: COE  
Property Number: 31199010932  
Status: Excess  
Comment: 14.85 acres; subject to existing  
easements
- Tracts 2601, 2602, 2603, 2604  
Cordell Hull Lake and Dam Project  
Doe Row Creek  
Gainesboro Co: Jackson TN 38562-  
Location: TN Highway 56  
Landholding Agency: COE  
Property Number: 31199010933  
Status: Unutilized  
Comment: 11 acres; subject to existing  
easements
- Tract 1911  
J. Percy Priest Dam and Reservoir  
Murfreesboro Co: Rutherford TN 37130-  
Location: East of Lamar Road  
Landholding Agency: COE  
Property Number: 31199010934  
Status: Excess  
Comment: 6.92 acres; subject to existing  
easements
- Tract 7206  
Barkley Lake  
Dover Co: Stewart TN 37058-  
Location: 2½ miles SE of Dover, TN  
Landholding Agency: COE  
Property Number: 31199010936  
Status: Excess
- Comment: 10.15 acres; subject to existing  
easements
- Tracts 8813, 8814  
Barkley Lake  
Cumberland Co: Stewart TN 37050-  
Location: 1½ miles East of Cumberland City  
Landholding Agency: COE  
Property Number: 31199010937  
Status: Excess  
Comment: 96 acres; subject to existing  
easements
- Tract 8911  
Barkley Lake  
Cumberland City Co: Montgomery TN  
37050-  
Location: 4 miles east of Cumberland City  
Landholding Agency: COE  
Property Number: 31199010938  
Status: Excess  
Comment: 7.7 acres; subject to existing  
easements
- Tract 11503  
Barkley Lake  
Ashland City Co: Cheatham TN 37015-  
Location: 2 miles downstream from  
Cheatham Dam  
Landholding Agency: COE  
Property Number: 31199010939  
Status: Excess  
Comment: 1.1 acres; subject to existing  
easements
- Tracts 11523, 11524  
Barkley Lake  
Ashland City Co: Cheatham TN 37015-  
Location: 2½ miles downstream from  
Cheatham Dam  
Landholding Agency: COE  
Property Number: 31199010940  
Status: Excess  
Comment: 19.5 acres; subject to existing  
easements
- Tract 6410  
Barkley Lake  
Bumpus Mills Co: Stewart TN 37028-  
Location: 4½ miles SW. of Bumpus Mills  
Landholding Agency: COE  
Property Number: 31199010941  
Status: Excess  
Comment: 17 acres; subject to existing  
easements.≤
- Tract 9707  
Barkley Lake  
Palmyer Co: Montgomery TN 37142-  
Location: 3 miles NE of Palmyer, TN.  
Highway 149  
Landholding Agency: COE  
Property Number: 31199010943  
Status: Excess  
Comment: 6.6 acres; subject to existing  
easements
- Tract 6949  
Barkley Lake  
Dover Co: Stewart TN 37058-  
Location: 1½ miles SE of Dover, TN.  
Landholding Agency: COE  
Property Number: 31199010944  
Status: Excess  
Comment: 29.67 acres; subject to existing  
easements
- Tracts 6005 and 6017  
Barkley Lake  
Dover Co: Stewart TN 37058-  
Location: 3 miles south of Village of  
Tobaccoport.
- Landholding Agency: COE  
Property Number: 31199011173  
Status: Excess  
Comment: 5 acres; subject to existing  
easements
- Tracts K-1191, K-1135  
Old Hickory Lock and Dam  
Hartsville Co: Trousdale TN 37074-  
Landholding Agency: COE  
Property Number: 31199130007  
Status: Underutilized  
Comment: 54 acres, (portion in floodway),  
most recent use—recreation
- Tract A-102  
Dale Hollow Lake & Dam Project  
Canoe Ridge, State Hwy 52  
Celina Co: Clay TN 38551-  
Landholding Agency: COE  
Property Number: 31199140006  
Status: Underutilized  
Comment: 351 acres, most recent use—  
hunting, subject to existing easements
- Tract A-120  
Dale Hollow Lake & Dam Project  
Swann Ridge, State Hwy No. 53  
Celina Co: Clay TN 38551-  
Landholding Agency: COE  
Property Number: 31199140007  
Status: Underutilized  
Comment: 883 acres, most recent use—  
hunting, subject to existing easements
- Tract D-185  
Dale Hollow Lake & Dam Project  
Ashburn Creek, Hwy No. 53  
Livingston Co: Clay TN 38570-  
Landholding Agency: COE  
Property Number: 31199140010  
Status: Underutilized  
Comment: 97 acres, most recent use—  
hunting, subject to existing easements
- Texas  
Former VORTAC Facility  
Acton Co: Hood TX 76234-  
Landholding Agency: GSA  
Property Number: 54200330007  
Status: Surplus  
Comment: 73.76 acres, limited access,  
numerous easements & lease restrictions  
GSA Number: 7-U-TX-1075
- Land  
Olin E. Teague Veterans Center  
1901 South 1st Street  
Temple Co: Bell TX 76504-  
Landholding Agency: VA  
Property Number: 97199010079  
Status: Underutilized  
Comment: 13 acres, portion formerly landfill,  
portion near flammable materials, railroad  
crosses property, potential utilities
- Wisconsin  
VA Medical Center  
County Highway E  
Tomah Co: Monroe WI 54660-  
Landholding Agency: VA  
Property Number: 97199010054  
Status: Underutilized  
Comment: 12.4 acres, serves as buffer  
between center and private property, no  
utilities

**Suitable/Unavailable Properties***Buildings (by State)*

Georgia

Bldgs. 00960, 00961, 00963

Fort Benning  
Ft. Benning Co: Chattahoochee GA  
Landholding Agency: Army  
Property Number: 21200330107  
Status: Unutilized  
Comment: 11,110 sq. ft., most recent use—housing, off-site use only

Idaho  
Bldg. CFA-613  
Central Facilities Area  
Idaho National Engineering Lab  
Scoville Co: Butte ID 83415-  
Landholding Agency: Energy  
Property Number: 41199630001  
Status: Unutilized  
Comment: 1219 sq. ft., most recent use—sleeping quarters, presence of asbestos, off-site use only

Illinois  
Bldg. 7  
Ohio River Locks & Dam No. 53  
Grand Chain Co: Pulaski IL 62941-9801  
Location: Ohio River Locks and Dam No. 53 at Grand Chain  
Landholding Agency: COE  
Property Number: 31199010001  
Status: Unutilized  
Comment: 900 sq. ft.; 1 floor wood frame; most recent use—residence

Bldg. 6  
Ohio River Locks & Dam No. 53  
Grand Chain Co: Pulaski IL 62941-9801  
Location: Ohio River Locks and Dam No. 53 at Grand Chain  
Landholding Agency: COE  
Property Number: 31199010002  
Status: Unutilized  
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence

Bldg. 5  
Ohio River Locks & Dam No. 53  
Grand Chain Co: Pulaski IL 62941-9801  
Location: Ohio River Locks and Dam No. 53 at Grand Chain  
Landholding Agency: COE  
Property Number: 31199010003  
Status: Unutilized  
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence

Bldg. 4  
Ohio River Locks & Dam No. 53  
Grand Chain Co: Pulaski IL 62941-9801  
Location: Ohio River Locks and Dam No. 53 at Grand Chain  
Landholding Agency: COE  
Property Number: 31199010004  
Status: Unutilized  
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence

Bldg. 3  
Ohio River Locks & Dam No. 53  
Grand Chain Co: Pulaski IL 62941-9801  
Location: Ohio River Locks and Dam No. 53 at Grand Chain  
Landholding Agency: COE  
Property Number: 31199010005  
Status: Unutilized  
Comment: 900 sq. ft.; one floor wood frame

Bldg. 2  
Ohio River Locks & Dam No. 53  
Grand Chain Co: Pulaski IL 62941-9801  
Location: Ohio River Locks and Dam No. 53 at Grand Chain  
Landholding Agency: COE

Property Number: 31199010006  
Status: Unutilized  
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence

Bldg. 1  
Ohio River Locks & Dam No. 53  
Grand Chain Co: Pulaski IL 62941-9801  
Location: Ohio River Locks and Dam No. 53 at Grand Chain  
Landholding Agency: COE  
Property Number: 31199010007  
Status: Unutilized  
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence

Montana  
VA MT Healthcare  
210 S. Winchester  
Miles City Co: Custer MT 59301-  
Landholding Agency: VA  
Property Number: 97200030001  
Status: Underutilized  
Comment: 18 buildings, total sq. ft. = 123,851, presence of asbestos, most recent use—clinic/office/food production

New York  
Bldg. 0158  
Brookhaven National Lab  
Upton Co: Suffolk NY 11973-  
Landholding Agency: Energy  
Property Number: 41200310005  
Status: Unutilized  
Comment: 12,436 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage, off-site use only

Ohio  
Bldg.—Berlin Lake  
7400 Bedell Road  
Berlin Center Co: Mahoning OH 44401-9797  
Landholding Agency: COE  
Property Number: 31199640001  
Status: Unutilized  
Comment: 1420 sq. ft., 2-story brick w/garage and basement, most recent use—residential, secured w/alternate access

Pennsylvania  
Bldg. 00001  
Defense Distribution Depot  
New Cumberland Co: York PA 17070-5002  
Landholding Agency: Army  
Property Number: 21200330183  
Status: Unutilized  
Comment: 225,400 sq. ft., needs rehab, most recent use—admin/storage/misc, off-site use only

Bldg. 00002  
Defense Distribution Depot  
New Cumberland Co: York PA 17070-5002  
Landholding Agency: Army  
Property Number: 21200330184  
Status: Unutilized  
Comment: 44,800 sq. ft., needs rehab, most recent use—shop/storage, off-site use only

Bldgs. 00004, 00005, 00006  
Defense Distribution Depot  
New Cumberland Co: York PA 17070-5002  
Landholding Agency: Army  
Property Number: 21200330185  
Status: Unutilized  
Comment: 201,600 sq. ft. each, needs rehab, most recent use—warehouse/storage, off-site use only

Bldg. 00013  
Defense Distribution Depot

New Cumberland Co: York PA 17070-5002  
Landholding Agency: Army  
Property Number: 21200330186  
Status: Unutilized  
Comment: 1200 sq. ft., needs rehab, off-site use only

Bldg. 00024  
Defense Distribution Depot  
New Cumberland Co: York PA 17070-5002  
Landholding Agency: Army  
Property Number: 21200330187  
Status: Unutilized  
Comment: 3100 sq. ft., needs rehab, most recent use—eng/housing mnt, off-site use only

Bldg. 00025  
Defense Distribution Depot  
New Cumberland Co: York PA 17070-5002  
Landholding Agency: Army  
Property Number: 21200330188  
Status: Unutilized  
Comment: 2640 sq. ft., needs rehab, most recent use—salt shed, off-site use only

Bldg. 00028  
Defense Distribution Depot  
New Cumberland Co: York PA 17070-5002  
Landholding Agency: Army  
Property Number: 21200330189  
Status: Unutilized  
Comment: 12,352 sq. ft., needs rehab, most recent use—vehicle maint shop, off-site use only

Bldg. 00064  
Defense Distribution Depot  
New Cumberland Co: York PA 17070-5002  
Landholding Agency: Army  
Property Number: 21200330190  
Status: Unutilized  
Comment: 900 sq. ft., needs rehab, off-site use only

Bldg. 00068  
Defense Distribution Depot  
New Cumberland Co: York PA 17070-5002  
Landholding Agency: Army  
Property Number: 21200330191  
Status: Unutilized  
Comment: 717 sq. ft., needs rehab, off-site use only

Bldg. 00078  
Defense Distribution Depot  
New Cumberland Co: York PA 17070-5002  
Landholding Agency: Army  
Property Number: 21200330192  
Status: Unutilized  
Comment: 32 sq. ft., needs rehab, off-site use only

Bldg. 00095  
Defense Distribution Depot  
New Cumberland Co: York PA 17070-5002  
Landholding Agency: Army  
Property Number: 21200330193  
Status: Unutilized  
Comment: 480 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 00096  
Defense Distribution Depot  
New Cumberland Co: York PA 17070-5002  
Landholding Agency: Army  
Property Number: 21200330194  
Status: Unutilized  
Comment: 1824 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 00097  
Defense Distribution Depot

- New Cumberland Co: York PA 17070-5002  
Landholding Agency: Army  
Property Number: 21200330195  
Status: Unutilized  
Comment: most recent use—open storage, off-site use only  
Bldg. 02010  
Defense Distribution Depot  
New Cumberland Co: York PA 17070-5002  
Landholding Agency: Army  
Property Number: 21200330196  
Status: Unutilized  
Comment: 288 sq. ft., needs rehab, off-site use only  
Tract 353  
Grays Landing Lock & Dam Project  
Greensboro Co: Greene PA 15338-  
Landholding Agency: COE  
Property Number: 31199430019  
Status: Unutilized  
Comment: 812 sq. ft., 2-story, log structure, needs repair, most recent use—residential, if used for habitation must be flood proofed or removed off-site  
Tract 403A  
Grays Landing Lock & Dam Project  
Greensboro Co: Greene PA 15338-  
Landholding Agency: COE  
Property Number: 31199430021  
Status: Unutilized  
Comment: 620 sq. ft., 2-story, needs repair, most recent use—residential, if used for habitation must be flood proofed or removed off-site  
Tract 403B  
Grays Landing Lock & Dam Project  
Greensboro Co: Greene PA 15338-  
Landholding Agency: COE  
Property Number: 31199430022  
Status: Unutilized  
Comment: 1600 sq. ft., 2-story, brick structure, needs repair, most recent use—residential, if used for habitation must be flood proofed or removed off-site  
Tract 403C  
Grays Landing Lock & Dam Project  
Greensboro Co: Greene PA 15338-  
Landholding Agency: COE  
Property Number: 31199430023  
Status: Unutilized  
Comment: 672 sq. ft., 2-story carriage house/stable barn type structure, needs repair, most recent use—storage/garage, if used for habitation must be flood proofed or removed  
Tract 434  
Grays Landing Lock & Dam Project  
Greensboro Co: Greene PA 15338-  
Landholding Agency: COE  
Property Number: 31199430024  
Status: Unutilized  
Comment: 1059 sq. ft., 2-story, wood frame, 2 apt. units, historic property, if used for habitation must be flood proofed or removed off-site  
Tract No. 224  
Grays Landing Lock & Dam Project  
Greensboro Co: Green PA 15338-  
Landholding Agency: COE  
Property Number: 31199440001  
Status: Unutilized  
Comment: 1040 sq. ft., 2 story bldg., needs repair, historic struct., flowage easement, if habitation is desired property will be required to be flood proofed or removed off site  
Wisconsin  
Former Lockmaster's Dwelling  
DePere Lock  
100 James Street  
De Pere Co: Brown WI 54115-  
Landholding Agency: COE  
Property Number: 31199011526  
Status: Unutilized  
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab; secured area with alternate access  
Bldg. 2  
VA Medical Center  
5000 West National Ave.  
Milwaukee WI 53295-  
Landholding Agency: VA  
Property Number: 97199830002  
Status: Underutilized  
Comment: 133,730 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage  
*Land (by State)*  
Illinois  
Lake Shelbyville  
Shelbyville Co: Shelby & Moultrie IL 62565-9804  
Landholding Agency: COE  
Property Number: 31199240004  
Status: Unutilized  
Comment: 5 parcels of land equalling 0.70 acres, improved w/4 small equipment storage bldgs. and a small access road, easement restrictions  
Iowa  
38 acres  
VA Medical Center  
1515 West Pleasant St.  
Knoxville Co: Marion IA 50138-  
Landholding Agency: VA  
Property Number: 97199740001  
Status: Unutilized  
Comment: golf course  
Michigan  
VA Medical Center 5500 Armstrong Road  
Battle Creek Co: Calhoun MI 49016-  
Landholding Agency: VA  
Property Number: 97199010015  
Status: Underutilized  
Comment: 20 acres, used as exercise trails and storage areas, potential utilities  
New York  
VA Medical Center  
Fort Hill Avenue  
Canandaigua Co: Ontario NY 14424-  
Landholding Agency: VA  
Property Number: 97199010017  
Status: Underutilized  
Comment: 27.5 acres, used for school ballfield and parking, existing utilities easements, portion leased  
Pennsylvania  
East Branch Clarion River Lake  
Wilcox Co: Elk PA  
Location: Free camping area on the right bank off entrance roadway  
Landholding Agency: COE  
Property Number: 31199011012  
Status: Underutilized  
Comment: 1 acre; most recent use—free campground  
Dashields Locks and Dam  
(Glenwillard, PA)  
Crescent Twp. Co: Allegheny PA 15046-0475  
Landholding Agency: COE  
Property Number: 31199210009  
Status: Unutilized  
Comment: 0.58 acres, most recent use—baseball field  
VA Medical Center  
New Castle Road  
Butler Co: Butler PA 16001-  
Landholding Agency: VA  
Property Number: 97199010016  
Status: Underutilized  
Comment: Approx. 9.29 acres, used for patient recreation, potential utilities  
Land No. 645  
VA. Medical Center  
Highland Drive  
Pittsburgh Co: Allegheny PA 15206-  
Location: Between Campanian and Wiltsie Streets  
Landholding Agency: VA  
Property Number: 97199010080  
Status: Unutilized  
Comment:  
90.3 acres, heavily wooded, property includes dump area and numerous site storm drain outfalls  
Land—34.16 acres  
VA Medical Center  
1400 Black Horse Hill Road  
Coatesville Co: Chester PA 19320-  
Landholding Agency: VA  
Property Number: 97199340001  
Status: Underutilized  
Comment: 34.16 acres, open field, most recent use—recreation/buffer  
**Suitable/To Be Excessed**  
*Buildings (by State)*  
Massachusetts  
Cuttyhunk Boathouse  
South Shore of Cuttyhunk Pond  
Gosnold Co: Dukes MA 02713-  
Landholding Agency: DOT  
Property Number: 87199310001  
Status: Unutilized  
Comment: 2700 sq. ft., wood frame, one story, needs rehab, limited utilities, off-site use only.  
Nauset Beach Light  
Nauset Beach Co: Barnstable MA  
Landholding Agency: DOT  
Property Number: 87199420001  
Status: Unutilized  
Comment: 48 foot tower, cylindrical cast iron, most recent use—aid to navigation  
Light Tower, Highland Light  
Near Rt. 6, 9 miles south of Race Point  
North Truro Co: Barnstable MA 02652-  
Landholding Agency: DOT  
Property Number: 87199430005  
Status: Excess  
Comment: 66 ft. tower, 14'9" diameter, brick structure, scheduled to be vacated 9/94  
Keepers Dwelling  
Highland Light  
Near Rt. 6, 9 miles south of Race Point  
North Truro Co: Barnstable MA 02652-  
Landholding Agency: DOT  
Property Number: 87199430006  
Status: Excess

Comment: 1160 sq. ft., 2-story wood frame, attached to light tower, scheduled to be vacated 9/94

#### Duplex Housing Unit

##### Highland Light

Near Rt. 6, 9 miles south of Race Point

North Truro Co: Barnstable MA 02652-

Landholding Agency: DOT

Property Number: 87199430007

Status: Excess

Comment: 2 living units, 930 sq. ft. each, 1-story each, located on eroding ocean bluff, scheduled to be vacated 9/94

##### Nahant Towers

Nahant Co: Essex MA

Landholding Agency: DOT

Property Number: 87199530001

Status: Unutilized

Comment: 196 sq. ft., 8-story observation tower

Land (by State)

#### Georgia

Lake Sidney Lanier

Co: Forsyth GA 30130-

Location: Located on Two Mile Creek adj. to State Route 369

Landholding Agency: COE

Property Number: 31199440010

Status: Unutilized

Comment: 0.25 acres, endangered plant species

Lake Sidney Lanier-3 parcels

Gainesville Co: Hall GA 30503-

Location:

Between Gainesville H.S. and State Route 53 By-Pass

Landholding Agency: COE

Property Number: 31199440011

Status: Unutilized

Comment: 3 parcels totalling 5.17 acres, most recent use—buffer zone, endangered plant species

#### Kansas

Parcel #1

Fall River Lake

Section 26

Co: Greenwood KS

Landholding Agency: COE

Property Number: 31199010065

Status: Unutilized

Comment: 126.69 acres; most recent use—recreation and leased cottage sites

Parcel No. 2, El Dorado Lake

Approx. 1 mi east of the town of El Dorado

Co: Butler KS

Landholding Agency: COE

Property Number: 31199210005

Status: Unutilized

Comment: 11 acres, part of a relocated railroad bed, rural area

#### Massachusetts

Buffumville Dam

Flood Control Project

Gale Road

Carlton Co: Worcester MA 01540-0155

Location: Portion of tracts B-200, B-248, B-251, B-204, B-247, B-200 and B-256

Landholding Agency: COE

Property Number: 31199010016

Status: Excess

Comment: 1.45 acres.

#### Tennessee

Tract D-456

Cheatham Lock and Dam

Ashland Co: Cheatham TN 37015-

Location: Right downstream bank of Sycamore Creek.

Landholding Agency: COE

Property Number: 31199010942

Status: Excess

Comment: 8.93 acres; subject to existing easements.

#### Texas

Corpus Christi Ship Channel

Corpus Christi Co: Neuces TX

Location: East side of Carbon Plant Road, approx. 14 miles NW of downtown Corpus Christi

Landholding Agency: COE

Property Number: 31199240001

Status: Unutilized

Comment: 4.4 acres, most recent use—farm land.

#### Unsuitable Properties

##### *Buildings (by State)*

#### Alabama

Dwelling A

USCG Mobile Pt. Station

Ft. Morgan

Gulfshores Co: Baldwin AL 36542-

Landholding Agency: DOT

Property Number: 87199120001

Status: Excess

Reason: Floodway

Dwelling B

USCG Mobile Pt. Station

Ft. Morgan

Gulfshores Co: Baldwin AL 36542-

Landholding Agency: DOT

Property Number: 87199120002

Status: Excess

Reason: Floodway

Oil House

USCG Mobile Pt. Station

Ft. Morgan

Gulfshores Co: Baldwin AL 36542-

Landholding Agency: DOT

Property Number: 87199120003

Status: Excess

Reason: Floodway

Garage

USCG Mobile Pt. Station

Ft. Morgan

Gulfshores Co: Baldwin AL 36542-

Landholding Agency: DOT

Property Number: 87199120004

Status: Excess

Reason: Floodway

Shop Building

USCG Mobile Pt. Station

Ft. Morgan

Gulfshores Co: Baldwin AL 36542-

Landholding Agency: DOT

Property Number: 87199120005

Status: Excess

Reason: Floodway

Bldg. 7

VA Medical Center

Tuskegee Co: Macon AL 36083-

Landholding Agency: VA

Property Number: 97199730001

Status: Underutilized

Reason: Secured Area

Bldg. 8

VA Medical Center

Tuskegee Co: Macon AL 36083-

Landholding Agency: VA

Property Number: 97199730002

Status: Underutilized

Reason: Secured Area

#### Alaska

Bldg. B001

Point Higgins

Ketchikan Co: AK 99901-

Landholding Agency: DOT

Property Number: 87200140003

Status: Excess

Reasons: Secured Area, Extensive deterioration

Bldg. B002

Point Higgins

Ketchikan Co: AK 99901-

Landholding Agency: DOT

Property Number: 87200140004

Status: Excess

Reasons: Secured Area, Extensive deterioration

Bldg. B003

Point Higgins

Ketchikan Co: AK 99901-

Landholding Agency: DOT

Property Number: 87200140005

Status: Excess

Reasons: Secured Area, Extensive deterioration

Bldg. B004

Point Higgins

Ketchikan Co: AK 99901-

Landholding Agency: DOT

Property Number: 87200140006

Status: Excess

Reason: Secured Area

Bldg. B006

Point Higgins

Ketchikan Co: AK 99901-

Landholding Agency: DOT

Property Number: 87200140007

Status: Excess

Reasons: Secured Area, Extensive deterioration

Bldg. B008

Point Higgins

Ketchikan Co: AK 99901-

Landholding Agency: DOT

Property Number: 87200140008

Status: Excess

Reasons: Secured Area, Extensive deterioration

Bldg. B009

Point Higgins

Ketchikan Co: AK 99901-

Landholding Agency: DOT

Property Number: 87200140009

Status: Excess

Reasons: Secured Area, Extensive deterioration

Bldg. B011

Point Higgins

Ketchikan Co: AK 99901-

Landholding Agency: DOT

Property Number: 87200140010

Status: Excess

Reasons: Secured Area, Extensive deterioration

Bldg. B012

Point Higgins

Ketchikan Co: AK 99901-

Landholding Agency: DOT

Property Number: 87200140011

Status: Excess  
Reasons: Secured Area, Extensive deterioration

Bldg. B000  
Point Higgins  
Ketchikan Co: AK 99901–  
Landholding Agency: DOT  
Property Number: 87200140012  
Status: Excess

Reason: Extensive deterioration

Bldg. B01  
Coast Guard Cutter Sycamore  
Cordova Co: AK 99574–  
Landholding Agency: DOT  
Property Number: 87200310001  
Status: Unutilized

Reason: Extensive deterioration

Fuel Tank Facility  
USCG LORAN Station  
Ketchikan Co: AK 99901–  
Landholding Agency: DOT  
Property Number: 87200310008  
Status: Unutilized

Reason: Extensive deterioration

Arkansas

Dwelling  
Bull Shoals Lake/Dry Run Road  
Oakland Co: Marion AR 72661–  
Landholding Agency: COE

Property Number: 31199820001  
Status: Unutilized

Reason: Extensive deterioration

Helena Casting Plant  
Helena Co: Phillips AR 72342–  
Landholding Agency: COE  
Property Number: 31200220001  
Status: Unutilized

Reason: Extensive deterioration

California

Soil & Materials Testing Lab  
Sausalito Co: CA 00000–  
Landholding Agency: COE  
Property Number: 31199920002  
Status: Excess

Reason: Contamination

Bldgs. MO3, MO14, MO17  
Sandia National Lab  
Livermore Co: Alameda CA 94550–  
Landholding Agency: Energy  
Property Number: 41200220001  
Status: Excess

Reason: Extensive deterioration

Bldg. 436  
Yosemite National Park  
Yosemite Co: Mariposa CA 95389–  
Landholding Agency: Interior  
Property Number: 61200330022  
Status: Unutilized

Reason: Extensive deterioration

Bldg. 742  
Naval Air Station  
Lemoore Co: CA  
Landholding Agency: Navy  
Property Number: 77200330015  
Status: Excess

Reason: Secured Area

Bldg. 743  
Naval Air Station  
Lemoore Co: CA  
Landholding Agency: Navy  
Property Number: 77200330016  
Status: Excess

Reasons: Secured Area, Extensive deterioration

Bldg. 744  
Naval Air Station  
Lemoore Co: CA  
Landholding Agency: Navy  
Property Number: 77200330017  
Status: Excess

Reason: Secured Area

Bldg. 745  
Naval Air Station  
Lemoore Co: CA  
Landholding Agency: Navy  
Property Number: 77200330018  
Status: Excess

Reasons: Secured Area, Extensive deterioration

Bldg. 746  
Naval Air Station  
Lemoore Co: CA  
Landholding Agency: Navy  
Property Number: 77200330019  
Status: Excess

Reason: Secured Area

Bldg. 751  
Naval Air Station  
Lemoore Co: CA  
Landholding Agency: Navy  
Property Number: 77200330020  
Status: Excess

Reason: Secured Area

Bldg. 754  
Naval Air Station  
Lemoore Co: CA  
Landholding Agency: Navy  
Property Number: 77200330021  
Status: Excess

Reason: Secured Area, Extensive deterioration

Bldg. 483  
Naval Air Station  
North Island  
San Diego Co: CA 92135–7040  
Landholding Agency: Navy  
Property Number: 77200330022  
Status: Excess

Reason: Extensive deterioration

Bldg. 490  
Naval Air Station  
North Island  
San Diego Co: CA 92135–7040  
Landholding Agency: Navy  
Property Number: 77200330023  
Status: Excess

Reason: Extensive deterioration

Bldg. 606  
Naval Air Station  
North Island  
San Diego Co: CA  
Landholding Agency: Navy  
Property Number: 77200330024  
Status: Excess

Reasons: Secured Area  
Extensive deterioration

Bldg. 620  
Naval Air Station  
North Island  
San Diego Co: CA 92135–7040  
Landholding Agency: Navy  
Property Number: 77200330025  
Status: Excess

Reasons: Secured Area, Extensive deterioration

Bldg. 697  
Naval Air Station  
North Island

San Diego Co: CA 92135–7040  
Landholding Agency: Navy  
Property Number: 77200330026  
Status: Excess  
Reasons: Secured Area, Extensive deterioration

Bldg. 76  
Space & Naval Warfare  
San Diego Co: CA  
Landholding Agency: Navy  
Property Number: 77200330027  
Status: Excess

Reason: Extensive deterioration

Bldgs. 15 & 16  
Fleet ASW Training Center  
San Diego Co: CA  
Landholding Agency: Navy  
Property Number: 77200330028  
Status: Excess

Reason: Extensive deterioration

Bldgs. 20 & 21  
Fleet ASW Training Center  
San Diego Co: CA  
Landholding Agency: Navy  
Property Number: 77200330029  
Status: Excess

Reason: Extensive deterioration

Bldg. 23  
Fleet ASW Training Center  
San Diego Co: CA  
Landholding Agency: Navy  
Property Number: 77200330030  
Status: Excess

Reason: Extensive deterioration

Bldg. 28  
Fleet ASW Training Center  
San Diego Co: CA  
Landholding Agency: Navy  
Property Number: 77200330031  
Status: Excess

Reason: Extensive deterioration

Bldg. 32  
Fleet ASW Training Center  
San Diego Co: CA  
Landholding Agency: Navy  
Property Number: 77200330032  
Status: Excess

Reason: Extensive deterioration

Bldgs. 37 & 39  
Fleet ASW Training Center  
San Diego Co: CA  
Landholding Agency: Navy  
Property Number: 77200330033  
Status: Excess

Reason: Extensive deterioration

Bldg. 63  
Fleet ASW Training Center  
San Diego Co: CA  
Landholding Agency: Navy  
Property Number: 77200330034  
Status: Excess

Reason: Extensive deterioration

Bldg. 69  
Fleet ASW Training Center  
San Diego Co: CA  
Landholding Agency: Navy  
Property Number: 77200330035  
Status: Excess

Reason: Extensive deterioration

Bldg. 2043  
Fleet ASW Training Center  
San Diego Co: CA  
Landholding Agency: Navy  
Property Number: 77200330036

Status: Excess  
Reason: Extensive deterioration  
Bldg. 116  
Naval Submarine Base  
San Diego Co: CA  
Landholding Agency: Navy  
Property Number: 77200330037  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 508  
Naval Submarine Base  
San Diego Co: CA  
Landholding Agency: Navy  
Property Number: 77200330038  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 19  
Naval Submarine Base  
San Diego Co: CA  
Landholding Agency: Navy  
Property Number: 77200330039  
Status: Excess  
Reason: Extensive deterioration  
Bldgs. 62341 & 62342  
Marine Corps Base  
Camp Pendleton Co: CA 92055-  
Landholding Agency: Navy  
Property Number: 77200330040  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 34  
Coast Guard Integrated Support Command  
Alameda Co: CA  
Landholding Agency: DOT  
Property Number: 87200240006  
Status: Unutilized  
Reason: Secured Area  
Colorado  
Bldg. 34  
Grand Junction Projects Office  
Grand Junction Co: Mesa CO 81503-  
Landholding Agency: Energy  
Property Number: 41199540001  
Status: Underutilized  
Reasons: Contamination, Secured Area  
Bldg. 35  
Grand Junction Projects Office  
Grand Junction Co: Mesa CO 81503-  
Landholding Agency: Energy  
Property Number: 41199540002  
Status: Underutilized  
Reasons: Contamination, Secured Area  
Bldg. 36  
Grand Junction Projects Office  
Grand Junction Co: Mesa CO 81503-  
Landholding Agency: Energy  
Property Number: 41199540003  
Status: Underutilized  
Reasons: Contamination, Secured Area  
Bldg. 2  
Grand Junction Projects Office  
Grand Junction Co: Mesa CO 81503-  
Landholding Agency: Energy  
Property Number: 41199610039  
Status: Unutilized  
Reasons: Contamination, Secured Area  
Bldg. 7  
Grand Junction Projects Office  
Grand Junction Co: Mesa CO 81503-  
Landholding Agency: Energy  
Property Number: 41199610040  
Status: Unutilized  
Reasons: Contamination, Secured Area  
Bldg. 31-A  
Grand Junction Projects Office  
Grand Junction Co: Mesa CO 81503-  
Landholding Agency: Energy  
Property Number: 41199610041  
Status: Unutilized  
Reasons: Contamination, Secured Area  
Bldg. 33  
Grand Junction Projects Office  
Grand Junction Co: Mesa CO 81503-  
Landholding Agency: Energy  
Property Number: 41199610042  
Status: Unutilized  
Reasons: Contamination, Secured Area  
Bldg. 727  
Rocky Flats Environmental Tech Site  
Golden Co: Jefferson CO 80020-  
Landholding Agency: Energy  
Property Number: 41199910001  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area  
Bldg. 729  
Rocky Flats Environmental Tech Site  
Golden Co: Jefferson CO 80020-  
Landholding Agency: Energy  
Property Number: 41199910002  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area  
Bldg. 779  
Rocky Flats Environmental Tech Site  
Golden Co: Jefferson CO 80020-  
Landholding Agency: Energy  
Property Number: 41199910003  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or  
explosive material Secured Area  
Bldg. 780  
Rocky Flats Environmental Tech Site  
Golden Co: Jefferson CO 80020-  
Landholding Agency: Energy  
Property Number: 41199910004  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or  
explosive material Secured Area  
Bldg. 780A  
Rocky Flats Environmental Tech Site  
Golden Co: Jefferson CO 80020-  
Landholding Agency: Energy  
Property Number: 41199910005  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area  
Bldg. 780B  
Rocky Flats Environmental Tech Site  
Golden Co: Jefferson CO 80020-  
Landholding Agency: Energy  
Property Number: 41199910006  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area  
Bldg. 782  
Rocky Flats Environmental Tech Site  
Golden Co: Jefferson CO 80020-  
Landholding Agency: Energy  
Property Number: 41199910007  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area  
Bldg. 783  
Rocky Flats Environmental Tech Site  
Golden Co: Jefferson CO 80020-  
Landholding Agency: Energy  
Property Number: 41199910008  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area  
Bldg. 784(A-D)  
Rocky Flats Environmental Tech Site  
Golden Co: Jefferson CO 80020-  
Landholding Agency: Energy  
Property Number: 41199910009  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area  
Bldg. 785  
Rocky Flats Environmental Tech Site  
Golden Co: Jefferson CO 80020-  
Landholding Agency: Energy  
Property Number: 41199910010  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area  
Bldg. 786  
Rocky Flats Environmental Tech Site  
Golden Co: Jefferson CO 80020-  
Landholding Agency: Energy  
Property Number: 41199910011  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area  
Bldg. 787(A-D)  
Rocky Flats Environmental Tech Site  
Golden Co: Jefferson CO 80020-  
Landholding Agency: Energy  
Property Number: 41199910012  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area  
Bldg. 875  
Rocky Flats Environmental Tech Site  
Golden Co: Jefferson CO 80020-  
Landholding Agency: Energy  
Property Number: 41199910013  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area  
Bldg. 880  
Rocky Flats Environmental Tech Site  
Golden Co: Jefferson CO 80020-  
Landholding Agency: Energy  
Property Number: 41199910014  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area  
Bldg. 886  
Rocky Flats Environmental Tech Site  
Golden Co: Jefferson CO 80020-  
Landholding Agency: Energy  
Property Number: 41199910015  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area  
Bldg. 308A  
Rocky Flats Env. Tech. Site  
Golden Co: Jefferson CO 80020-  
Landholding Agency: Energy  
Property Number: 41199910016  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area  
Bldg. 788  
Rocky Flats Env. Tech. site  
Golden Co: Jefferson CO 80020-  
Landholding Agency: Energy  
Property Number: 41199910017  
Status: Underutilized  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area



Reasons: Within 2000 ft. of flammable or explosive material, Secured Area  
Bldgs. 557, 559  
Rocky Flats Env. Tech. Site  
Golden Co: Jefferson CO 80020–  
Landholding Agency: Energy  
Property Number: 41200220006  
Status: Excess  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area  
Bldgs. 561, 562  
Rocky Flats Env. Tech. Site  
Golden Co: Jefferson CO 80020–  
Landholding Agency: Energy  
Property Number: 41200220007  
Status: Excess  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area  
Bldgs. 564, 566/A, 569  
Rocky Flats Env. Tech. Site  
Golden Co: Jefferson CO 80020–  
Landholding Agency: Energy  
Property Number: 41200220008  
Status: Excess  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area  
Bldgs. 662, 663  
Rocky Flats Env. Tech. Site  
Golden Co: Jefferson CO 80020–  
Landholding Agency: Energy  
Property Number: 41200220009  
Status: Excess  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area  
Bldgs. 666, 681  
Rocky Flats Env. Tech. Site  
Golden Co: Jefferson CO 80020–  
Landholding Agency: Energy  
Property Number: 41200220010  
Status: Excess  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area  
Bldgs. 701, 705–708  
Rocky Flats Env. Tech. Site  
Golden Co: Jefferson CO 80020–  
Landholding Agency: Energy  
Property Number: 41200220011  
Status: Excess  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area  
Bldgs. 714, 715, 718  
Rocky Flats Env. Tech. Site  
Golden Co: Jefferson CO 80020–  
Landholding Agency: Energy  
Property Number: 41200220012  
Status: Excess  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area  
Bldgs. 731, 732  
Rocky Flats Env. Tech. Site  
Golden Co: Jefferson CO 80020–  
Landholding Agency: Energy  
Property Number: 41200220013  
Status: Excess  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area  
Bldgs. 750, 763–765  
Rocky Flats Env. Tech. Site  
Golden Co: Jefferson CO 80020–  
Landholding Agency: Energy  
Property Number: 41200220014  
Status: Excess  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area  
Bldgs. 778, 790  
Rocky Flats Env. Tech. Site  
Golden Co: Jefferson CO 80020–  
Landholding Agency: Energy  
Property Number: 41200220015  
Status: Excess  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area  
Bldgs. 850, 864–865  
Rocky Flats Env. Tech. Site  
Golden Co: Jefferson CO 80020–  
Landholding Agency: Energy  
Property Number: 41200220016  
Status: Excess  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area  
Bldgs. 869, 879  
Rocky Flats Env. Tech. Site  
Golden Co: Jefferson CO 80020–  
Landholding Agency: Energy  
Property Number: 41200220017  
Status: Excess  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area  
Bldgs. 881, 881F, 881H  
Rocky Flats Env. Tech. Site  
Golden Co: Jefferson CO 80020–  
Landholding Agency: Energy  
Property Number: 41200220018  
Status: Excess  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area  
Bldgs. 883–885, 887  
Rocky Flats Env. Tech. Site  
Golden Co: Jefferson CO 80020–  
Landholding Agency: Energy  
Property Number: 41200220019  
Status: Excess  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area  
Bldg. 891  
Rocky Flats Env. Tech. Site  
Golden Co: Jefferson CO 80020–  
Landholding Agency: Energy  
Property Number: 41200220020  
Status: Excess  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area  
Bldgs. 906, 991, 995  
Rocky Flats Env. Tech. Site  
Golden Co: Jefferson CO 80020–  
Landholding Agency: Energy  
Property Number: 41200220021  
Status: Excess  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area  
Alemeda Facility 350 S. Santa Fe Drive  
Denver Co: Denver CO 80223–  
Landholding Agency: DOT  
Property Number: 87199010014  
Status: Unutilized  
Reason: Other environmental  
Comment: Contamination  
Connecticut  
Hezekiah S. Ramsdell Farm  
West Thompson Lake  
North Grosvenordale Co: Windham CT  
06255–9801  
Landholding Agency: COE  
Property Number: 31199740001  
Status: Unutilized  
Reasons: Floodway, Extensive deterioration  
Bldgs. 25 and 26  
Prospect Hill Road  
Windsor Co: Hartford CT 06095–  
Landholding Agency: Energy  
Property Number: 41199440003  
Status: Excess  
Reason: Secured Area  
9 Bldgs.  
Knolls Atomic Power Lab, Windsor Site  
Windsor Co: Hartford CT 06095–  
Landholding Agency: Energy  
Property Number: 41199540004  
Status: Excess  
Reason: Secured Area  
Bldg. 8, Windsor Site  
Knolls Atomic Power Lab  
Windsor Co: Hartford CT 06095–  
Landholding Agency: Energy  
Property Number: 41199830006  
Status: Unutilized  
Reason: Extensive deterioration  
Falkner Island Light  
U.S. Coast Guard  
Guilford Co: New Haven CT 06512–  
Landholding Agency: DOT  
Property Number: 87199240031  
Status: Unutilized  
Reason: Floodway  
Florida  
Bldg. #3, Recreation Cottage  
USCG Station  
Marathon Co: Monroe FL 33050–  
Landholding Agency: DOT  
Property Number: 87199210008  
Status: Unutilized  
Reasons: Floodway, Secured Area  
Bldg. 103, Trumbo Point  
Key West Co: Monroe FL 33040–  
Landholding Agency: DOT  
Property Number: 87199230001  
Status: Unutilized  
Reasons: Floodway, Secured Area  
Exchange Building  
St. Petersburg Co: Pinellas FL 33701–  
Landholding Agency: DOT  
Property Number: 87199410004  
Status: Unutilized  
Reason: Floodway  
9988 Keepers Quarters A  
Cape San Blas  
Port St. Joe Co: Gulf FL  
Landholding Agency: DOT  
Property Number: 87199440009  
Status: Underutilized  
Reasons: Floodway, Secured Area  
9989 Keepers Quarters B  
Cape San Blas  
Port St. Joe Co: Gulf FL  
Landholding Agency: DOT  
Property Number: 87199440010  
Status: Underutilized  
Reasons: Floodway, Secured Area  
9990 Bldg.  
Cape San Blas  
Port St. Joe Co: Gulf FL  
Landholding Agency: DOT  
Property Number: 87199440011  
Status: Underutilized  
Reasons: Floodway, Secured Area  
9991 Plant Bldg.  
Cape San Blas  
Port St. Joe Co: Gulf FL  
Landholding Agency: DOT  
Property Number: 87199440012  
Status: Underutilized  
Reasons: Floodway, Secured Area

9992 Shop Bldg.  
Cape San Blas  
Port St. Joe Co: Gulf FL  
Landholding Agency: DOT  
Property Number: 87199440013  
Status: Underutilized  
Reasons: Floodway, Secured Area

9993 Admin. Bldg.  
Cape San Blas  
Port St. Joe Co: Gulf FL  
Landholding Agency: DOT  
Property Number: 87199440014  
Status: Underutilized  
Reasons: Floodway Secured Area

9994 Water Pump Bldg.  
Cape San Blas  
Port St. Joe Co: Gulf FL  
Landholding Agency: DOT  
Property Number: 87199440015  
Status: Underutilized  
Reasons: Floodway, Secured Area

Storage Bldg.  
Cape San Blas  
Port St. Joe Co: Gulf FL  
Landholding Agency: DOT  
Property Number: 87199440016  
Status: Underutilized  
Reasons: Floodway, Secured Area

9999 Storage Bldg.  
Cape San Blas  
Port St. Joe Co: Gulf FL  
Landholding Agency: DOT  
Property Number: 87199440017  
Status: Underutilized  
Reasons: Floodway, Secured Area

3 Bldgs. and Land  
Peanut Island Station  
Riveria Beach Co: Palm Beach FL 33419-0909

Landholding Agency: DOT  
Property Number: 87199510009  
Status: Unutilized  
Reasons: Floodway, Secured Area

Cape St. George Lighthouse  
Co: Franklin FL 32328-  
Landholding Agency: DOT  
Property Number: 87199640002  
Status: Unutilized  
Reason: Extensive deterioration

Maint/Carpentry Shop  
USCG Station  
St. Petersburg Co: Pinellas FL 33701-  
Landholding Agency: DOT  
Property Number: 87200120001  
Status: Excess  
Reasons: Secured Area, Extensive deterioration

#### Georgia

Prop. ID HAR18015  
Hartwell Project  
Hartwell Co: GA 30643-  
Landholding Agency: COE  
Property Number: 31200310001  
Status: Unutilized  
Reason: Extensive deterioration

Prop. ID RBR17830  
Russell Dam Dr.  
Elberton Co: GA 30635-  
Landholding Agency: COE  
Property Number: 31200310002  
Status: Unutilized  
Reason: Secured Area  
Prop. ID RBR17832

Russell Dam Drive  
Elberton Co: GA 30635-  
Landholding Agency: COE  
Property Number: 31200310003  
Status: Unutilized  
Reason: Secured Area

Coast Guard Station  
St. Simons Island  
Co: Glynn GA 31522-0577  
Landholding Agency: DOT  
Property Number: 87199540002  
Status: Unutilized  
Reason: Extensive deterioration

#### Idaho

Bldg. AFD0070  
Albeni Falls Dam  
Oldtown Co: Bonner ID 83822-  
Landholding Agency: COE  
Property Number: 31199910001  
Status: Unutilized  
Reason: Extensive deterioration

Bldg. PBF-621  
Idaho National Engineering Laboratory  
Scoville Co: Butte ID 83415-  
Landholding Agency: Energy  
Property Number: 41199610001  
Status: Unutilized  
Reason: Secured Area

Bldg. CPP-691  
Idaho National Engineering Laboratory  
Scoville Co: Butte ID 83415-  
Landholding Agency: Energy  
Property Number: 41199610003  
Status: Unutilized  
Reason: Secured Area

Bldg. CPP-625  
Idaho National Engineering Laboratory  
Scoville Co: Butte ID 83415-  
Landholding Agency: Energy  
Property Number: 41199610004  
Status: Unutilized  
Reason: Secured Area

Bldg. CPP-650  
Idaho National Engineering Laboratory  
Scoville Co: Butte ID 83415-  
Landholding Agency: Energy  
Property Number: 41199610005  
Status: Unutilized  
Reason: Secured Area

Bldg. CPP-608  
Idaho National Engineering Laboratory  
Scoville Co: Butte ID 83415-  
Landholding Agency: Energy  
Property Number: 41199610006  
Status: Unutilized  
Reason: Secured Area

Bldg. TAN-660  
Idaho National Engineering Laboratory  
Scoville Co: Butte ID 83415-  
Landholding Agency: Energy  
Property Number: 41199610007  
Status: Unutilized  
Reason: Secured Area

Bldg. TAN-636  
Idaho National Engineering Laboratory  
Scoville Co: Butte ID 83415-  
Landholding Agency: Energy  
Property Number: 41199610008  
Status: Unutilized  
Reason: Secured Area

Bldg. TAN-609  
Idaho National Engineering Laboratory  
Scoville Co: Butte ID 83415-

Landholding Agency: Energy  
Property Number: 41199610009  
Status: Unutilized  
Reason: Secured Area

Bldg. TAN-670  
Idaho National Engineering Laboratory  
Scoville Co: Butte ID 83415-  
Landholding Agency: Energy  
Property Number: 41199610010  
Status: Unutilized  
Reason: Secured Area

Bldg. TAN-661  
Idaho National Engineering Laboratory  
Scoville Co: Butte ID 83415-  
Landholding Agency: Energy  
Property Number: 41199610011  
Status: Unutilized  
Reason: Secured Area

Bldg. TAN-657  
Idaho National Engineering Laboratory  
Scoville Co: Butte ID 83415-  
Landholding Agency: Energy  
Property Number: 41199610012  
Status: Unutilized  
Reason: Secured Area

Bldg. TRA-669  
Idaho National Engineering Laboratory  
Scoville Co: Butte ID 83415-  
Landholding Agency: Energy  
Property Number: 41199610013  
Status: Unutilized  
Reason: Secured Area

Bldg. TAN-637  
Idaho National Engineering Laboratory  
Scoville Co: Butte ID 83415-  
Landholding Agency: Energy  
Property Number: 41199610014  
Status: Unutilized  
Reason: Secured Area

Bldg. TAN-635  
Idaho National Engineering Laboratory  
Scoville Co: Butte ID 83415-  
Landholding Agency: Energy  
Property Number: 41199610015  
Status: Unutilized  
Reason: Secured Area

Bldg. TAN-638  
Idaho National Engineering Laboratory  
Scoville Co: Butte ID 83415-  
Landholding Agency: Energy  
Property Number: 41199610016  
Status: Unutilized  
Reason: Secured Area

Bldg. TAN-651  
Idaho National Engineering Laboratory  
Scoville Co: Butte ID 83415-  
Landholding Agency: Energy  
Property Number: 41199610017  
Status: Unutilized  
Reason: Secured Area

Bldg. TRA-673  
Idaho National Engineering Laboratory  
Scoville Co: Butte ID 83415-  
Landholding Agency: Energy  
Property Number: 41199610018  
Status: Unutilized  
Reason: Secured Area

Bldg. PBF-620  
Idaho National Engineering Laboratory  
Scoville Co: Butte ID 83415-  
Landholding Agency: Energy  
Property Number: 41199610019  
Status: Unutilized  
Reason: Secured Area

Bldg. PBF-616  
Idaho National Engineering Laboratory  
Scoville Co: Butte ID 83415-  
Landholding Agency: Energy  
Property Number: 41199610020  
Status: Unutilized  
Reason: Secured Area

Bldg. PBF-617  
Idaho National Engineering Laboratory  
Scoville Co: Butte ID 83415-  
Landholding Agency: Energy  
Property Number: 41199610021  
Status: Unutilized  
Reason: Secured Area

Bldg. PBF-619  
Idaho National Engineering Laboratory  
Scoville Co: Butte ID 83415-  
Landholding Agency: Energy  
Property Number: 41199610022  
Status: Unutilized  
Reason: Secured Area

Bldg. PBF-624  
Idaho National Engineering Laboratory  
Scoville Co: Butte ID 83415-  
Landholding Agency: Energy  
Property Number: 41199610023  
Status: Unutilized  
Reason: Secured Area

Bldg. PBF-625  
Idaho National Engineering Laboratory  
Scoville Co: Butte ID 83415-  
Landholding Agency: Energy  
Property Number: 41199610024  
Status: Unutilized  
Reason: Secured Area

Bldg. PBF-629  
Idaho National Engineering Laboratory  
Scoville Co: Butte ID 83415-  
Landholding Agency: Energy  
Property Number: 41199610025  
Status: Unutilized  
Reason: Secured Area

Bldg. PBF-604  
Idaho National Engineering Laboratory  
Scoville Co: Butte ID 83415-  
Landholding Agency: Energy  
Property Number: 41199610026  
Status: Unutilized  
Reason: Secured Area

Bldg. TRA-641  
Idaho National Engineering Laboratory  
Scoville Co: Butte ID 83415-  
Landholding Agency: Energy  
Property Number: 41199610034  
Status: Unutilized  
Reason: Secured Area

Bldg. CF-606  
Idaho National Engineering Laboratory  
Scoville Co: Butte ID 83415-  
Landholding Agency: Energy  
Property Number: 41199610037  
Status: Unutilized  
Reason: Secured Area

TAN 602, 631, 663, 702, 724  
Idaho Natl Engineering & Environmental Lab  
Test Area North  
Scoville Co: Butte ID 83415-  
Landholding Agency: Energy  
Property Number: 41199830002  
Status: Excess  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area,  
Extensive deterioration

8 Bldgs.

Idaho Natl Engineering & Environmental Lab  
Test Reactor North  
Scoville Co: Butte ID 83415-  
Location: TRA 643, 644, 655, 660, 704-706,  
755  
Landholding Agency: Energy  
Property Number: 41199830003  
Status: Excess  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area

Bldg. TAN 616  
Idaho Natl Eng & Env Lab  
Scoville Co: Butte ID 83415-  
Landholding Agency: Energy  
Property Number: 41200320007  
Status: Excess  
Reason: Contamination

Illinois  
Calumet Harbor Station  
U.S. Coast Guard  
Chicago Co: Cook IL  
Landholding Agency: DOT  
Property Number: 87199310005  
Status: Excess  
Reason: Secured Area

Indiana  
Bldg. 12  
Naval Air Warfare  
Crane Co: Martin IN 47522-  
Landholding Agency: Navy  
Property Number: 77200330041  
Status: Excess  
Reason: Extensive deterioration

Bldg. 2517  
Naval Air Warfare  
Crane Co: Martin IN 47522-  
Landholding Agency: Navy  
Property Number: 77200330042  
Status: Excess  
Reason: Extensive deterioration

Bldg. BH2  
Naval Air Warfare  
Crane Co: Martin IN 47522-  
Landholding Agency: Navy  
Property Number: 77200330043  
Status: Excess  
Reason: Extensive deterioration

Bldg. 21, VA Medical Center  
East 38th Street  
Marion Co: Grant IN 46952-  
Landholding Agency: VA  
Property Number: 97199230001  
Status: Excess  
Reason: Extensive deterioration

Bldg. 22, VA Medical Center  
East 38th Street  
Marion Co: Grant IN 46952-  
Landholding Agency: VA  
Property Number: 97199230002  
Status: Excess  
Reason: Extensive deterioration

Bldg. 62, VA Medical Center  
East 38th Street  
Marion Co: Grant IN 46952-  
Landholding Agency: VA  
Property Number: 97199230003  
Status: Excess  
Reason: Extensive deterioration

Iowa  
Treatment Plant  
South Fork Park  
Mystic Co: Appanoose IA 52574-  
Landholding Agency: COE

Property Number: 31200220002  
Status: Excess  
Reason: Extensive deterioration

Storage Bldg.  
Rathbun Project  
Moravia Co: Appanoose IA 52571-  
Landholding Agency: COE  
Property Number: 31200330001  
Status: Excess  
Reason: Extensive deterioration

Bldg.  
Island View Park  
Rathbun Project  
Centerville Co: Appanoose IA 52544-  
Landholding Agency: COE  
Property Number: 31200330002  
Status: Excess  
Reason: Extensive deterioration

Kansas  
No. 01017  
Kanopolis Project  
Marquette Co: Ellsworth KS 67456-  
Landholding Agency: COE  
Property Number: 31200210001  
Status: Unutilized  
Reason: Extensive deterioration

No. 01020  
Kanopolis Project  
Marquette Co: Ellsworth KS 67456-  
Landholding Agency: COE  
Property Number: 31200210002  
Status: Unutilized  
Reason: Extensive deterioration

No. 61001  
Kanopolis Project  
Marquette Co: Ellsworth KS 67456-  
Landholding Agency: COE  
Property Number: 31200210003  
Status: Unutilized  
Reason: Extensive deterioration

Bldg. #1  
Kanopolis Project  
Marquette Co: Ellsworth KS 67456-  
Landholding Agency: COE  
Property Number: 31200220003  
Status: Excess  
Reason: Extensive deterioration

Bldg. #2  
Kanopolis Project  
Marquette Co: Ellsworth KS 67456-  
Landholding Agency: COE  
Property Number: 31200220004  
Status: Excess  
Reason: Extensive deterioration

Bldg. #4  
Kanopolis Project  
Marquette Co: Ellsworth KS 67456-  
Landholding Agency: COE  
Property Number: 31200220005  
Status: Excess  
Reason: Extensive deterioration

Comfort Station  
Clinton Lake Project  
Lawrence Co: Douglas KS 66049-  
Landholding Agency: COE  
Property Number: 31200220006  
Status: Excess  
Reason: Extensive deterioration

Privie  
Perry Lake  
Perry Co: Jefferson KS 66074-  
Landholding Agency: COE  
Property Number: 31200310004

Status: Unutilized  
Reason: Extensive deterioration  
Shower  
Perry Lake  
Perry Co: Jefferson KS 66073–  
Landholding Agency: COE  
Property Number: 31200310005  
Status: Unutilized  
Reason: Extensive deterioration  
Tool Shed  
Perry Lake  
Perry Co: Jefferson KS 66073–  
Landholding Agency: COE  
Property Number: 31200310006  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. M37  
Minooka Park  
Sylvan Grove Co: Russell KS 67481–  
Landholding Agency: COE  
Property Number: 31200320002  
Status: Excess  
Reason: Extensive deterioration  
Bldg. M38  
Minooka Park  
Sylvan Grove Co: Russell KS 67481–  
Landholding Agency: COE  
Property Number: 31200320003  
Status: Excess  
Reason: Extensive deterioration  
Bldg. L19  
Lucas Park  
Sylvan Grove Co: Russell KS 67481–  
Landholding Agency: COE  
Property Number: 31200320004  
Status: Unutilized  
Reason: Extensive deterioration  
2 Bldgs.  
Tuttle Creek Lake  
Near Shelters #3 & #4  
Riley Co: KS 66502–  
Landholding Agency: COE  
Property Number: 31200330003  
Status: Excess  
Reason: Extensive deterioration  
Kentucky  
Spring House  
Kentucky River Lock and Dam No. 1  
Highway 320  
Carrollton Co: Carroll KY 41008–  
Landholding Agency: COE  
Property Number: 21199040416  
Status: Unutilized  
Reason: Spring House  
6-Room Dwelling  
Green River Lock and Dam No. 3  
Rochester Co: Butler KY 42273–  
Location: Off State Hwy 369, which runs off  
of Western Ky. Parkway  
Landholding Agency: COE  
Property Number: 31199120010  
Status: Unutilized  
Reason: Floodway  
2-Car Garage  
Green River Lock and Dam No. 3  
Rochester Co: Butler KY 42273–  
Location: Off State Hwy 369, which runs off  
of Western Ky. Parkway  
Landholding Agency: COE  
Property Number: 31199120011  
Status: Unutilized  
Reason: Floodway  
Office and Warehouse  
Green River Lock and Dam No. 3  
Rochester Co: Butler KY 42273–  
Location: Off State Hwy 369, which runs off  
of Western Ky. Parkway  
Landholding Agency: COE  
Property Number: 31199120012  
Status: Unutilized  
Reason: Floodway  
2 Pit Toilets  
Green River Lock and Dam No. 3  
Rochester Co: Butler KY 42273–  
Landholding Agency: COE  
Property Number: 31199120013  
Status: Unutilized  
Reason: Floodway  
Dwelling  
USCG Shoreside Detachment  
Owensboro Co: Daviess KY  
Landholding Agency: DOT  
Property Number: 87200230010  
Status: Unutilized  
Reason: Extensive deterioration  
Louisiana  
Weeks Island Facility  
New Iberia Co: Iberia Parish LA 70560–  
Landholding Agency: Energy  
Property Number: 41199610038  
Status: Underutilized  
Reason: Secured Area  
Maine  
Supply Bldg., Coast Guard  
Southwest Harbor  
Southwest Harbor Co: Hancock ME 04679–  
5000  
Landholding Agency: DOT  
Property Number: 87199240005  
Status: Unutilized  
Reason: Floodway  
Base Exchange, Coast Guard  
Southwest Harbor  
Southwest Harbor Co: Hancock ME 04679–  
5000  
Landholding Agency: DOT  
Property Number: 87199240006  
Status: Unutilized  
Reason: Floodway  
Engineering Shop, Coast Guard  
Southwest Harbor  
Southwest Harbor Co: Hancock ME 04679–  
5000  
Landholding Agency: DOT  
Property Number: 87199240007  
Status: Unutilized  
Reason: Floodway  
Storage Bldg., Coast Guard  
Southwest Harbor  
Southwest Harbor Co: Hancock ME 04679–  
5000  
Landholding Agency: DOT  
Property Number: 87199240008  
Status: Unutilized  
Reason: Floodway  
Squirrel Point Light  
U.S. Coast Guard  
Phippsburg Co: Sayadahoc ME 04530–  
Landholding Agency: DOT  
Property Number: 87199240032  
Status: Unutilized  
Reason: Floodway  
Keepers Dwelling  
Heron Neck Light, U.S. Coast Guard  
Vinalhaven Co: Knox ME 04841–  
Landholding Agency: DOT  
Property Number: 87199240035  
Status: Unutilized  
Reason: Extensive Deterioration  
Fort Popham Light  
Phippsburg Co: Sayadahoc ME 04562–  
Landholding Agency: DOT  
Property Number: 87199320024  
Status: Unutilized  
Reason: Extensive Deterioration  
Nash Island Light  
U.S. Coast Guard  
Addison Co: Washington ME 04606–  
Landholding Agency: DOT  
Property Number: 87199420005  
Status: Unutilized  
Reason: Inaccessible  
Bldg.—South Portland Base  
U.S. Coast Guard  
S. Portland Co: Cumberland ME 04106–  
Landholding Agency: DOT  
Property Number: 87199420006  
Status: Unutilized  
Reason: Secured Area  
Garage—Boothbay Harbor Stat.  
Boothbay Harbor Co: Lincoln ME 04538–  
Landholding Agency: DOT  
Property Number: 87199430001  
Status: Unutilized  
Reason: Secured Area  
Maryland  
Bldgs. 38–39, 41, 43–46, 56  
U.S. Coast Guard Yard  
Baltimore MD 21226–  
Landholding Agency: DOT  
Property Number: 87199540005  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area,  
Extensive Deterioration  
Bldg. 53  
U.S. Coast Guard Yard  
Baltimore MD 21226–  
Landholding Agency: DOT  
Property Number: 87199540006  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area,  
Extensive Deterioration  
Bldg. 6  
U.S. Coast Guard Yard, 2401 Hawkins Point  
Rd.  
Baltimore MD 21226–1797  
Landholding Agency: DOT  
Property Number: 87199620001  
Status: Excess  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area  
Bldg. 59  
U.S. Coast Guard Yard, 2401 Hawkins Point  
Rd.  
Baltimore MD 21226–1797  
Landholding Agency: DOT  
Property Number: 87199620002  
Status: Excess  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area  
5 Bldgs.  
USCG Yard  
#9, 21, 23, 52, 57  
Baltimore Co: MD 21226–  
Landholding Agency: DOT  
Property Number: 87200120002  
Status: Unutilized  
Reason: Extensive Deterioration  
Bldg. #81

U.S. Coast Guard YARD  
Baltimore Co: Baltimore MD 21226–  
Landholding Agency: DOT  
Property Number: 87200210001  
Status: Underutilized  
Reason: Secured Area  
Bldg. #85  
U.S. Coast Guard YARD  
Baltimore Co: Baltimore MD 21226–  
Landholding Agency: DOT  
Property Number: 87200210002  
Status: Underutilized  
Reason: Secured Area  
Bldg. #86  
U.S. Coast Guard YARD  
Baltimore Co: Baltimore MD 21226–  
Landholding Agency: DOT  
Property Number: 87200210003  
Status: Underutilized  
Reason: Secured Area  
Bldg. #86D  
U.S. Coast Guard YARD  
Baltimore Co: Baltimore MD 21226–  
Landholding Agency: DOT  
Property Number: 87200210004  
Status: Underutilized  
Reason: Secured Area  
Bldg. #149  
U.S. Coast Guard YARD  
Baltimore Co: Baltimore MD 21226–  
Landholding Agency: DOT  
Property Number: 87200210005  
Status: Underutilized  
Reason: Secured Area

Massachusetts  
Bldg. 4, USCG Support Center  
Commercial Street  
Boston Co: Suffolk MA 02203–  
Landholding Agency: DOT  
Property Number: 87199240001  
Status: Underutilized  
Reason: Secured Area  
Eastern Point Light  
U.S. Coast Guard  
Gloucester Co: Essex MA 01930–  
Landholding Agency: DOT  
Property Number: 87199240029  
Status: Unutilized  
Reasons: Floodway, Secured Area  
Storage Shed  
Highland Light  
N. Truro Co: Barnstable MA 02652–  
Location: DeSoto Johnson KS 66018–  
Landholding Agency: DOT  
Property Number: 87199430004  
Status: Unutilized  
Reason: Extensive deterioration  
Westview Street Wells  
Lexington Co: MA 02173–  
Landholding Agency: VA  
Property Number: 97199920001  
Status: Unutilized  
Reason: Extensive deterioration

Michigan  
Station Bldg.  
USCG Station  
Manistee Co: MI 49660–  
Landholding Agency: DOT  
Property Number: 87200120003  
Status: Unutilized  
Reasons: Floodway, Secured Area  
Garage Bldg.  
USCG Station  
Manistee Co: MI 49660–  
Landholding Agency: DOT  
Property Number: 87200120004  
Status: Unutilized  
Reasons: Floodway, Secured Area  
Shed/Pump Bldg.  
USCG Station  
Manistee Co: MI 49660–  
Landholding Agency: DOT  
Property Number: 87200120005  
Status: Unutilized  
Reasons: Floodway, Secured Area  
Storage Bldg.  
USCG Station  
Manistee Co: MI 49660–  
Landholding Agency: DOT  
Property Number: 87200120006  
Status: Unutilized  
Reasons: Floodway, Secured Area  
Station/boathouse Bldg.  
USCG Harbor Beach Station  
Harbor Beach Co: Huron MI 48441–  
Landholding Agency: DOT  
Property Number: 87200130001  
Status: Unutilized  
Reasons: Floodway, Extensive deterioration  
Buoy Shed  
U.S. Coast Guard Station  
Sault Ste. Marie Co: Chippewa MI 49783–  
9501  
Landholding Agency: DOT  
Property Number: 87200320001  
Status: Excess  
Reason: Secured Area  
Warehouse Bldg.  
U.S. Coast Guard  
Charlevoix Co: MI 49720–  
Landholding Agency: DOT  
Property Number: 87200320002  
Status: Excess  
Reason: Secured Area  
Mississippi  
Natchez Moorings  
82 L.E. Berry Road  
Natchez Co: Adams MS 39121–  
Landholding Agency: DOT  
Property Number: 87199340002  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. 6, Boiler Plant  
Biloxi VA Medical Center  
Gulfport Co: Harrison MS 39531–  
Landholding Agency: VA  
Property Number: 97199410001  
Status: Unutilized  
Reason: Floodway  
Bldg. 67  
Biloxi VA Medical Center  
Gulfport Co: Harrison MS 39531–  
Landholding Agency: VA  
Property Number: 97199410008  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. 68  
Biloxi VA Medical Center  
Gulfport Co: Harrison MS 39531–  
Landholding Agency: VA  
Property Number: 97199410009  
Status: Unutilized  
Reason: Extensive deterioration  
Missouri  
Rec Office  
Harry S. Truman Dam & Reservoir  
Osceola Co: St. Clair MO 64776–  
Landholding Agency: COE  
Property Number: 31200110001  
Status: Unutilized  
Reason: Extensive deterioration  
Privy/Nemo Park  
Pomme de Terre Lake  
Hermitage Co: MO 65668–  
Landholding Agency: COE  
Property Number: 31200120001  
Status: Excess  
Reason: Extensive deterioration  
Privy No. 1/Bolivar Park  
Pomme de Terre Lake  
Hermitage Co: MO 65668–  
Landholding Agency: COE  
Property Number: 31200120002  
Status: Excess  
Reason: Extensive deterioration  
Privy No. 2/Bolivar Park  
Pomme de Terre Lake  
Hermitage Co: MO 65668–  
Landholding Agency: COE  
Property Number: 31200120003  
Status: Excess  
Reason: Extensive deterioration  
#07004, 60006, 60007  
Crabtree Cove/Stockton Area  
Stockton Co: MO 65785–  
Landholding Agency: COE  
Property Number: 31200220007  
Status: Excess  
Reason: Extensive deterioration  
Bldg.  
Old Mill Park Area  
Stockton Co: MO 65785–  
Landholding Agency: COE  
Property Number: 31200310007  
Status: Excess  
Reason: Extensive deterioration  
Stockton Lake Proj. Ofc.  
Stockton Co: Cedar MO 65785–  
Landholding Agency: COE  
Property Number: 31200330004  
Status: Unutilized  
Reason: Extensive deterioration

Nebraska  
Vault Toilets  
Harlan County Project  
Republican Co: NE 68971–  
Landholding Agency: COE  
Property Number: 31200210006  
Status: Unutilized  
Reason: Extensive deterioration  
Patterson Treatment Plant  
Harlan County Project  
Republican Co: NE 68971–  
Landholding Agency: COE  
Property Number: 31200210007  
Status: Unutilized  
Reason: Extensive deterioration  
#30004  
Harlan County Project  
Republican Co: Harlan NE 68971–  
Landholding Agency: COE  
Property Number: 31200220008  
Status: Unutilized  
Reason: Extensive deterioration  
#3005, 3006  
Harlan County Project  
Republican Co: Harlan NE 68971–  
Landholding Agency: COE  
Property Number: 31200220009

Status: Unutilized  
Reason: Extensive deterioration  
Nevada  
28 Facilities  
Nevada Test Site  
Mercury Co: Nye NV 89023–  
Landholding Agency: Energy  
Property Number: 41200310018  
Status: Excess  
Reasons: contamination, Secured Area  
Air Traffic Control Tower  
Perimeter Road  
Las Vegas Co: NV  
Landholding Agency: DOT  
Property Number: 87200310002  
Status: Unutilized  
Reason: Within airport runway clear zone  
New Jersey  
Piers and Wharf  
Station Sandy Hook  
Highlands Co: Monmouth NJ 07732–5000  
Landholding Agency: DOT  
Property Number: 87199240009  
Status: Unutilized  
Reasons: Secured Area, Extensive deterioration  
Chapel Hill Front Range Light Tower  
Middletown Co: Monmouth NJ 07748–  
Landholding Agency: DOT  
Property Number: 87199440002  
Status: Unutilized  
Reason: Skeletal tower  
Bldg. 103  
U.S. Coast Guard Station Sandy Hook  
Middleton Co: Monmouth NJ 07737–  
Landholding Agency: DOT  
Property Number: 87199610002  
Status: Unutilized  
Reason: Secured Area  
Ship Stg. Bldg.  
USCG Training Center  
Cape May Co: NJ 08204–5002  
Landholding Agency: DOT  
Property Number: 87200110018  
Status: Excess  
Reason: Secured Area  
Exchange Whse.  
USCG Training Center  
Cape May Co: NJ 08204–5002  
Landholding Agency: DOT  
Property Number: 87200110019  
Status: Excess  
Reason: Secured Area  
Patrol Boat Bldg.  
USCG Training Center  
Cape May Co: NJ 08204–5002  
Landholding Agency: DOT  
Property Number: 87200110020  
Status: Excess  
Reason: Secured Area  
Station Bldg.  
USCG Training Center  
Cape May Co: NJ 08204–5002  
Landholding Agency: DOT  
Property Number: 87200110021  
Status: Excess  
Reason: Secured Area  
ANT Bldg.  
USCG Training Center  
Cape May Co: NJ 08204–5002  
Landholding Agency: DOT  
Property Number: 87200110022  
Status: Excess

Reason: Secured Area  
Quarters C  
USCG Training Center  
Cape May Co: NJ 08204–5002  
Landholding Agency: DOT  
Property Number: 87200120012  
Status: Excess  
Reason: Secured Area  
Central Heating Plant  
USCG Training Center  
Cape May Co: NJ 08204–5002  
Landholding Agency: DOT  
Property Number: 87200120013  
Status: Excess  
Reason: Secured Area  
Hangar/Shop  
USCG Training Center  
Cape May Co: NJ 08204–5002  
Landholding Agency: DOT  
Property Number: 87200120014  
Status: Excess  
Reason: Secured Area  
Bldg. 195  
U.S. Coast Guard  
Cape May Co: NJ 08204–5002  
Landholding Agency: DOT  
Property Number: 87200220001  
Status: Excess  
Reason: Secured Area  
Bldg. 204  
U.S. Coast Guard  
Cape May Co: NJ 08204–5002  
Landholding Agency: DOT  
Property Number: 87200220002  
Status: Excess  
Reason: Secured Area  
Bldg. 208  
U.S. Coast Guard  
Cape May Co: NJ 08204–5002  
Landholding Agency: DOT  
Property Number: 87200220003  
Status: Excess  
Reason: Secured Area  
Bldg. 209  
U.S. Coast Guard  
Cape May Co: NJ 08204–5002  
Landholding Agency: DOT  
Property Number: 87200220004  
Status: Excess  
Reason: Secured Area  
Sheds OV1, OV2, OV3  
U.S. Coast Guard  
Shark River  
Avon by the Sea Co: Monmouth NJ 13640–  
Landholding Agency: DOT  
Property Number: 87200240001  
Status: Unutilized  
Reason: Secured Area  
Unit 13  
USCG Station Barnegat Light  
Station Barnegat Co: Ocean NJ  
Landholding Agency: DOT  
Property Number: 87200240002  
Status: Unutilized  
Reason: Secured Area  
Units 9–12  
USCG Station Barnegat Light  
Station Barnegat Co: Ocean NJ  
Landholding Agency: DOT  
Property Number: 87200240003  
Status: Unutilized  
Reason: Secured Area  
Bldg. 019  
Coast Guard Training Center

Cape May Co: NJ 08204–  
Landholding Agency: DOT  
Property Number: 87200310003  
Status: Excess  
Reasons: Secured Area, Extensive deterioration  
Bldg. 022  
Coast Guard Training Center  
Cape May Co: NJ 08204–  
Landholding Agency: DOT  
Property Number: 87200310004  
Status: Excess  
Reasons: Secured Area, Extensive deterioration  
Bldg. 192  
Coast Guard Training Center  
Cape May Co: NJ 08204–  
Landholding Agency: DOT  
Property Number: 87200310005  
Status: Excess  
Reasons: Secured Area, Extensive deterioration  
Bldg. 193  
Coast Guard Training Center  
Cape May Co: NJ 08204–  
Landholding Agency: DOT  
Property Number: 87200310006  
Status: Excess  
Reasons: Secured Area, Extensive deterioration  
Bldg. 207  
Coast Guard Training Center  
Cape May Co: NJ 08204–  
Landholding Agency: DOT  
Property Number: 87200310007  
Status: Excess  
Reasons: Secured Area, Extensive deterioration  
New Mexico  
Bldgs. 9252, 9268  
Kirtland Air Force Base  
Albuquerque Co: Bernalillo NM 87185–  
Landholding Agency: Energy  
Property Number: 41199430002  
Status: Unutilized  
Reason: Extensive deterioration  
Tech Area II  
Kirtland Air Force Base  
Albuquerque Co: Bernalillo NM 87105–  
Landholding Agency: Energy  
Property Number: 41199630004  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration  
Bldg. 1, TA–33  
Los Alamos National Laboratory  
Los Alamos NM 87545–  
Landholding Agency: Energy  
Property Number: 41199810001  
Status: Unutilized  
Reasons: Secured Area, Extensive deterioration  
Bldg. 2, TA–33  
Los Alamos National Laboratory  
Los Alamos NM 87545–  
Landholding Agency: Energy  
Property Number: 41199810002  
Status: Unutilized  
Reasons: Secured Area, Extensive deterioration  
Bldg. 24, TA–33  
Los Alamos National Laboratory  
Los Alamos NM 87545–





Landholding Agency: Energy  
Property Number: 41200010025  
Status: Unutilized  
Reason: Secured Area  
Bldg. 313, TA-21  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41200010026  
Status: Unutilized  
Reason: Secured Area  
Bldg. 314, TA-21  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41200010027  
Status: Unutilized  
Reason: Secured Area  
Bldg. 315, TA-21  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41200010028  
Status: Unutilized  
Reason: Secured Area  
Bldg. 1, TA-8  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41200010029  
Status: Unutilized  
Reason: Secured Area  
Bldg. 2, TA-8  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41200010030  
Status: Unutilized  
Reasons: Secured Area, Extensive  
deterioration  
Bldg. 3, TA-8  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41200020001  
Status: Unutilized  
Reasons: Secured Area, Extensive  
deterioration  
Bldg. 51, TA-9  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41200020002  
Status: Unutilized  
Reason: Secured Area  
Bldg. 30, TA-14  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41200020003  
Status: Unutilized  
Reason: Secured Area  
Bldg. 16, TA-3  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41200020009  
Status: Unutilized  
Reason: Secured Area  
Bldg. 339, TA-16  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41200020010  
Status: Unutilized  
Reason: Secured Area  
Bldg. 340, TA-16  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41200020011  
Status: Unutilized  
Reason: Secured Area  
Bldg. 341, TA-16  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41200020012  
Status: Unutilized  
Reason: Secured Area  
Bldg. 342, TA-16  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41200020013  
Status: Unutilized  
Reason: Secured Area  
Bldg. 343, TA-16  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41200020014  
Status: Unutilized  
Reason: Secured Area  
Bldg. 345, TA-16  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41200020015  
Status: Unutilized  
Reason: Secured Area  
Bldg. 16, TA-21  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41200020016  
Status: Unutilized  
Reason: Secured Area  
Bldg. 48, TA-55  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41200020017  
Status: Unutilized  
Reason: Secured Area  
Bldg. 125, TA-55  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41200020018  
Status: Unutilized  
Reason: Secured Area  
Bldg. 162, TA-55  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41200020019  
Status: Unutilized  
Reason: Secured Area  
Bldg. 22, TA-33  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41200020022  
Status: Unutilized  
Reasons: Secured Area, Extensive  
deterioration  
Bldg. 23, TA-49  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41200020023  
Status: Unutilized  
Reason: Secured Area  
Bldg. 37, TA-53  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41200020024  
Status: Unutilized  
Reason: Secured Area  
Bldg. 121, TA-49  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41200020025  
Status: Unutilized  
Reason: Secured Area  
Bldg. 30, TA-21  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41200040001  
Status: Unutilized  
Reason: Secured Area  
Bldg. 152 TA-21  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41200040002  
Status: Unutilized  
Reason: Secured Area  
Bldg. 105, TA-3  
Los Alamos Natl Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41200120007  
Status: Excess  
Reason: Secured Area  
Bldg. 452, TA-3  
Los Alamos Natl Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41200120008  
Status: Excess  
Reason: Secured Area  
5 Bldgs.  
Kirtland AFB  
Sandia Natl Lab  
Albuquerque Co: Bernalillo NM 87185-  
Location: 9927, 9970, 6730, 6731, 6555  
Landholding Agency: Energy  
Property Number: 41200210014  
Status: Excess  
Reason: Extensive deterioration  
6 Bldgs.  
Kirtland AFB  
Sandia Natl Lab  
Albuquerque Co: Bernalillo NM 87185-  
Location: 6725, 841, 884, 892, 893, 9800  
Landholding Agency: Energy  
Property Number: 41200210015  
Status: Excess  
Reason: Extensive deterioration  
TA-53, Bldg. 61  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41200220023  
Status: Unutilized  
Reason: Extensive deterioration  
TA-53, Bldg. 63

Los Alamos National Lab  
Los Alamos Co: NM 87545–  
Landholding Agency: Energy  
Property Number: 41200220024  
Status: Unutilized  
Reason: Extensive deterioration  
TA–53, Bldg. 65  
Los Alamos National Lab  
Los Alamos Co: NM 87545–  
Landholding Agency: Energy  
Property Number: 41200220025  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. B117  
Kirtland Operations  
Albuquerque Co: Bernalillo NM 87117–  
Landholding Agency: Energy  
Property Number: 41200220032  
Status: Excess  
Reason: Extensive deterioration  
Bldg. B118  
Kirtland Operations  
Albuquerque Co: Bernalillo NM 87117–  
Landholding Agency: Energy  
Property Number: 41200220033  
Status: Excess  
Reason: Extensive deterioration  
Bldg. B119  
Kirtland Operations  
Albuquerque Co: Bernalillo NM 87117–  
Landholding Agency: Energy  
Property Number: 41200220034  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 6721  
Kirtland AFB  
Albuquerque Co: Bernalillo NM 87185–  
Landholding Agency: Energy  
Property Number: 41200220042  
Status: Unutilized  
Reason: Extensive deterioration  
6 Bldgs.  
Kirtland Air Force Base #852, 874, 9939A,  
6536, 6636, 833A  
Albuquerque Co: NM 87185–  
Landholding Agency: Energy  
Property Number: 41200230001  
Status: Excess  
Reason: Secured Area  
Bldg. 805  
Kirtland Air Force Base  
Albuquerque Co: Bernalillo NM 87185–  
Landholding Agency: Energy  
Property Number: 41200240001  
Status: Unutilized  
Reason: Secured Area  
Bldg. 8898  
Kirtland Air Force Base  
Albuquerque Co: Bernalillo NM 87185–  
Landholding Agency: Energy  
Property Number: 41200240002  
Status: Unutilized  
Reason: Secured Area  
8 Bldgs., TA–16  
Los Alamos National Lab 195, 220–226  
Los Alamos Co: NM 87545–  
Landholding Agency: Energy  
Property Number: 41200240003  
Status: Unutilized  
Reason: Secured Area  
Bldg. 2, TA–11  
Los Alamos National Lab  
Los Alamos Co: NM 87545–  
Landholding Agency: Energy  
Property Number: 41200240004  
Status: Unutilized  
Reason: Secured Area  
Bldg. 4, TA–41  
Los Alamos National Lab  
Los Alamos Co: NM 87545–  
Landholding Agency: Energy  
Property Number: 41200240005  
Status: Unutilized  
Reason: Secured Area  
Bldg. 16, TA–41  
Los Alamos National Lab  
Los Alamos Co: NM 87545–  
Landholding Agency: Energy  
Property Number: 41200240006  
Status: Unutilized  
Reason: Secured Area  
Bldg. 30, TA–41  
Los Alamos National Lab  
Los Alamos Co: NM 87545–  
Landholding Agency: Energy  
Property Number: 41200240007  
Status: Unutilized  
Reason: Secured Area  
Bldg. 53, TA–41  
Los Alamos National Lab  
Los Alamos Co: NM 87545–  
Landholding Agency: Energy  
Property Number: 41200240008  
Status: Unutilized  
Reason: Secured Area  
Bldg. 2, TA–33  
Los Alamos National Lab  
Los Alamos Co: NM 87545–  
Landholding Agency: Energy  
Property Number: 41200310001  
Status: Unutilized  
Reasons: Secured Area, Extensive  
deterioration  
Bldgs. 228, 286, TA–21  
Los Alamos National Lab  
Los Alamos Co: NM 87545–  
Landholding Agency: Energy  
Property Number: 41200310002  
Status: Unutilized  
Reason: Secured Area  
Bldg. 116, TA–21  
Los Alamos National Lab  
Los Alamos Co: NM 87545–  
Landholding Agency: Energy  
Property Number: 41200310003  
Status: Unutilized  
Reason: Secured Area  
Bldgs. 1, 2, 3, 4, 5, TA–28  
Los Alamos National Lab  
Los Alamos Co: NM 87545–  
Landholding Agency: Energy  
Property Number: 41200310004  
Status: Unutilized  
Reason: Secured Area  
New York  
Warehouse  
Whitney Lake Project  
Whitney Point Co: Broome NY 13862–0706  
Landholding Agency: COE  
Property Number: 31199630007  
Status: Unutilized  
Reason: Extensive deterioration  
2 Buildings  
Ant Saugerties  
Saugerties Co: Ulster NY 12477–  
Landholding Agency: DOT  
Property Number: 87199230005  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. 606, Fort Totten  
New York Co: Queens NY 11359–  
Landholding Agency: DOT  
Property Number: 87199240020  
Status: Unutilized  
Reason: Secured Area  
Bldg. 607, Fort Totten  
New York Co: Queens NY 11359–  
Landholding Agency: DOT  
Property Number: 87199240021  
Status: Unutilized  
Reasons: Extensive deterioration, Secured  
Area  
Bldg. 605, Fort Totten  
New York Co: Queens NY 11359–  
Landholding Agency: DOT  
Property Number: 87199240022  
Status: Unutilized  
Reasons: Extensive deterioration, Secured  
Area  
Eatons Neck Station  
U.S. Coast Guard  
Huntington Co: Suffolk NY 11743–  
Landholding Agency: DOT  
Property Number: 87199310003  
Status: Unutilized  
Reasons: Secured Area, Extensive  
deterioration  
Bldg. 517, USCG Support Center  
Governors Island Co: Manhattan NY 10004–  
Landholding Agency: DOT  
Property Number: 87199320025  
Status: Unutilized  
Reason: Secured Area  
Bldg. 138  
U.S. Coast Guard Support Center  
Governors Island Co: Manhattan NY 10004–  
Landholding Agency: DOT  
Property Number: 87199410003  
Status: Unutilized  
Reason: Secured Area  
Bldg. 830  
U.S. Coast Guard  
Governors Island Co: Manhattan NY 10004–  
Landholding Agency: DOT  
Property Number: 87199420004  
Status: Unutilized  
Reason: Secured Area  
Bldg. 8  
Rosebank—Coast Guard Housing  
Staten Island Co: Richmond NY 10301–  
Landholding Agency: DOT  
Property Number: 87199530009  
Status: Unutilized  
Reason: Secured Area  
Bldg. 7  
Rosebank—Coast Guard Housing  
Staten Island Co: Richmond NY 10301–  
Landholding Agency: DOT  
Property Number: 87199530010  
Status: Unutilized  
Reasons: Secured Area, Extensive  
deterioration  
Bldg. 222  
Fort Wadsworth  
Staten Island Co: Richmond NY 10305–  
Landholding Agency: DOT  
Property Number: 87199620003  
Status: Unutilized  
Reason: Secured Area  
Bldg. 223

Fort Wadsworth  
Staten Island Co: Richmond NY 10305–  
Landholding Agency: DOT  
Property Number: 87199620004  
Status: Unutilized  
Reason: Secured Area  
Bldg. 205  
Fort Wadsworth  
Staten Island Co: Richmond NY 10305–  
Landholding Agency: DOT  
Property Number: 87199620005  
Status: Unutilized  
Reason: Secured Area  
Bldg. 9  
U.S. Coast Guard—Rosebank  
Staten Island Co: Richmond NY 10301–  
Landholding Agency: DOT  
Property Number: 87199630027  
Status: Excess  
Reason: Secured Area  
Bldg. 10  
U.S. Coast Guard—Rosebank  
Staten Island Co: Richmond NY 10301–  
Landholding Agency: DOT  
Property Number: 87199630028  
Status: Excess  
Reason: Secured Area  
Bldg. 206, Rosebank  
Staten Island Co: Richmond NY 10301–  
Landholding Agency: DOT  
Property Number: 87199630029  
Status: Excess  
Reason: Secured Area  
Bldg. OG2  
Coast Guard Station  
Alexandria Bay Co: Jefferson NY 13640–  
Landholding Agency: DOT  
Property Number: 87200210021  
Status: Unutilized  
Reason: Secured Area

North Carolina  
Prop. ID WKS20350  
Scott Reservoir Project  
Wilkesboro Co: NC 28697–7462  
Landholding Agency: COE  
Property Number: 31200310008  
Status: Unutilized  
Reason: Extensive deterioration  
Prop. ID WKS18652  
Scott Reservoir Project  
Wilkesboro Co: NC 28697–7462  
Landholding Agency: COE  
Property Number: 31200310009  
Status: Unutilized  
Reason: Extensive deterioration  
10 Facilities  
Wilkes County Recreation Area  
Wilkesboro Co: NC  
Landholding Agency: COE  
Property Number: 31200320001  
Status: Unutilized  
Reason: Extensive deterioration  
Group Cape Hatteras  
Boiler Plant  
Buxton Co: Dare NC 27902–0604  
Landholding Agency: DOT  
Property Number: 87199240018  
Status: Unutilized  
Reason: Secured Area  
Group Cape Hatteras  
Bowling Alley  
Buxton Co: Dare NC 27902–0604  
Landholding Agency: DOT  
Property Number: 87199240019  
Status: Unutilized  
Reason: Secured Area  
Bldg. 54  
Group Cape Hatteras  
Buxton Co: Dare NC 27902–0604  
Landholding Agency: DOT  
Property Number: 87199340004  
Status: Unutilized  
Reason: Secured Area  
Bldg. 83  
Group Cape Hatteras  
Buxton Co: Dare NC 27902–0604  
Landholding Agency: DOT  
Property Number: 87199340005  
Status: Unutilized  
Reason: Secured Area  
Water Tanks  
Group Cape Hatteras  
Buxton Co: Dare NC 27902–0604  
Landholding Agency: DOT  
Property Number: 87199340006  
Status: Unutilized  
Reason: Secured Area  
USCG Gentian (WLB 290)  
Fort Macon State Park  
Atlantic Beach Co: Carteret NC 27601–  
Landholding Agency: DOT  
Property Number: 87199420007  
Status: Excess  
Reason: Secured Area  
Unit #71  
Buxton Annex, Cape Kendrick Circle  
Buxton Co: Dare NC 27920–  
Landholding Agency: DOT  
Property Number: 87199530011  
Status: Unutilized  
Reason: Floodway  
Unit #72  
Buxton Annex, Cape Kendrick Circle  
Buxton Co: Dare NC 27920–  
Landholding Agency: DOT  
Property Number: 87199530012  
Status: Unutilized  
Reason: Floodway  
Unit #73  
Buxton Annex, Cape Kendrick Circle  
Buxton Co: Dare NC 27920–  
Landholding Agency: DOT  
Property Number: 87199530013  
Status: Unutilized  
Reason: Floodway  
Unit #74  
Buxton Annex, Cape Kendrick Circle  
Buxton Co: Dare NC 27920–  
Landholding Agency: DOT  
Property Number: 87199530014  
Status: Unutilized  
Reason: Floodway  
Unit #75  
Buxton Annex, Cape Kendrick Circle  
Buxton Co: Dare NC 27920–  
Landholding Agency: DOT  
Property Number: 87199530015  
Status: Unutilized  
Reason: Floodway  
Unit #63  
Buxton Annex, Anna May Court  
Buxton Co: Dare NC 27920–  
Landholding Agency: DOT  
Property Number: 87199530016  
Status: Unutilized  
Reason: Floodway  
Unit #64  
Buxton Annex, Anna May Court  
Buxton Co: Dare NC 27920–  
Landholding Agency: DOT  
Property Number: 87199530017  
Status: Unutilized  
Reason: Floodway  
Unit #76  
Buxton Annex, Anna May Court  
Buxton Co: Dare NC 27920–  
Landholding Agency: DOT  
Property Number: 87199530018  
Status: Unutilized  
Reason: Floodway  
Unit #68  
Buxton Annex, Anna May Court  
Buxton Co: Dare NC 27920–  
Landholding Agency: DOT  
Property Number: 87199530019  
Status: Unutilized  
Reason: Floodway  
Unit #69  
Buxton Annex, Anna May Court  
Buxton Co: Dare NC 27920–  
Landholding Agency: DOT  
Property Number: 87199530020  
Status: Unutilized  
Reason: Floodway  
Unit #70  
Buxton Annex, Anna May Court  
Buxton Co: Dare NC 27920–  
Landholding Agency: DOT  
Property Number: 87199530021  
Status: Unutilized  
Reason: Floodway  
Unit #77  
Buxton Annex, Old Lighthouse Road  
Buxton Co: Dare NC 27920–  
Landholding Agency: DOT  
Property Number: 87199530022  
Status: Unutilized  
Reason: Floodway  
Unit #78  
Buxton Annex, Old Lighthouse Road  
Buxton Co: Dare NC 27920–  
Landholding Agency: DOT  
Property Number: 87199530023  
Status: Unutilized  
Reason: Floodway  
Bldg. 53  
Coast Guard Support Center  
Elizabeth City Co: Pasquotank NC 27909–  
5006  
Landholding Agency: DOT  
Property Number: 87199630022  
Status: Unutilized  
Reason: Secured Area  
Bldg. OV1 (033)  
USCG Cape Hatteras  
Buxton Co: Dare NC 27902–0604  
Landholding Agency: DOT  
Property Number: 87200210012  
Status: Underutilized  
Reason: Secured Area  
Storage Bldg.  
USCG Loran Station  
Carolina Beach Co: New Hanover NC  
Landholding Agency: DOT  
Property Number: 87200210013  
Status: Underutilized  
Reason: Secured Area  
Frying Pan Shoals Light  
USCG  
Cape Fear Co: NC  
Landholding Agency: DOT

Property Number: 87200240004  
 Status: Unutilized  
 Reason: Secured Area  
 Diamond Shoals Light  
 USCG  
 Cape Hatteras Co: NC  
 Landholding Agency: DOT  
 Property Number: 87200240005  
 Status: Unutilized  
 Reason: Secured Area  
 Bldg. 9  
 VA Medical Center  
 1100 Tunnel Road  
 Asheville Co: Buncombe NC 28805-  
 Landholding Agency: VA  
 Property Number: 97199010008  
 Status: Unutilized  
 Reason: Extensive deterioration

Ohio  
 Bldg. 77  
 Fernald Environmental Management Project  
 Fernald Co: Hamilton OH 45013-  
 Landholding Agency: Energy  
 Property Number: 41199840003  
 Status: Excess  
 Reasons: Within 2000 ft. of flammable or  
 explosive material, Secured Area  
 Bldg. 82A  
 Fernald Environmental Mgmt Project  
 Fernald Co: Hamilton OH 45013-  
 Landholding Agency: Energy  
 Property Number: 41199910018  
 Status: Excess  
 Reasons: Within 2000 ft. of flammable or  
 explosive material, Secured Area  
 Bldg. 16  
 RMI Environmental Services  
 Ashtabula Co: OH 44004-  
 Landholding Agency: Energy  
 Property Number: 41199930016  
 Status: Unutilized  
 Reason: Secured Area  
 Bldg. 22B  
 Fernald Env. Mgmt. Proj.  
 Hamilton Co: OH 45013-9402  
 Landholding Agency: Energy  
 Property Number: 41200020026  
 Status: Unutilized  
 Reasons: Within 2000 ft. of flammable or  
 explosive material, Secured Area  
 Bldg. 53A  
 Fernald Env. Mgmt. Project  
 Fernald Co: Hamilton OH 45013-9402  
 Landholding Agency: Energy  
 Property Number: 41200120009  
 Status: Excess  
 Reason: Secured Area  
 Bldg. 8G  
 Fernald Environmental Mgmt Project  
 Hamilton Co: OH 45013-  
 Landholding Agency: Energy  
 Property Number: 41200210003  
 Status: Excess  
 Reason: Secured Area  
 Bldg. 8H  
 Fernald Environmental Mgmt Project  
 Hamilton Co: OH 45013-  
 Landholding Agency: Energy  
 Property Number: 41200210004  
 Status: Excess  
 Reason: Secured Area  
 Bldg. 94A  
 Fernald Environmental Mgmt Project  
 Hamilton Co: OH 45013-  
 Landholding Agency: Energy  
 Property Number: 41200210005  
 Status: Excess  
 Reason: Secured Area  
 Bldg. 11  
 Fernald Env. Mgmt. Proj.  
 Hamilton Co: OH 45013-  
 Landholding Agency: Energy  
 Property Number: 41200220026  
 Status: Excess  
 Reason: Secured Area  
 Bldg. 14A  
 Fernald Env. Mgmt. Proj.  
 Hamilton Co: OH 45013-  
 Landholding Agency: Energy  
 Property Number: 41200220027  
 Status: Excess  
 Reason: Secured Area  
 Bldg. 15A  
 Fernald Env. Mgmt. Proj.  
 Hamilton Co: OH 45013-  
 Landholding Agency: Energy  
 Property Number: 41200220028  
 Status: Excess  
 Reason: Secured Area  
 Bldg. 15C  
 Fernald Env. Mgmt. Proj.  
 Hamilton Co: OH 45013-  
 Landholding Agency: Energy  
 Property Number: 41200220029  
 Status: Excess  
 Reason: Secured Area  
 Bldg. 20K  
 Fernald Env. Mgmt. Proj.  
 Hamilton Co: OH 45013-  
 Landholding Agency: Energy  
 Property Number: 41200220030  
 Status: Excess  
 Reason: Secured Area  
 Bldg. 53B  
 Fernald Env. Mgmt. Proj.  
 Hamilton Co: OH 45013-  
 Landholding Agency: Energy  
 Property Number: 41200220031  
 Status: Excess  
 Reason: Secured Area  
 Modular Ofc. Bldg.  
 RMI  
 Ashtabula Co: OH 44004-  
 Landholding Agency: Energy  
 Property Number: 41200310008  
 Status: Excess  
 Reason: Contamination  
 Modular Lab Bldg.  
 RMI  
 Ashtabula Co: OH 44004-  
 Landholding Agency: Energy  
 Property Number: 41200310009  
 Status: Excess  
 Reason: Contamination  
 Soil Storage Bldg.  
 RMI  
 Ashtabula Co: OH 44004-  
 Landholding Agency: Energy  
 Property Number: 41200310010  
 Status: Excess  
 Reason: Contamination  
 Soil Washing Bldg.  
 RMI  
 Ashtabula Co: OH 44004-  
 Landholding Agency: Energy  
 Property Number: 41200310011  
 Status: Excess

Reason: Contamination  
 Bldg. 16B  
 Fernald Env. Mgmt. Proj.  
 Hamilton Co: Butler OH 45013-  
 Landholding Agency: Energy  
 Property Number: 41200310012  
 Status: Excess  
 Reasons: Contamination, Secured Area  
 Bldg. 24C  
 Fernald Env. Mgmt. Proj.  
 Hamilton Co: Butler OH 45013-  
 Landholding Agency: Energy  
 Property Number: 41200310013  
 Status: Excess  
 Reasons: Contamination, Secured Area  
 Bldg. 25K  
 Fernald Env. Mgmt. Proj.  
 Hamilton Co: Butler OH 45013-  
 Landholding Agency: Energy  
 Property Number: 41200310014  
 Status: Excess  
 Reasons: Contamination, Secured Area  
 Bldg. 50  
 Fernald Env. Mgmt. Proj.  
 Hamilton Co: Butler OH 45013-  
 Landholding Agency: Energy  
 Property Number: 41200310015  
 Status: Excess  
 Reasons: Contamination, Secured Area  
 Bldg. 52A  
 Fernald Env. Mgmt. Proj.  
 Hamilton Co: Butler OH 45013-  
 Landholding Agency: Energy  
 Property Number: 41200310016  
 Status: Excess  
 Reasons: Contamination, Secured Area  
 Bldg. 52B  
 Fernald Env. Mgmt. Proj.  
 Hamilton Co: Butler OH 45013-  
 Landholding Agency: Energy  
 Property Number: 41200310017  
 Status: Excess  
 Reasons: Contamination, Secured Area  
 Bldg. 116  
 VA Medical Center  
 Dayton Co: Montgomery OH 45428-  
 Landholding Agency: VA  
 Property Number: 97199920002  
 Status: Unutilized  
 Reason: Extensive deterioration  
 Bldg. 402  
 VA Medical Center  
 Dayton Co: Montgomery OH 45428-  
 Landholding Agency: VA  
 Property Number: 97199920004  
 Status: Unutilized  
 Reason: Extensive deterioration  
 Bldg. 105  
 VA Medical Center  
 Dayton Co: Montgomery OH 45428-  
 Landholding Agency: VA  
 VA  
 Property Number: 97199920005  
 Status: Unutilized  
 Reason: Extensive deterioration

Oklahoma  
 Comfort Station  
 LeFlore Landing PUA  
 Sallisaw Co: LeFlore OK 74955-9445  
 Landholding Agency: COE  
 Property Number: 31200240008  
 Status: Excess  
 Reason: Extensive deterioration

Comfort Station  
 Braden Bend PUA  
 Sallisaw Co: LeFlore OK 74955-9445  
 Landholding Agency: COE  
 Property Number: 31200240009  
 Status: Excess  
 Reason: Extensive deterioration

Water Treatment Plant  
 Salt Creek Cove  
 Sawyer Co: Choctaw OK 74756-0099  
 Landholding Agency: COE  
 Property Number: 31200240010  
 Status: Excess  
 Reason: Extensive deterioration

Water Treatment Plant  
 Wilson Point  
 Sawyer Co: Choctaw OK 74756-0099  
 Landholding Agency: COE  
 Property Number: 31200240011  
 Status: Excess  
 Reason: Extensive deterioration

2 Comfort Stations  
 Landing PUA/Juniper Point PUA  
 Stigler Co: McIntosh OK 74462-9440  
 Landholding Agency: COE  
 Property Number: 31200240012  
 Status: Excess  
 Reason: Extensive deterioration

Filter Plant/Pumphouse  
 South PUA  
 Stigler Co: McIntosh OK 74462-9440  
 Landholding Agency: COE  
 Property Number: 31200240013  
 Status: Excess  
 Reason: Extensive deterioration

Filter Plant/Pumphouse  
 North PUA  
 Stigler Co: McIntosh OK 74462-9440  
 Landholding Agency: COE  
 Property Number: 31200240014  
 Status: Excess  
 Reason: Extensive deterioration

Filter Plant/Pumphouse  
 Juniper Point PUA  
 Stigler Co: McIntosh OK 74462-9440  
 Landholding Agency: COE  
 Property Number: 31200240015  
 Status: Excess  
 Reason: Extensive deterioration

Comfort Station  
 Juniper Point PUA  
 Stigler Co: McIntosh OK 74462-9440  
 Landholding Agency: COE  
 Property Number: 31200240016  
 Status: Excess  
 Reason: Extensive deterioration

Comfort Station  
 Brooken Cove PUA  
 Stigler Co: McIntosh OK 74462-9440  
 Landholding Agency: COE  
 Property Number: 31200240017  
 Status: Excess  
 Reason: Extensive deterioration

Pennsylvania  
 Z-Bldg.  
 Bettis Atomic Power Lab  
 West Mifflin Co: Allegheny PA 15122-0109  
 Landholding Agency: Energy  
 Property Number: 41199720002  
 Status: Excess  
 Reason: Extensive deterioration

Puerto Rico  
 NAFA Warehouse  
 U.S. Coast Guard Air Station Borinquen  
 Aquadilla PR 00604-  
 Landholding Agency: DOT  
 Property Number: 87199310011  
 Status: Unutilized  
 Reason: Secured Area  
 Storage Equipment Bldg.  
 U.S. Coast Guard Air Station Borinquen  
 Aquadilla PR 00604-  
 Landholding Agency: DOT  
 Property Number: 87199330001  
 Status: Unutilized  
 Reason: Secured Area  
 Bldg. 115  
 U.S. Coast Guard Base  
 San Juan PR 00902-2029  
 Landholding Agency: DOT  
 Property Number: 87199510001  
 Status: Unutilized  
 Reason: Secured Area  
 Bldg. 117  
 U.S. Coast Guard Base  
 San Juan PR 00902-2029  
 Landholding Agency: DOT  
 Property Number: 87199510002  
 Status: Unutilized  
 Reason: Secured Area  
 Bldg. 118  
 U.S. Coast Guard Base  
 San Juan PR 00902-2029  
 Landholding Agency: DOT  
 Property Number: 87199510003  
 Status: Unutilized  
 Reason: Secured Area  
 Bldg. 119  
 U.S. Coast Guard Base  
 San Juan PR 00902-2029  
 Landholding Agency: DOT  
 Property Number: 87199510004  
 Status: Unutilized  
 Reason: Secured Area  
 Bldg. 120  
 U.S. Coast Guard Base  
 San Juan PR 00902-2029  
 Landholding Agency: DOT  
 Property Number: 87199510005  
 Status: Unutilized  
 Reason: Secured Area  
 Bldg. 122  
 U.S. Coast Guard Base  
 San Juan PR 00902-2029  
 Landholding Agency: DOT  
 Property Number: 87199510006  
 Status: Unutilized  
 Reason: Secured Area  
 Bldg. 128  
 U.S. Coast Guard Base  
 San Juan PR 00902-2029  
 Landholding Agency: DOT  
 Property Number: 87199510007  
 Status: Unutilized  
 Reason: Secured Area  
 Bldg. 129  
 U.S. Coast Guard Base  
 San Juan PR 00902-2029  
 Landholding Agency: DOT  
 Property Number: 87199510008  
 Status: Unutilized  
 Reason: Secured Area

Rhode Island  
 Station Point Judith Pier  
 Narranganset Co: Washington RI 02882-  
 Landholding Agency: DOT

Property Number: 87199310002  
 Status: Unutilized  
 Reason: Extensive deterioration

South Carolina  
 Prop. ID JST18895  
 Thurmond Project  
 Clarks Hill Co: McCormick SC  
 Landholding Agency: COE  
 Property Number: 31200310010  
 Status: Unutilized  
 Reason: Extensive deterioration

5 Bldgs.  
 Thurmond Project  
 Clarks Hill Co: McCormick SC  
 Location: JST15781, JST15784, JST15864,  
 JST15866, TST15868  
 Landholding Agency: COE  
 Property Number: 31200310011  
 Status: Unutilized  
 Reason: Extensive deterioration

Prop. ID JST17133  
 Thurmond Project  
 Clarks Hill Co: McCormick SC  
 Landholding Agency: COE  
 Property Number: 31200310012  
 Status: Unutilized  
 Reason: Extensive deterioration

Prop. ID JST18428  
 Thurmond Project  
 Clarks Hill Co: McCormick SC  
 Landholding Agency: COE  
 Property Number: 31200310013  
 Status: Unutilized  
 Reason: Extensive deterioration

South Dakota  
 Mobile Home  
 Tract L-1295  
 Oahe Dam  
 Potter Co: SD 00000-  
 Landholding Agency: COE  
 Property Number: 31200030001  
 Status: Excess  
 Reason: Extensive deterioration

Tennessee  
 Bldg. 204  
 Cordell Hull Lake and Dam Project  
 Defeated Creek Recreation Area  
 Carthage Co: Smith TN 37030-  
 Location: US Highway 85  
 Landholding Agency: COE  
 Property Number: 31199011499  
 Status: Unutilized  
 Reason: Floodway

Tract 2618 (Portion)  
 Cordell Hull Lake and Dam Project  
 Roaring River Recreation Area  
 Gainesboro Co: Jackson TN 38562-  
 Location: TN Highway 135  
 Landholding Agency: COE  
 Property Number: 31199011503  
 Status: Underutilized  
 Reason: Floodway

Water Treatment Plant  
 Dale Hollow Lake & Dam Project  
 Obey River Park, State Hwy 42  
 Livingston Co: Clay TN 38351-  
 Landholding Agency: COE  
 Property Number: 31199140011  
 Status: Excess  
 Reason: Water treatment plant

Water Treatment Plant  
 Dale Hollow Lake & Dam Project

Lillydale Recreation Area, State Hwy 53  
Livingston Co: Clay TN 38351-  
Landholding Agency: COE  
Property Number: 31199140012  
Status: Excess  
Reason: Water treatment plant  
Water Treatment Plant  
Dale Hollow Lake & Dam Project  
Willow Grove Recreational Area, Hwy No. 53  
Livingston Co: Clay TN 38351-  
Landholding Agency: COE  
Property Number: 31199140013  
Status: Excess  
Reason: Water treatment plant  
Bldg. 3004  
Oak Ridge National Lab  
Oak Ridge Co: Roane TN 37831-  
Landholding Agency: Energy  
Property Number: 41199710002  
Status: Unutilized  
Reasons: Secured Area, Extensive  
deterioration  
Bldg. 3004  
Oak Ridge National Lab  
Oak Ridge Co: Roane TN 37831-  
Landholding Agency: Energy  
Property Number: 41199720001  
Status: Excess  
Reason: Extensive deterioration  
Bldgs. 9714-3, 9714-4, 9983-AY  
Y-12 Pistol Range  
Oak Ridge Co: Anderson TN 37831-  
Landholding Agency: Energy  
Property Number: 41199720004  
Status: Unutilized  
Reason: Secured Area  
5 Bldgs.  
K-724, K-725, K-1031, K-1131, K-1410  
East Tennessee Technology Park  
Oak Ridge Co: Roane TN 37831-  
Landholding Agency: Energy  
Property Number: 41199730001  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. 9418-1  
Y-12 Plant  
Oak Ridge Co: Anderson TN 37831-  
Landholding Agency: Energy  
Property Number: 41199810026  
Status: Unutilized  
Reasons: Secured Area, Extensive  
deterioration  
Bldg. 9825  
Y-12 Plant  
Oak Ridge Co: Anderson TN 37831-  
Landholding Agency: Energy  
Property Number: 41199810027  
Status: Unutilized  
Reason: Secured Area  
Bldg. 3026  
Oak Ridge Natl Lab  
Oak Ridge Co: Roane TN 37831-  
Landholding Agency: Energy  
Property Number: 41199830001  
Status: Excess  
Reasons: Secured Area, Extensive  
deterioration  
Bldg. 3505  
Oak Ridge National Lab  
Oak Ridge Co: Roane TN 37831-  
Landholding Agency: Energy  
Property Number: 41199940020  
Status: Unutilized  
Reasons: Secured Area, Extensive  
deterioration  
9 Bldgs.  
E. Tennessee Tech Park  
Oak Ridge Co: Roane TN 37831-  
Location: K-1001, K-1301, K-1302, K-1303,  
K-1404, K-1405-6, K-1407, K-1408A, K-  
1413  
Landholding Agency: Energy  
Property Number: 41200010023  
Status: Unutilized  
Reasons: Secured Area, Extensive  
deterioration  
Bldg. 9723-16  
National Security Complex  
Oak Ridge Co: Anderson TN 37831-  
Landholding Agency: Energy  
Property Number: 41200120010  
Status: Unutilized  
Reasons: Secured Area, Extensive  
deterioration  
5 Bldgs.  
Oak Ridge National Lab  
#7811, 7819, 7833, 7852, 7860  
Oak Ridge Co: Roane TN 37831-  
Landholding Agency: Energy  
Property Number: 41200130001  
Status: Unutilized  
Reasons: Contamination, Secured Area,  
Extensive deterioration  
Bldg. 81-22  
Y-12 National Security Complex  
Oak Ridge Co: Anderson TN 37831-  
Landholding Agency: Energy  
Property Number: 41200140001  
Status: Unutilized  
Reasons: Secured Area, Extensive  
deterioration  
Bldg. 9409-26  
Y-12 National Security Complex  
Oak Ridge Co: Anderson TN 37831-  
Landholding Agency: Energy  
Property Number: 41200140002  
Status: Unutilized  
Reasons: Secured Area, Extensive  
deterioration  
Bldg. 9723-4  
Y-12 National Security Complex  
Oak Ridge Co: Anderson TN 37831-  
Landholding Agency: Energy  
Property Number: 41200140003  
Status: Unutilized  
Reasons: Secured Area, Extensive  
deterioration  
Bldg. 9733-4  
Y-12 National Security Complex  
Oak Ridge Co: Anderson TN 37831-  
Landholding Agency: Energy  
Property Number: 41200140004  
Status: Unutilized  
Reasons: Secured Area, Extensive  
deterioration  
4 Bldgs.  
Y-12 National Security Complex  
#9929-1, 9823, 9827 & shed  
Oak Ridge Co: Anderson TN 37831-  
Landholding Agency: Energy  
Property Number: 41200140005  
Status: Unutilized  
Reasons: Secured Area, Extensive  
deterioration  
Bldg. 9949-1  
Y-12 National Security Complex  
Oak Ridge Co: Anderson TN 37831-  
Landholding Agency: Energy  
Property Number: 41200140006  
Status: Unutilized  
Reason: Secured Area  
Bldg. 9949-31  
Y-12 Natl Security Complex  
Oak Ridge Co: Anderson TN 37831-  
Landholding Agency: Energy  
Property Number: 41200210002  
Status: Unutilized  
Reason: Secured Area  
Bldg. SC-14  
ORISE Scarboro Operations Site  
Oak Ridge Co: Anderson TN 37831-  
Landholding Agency: Energy  
Property Number: 41200210002  
Status: Excess  
Reason: Secured Area  
Bldg. 9723-18  
Y-12 National Security Complex  
Oak Ridge Co: Anderson TN 37831-  
Landholding Agency: Energy  
Property Number: 41200210006  
Status: Unutilized  
Reasons: Secured Area, Extensive  
deterioration  
Bldg. 9728  
Y-12 National Security Complex  
Oak Ridge Co: Anderson TN 37831-  
Landholding Agency: Energy  
Property Number: 41200210007  
Status: Unutilized  
Reasons: Secured Area, Extensive  
deterioration  
Bldg. 9404-03  
Y-12 Natl Security Complex  
Oak Ridge Co: Anderson TN 37831-  
Landholding Agency: Energy  
Property Number: 41200220035  
Status: Unutilized  
Reason: Secured Area  
Bldg. 9404-07  
Y-12 Natl Security Complex  
Oak Ridge Co: Anderson TN 37831-  
Landholding Agency: Energy  
Property Number: 41200220036  
Status: Unutilized  
Reason: Secured Area  
Bldg. 9404-08  
Y-12 Natl Security Complex  
Oak Ridge Co: Anderson TN 37831-  
Landholding Agency: Energy  
Property Number: 41200220037  
Status: Unutilized  
Reason: Secured Area  
4 Bldgs.  
Y-12 Natl Security Complex  
9418-4, 9418-5, 9418-6, 9418-9  
Oak Ridge Co: Anderson TN 37831-  
Landholding Agency: Energy  
Property Number: 41200220038  
Status: Unutilized  
Reason: Secured Area  
Bldg. 9620-2  
Y-12 Natl Security Complex  
Oak Ridge Co: Anderson TN 37831-  
Landholding Agency: Energy  
Property Number: 41200220039  
Status: Unutilized  
Reasons: Secured Area, Extensive  
deterioration  
Bldgs. 9769, 9770-3  
Y-12 Natl Security Complex  
Oak Ridge Co: Anderson TN 37831-  
Landholding Agency: Energy  
Property Number: 41200220040

Status: Unutilized  
Reason: Secured Area  
Bldgs. 9720-1, 9720-2  
Y-12 Natl Security Complex  
Oak Ridge Co: Anderson TN 37831-  
Landholding Agency: Energy  
Property Number: 41200220041  
Status: Unutilized  
Reasons: Secured Area, Extensive deterioration  
Bldg. 9723-21  
Y-12 Natl Security Complex  
Oak Ridge Co: Anderson TN 37831-  
Landholding Agency: Energy  
Property Number: 41200220043  
Status: Unutilized  
Reasons: Secured Area, Extensive deterioration  
Bldgs. 9205, 9208  
Y-12 Natl Security Complex  
Oak Ridge Co: Anderson TN 37831-  
Landholding Agency: Energy  
Property Number: 41200220059  
Status: Unutilized  
Reasons: Secured Area, Extensive deterioration  
Bldgs. 2013, 2506, 6003  
Oak Ridge National Lab  
Oak Ridge Co: Roane TN 37831-  
Landholding Agency: Energy  
Property Number: 41200220060  
Status: Unutilized  
Reasons: Secured Area, Extensive deterioration  
Bldg. 9720-14  
Y-12 National Security Complex  
Oak Ridge Co: Anderson TN 37831-  
Landholding Agency: Energy  
Property Number: 41200230002  
Status: Excess  
Reason: Secured Area  
6 Bldgs.  
Y-12 National Security Complex  
Oak Ridge Co: Anderson TN 37831-  
Location: 9983-62, 9983-63, 9983-64, 9983-65, 9983-71, 9983-72  
Landholding Agency: Energy  
Property Number: 41200230003  
Status: Excess  
Reason: Secured Area  
17 Bldgs.  
Oak Ridge Tech Park  
Oak Ridge Co: Roane TN 37831-  
Location: K-801, A-D, H, K-891, K-892, K1025A-E, K-1064B-E, H, K, L, K1206-E  
Landholding Agency: Energy  
Property Number: 41200310007  
Status: Unutilized  
Reasons: Secured Area, Extensive deterioration  
4 Bldgs.  
Oak Ridge National Lab 0954, 0961, 2093, 3013  
Oak Ridge Co: Roane TN 37831-  
Landholding Agency: Energy  
Property Number: 41200310019  
Status: Unutilized  
Reason: Secured Area  
5 Bldgs.  
Naval Support Activity  
430, 434, 762, 1765, 397  
Millington Co: TN 38054-  
Landholding Agency: Navy  
Property Number: 77200330045  
Status: Excess  
Reason: Secured Area  
Texas  
Comfort Station  
Overlook PUA  
Powderly Co: Lamar TX 75473-9801  
Landholding Agency: COE  
Property Number: 31200240018  
Status: Excess  
Reason: Extensive deterioration  
Zone 5, Bldg. FS-18  
Pantex Plant  
Amarillo Co: Carson TX 79120-  
Landholding Agency: Energy  
Property Number: 41200220044  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area  
Zone 11, Bldg. 11-001  
Pantex Plant  
Amarillo Co: Carson TX 79120-  
Landholding Agency: Energy  
Property Number: 41200220045  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area  
Zone 11, 3 Bldgs.  
11-015, 11-015B, 11-046  
Pantex Plant  
Amarillo Co: Carson TX 79120-  
Landholding Agency: Energy  
Property Number: 41200220046  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area  
Zone 11, Bldg. 11-041  
Pantex Plant  
Amarillo Co: Carson TX 79120-  
Landholding Agency: Energy  
Property Number: 41200220047  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area  
Zone 11, Bldg. 11-044  
Pantex Plant  
Amarillo Co: Carson TX 79120-  
Landholding Agency: Energy  
Property Number: 41200220048  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area  
Zone 12, Bldg. 12-003P  
Pantex Plant  
Amarillo Co: Carson TX 79120-  
Landholding Agency: Energy  
Property Number: 41200220049  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area  
Zone 12, Bldg. 12-05G1  
Pantex Plant  
Amarillo Co: Carson TX 79120-  
Landholding Agency: Energy  
Property Number: 41200220050  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area  
Zone 12, 11 Bldgs.  
Pantex Plant  
Amarillo Co: Carson TX 79120-  
Location: 12-010, 12-010V1, 12-010V2, 12-010L, 12-R-010, 12-012, 12-R-012, 12-012V, 12-R-013, 12-R-013RR, 12-13V  
Landholding Agency: Energy  
Property Number: 41200220051  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area  
Zone 12, Bldg. 12-017C  
Pantex Plant  
Amarillo Co: Carson TX 79120-  
Landholding Agency: Energy  
Property Number: 41200220052  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area  
Zone 12, Bldg. 12-20  
Pantex Plant  
Amarillo Co: Carson TX 79120-  
Landholding Agency: Energy  
Property Number: 41200220053  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area  
Zone 12, 8 Bldgs.  
Pantex Plant  
Amarillo Co: Carson TX 79120-  
Location: 12-024, 12-024A, 12-02455, 12-025, 12-R-025, 12-030, 12-043, 12-043A  
Landholding Agency: Energy  
Property Number: 41200220054  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area  
Zone 12, Bldg. 12-27  
Pantex Plant  
Amarillo Co: Carson TX 79120-  
Landholding Agency: Energy  
Property Number: 41200220055  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area  
Zone 12, Bldg. 12-038  
Pantex Plant  
Amarillo Co: Carson TX 79120-  
Landholding Agency: Energy  
Property Number: 41200220056  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area  
Zone 12, 2 Bldgs.  
Pantex Plant  
Amarillo Co: Carson TX 79120-  
Location: 12-076, 12-076A  
Landholding Agency: Energy  
Property Number: 41200220057  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area  
Zone 13, 6 Bldgs.  
Pantex Plant  
Amarillo Co: Carson TX 79120-  
Location: 13-041, 13-042, 13-043, 13-044, 13-045, 13-046  
Landholding Agency: Energy  
Property Number: 41200220058  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area  
10 Bldgs.  
DOE Pantex Plant  
Amarillo Co: Carson TX 79120-  
Location: 11-023, 024, 034, 036, 036SS, 039, 039SS, 11-R-014, 11-R-020, 11-R-039  
Landholding Agency: Energy  
Property Number: 41200310020  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

5 Bldgs.  
Pantex Plant  
Amarillo Co: Carson TX 79120-  
Location: 12-091, 15-023, 15-023A, 16-006,  
FS-008  
Landholding Agency: Energy  
Property Number: 41200310021  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or  
explosive material; Secured Area

6 Bldgs.  
Pantex Plant  
Amarillo Co: Carson TX 79120-  
Location: 12-008, 12-R-008, 12-059, 12-  
059E, 12-059V, 12-R-059  
Landholding Agency: Energy  
Property Number: 41200320009  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or  
explosive material; Secured Area

Bldgs. 12-017E, 12-019E  
Pantex Plant  
Amarillo Co: Carson TX 79120-  
Landholding Agency: Energy  
Property Number: 41200320010  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or  
explosive material; Secured Area

Bldg. 1302  
Naval Air Station  
Ft. Worth Co: Tarrant TX 76127-6200  
Landholding Agency: Navy  
Property Number: 77200330046  
Status: Unutilized  
Reasons: Secured Area; Extensive  
deterioration

Bldg. 1320  
Naval Air Station  
Ft. Worth Co: Tarrant TX 76127-6200  
Landholding Agency: Navy  
Property Number: 77200330047  
Status: Unutilized  
Reasons: Secured Area; Extensive  
deterioration

Bldg. 1509  
Naval Air Station  
Ft. Worth Co: Tarrant TX 76127-  
Landholding Agency: Navy  
Property Number: 77200330048  
Status: Unutilized  
Reasons: Secured Area; Extensive  
deterioration

Old Exchange Bldg.  
U.S. Coast Guard  
Galveston Co: Galveston TX 77553-3001  
Landholding Agency: DOT  
Property Number: 87199310012  
Status: Unutilized  
Reason: Secured Area

WPB Building  
Station Port Isabel  
Coast Guard Station  
South Padre Island Co: Cameron TX 78597-  
6497  
Landholding Agency: DOT  
Property Number: 87199530002  
Status: Unutilized  
Reason: Floodway

Aton Shops Building  
USCG Station Sabine  
Sabine Co: Jefferson TX 77655-  
Landholding Agency: DOT  
Property Number: 87199530003  
Status: Unutilized

Reasons: Within 2000 ft. of flammable or  
explosive material; Secured Area

WPB Storage Shed  
USCG Station Sabine  
Sabine Co: Jefferson TX 77655-  
Landholding Agency: DOT  
Property Number: 87199530004  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or  
explosive material; Secured Area

Flammable Storage Building  
USCG Station Sabine  
Sabine Co: Jefferson TX 77655-  
Landholding Agency: DOT  
Property Number: 87199530005  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or  
explosive material; Secured Area

Battery Storage Building  
USCG Station Sabine  
Sabine Co: Jefferson TX 77655-  
Landholding Agency: DOT  
Property Number: 87199530006  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or  
explosive material; Secured Area

Boat House  
USCG Station Sabine  
Sabine Co: Jefferson TX 77655-  
Landholding Agency: DOT  
Property Number: 87199530007  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or  
explosive material; Secured Area

Small Boat Pier  
USCG Station Sabine  
Sabine Co: Jefferson TX 77655-  
Landholding Agency: DOT  
Property Number: 87199530008  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or  
explosive material; Secured Area

Bldg. 108  
Fort Crockett/43rd St. Housing  
Galveston Co: Galveston TX 77553-  
Landholding Agency: DOT  
Property Number: 87199630008  
Status: Unutilized  
Reason: Extensive deterioration

Vermont  
Depot Street  
Downtown at the Waterfront  
Burlington Co: Chittenden VT 05401-5226  
Landholding Agency: DOT  
Property Number: 87199220003  
Status: Excess  
Reason: Floodway

Virginia  
Ferris Property  
Yorktown Co: VA 23690-  
Landholding Agency: Interior  
Property Number: 61200330023  
Status: Excess  
Reason: Extensive deterioration

Bldg. A-102  
Naval Station  
Norfolk Co: VA 23511-3095  
Landholding Agency: Navy  
Property Number: 77200330049  
Status: Excess  
Reasons: Secured Area; Extensive  
deterioration

Bldg. A-102A  
Naval Station  
Norfolk Co: VA 23511-3095  
Landholding Agency: Navy  
Property Number: 77200330050  
Status: Excess  
Reasons: Secured Area; Extensive  
deterioration

Bldg. A-103  
Naval Station  
Norfolk Co: VA 23511-3095  
Landholding Agency: Navy  
Property Number: 77200330051  
Status: Excess  
Reasons: Secured Area; Extensive  
deterioration

Bldg. 435  
Naval Weapons Station  
Yorktown Co: VA  
Landholding Agency: Navy  
Property Number: 77200330052  
Status: Excess  
Reasons: Within 2000 ft. of flammable or  
explosive material; Secured Area;  
Extensive deterioration

Bldg. 1347  
Naval Weapons Station  
Yorktown Co: VA  
Landholding Agency: Navy  
Property Number: 77200330053  
Status: Excess  
Reasons: Within 2000 ft. of flammable or  
explosive material; Secured Area;  
Extensive deterioration

Bldg. 1350  
Naval Weapons Station  
Yorktown Co: VA  
Landholding Agency: Navy  
Property Number: 77200330054  
Status: Excess  
Reasons: Within 2000 ft. of flammable or  
explosive material; Secured Area;  
Extensive deterioration

Bldg. 1374  
Naval Weapons Station  
Yorktown Co: VA  
Landholding Agency: Navy  
Property Number: 77200330055  
Status: Excess  
Reasons: Within 2000 ft. of flammable or  
explosive material; Secured Area;  
Extensive deterioration

Bldg. 1810  
Naval Weapons Station  
Yorktown Co: VA  
Landholding Agency: Navy  
Property Number: 77200330056  
Status: Excess  
Reasons: Within 2000 ft. of flammable or  
explosive material; Secured Area;  
Extensive deterioration

Bldg. 052 & Tennis Court  
USCG Reserve Training Center  
Yorktown Co: York VA 23690-  
Landholding Agency: DOT  
Property Number: 87199230004  
Status: Excess  
Reason: Secured Area

Admin. Bldg.  
Coast Guard, Group Eastern Shores  
Chincoteague Co: Accomack VA 23361-510  
Landholding Agency: DOT  
Property Number: 87199240014  
Status: Unutilized  
Reason: Secured Area

Little Creek Station  
Navamphib Base, West Annex, U.S. Coast Guard  
Norfolk Co: Princess Anne VA 23520—  
Landholding Agency: DOT  
Property Number: 87199310004  
Status: Unutilized  
Reason: Secured Area  
Operations Bldg.  
U.S. Coast Guard Group Hampton Roads  
Portsmouth VA 23703—  
Landholding Agency: DOT  
Property Number: 87199710003  
Status: Unutilized  
Reason: Secured Area  
Bldgs. 63, 115  
USCG Training Center  
Yorktown Co: York VA 23690—5000  
Landholding Agency: DOT  
Property Number: 87200110037  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration  
Bldg. 156  
USCG Training Center Yorktown  
Yorktown Co: York VA 23690—5000  
Landholding Agency: DOT  
Property Number: 87200120015  
Status: Underutilized  
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area  
Bldg. 002  
USCG Eastern Shore  
Chincoteague Co: Accomack VA 23336—  
Landholding Agency: DOT  
Property Number: 87200220007  
Status: Excess  
Reason: Secured Area  
Washington  
Rec Storage Bldg.  
Richland Parks  
Richland Co: Benton WA 99352—  
Landholding Agency: COE  
Property Number: 31200240019  
Status: Unutilized  
Reason: Extensive deterioration  
Garage/No.804  
Columbia Basin  
George Co: Grant WA 98848—  
Landholding Agency: Interior  
Property Number: 61200330024  
Status: Unutilized  
Reason: Extensive deterioration  
Residence No. 804  
Columbia Basin  
George Co: Grant WA 98848—  
Landholding Agency: Interior  
Property Number: 61200330025  
Status: Unutilized  
Reason: Extensive deterioration  
Garage/No. 801  
Columbia Basin  
George Co: Grant WA 98848—  
Landholding Agency: Interior  
Property Number: 61200330026  
Status: Unutilized  
Reason: Extensive deterioration  
Residence No. 801  
Columbia Basin  
George Co: Grant WA 98848—  
Landholding Agency: Interior  
Property Number: 61200330027  
Status: Unutilized  
Reason: Extensive deterioration  
Garage/No. 305  
Columbia Basin  
Soap Lake Co: Grant WA 98851—  
Landholding Agency: Interior  
Property Number: 61200330028  
Status: Unutilized  
Reason: Extensive deterioration  
Residence No. 305  
Columbia Basin  
Soap Lake Co: Grant WA 98851—  
Landholding Agency: Interior  
Property Number: 61200330029  
Status: Unutilized  
Reason: Extensive deterioration  
Garage/Residence No. 304  
Columbia Basin  
Soap Lake Co: Grant WA 98851—  
Landholding Agency: Interior  
Property Number: 61200330030  
Status: Unutilized  
Reason: Extensive deterioration  
Residence No. 304  
Columbia Basin  
Soap Lake Co: Grant WA 98851—  
Landholding Agency: Interior  
Property Number: 61200330031  
Status: Unutilized  
Reason: Extensive deterioration  
Wisconsin  
Rawley Point Light  
Two Rivers Co: Manitowoc WI  
Landholding Agency: DOT  
Property Number: 87199540004  
Status: Unutilized  
Reason: Secured Area; Extensive deterioration  
LAND (by State)  
Arizona  
58 acres  
VA Medical Center  
500 Highway 89 North  
Prescott Co: Yavapai AZ 86313—  
Landholding Agency: VA  
Property Number: 97190630001  
Status: Unutilized  
Reason: Floodway  
20 acres  
VA Medical Center  
500 Highway 89 North  
Prescott Co: Yavapai AZ 86313—  
Landholding Agency: VA  
Property Number: 97190630002  
Status: Underutilized  
Reason: Floodway  
Florida  
Land—approx. 220 acres  
Cape San Blas  
Port St. Joe Co: Gulf FL  
Landholding Agency: DOT  
Property Number: 87199440018  
Status: Underutilized  
Reasons: Floodway; Secured Area  
Wildlife Sanctuary, VAMC  
10,000 Bay Pines Blvd.  
Bay Pines Co: Pinellas FL 33504—  
Landholding Agency: VA  
Property Number: 97199230004  
Status: Underutilized  
Reason: Inaccessible  
Kentucky  
Tract 4626  
Barkley Lake, Kentucky and Tennessee  
Donaldson Creek Launching Area  
Cadiz Co: Trigg KY 42211—  
Location: 14 miles from U.S. Highway 68.  
Landholding Agency: COE  
Property Number: 31199010030  
Status: Underutilized  
Reason: Floodway  
Tract AA—2747  
Wolf Creek Dam and Lake Cumberland  
US HWY. 27 to Blue John Road  
Burnside Co: Pulaski KY 42519—  
Landholding Agency: COE  
Property Number: 31199010038  
Status: Underutilized  
Reason: Floodway  
Tract AA—2726  
Wolf Creek Dam and Lake Cumberland  
KY HWY. 80 to Route 769  
Burnside Co: Pulaski KY 42519—  
Landholding Agency: COE  
Property Number: 31199010039  
Status: Underutilized  
Reason: Floodway  
Tract 1358  
Barkley Lake, Kentucky and Tennessee  
Eddyville Recreation Area  
Eddyville Co: Lyon KY 42038—  
Location: US Highway 62 to state highway 93.  
Landholding Agency: COE  
Property Number: 31199010043  
Status: Excess  
Reason: Floodway  
Red River Lake Project  
Stanton Co: Powell KY 40380—  
Location: Exit Mr. Parkway at the Stanton and Slade Interchange, then take SR Hand 15 north to SR 613.  
Landholding Agency: COE  
Property Number: 31199011684  
Status: Unutilized  
Reason: Floodway  
Barren River Lock & Dam No. 1  
Richardsville Co: Warren KY 42270—  
Landholding Agency: COE  
Property Number: 31199120008  
Status: Unutilized  
Reason: Floodway  
Green River Lock & Dam No. 3  
Rochester Co: Butler KY 42273—  
Location: Off State Hwy. 369, which runs off of Western Ky. Parkway  
Landholding Agency: COE  
Property Number: 31199120009  
Status: Unutilized  
Reason: Floodway  
Green River Lock & Dam No. 4  
Woodbury Co: Butler KY 42288—  
Location: Off State Hwy 403, which is off State Hwy 231  
Landholding Agency: COE  
Property Number: 31199120014  
Status: Underutilized  
Reason: Floodway  
Green River Lock & Dam No. 5  
Readville Co: Butler KY 42275—  
Location: Off State Highway 185  
Landholding Agency: COE  
Property Number: 31199120015  
Status: Unutilized  
Reason: Floodway  
Green River Lock & Dam No. 6  
Brownsville Co: Edmonson KY 42210—

Location: Off State Highway 259  
Landholding Agency: COE  
Property Number: 31199120016  
Status: Underutilized  
Reason: Floodway  
Vacant land west of locksite  
Greenup Locks and Dam 5121 New Dam Road  
Rural Co: Greenup KY 41144–  
Landholding Agency: COE  
Property Number: 31199120017  
Status: Unutilized  
Reason: Floodway

Maryland  
Tract 131R  
Youghiogheny River Lake, Rt. 2, Box 100  
Friendsville Co: Garrett MD  
Landholding Agency: COE  
Property Number: 31199240007  
Status: Underutilized  
Reason: Floodway  
Land/10,000 sq. ft.  
Indian Head Division  
Indian Head Co: Charles MD 20646–  
Landholding Agency: Navy  
Property Number: 77200330044  
Status: Underutilized  
Reason: Secured Area

Michigan  
Middle Marker Facility  
Ypsilanti Co: Washtenaw MI 48198–  
Location: 549 ft. north of intersection of  
Coolidge and Bradley Ave. on East side of  
street  
Landholding Agency: DOT  
Property Number: 87199120006  
Status: Unutilized  
Reason: Within airport runway clear zone

Minnesota  
3.85 acres (Area #2)  
VA Medical Center  
4801 8th Street  
St. Cloud Co: Stearns MN 56303–  
Landholding Agency: VA  
Property Number: 97199740004  
Status: Unutilized  
Reason: Landlocked  
7.48 acres (Area #1)  
VA Medical Center  
4801 8th Street  
St. Cloud Co: Stearns MN 56303–  
Landholding Agency: VA  
Property Number: 97199740005  
Status: Underutilized  
Reason: Secured Area

Mississippi  
Parcel 1  
Grenada Lake  
Section 20  
Grenada Co: Grenada MS 38901–0903  
Landholding Agency: COE  
Property Number: 31199011018  
Status: Underutilized  
Reason: Within airport runway clear zone

Missouri  
Ditch 19, Item 2, Tract No. 230  
St. Francis Basin Project 2½ miles west of  
Malden Co: Dunklin MO  
Landholding Agency: COE  
Property Number: 31199130001  
Status: Unutilized  
Reason: Floodway

New York  
Tract 1  
VA Medical Center  
Bath Co: Steuben NY 14810–  
Location: Exit 38 off New York State Route  
17.  
Landholding Agency: VA  
Property Number: 97199010011  
Status: Unutilized  
Reason: Secured Area  
Tract 2  
VA Medical Center  
Bath Co: Steuben NY 14810–  
Location: Exit 38 off New York State Route  
17.  
Landholding Agency: VA  
Property Number: 97199010012  
Status: Underutilized  
Reason: Secured Area  
Tract 3  
VA Medical Center  
Bath Co: Steuben NY 14810–  
Location: Exit 38 off New York State Route  
17.  
Landholding Agency: VA  
Property Number: 97199010013  
Status: Underutilized  
Reason: Secured Area  
Tract 4  
VA Medical Center  
Bath Co: Steuben NY 14810–  
Location: Exit 38 off New York State Route  
17.  
Landholding Agency: VA  
Property Number: 97199010014  
Status: Unutilized  
Reason: Secured Area

Ohio  
Mosquito Creek Lake  
Everett Hull Road Boat Launch  
Cortland Co: Trumbull OH 44410–9321  
Landholding Agency: COE  
Property Number: 31199440007  
Status: Underutilized  
Reason: Floodway  
Mosquito Creek Lake  
Housel—Craft Rd., Boat Launch  
Cortland Co: Trumbull OH 44410–9321  
Landholding Agency: COE  
Property Number: 31199440008  
Status: Underutilized  
Reason: Floodway  
36 Site Campground  
German Church Campground  
Berlin Center Co: Portage OH 44401–9707  
Landholding Agency: COE  
Property Number: 31199810001  
Status: Unutilized  
Reason: Floodway

Pennsylvania  
Lock and Dam #7  
Monongahela River  
Greensboro Co: Greene PA  
Location: Left hand side of entrance roadway  
to project.  
Landholding Agency: COE  
Property Number: 31199011564  
Status: Unutilized  
Reason: Floodway  
Mercer Recreation Area  
Shenango Lake  
Transfer Co: Mercer PA 16154–  
Landholding Agency: COE

Property Number: 31199810002  
Status: Unutilized  
Reason: Floodway  
Tract No. B–212C  
Upstream from Gen. Jadwin Dam & Reservoir  
Honesdale Co: Wayne PA 18431–  
Landholding Agency: COE  
Property Number: 31200020005  
Status: Unutilized  
Reason: Floodway

Tennessee  
Brooks Bend  
Cordell Hull Dam and Reservoir  
Highway 85 to Brooks Bend Road  
Gainesboro Co: Jackson TN 38562–  
Location: Tracts 800, 802–806, 835–837, 900–  
902, 1000–1003, 1025  
Landholding Agency: COE  
Property Number: 21199040413  
Status: Underutilized  
Reason: Floodway  
Cheatham Lock and Dam  
Highway 12  
Ashland City Co: Cheatham TN 37015–  
Location: Tracts E–513, E–512–1 and E–512–  
2  
Landholding Agency: COE  
Property Number: 21199040415  
Status: Underutilized  
Reason: Floodway  
Tract 2321  
J. Percy Priest Dam and Reservoir  
Murfreesboro Co: Rutherford TN 37130–  
Location: South of Old Jefferson Pike  
Landholding Agency: COE  
Property Number: 31199010935  
Status: Excess  
Reason: Landlocked  
Tract 6737  
Blue Creek Recreation Area  
Barkley Lake, Kentucky and Tennessee  
Dover Co: Stewart TN 37058–  
Location: U.S. Highway 79/TN Highway 761  
Landholding Agency: COE  
Property Number: 31199011478  
Status: Underutilized  
Reason: Floodway  
Tracts 3102, 3105, and 3106  
Brimstone Launching Area  
Cordell Hull Lake and Dam Project  
Gainesboro Co: Jackson TN 38562–  
Location: Big Bottom Road  
Landholding Agency: COE  
Property Number: 31199011479  
Status: Excess  
Reason: Floodway  
Tract 3507  
Proctor Site  
Cordell Hull Lake and Dam Project  
Celina Co: Clay TN 38551–  
Location: TN Highway 52  
Landholding Agency: COE  
Property Number: 31199011480  
Status: Unutilized  
Reason: Floodway  
Tract 3721  
Obey  
Cordell Hull Lake and Dam Project  
Celina Co: Clay TN 38551–  
Location: TN Highway 53  
Landholding Agency: COE  
Property Number: 31199011481  
Status: Unutilized  
Reason: Floodway

Tracts 608, 609, 611 and 612  
Sullivan Bend Launching Area  
Cordell Hull Lake and Dam Project  
Carthage Co: Smith TN 37030—  
Location: Sullivan Bend Road  
Landholding Agency: COE  
Property Number: 31199011482  
Status: Underutilized  
Reason: Floodway

Tract 920  
Indian Creek Camping Area  
Cordell Hull Lake and Dam Project  
Granville Co: Smith TN 38564—  
Location: TN Highway 53  
Landholding Agency: COE  
Property Number: 31199011483  
Status: Underutilized  
Reason: Floodway

Tracts 1710, 1716 and 1703  
Flynn's Lick Launching Ramp  
Cordell Hull Lake and Dam Project  
Gainesboro Co: Jackson TN 38562—  
Location: Whites Bend Road  
Landholding Agency: COE  
Property Number: 31199011484  
Status: Underutilized  
Reason: Floodway

Tract 1810  
Wartrace Creek Launching Ramp  
Cordell Hull Lake and Dam Project  
Gainesboro Co: Jackson TN 38551—  
Location: TN Highway 85  
Landholding Agency: COE  
Property Number: 31199011485  
Status: Underutilized  
Reason: Floodway

Tract 2524  
Jennings Creek  
Cordell Hull Lake and Dam Project  
Gainesboro Co: Jackson TN 38562—  
Location: TN Highway 85  
Landholding Agency: COE  
Property Number: 31199011486  
Status: Unutilized  
Reason: Floodway

Tracts 2905 and 2907  
Webster  
Cordell Hull Lake and Dam Project  
Gainesboro Co: Jackson TN 38551—  
Location: Big Bottom Road  
Landholding Agency: COE  
Property Number: 31199011487  
Status: Unutilized  
Reason: Floodway

Tracts 2200 and 2201  
Gainesboro Airport  
Cordell Hull Lake and Dam Project  
Gainesboro Co: Jackson TN 38562—  
Location: Big Bottom Road  
Landholding Agency: COE  
Property Number: 31199011488  
Status: Underutilized  
Reasons: Within airport runway clear zone;  
Floodway

Tracks 710C and 712C  
Sullivan Island  
Cordell Hull Lake and Dam Project  
Carthage Co: Smith TN 37030—  
Location: Sullivan Bend Road  
Landholding Agency: COE  
Property Number: 31199011489  
Status: Unutilized  
Reason: Floodway

Track 2403, Hensley Creek  
Cordell Hull Lake and Dam Project  
Gainesboro Co: Jackson TN 38562—  
Location: TN Highway 85  
Landholding Agency: COE  
Property Number: 31199011490  
Status: Unutilized  
Reason: Floodway

Tracks 2117C, 2118 and 2120  
Cordell Hull Lake and Dam Project  
Trace Creek  
Gainesboro Co: Jackson TN 38562—  
Location: Brooks Ferry Road  
Landholding Agency: COE  
Property Number: 31199011491  
Status: Unutilized  
Reason: Floodway

Tracks 424, 425 and 426  
Cordell Hull Lake and Dam Project  
Stone Bridge  
Carthage Co: Smith TN 37030—  
Location: Sullivan Bend Road  
Landholding Agency: COE  
Property Number: 31199011492  
Status: Unutilized  
Reason: Floodway

Track 517  
J. Percy Priest Dam and Reservoir  
Suggs Creek Embayment  
Nashville Co: Davidson TN 37214—  
Location: Interstate 40 to S. Mount Juliet  
Road.  
Landholding Agency: COE  
Property Number: 31199011493  
Status: Underutilized  
Reason: Floodway

Track 1811  
West Fork Launching Area  
Smyrna Co: Rutherford TN 37167—  
Location: Florence road near Enon Springs  
Road  
Landholding Agency: COE  
Property Number: 31199011494  
Status: Underutilized  
Reason: Floodway

Track 1504  
J. Perry Priest Dam and Reservoir  
Lamon Hill Recreation Area  
Smyrna Co: Rutherford TN 37167—  
Location: Lamon Road  
Landholding Agency: COE  
Property Number: 31199011495  
Status: Underutilized  
Reason: Floodway

Track 1500  
J. Perry Priest Dam and Reservoir  
Pools Knob Recreation  
Smyrna Co: Rutherford TN 37167—  
Location: Jones Mill Road  
Landholding Agency: COE  
Property Number: 31199011496  
Status: Underutilized  
Reason: Floodway

Tracks 245, 257, and 256  
J. Perry Priest Dam and Reservoir  
Cook Recreation Area  
Nashville Co: Davidson TN 37214—  
Location: 2.2 miles south of Interstate 40 near  
Saunders Ferry Pike.  
Landholding Agency: COE  
Property Number: 31199011497  
Status: Underutilized  
Reason: Floodway

Tracks 107, 109 and 110  
Cordell Hull Lake and Dam Project  
Two Prong  
Carthage Co: Smith TN 37030—  
Location: US Highway 85  
Landholding Agency: COE  
Property Number: 31199011498  
Status: Unutilized  
Reason: Floodway

Tracks 2919 and 2929  
Cordell Hull Lake and Dam Project  
Sugar Creek  
Gainesboro Co: Jackson TN 38562—  
Location: Sugar Creek Road  
Landholding Agency: COE  
Property Number: 31199011500  
Status: Unutilized  
Reason: Floodway

Tracks 1218 and 1204  
Cordell Hull Lake and Dam Project  
Granville—Alvin Yourk Road  
Granville Co: Jackson TN 38564—  
Landholding Agency: COE  
Property Number: 31199011501  
Status: Unutilized  
Reason: Floodway

Track 2100  
Cordell Hull Lake and Dam Project  
Galbreaths Branch  
Gainesboro Co: Jackson TN 38562—  
Location: TN Highway 53  
Landholding Agency: COE  
Property Number: 31199011502  
Status: Unutilized  
Reason: Floodway

Track 104 et. al.  
Cordell Hull Lake and Dam Project  
Horshoe Bend Launching Area  
Carthage Co: Smith TN 37030—  
Location: Highway 70 N  
Landholding Agency: COE  
Property Number: 31199011504  
Status: Underutilized  
Reason: Floodway

Tracts 510, 511, 513 and 514  
J. Percy Priest Dam and Reservoir Project  
Lebanon Co: Davidson TN 37087—  
Location: Vivrett Creek Launching Area,  
Alvin Sperry Road  
Landholding Agency: COE  
Property Number: 31199120007  
Status: Underutilized  
Reason: Floodway

Tract A-142, Old Hickory Beach  
Old Hickory Blvd.  
Old Hickory Co: Davidson TN 37138—  
Landholding Agency: COE  
Property Number: 31199130008  
Status: Underutilized  
Reason: Floodway

Tract D, 7 acres  
Cheatham Lock & Dam  
Nashville Co: Davidson TN 37207—  
Landholding Agency: COE  
Property Number: 31200020006  
Status: Underutilized  
Reason: Floodway

Texas  
Tracts 104, 105-1, 105-2 & 118  
Joe Pool Lake  
Co: Dallas TX  
Landholding Agency: COE  
Property Number: 31199010397  
Status: Underutilized  
Reason: Floodway

Part of Tract 201-3

Joe Pool Lake  
Co: Dallas TX  
Landholding Agency: COE  
Property Number: 31199010398  
Status: Underutilized  
Reason: Floodway  
Part of Tract 323  
Joe Pool Lake  
Co: Dallas TX  
Landholding Agency: COE  
Property Number: 31199010399  
Status: Underutilized  
Reason: Floodway  
Tract 702-3  
Granger Lake  
Route 1, Box 172  
Granger Co: Williamson TX 76530-9801  
Landholding Agency: COE  
Property Number: 31199010401  
Status: Unutilized  
Reason: Floodway  
Tract 706

Granger Lake  
Route 1, Box 172  
Granger Co: Williamson TX 76530-9801  
Landholding Agency: COE  
Property Number: 31199010402  
Status: Unutilized  
Reason: Floodway  
Washington  
2.8 acres  
Tract P-1003  
Kennewick Co: Benton WA 99336-  
Landholding Agency: COE  
Property Number: 31200240020  
Status: Excess  
Reason: Within 2000 ft. of flammable or  
explosive material  
West Virginia  
Morgantown Lock and Dam  
Box 3 RD # 2  
Morgantown Co: Monongahelia WV 26505-  
Landholding Agency: COE

Property Number: 31199011530  
Status: Unutilized  
Reason: Floodway  
London Lock and Dam  
Route 60 East  
Rural Co: Kanawha WV 25126-  
Location: 20 miles east of Charleston, W.  
Virginia.  
Landholding Agency: COE  
Property Number: 31199011690  
Status: Unutilized  
Reason: .03 acres; very narrow strip of land  
Portion of Tract #101  
Buckeye Creek  
Sutton Co: Braxton WV 26601-  
Landholding Agency: COE  
Property Number: 31199810006  
Status: Excess  
Reason: inaccessible  
[FR Doc. 03-21363 Filed 8-21-03; 8:45 am]  
**BILLING CODE 4210-29-P**



# Federal Register

---

**Friday,  
August 22, 2003**

---

**Part IV**

## **Department of Defense**

---

**32 CFR Part 179  
Munitions Response Site Prioritization  
Protocol; Proposed Rule**

**DEPARTMENT OF DEFENSE****Office of the Secretary****32 CFR Part 179****Munitions Response Site Prioritization Protocol****AGENCY:** Department of Defense.**ACTION:** Proposed rule.

**SUMMARY:** The Department of Defense (DoD) is proposing a rule that establishes the Munitions Response Site Prioritization Protocol (hereinafter referred to as the "Protocol"). The purpose of the Protocol is to assign a relative priority for munitions responses to each location in the inventory of munitions response sites known or suspected of containing unexploded ordnance, discarded military munitions, or munitions constituents.

**DATES:** Written comments on this proposed rule will be accepted until November 20, 2003.

**ADDRESSES:** Written comments should be mailed to: Munitions Response Site Prioritization Protocol, P.O. Box 4231, McLean, Virginia 22103-4231. Comments will also be accepted via electronic mail ("e-mail") at [mmrp@www.denix.osd.mil](mailto:mmrp@www.denix.osd.mil) or via the World Wide Web at <http://www.denix.osd.mil/MMRP>. For comments submitted via electronic mail, please include in the subject line the statement "Comments on Proposed Protocol."

**FOR FURTHER INFORMATION CONTACT:** If there are specific questions, please contact Ms. Patricia Ferree, Office of the Deputy Under Secretary of Defense (Installations & Environment) (ODUSD(I&E)), 703-695-6107. This proposed rule along with relevant background information is available on the World Wide Web at the Defense Environmental Network & Information eXchange Web site, <http://www.denix.osd.mil/MMRP>.

**SUPPLEMENTARY INFORMATION:****I. Protocol**

The Protocol reflects the statement in 10 U.S.C. 2710(b)(2) that the priority assigned should be based on the overall conditions at each location, taking into consideration various factors relating to safety and environmental hazard potential. As required under 10 U.S.C. 2710(b)(1), the priority assigned to each munitions response site will be included with the inventory information made publicly available. The requirement for an inventory of munitions response sites known or suspected of containing unexploded

ordnance, DMM, or MCs is found at 10 U.S.C. 2710(a). The assigned priority will be updated annually to reflect new information that becomes available.

The Protocol evaluates the following potential explosive safety and environmental hazards:

- Explosive hazards posed by unexploded ordnance (UXO) and discarded military munitions (DMM)
- Hazards associated with the effects of chemical warfare materiel (CWM)
- The chronic health and environmental hazards posed by munitions constituents (MC) or other chemical constituents.

DoD recognizes the different hazards inherent to each class of materials. To address these differences, the Protocol has three hazard evaluation modules, each of which is specific to one type of hazard, specifically:

- Explosive hazards are evaluated using the Explosives Hazard Evaluation (EHE) module.
- CWM-related hazards are evaluated using the Chemical Warfare Materiel Hazard Evaluation (CHE) module.
- Health and environmental hazards posed by MC are evaluated using the Relative Risk Site Evaluation (RRSE) module.

DoD recognizes that sufficient data to apply all three of the hazard evaluation modules may not be immediately available for some munitions response sites. In such cases where data are available for only one or two of the modules, the priority will be assigned based on the modules for which sufficient data are available. This initial priority may change when additional data are collected and all three modules are evaluated. Modules for which there are insufficient data will be assigned a status of "evaluation pending."

Upon completion of all necessary munitions responses at a munitions response site, the status "prioritization no longer required" will be assigned. The sequencing of munitions response sites for environmental restoration activities will be based primarily on the priority assigned using this Protocol, but may also reflect other relevant information, such as stakeholder concerns, economic issues, and program management considerations.

DoD is proposing to promulgate this Protocol as a Federal regulation. When promulgated as a Federal regulation, per 10 U.S.C. 2710(b)(3), the priority assigned to each munitions response site " \* \* \* shall not impair, alter, or diminish any applicable Federal or State authority to establish requirements for the investigation of, and response to, environmental problems" at the munitions response site. It is also

important to note that the priority assigned does not impact the actions taken during a munitions response. All munitions response sites known or suspected to contain UXO, DMM, or MC will be investigated and, as required by site-specific conditions, the UXO, DMM, or MC present will be addressed through removal actions, remedial actions, or a combination of removal and remedial actions.

**II. Legal Authority**

This part is proposed under the authority of 10 U.S.C. 2710(b).

**III. Background**

Through the Defense Environmental Restoration Program (DERP), the Department of Defense (DoD) is protecting human health and the environment at its active and closing installations, as well as at Formerly Used Defense Sites. In all 50 States, the District of Columbia, and U.S. territories, DoD is making measurable progress in cleaning up chemical contamination from past defense activities to protect its forces, their families, and civilian neighbors from environmental health and safety hazards. DoD is now beginning to undertake similar efforts under the DERP to address potential health and safety hazards associated with its past use of military munitions.

**A. Scope of the Defense Environmental Restoration Program**

Section 211 of the Superfund Amendments and Reauthorization Act (SARA) of 1986<sup>1</sup> (codified at 10 U.S.C. 2701) established the DERP. Per the provisions in 10 U.S.C. 2701(a), the "Secretary of Defense shall carry out a program of environmental restoration at facilities under the jurisdiction of the Secretary." The phrase "under the jurisdiction of the Secretary" is further described by 10 U.S.C. 2701(c), which states: "The Secretary shall carry out (in accordance with the provisions of this chapter and CERCLA) all response actions with respect to releases of hazardous substances from each of the following: (A) Each facility or site owned by, leased to, or otherwise possessed by the United States and under the jurisdiction of the Secretary. (B) Each facility or site which was under the jurisdiction of the Secretary and owned by, leased to, or otherwise

<sup>1</sup> SARA was signed into law on October 17, 1986, amending the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, 42 U.S.C. 9601 *et seq.* Related sections in Title 10 of the United States Code, 10 U.S.C. 2702-2710 and 2810-2811, further define the DERP.

possessed by the United States at the time of actions leading to contamination by hazardous substances. (C) Each vessel owned or operated by the Department of Defense.”

The scope of the DERP is defined at 10 U.S.C. 2701(b), which states: “Goals of the program shall include the following: (1) The identification, investigation, research and development, and cleanup of contamination from hazardous substances, and pollutants and contaminants. (2) Correction of other environmental damage (such as detection and disposal of unexploded ordnance) which creates an imminent and substantial endangerment to the public health or welfare or to the environment.\* \* \*”

#### B. Military Munitions Use

Military munitions are used in training for combat, in munitions testing, and in weapons research, development, testing, and evaluation. When a military munition is used, but remains unexploded either by malfunction, design, or any other cause, it is called unexploded ordnance (UXO) and may pose an explosive hazard. Other military munitions may have been disposed of or abandoned, becoming what is known as a discarded military munitions (DMM). DMM are sometimes disposed of or abandoned through an attempt at treatment by burning or open detonation; other times DMM are directly disposed of or abandoned. When UXO or DMM are present at a location where DoD no longer intends to use military munitions, there are potential hazards. DoD established the Military Munitions Response program (MMRP) as part of the DERP specifically to address potential explosive and environmental hazards associated with UXO, DMM, and the chemical constituents of these munitions (*i.e.*, munitions constituents). The purpose of this Protocol is to assign a relative priority to locations where a munitions response is needed to mitigate these potential hazards.

#### C. Implementing Guidance for the DERP

DoD's primary implementing guidance for the DERP is the Management Guidance for the Defense Environmental Restoration Program (September 28, 2001), hereinafter referred to as the Management Guidance. The Management Guidance is issued by the Deputy Under Secretary of Defense (Installations & Environment) (DUSD (I&E)) and is available on the World Wide Web at <http://www.dtic.mil/envirodod/Policies/PDDERP.html>. The Management

Guidance defines the basic program structure for DoD's environmental restoration activities and includes specific provisions addressing munitions responses. These provisions include:

- Establishing the Military Munitions Response program category within the DERP to implement and track munitions responses
- Defining munitions responses as actions, including investigation, removal actions, and remedial actions, to address the explosives safety, human health, or environmental risks presented by UXO, DMM, or MC
- Directing the DoD Components to identify and establish an inventory of certain locations where a munitions response may be required
- Requiring DoD Components to evaluate the hazards posed where the presence of UXO, DMM, or MC are known or suspected to be present, and to conduct an appropriate munitions response
- Requiring the DoD Components to conduct munitions responses in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, 42 U.S.C. 9601 *et seq.*), Executive Order (E.O.) 12580, Superfund Implementation (January 23, 1986) and E.O. 13016 Superfund Amendments (August 28, 1996), and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR part 300).

#### D. The National Defense Authorization Act for Fiscal Year 2002

As DoD began to implement these requirements, Congress passed and the President signed into law several new requirements related to UXO, DMM, and MC. These provisions, found in the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107), Sections 311-313, were codified 10 U.S.C. 2703 and 2710.

One of these requirements, specifically 10 U.S.C. 2710(a), directed the Secretary of Defense to develop an inventory of munitions response sites that are known or suspected to contain UXO, DMM, or MC. Per 10 U.S.C. 2710(b), DoD is also required to develop, in consultation with representatives of the States and Indian Tribes, a proposed protocol for assigning to each munitions response site in this inventory a relative priority for response activities related to UXO, DMM, and MC based on the overall conditions at the munitions response site. Further, after public notice and comment on the proposed protocol, DoD is to issue a final protocol and apply the

final protocol to all munitions response sites listed on the inventory.

The statute specifically excludes from the inventory required under 10 U.S.C. 2710(a) and, therefore, from application of this Protocol all locations that are:

- Not currently or were not previously owned by, leased to, or otherwise possessed or used by DoD (excluded because these locations do not meet the definition of a defense site)
- Not known or suspected of containing UXO, DMM, or MC (excluded because these locations are not included in the inventory)
- Outside the United States (excluded per 10 U.S.C. 2710(d)(1))
- Locations where the presence of military munitions is a result of combat operations (excluded per 10 U.S.C. 2710(d)(2))
- An operating storage or manufacturing facility (excluded per 10 U.S.C. 2710(d)(3))
- Used for, or were permitted for, the treatment or disposal of military munitions (excluded per 10 U.S.C. 2710(e)(1))
- An operational range (excluded per 10 U.S.C. 2710(d)(4) and 10 U.S.C. 2710(e)(1)).

As of the end of FY02, DoD has identified 2,307 munitions response sites in the inventory, an increase of 553 from the number DoD initially reported at the end of FY01. The FY02 inventory is comprised of 1,691 munitions response sites at FUDS, 542 at active installations, and 74 at installations subject to closure as part of the Base Realignment and Closure program. The current estimate of the costs of munitions responses for munitions response sites in the inventory exceeds \$11.5 billion. More detailed information on the inventory can be found in the Fiscal Year 2002 Defense Environmental Restoration Program Annual Report to Congress. This report can be accessed via the World Wide Web at <http://www.dtic.mil/envirodod/DERP/DERP.htm>.

#### IV. Development of the Protocol

Soon after enactment of 10 U.S.C. 2710, the Office of the Deputy Under Secretary of Defense (Installations & Environment) convened a working group with representatives from the DoD Components knowledgeable in explosive safety or environmental restoration. This DoD work group led the effort to develop the Protocol for prioritizing munitions response sites, including conducting preliminary discussions and interviews, constructing and testing the Protocol, and consulting with stakeholders

throughout the process to gain their input and address their concerns.

#### A. Preliminary Interviews

As part of the initial effort in the development of the Protocol, the DoD work group conducted a small number of preliminary interviews of people within and outside DoD, including representatives of the DoD Components, other Federal and State agencies, American Indian and Alaska Native Tribes, and the public. The intent of these preliminary interviews was to query a small number of people familiar with or interested in the prioritization of DoD's munitions response sites to establish a baseline for the development effort. Approximately 100 people were interviewed.

The interviews involved a standard questionnaire requiring a combination of structured (e.g., multiple choice) and narrative answers related to four areas the work group thought important to developing the Protocol:

- General characteristics for the Protocol
- The respondents' knowledge of the requirements for developing the Protocol, as those requirements were detailed in 10 U.S.C. 2701(b)
- The respondents' views on the importance of various data elements found in similar priority setting models, and
- Whether or not the respondent had any additional comments not covered in the structured questions

In general, the responses indicated that the Protocol should:

- Be simple in approach and operation
- Be easy to understand
- Have standardization of application
- Provide consistent and repeatable results
- Prioritize all munitions response sites into between 3 and 6 categories, and
- Keep the evaluation of the explosive hazards and the environmental hazards separate

The information gathered during these interviews provided the DoD work group with ideas for the initial characteristics that the Protocol should and should not contain. The work group considered these characteristics throughout the process of constructing the Protocol, including during the review of selected priority setting models.

#### B. Review of Selected Priority-Setting Models

Reflecting on the preferred characteristics identified during the

preliminary interviews, DoD reviewed six existing tools used to prioritize sites for environmental restoration activities and analyzed the characteristics of each. Among the characteristics reviewed, the DoD work group sought to understand the means each tool used to balance differing concerns so that no one type of information dominated the model. One characteristic that became readily apparent was the number of major factors considered. Adopting the term "axis" to describe each major factor in the construct of the models reviewed, the work group sought to determine the number of axes the Protocol should have as the number of axes determines or limits the weight that can be applied to any one type of information. To achieve sufficient differentiation among sites, it is important that no one axis dominate the method.

*Risk Assessment Code (RAC).* Since 1990, the U.S. Army Corps of Engineers (USACE) has applied the RAC at both Formerly Used Defense Sites (FUDS) and Base Realignment and Closure installations as a tool for prioritizing ordnance and explosives response actions. In the Management Guidance, DoD adopted the RAC as an interim tool for prioritizing munitions response sites. The RAC is a two-axis model that assumes risk is a function of (1) exposure and (2) the hazard posed by the munitions present. The RAC assigns sites to one of five classes from high risk (RAC Score 1) to negligible risk (RAC score 5). It is a simple model that can be applied with limited information.

*Range Rule Risk Methodology (R3M).* The R3M was developed during DoD's effort to promulgate the DoD Range Rule. The Qualitative Risk Evaluation (QRE) is the first of three evaluations under the R3M. It is a three-axis, qualitative system designed as a screening tool for determining which sites required additional risk evaluation for explosive hazards. Its three factors (i.e., axes) are UXO density, frequency of entry to the site, and UXO type. The Detailed and Streamlined Risk Evaluation (DRE and SRE) are the other two elements of the R3M and are applied to sites that were not screened out by the QRE. The SRE estimates the maximum quantitative degree of UXO risk to which receptors may be exposed. The DRE is a comprehensive assessment that uses site characterization data. The SRE and the DRE essentially are one-axis, quantitative models that focus on the probability of exposure.

*Former Lowry Bombing and Gunnery Range Prioritization Tool.* USACE and stakeholders developed this site-specific model to prioritize sites that encompass a very large FUDS. It is a one-axis

system with multiple data elements. It requires extensive information and input from internal and external stakeholders.

*Interim Range Rule Risk Methodology (IR3M) Baseline Explosives Hazard Evaluation.* The IR3M baseline explosives risk evaluation tool was derived from the R3M and focused on the comparative evaluation of response alternatives against the baseline (i.e., the amount of potential risk prior to response). It is a three-axis system, which assigns sites to one of five classes. The three axes are accessibility, overall hazard, and exposure. Modeling has suggested that application of the IR3M to sites results in reasonable distribution among the five classes.

*Native American Lands Environmental Mitigation Program (NALEMP) Model.* DoD developed this model to assist in prioritizing actions to be conducted under the NALEMP. It is a three-axis, quantitative system, specifically designed to consider risk and non-risk-based factors, such as life ways, programmatic, government-to-government, and economic considerations that are unique to Indian lands. The NALEMP model uses RRSE and RAC for the risk evaluation components. It also takes into consideration a range of potential impacts affecting traditional and customary uses of land and cultural and ecological resources vital to American Indian and Alaska Native life ways.

*Hazard Ranking System (HRS).* The U.S. Environmental Protection Agency developed this system to score sites for inclusion on the National Priorities List. It is a quantitative system that assigns a numerical score to each site based on the contaminant hazards in the groundwater, surface water, soil, and air. The HRS requires extensive data to operate and does not address explosive hazards.

While the USACE has used RAC for 13 years as a means of assigning a relative priority to FUDS, the DoD work group determined that neither RAC nor any of the other models reviewed provided the characteristics necessary to meet all the requirements in 10 U.S.C. 2710(b). The analysis of each model's strengths and weaknesses provided DoD with critical information regarding the characteristics the Protocol should possess. Based on information from this review and the preliminary interviews, the DoD work group began constructing a new model (i.e., the Protocol) to more effectively evaluate the explosive safety and environmental hazards posed by UXO, DMM, and MC at munitions response sites.

### C. Consultation With States, Tribes, and Others

As DoD worked to develop this Protocol, it engaged in extensive consultation with States, Tribes, and other Federal agencies. DoD also provided opportunity for interested members of the public to provide input during the development. DoD's efforts to engage stakeholders in the development process are summarized in a subsequent section. Although DoD notified all American Indian and Alaska Native Tribes of the Protocol development effort, DoD's consultation concentrated on those Tribes with interest in lands that are known or suspected of containing UXO, DMM, or MC.

## V. Scope and Applicability

### A. Terms Pertinent to the Protocol

In developing the Protocol, DoD realized the need for a term to describe the universe of locations subject to inclusion in the inventory and prioritization using the Protocol. DoD is creating the term "munitions response site" for this purpose. Although 10 U.S.C. 2710 had introduced the term "defense site," this term is not considered appropriate for the purposes of prioritization as not all locations that meet the definition of defense sites are known or suspected to contain UXO, DMM, or MC. By definition, the term "defense site" refers to all locations that are or were owned, leased, or otherwise used by DoD (and contains several exclusions related to the types of activities occurring at the location). For a specific location to be included in the inventory (*i.e.*, a munitions response site), it must be (1) a location that is, or was, owned by, leased to, or otherwise possessed or used by DoD (*i.e.*, a defense site), and (2) known or suspected to contain UXO, DMM, or MC.

DoD formally established its Military Munitions Response program, a subset of the DERP, in September 2001. DoD is working to build the MMRP into a robust program to address the safety and environmental hazards associated with UXO, DMM, and MC. With the exception of FUDS properties, which have been further characterized, DoD is just beginning to identify the locations where it knows of or suspects the presence of UXO, DMM, and MC remaining from its past use of military munitions. In many cases, the identified locations are large geographic areas, sometimes encompassing an entire former range. Former ranges, often comprising hundreds of thousands of acres, supported various activities on different parts of the range. These locations meet the criteria for inclusion

in the inventory, as they are (1) defense sites, and (2) known or suspected to contain UXO, DMM, or MC. DoD proposes to use the term "munitions response area (MRA)" for these large locations. MRA is defined as ". . . any area on a defense site that is known or suspected to contain UXO, DMM, or MC. Examples are former ranges or munitions burial areas. A munitions response area is comprised of one or more munitions response sites."

Because an MRA may be large and complex, DoD will work to characterize each MRA and subdivide it into discrete locations so that munitions responses specific to local conditions can be conducted. Subdivision of an MRA is not required, but permitted as needed for purposes of implementing a munitions response. A munitions response site (MRS) is defined as ". . . a discrete location within an MRA that is known to require a munitions response." Because every MRA is associated with at least one MRS and the MRS is defined by the need for a munitions response, consistent with the statutory requirement to assign a priority for response activities, the Protocol will be applied to MRS.

DoD will track the acreage of the MRA as well as each MRS to ensure that all acreage is accounted for regardless of whether or not an MRA is subdivided into more than one MRS. The total acreage of all MRS associated with the MRA must equal the total acreage of the MRA. Information about the size of each MRA and each MRS will be included with the other information in the inventory disclosed in response to the requirements of 10 U.S.C. 2710(a)(2).

### B. Definitions

This proposed rule includes definitions for terms that describe the scope and applicability of the Protocol as well as terms that are integral to the hazard evaluation modules that comprise the Protocol. These definitions, unless codified elsewhere in the U.S. Code or Code of Federal Regulations (CFR) apply only to this part. Many of the terms relevant to this part are already defined in 10 U.S.C. 2710(e) and the CFR. Where this is the case, the existing statutory and regulatory definitions will be adopted for use in this part and are repeated here strictly for ease of reference.

*American Indian and Alaska Native Tribes* are any Federally recognized American Indian and Alaska Native tribal entity as defined by the most current Department of Interior/Bureau of Indian Affairs list of tribal entities published in the **Federal Register**

pursuant to section 104 of the Federally Recognized Tribe Act.

*Barrier* means a natural obstacle or obstacles (*e.g.*, difficult terrain, dense vegetation, deep or fast moving water), a man-made obstacle or obstacles (*e.g.*, fencing), or a combination of natural and man-made obstacles.

*Chemical agent identification sets (CAIS)* are military training aids containing small quantities of various chemical warfare agents and other chemicals.

*Chemical warfare agents (CWA)* are the V- and G-series nerve agents, H-series (*i.e.*, "mustard" agents) and L-series (*i.e.*, lewisite) blister agents, and certain industrial chemicals used by the military as weapons, including hydrogen cyanide (AC), cyanogen chloride (CK), or carbonyl dichloride (called phosgene or CG)). CWA do not include riot control agents (*e.g.*, w-chloroacetophenone (CN) and o-chlorobenzylidene malononitrile (CS) tear gas), chemical herbicides, smoke or incendiary compounds, and industrial chemicals that are not configured as a military munition.

*Chemical Warfare Material (CWM)* is a general term that includes four subcategories of specific materials:

- *CWM, explosively configured* are all munitions that contain a CWA fill and any explosive component. Examples include M55 rockets with CWA, the M23 VX mine, and the M360 105-millimeter GB artillery cartridge.
- *CWM, nonexplosively configured* are all munitions that contain a CWA fill but that do not include any explosive components. Examples include any chemical munition that does not contain an explosive component and VX or mustard agent spray canisters.

- *CWM, bulk container* are all non-munitions-configured containers of CWA (*e.g.*, a ton container).

- *Chemical agent identification sets (CAIS)*. All forms of CAIS are scored the same except for CAIS K941, toxic gas set M-1; and K942, toxic gas set M-2/E11, which are scored higher due to the relatively large quantities of agent they contain.

In the Protocol, the general term "CWM" means all four subcategories. Where the name of one or more of the subcategories is used, the statement is specific to the subcategories specified.

*Cultural resources* means there are recognized cultural, traditional, spiritual, religious, or historical features or properties (*e.g.*, structures, artifacts, symbolism) on the munitions response site. For example, American Indians and Alaska Natives deem portions of or the entire munitions response site sacred.

Another example of cultural resources are areas that American Indians and Alaska Natives use for subsistence activities (e.g., hunting, fishing). (**Note:** Specific requirements for determining if a particular feature is a cultural resource may be found in the National Historic Preservation Act, Native American Graves Protection and Repatriation Act, Archeological Resources Protection Act, Executive Order 13007, and the American Indian Religious Freedom Act.).

*Defense site* means locations that are or were owned by, leased to, or otherwise possessed or used by the Department of Defense. The term does not include any operational range, operating storage or manufacturing facility, or facility that is used for or was permitted for the treatment or disposal of military munitions. (10 U.S.C. 2710(e)(1)).

*Department of Defense (DoD) Components* means the Office of the Secretary of Defense, the Military Departments, the Defense Agencies, the DoD Field Activities, and any other DoD organizational entity or instrumentality established to perform a government function.

*Discarded military munitions (DMM)* means military munitions that have been abandoned without proper disposal or removed from storage in a military magazine or other storage area for the purpose of disposal. The term does not include unexploded ordnance, military munitions that are being held for future use or planned disposal, or military munitions that have been properly disposed of, consistent with applicable environmental laws and regulations. (10 U.S.C. 2710(e)(2)).

*Ecological resources* means: (1) A threatened or endangered species (designated under the Endangered Species Act (ESA)) is present on the munitions response site; or (2) the munitions response site is designated under the ESA as critical habitat for a threatened or endangered species; or (3) there are identified sensitive ecosystems such as wetlands or breeding grounds present on the munitions response site.

*Former* (as in "former range") means the munitions response site is a location that was: (1) Closed by a formal decision made by the DoD Component with administrative control over the location, or (2) put to a use incompatible with the presence of UXO, DMM, or MC.

*Historical evidence* means that the investigation: (1) Found written documents or records, or (2) documented interviews of persons with knowledge of site conditions, or (3) found and verified other forms of information.

*In the subsurface* means the munition or CWM is: (1) Entirely beneath the ground surface, or (2) fully submerged in a water body.

*Military munitions* means all ammunition products and components produced for or used by the armed forces for national defense and security, including ammunition products or components under the control of the Department of Defense, the Coast Guard, the Department of Energy, and the National Guard. The term includes confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. The term does not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components, except that the term does include non nuclear components of nuclear devices that are managed under the nuclear weapons program of the Department of Energy after all required sanitization operations under the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*) have been completed. (10 U.S.C. 2710(e)(3) and 40 CFR 260.10)

*Military range* means designated land and water areas set aside, managed, and used to research, develop, test, and evaluate military munitions, other ordnance, or weapon systems, or to train military personnel in their use and handling. Ranges include firing lines and positions, maneuver areas, firing lanes, test pads, detonation pads, impact areas, and buffer zones with restricted access and exclusionary areas. (40 CFR 266.201).

*Munitions constituents (MC)* means any materials originating from unexploded ordnance, discarded military munitions, or other military munitions, including explosive and non-explosive materials, and emission, degradation, or breakdown elements of such ordnance or munitions. (10 U.S.C. 2710(e)(4))

*Munitions response* means response actions, including investigation, removal actions, and remedial actions, to address the explosives safety, human health, or environmental risks presented by UXO, DMM, or MC.

*Munitions response area (MRA)* means any area on a defense site that is known or suspected to contain UXO,

DMM, or MC. Examples include former ranges or munitions burial areas. An MRA is comprised of one or more munitions response sites.

*Munitions response site (MRS)* means a discrete location within an MRA that is known to require a munitions response.

*On the surface* means the munition or CWM is: (1) Entirely or partially exposed above the ground surface, or (2) entirely or partially exposed above the surface of a water body (e.g., as a result of tidal activity).

*Operational range* means a military range that is used for range activities, or a military range that is not currently being used but that is still considered by the Secretary to be a range area, is under the jurisdiction, custody, or control of the Department of Defense, and has not been put to a new use that is incompatible with range activities. (10 U.S.C. 2710(e)(5)).

*Physical evidence* means: (1) Recorded observations from on-site investigations, such as finding intact UXO or DMM, or components, fragments, or other pieces of military munitions, or (2) the results of field or laboratory sampling and analysis procedures, or (3) the results of geophysical investigations.

*Practice munitions* means munitions that contain an inert filler (e.g., wax, sand, concrete), a spotting charge (i.e., a pyrotechnic charge), and a fuze. For a munition to be classified as a "practice munition," the fuze cannot be considered "sensitive."

*Range activities* means research, development, testing, and evaluation of military munitions, other ordnance, and weapons systems; and the training of military personnel in the use and handling of military munitions, other ordnance, and weapons systems.

*Small arms ammunition* means ammunition that is .50 caliber or smaller and shotgun shells.

*Unexploded ordnance (UXO)* means military munitions that: (1) Have been primed, fuzed, armed, or otherwise prepared for action; (2) have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installations, personnel, or material; and (3) remain unexploded either by malfunction, design, or any other cause. (10 U.S.C. 2710(e)(9) and 40 CFR 266.201).

*United States* means, in a geographic sense, the States, territories, and possessions and associated navigable waters, contiguous zones, and ocean waters of which the natural resources are under the exclusive management authority of the United States. (10 U.S.C. 2710(e)(10)).

## I. Application of the Munitions Response Site Prioritization Protocol

### A. General Requirements

There are a number of activities that the DoD Components must undertake as part of the application of the Protocol. Among other requirements, the DoD Components will:

(1) Ensure the total acreage of each MRA is evaluated and apply the Protocol to all MRS under their administrative control.

(2) Involve the local community in the munitions response process as early as possible and seek continued involvement of the local community throughout the process.

(3) Use a team approach, where each team includes members with the expertise needed to apply the Protocol at a specific MRS. Each team should be comprised of DoD Component representatives from required functional areas (*e.g.*, explosives or chemical safety, environmental) and EPA, State regulators, and other Federal land managers, where appropriate. The DoD Component is also expected to seek involvement from American Indian or Alaskan Native Tribes when any portion of the MRS affects tribal lands, the affected local restoration advisory board (RAB) or technical review committee (TRC), and local stakeholders in the application of the Protocol. DoD is committed to working with Tribes on a government-to-government basis in recognition of their sovereignty and in a continuing effort to implement the 1998 DoD American Indian and Alaska Native Policy. To ensure American Indian and Alaskan Native Tribes, EPA, other Federal agency, State regulatory agencies, and local government officials are aware of the opportunity to participate in the application of the Protocol, the DoD Component organization responsible for implementing a munitions response at the MRS will send a certified letter to the heads of these organizations (or their designated point-of-contact), as appropriate, seeking their involvement. A copy of these letters will be placed in the Administrative Record and Information Repository for the MRS.

(4) Develop and maintain records on the application of this Protocol for each MRS. At a minimum, the records will contain references to all information and documents used for the evaluation (*e.g.*, data from preliminary assessments, worksheets). These records will be included in the Administrative Record and the Information Repository for the MRS.

(5) Document in a Management Action Plan (MAP) or its equivalent all

aspects of the munitions responses required at all MRS for which that MAP is applicable. DoD guidance requires that MAPs are developed and maintained at an installation (or FUDS property) level. For the FUDS program, a State-wide MAP may also be developed.

(6) Establish a quality assurance panel to review all MRS prioritization decisions. To ensure objectivity, this panel will not include any person that was directly involved with the application of the Protocol to a specific MRS. If the panel concludes that a different priority should be assigned to a given MRS, the DoD Component will report the rationale for this change to ODUSD(I&E) with their inventory data. The DoD Component will also provide this rationale to the appropriate regulators and stakeholders for review and comment before finalizing the change.

(7) Update the priority as necessary to reflect new information that has become available.

(8) Following the panel review, report the priority for each MRS and the ratings for each hazard evaluation module to ODUSD (I&E) (or successor organizations) for inclusion in the inventory of MRS that is made publicly available.

### A. Application of the Protocol

Components will apply the Protocol at an MRS when there are sufficient data to populate all the data elements in at least one of the three hazard evaluation modules (*i.e.*, the Explosive Hazard Evaluation, the CWM Hazard Evaluation, and Relative Risk Site Evaluation modules) that comprise the Protocol. It is expected that this will occur after the CERCLA preliminary assessment phase is completed but before the CERCLA site inspection phase is completed.

Any hazard evaluation module for which there is insufficient information to complete the evaluation will be assigned the "evaluation pending" rating for that module, and the MRS's relative priority will be assigned based on the ratings of the hazard evaluation modules for which sufficient data are available to complete the hazard evaluation. The Protocol will be reapplied as soon as the data to run the hazard evaluation modules assigned "evaluation pending" ratings becomes available.

The Protocol will be reapplied at a MRS under the following circumstances:

(1) Upon completion of a response action that could change the site

conditions evaluated by the hazard evaluation modules at the MRS.

(2) To update or validate a previously rated hazard evaluation module when new information is available.

(3) To update or validate an MRS priority that was previously assigned based on evaluation of only one or two of the three hazard evaluation modules.

(4) Upon further delineation and characterization of an MRA into MRS.

(5) To categorize MRS previously classified as "evaluation pending."

When a munitions response is fully completed and no additional munition response is required, as agreed to by appropriate Federal and State regulatory agencies, the MRS will be assigned the rating "no longer required."

It is important to note that the Protocol is a prioritization tool only and does not impact the actions taken at an MRS. The responsible DoD Component will thoroughly investigate all MRS known or suspected to contain UXO, DMM, or MC and, as required by site-specific conditions, address any UXO, DMM, or MC through removal actions, remedial actions, or a combination or removal and remedial actions.

## VII. The Hazard Evaluation Modules

The three modules that evaluate the potential hazards present at an MRS are the central feature of the Protocol. Using a hazard evaluation module developed specifically to address the unique characteristics of each type of hazard, DoD will evaluate each MRS in three distinct areas:

- Explosive hazards posed by UXO and DMM through the Explosives Hazard Evaluation (EHE) module,
- Chemical hazards associated with the physiological effects of CWM through the Chemical Warfare Materiel Hazard Evaluation (CHE) module, and
- Health and environmental hazards posed by MC using the Relative Risk Site Evaluation (RRSE) module.

Each hazard evaluation module is constructed using three categories, or factors, of information. As discussed earlier in the Preamble, this is a three-axis construct as three primary factors of information are used to derive the results of each hazard evaluation module. This characteristic is important as it limits the influence of any one factor on the outcome. Although the specifics of the three factors vary for each of the three hazard evaluation modules, each module is comprised of standard factors for source of hazard, pathways for exposure, and receptors. Further, each factor is comprised of multiple data elements that are intended to capture site-specific information. While developing the data elements, the

DoD work group worked to ensure that each data element within the three modules was:

- Essential for characterization of site conditions;

- Easily collected during the early phases of the CERCLA process; and
- Sufficiently defined to ensure consistent, repeatable, and supportable results for prioritizing an MRS.

The structure, application, and output of each of these modules are discussed in detail in the following parts of this section. Figure 1 is an illustration of the structure of the Protocol.

**BILLING CODE 5001-08-P**

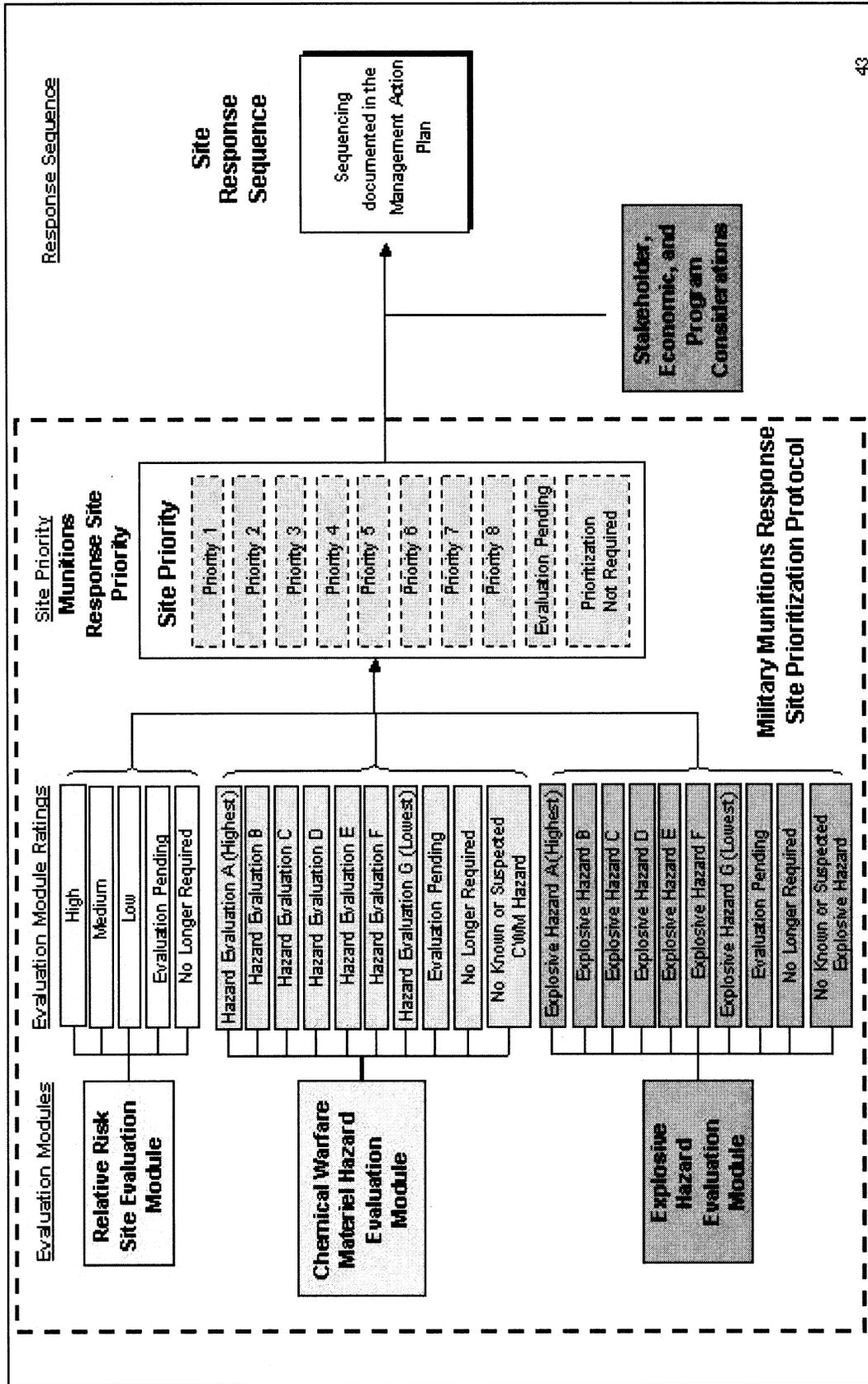


Figure 1: Overall Protocol Structure

*A. The Explosive Hazard Evaluation (EHE) Module*

The EHE module is used to conduct a relative comparison of the potential explosive hazards posed by UXO or DMM at an MRS. The EHE module determines the explosive hazard through evaluation of three general factors (*i.e.*, categories of information), each of which is comprised of two to four specific data elements. The factors comprising the EHE module are:

- Explosive hazard, which has the elements Munitions Type and Source of Hazard and characterizes the cause of the hazard;
- Accessibility, which has the elements Information on the Location of Munitions, Ease of Access, and Status of Property and characterizes the pathway or means by which a receptor can encounter the hazard; and
- Receptors, which has the elements Population Density, Population Near Hazard, Types of Activities/Structures, and Ecological and/or Cultural Resources and accounts for any receptors likely to be impacted by exposure to the hazard.

Each data element is assigned a maximum numerical value and consists of several classifications (each of which is assigned a numeric value ranging up to the maximum value of the data element) that are intended to capture certain site-specific conditions. The DoD work group developed these values based on the knowledge of technical experts within DoD and comments received from stakeholders. The values were adjusted based on the results of extensive testing of the Protocol and stakeholders' comments. The total value assigned to each data element as well as the value of the specific classifications

within each element are relative evaluations of each element's contribution to the overall explosive hazard. The sum of these values is the EHE module score for the MRS, which is used to derive the EHE module hazard evaluation rating. Additional information on each factor and data element is provided in the text.

(1) Explosive Hazard Factor

The Explosive Hazard factor of the EHE module is comprised of two data elements, Munitions Type and Source of Hazard, and constitutes 40 percent of the numerical score of the EHE module.

The Munitions Type data element classifies munitions according to their potential to detonate and their inherent explosive power. Portability, the ability for a munition to be readily transported, is indirectly accounted for in this element. The DoD work group initially considered including portability as a distinct data element under the Accessibility factor, but because UXO can be found in many different configurations (*e.g.*, intact warheads, fuzes or other components that have separated from the munitions) that would be considered portable, DoD found it too difficult to define the criteria necessary to address portability separately in the EHE module.

In developing the data elements within this factor, the DoD work group determined the need for separate classifications for many common munitions types but also recognized that there are exceptions to several categories. For example, although there is a separate classification for practice munitions, when the associated fuze is determined to be sensitive by a technically qualified individual, the

munition will be classified as sensitive not as practice to more accurately reflect the greater explosive hazard presented by sensitive fuzes. Similarly, while the Protocol provides a separate classification for small arms ammunition to reflect the limited explosives hazard they posed because they lack an explosive charge. To select the small arms ammunition classification, there must be evidence that only small arms ammunition was used at the MRS. If there is evidence that munitions other than small arms ammunition were used or could be present on the MRS, the munition type with the highest numeric value (*i.e.*, the greatest potential hazard) is used for the evaluation. DoD has also included an "evidence of no munitions" classification, which can only be used if, after investigation, there is physical or historical evidence that indicates there are no munitions present. The definition for "evidence of no munitions" is important as it requires DoD to investigate all MRS for the presence of UXO or DMM. Further, DoD adopted the criteria for physical and historical evidence as an affirmation that the DoD Components will collect information upon which to base decisions. This approach to physical or historical evidence is intended to preclude decisions based on the logic that "\* \* \* there is no physical/historical evidence of \* \* \*," which could mean there is an absence of information on what physical or historical evidence is available.

The classifications, the definition for each classification, and associated numerical scores for the Munitions Type data element are presented in Table 1.

TABLE 1.—CLASSIFICATIONS WITHIN THE EHE MODULE TYPE DATA ELEMENT

Classification	Description	Score
Sensitive .....	<ul style="list-style-type: none"> <li>• All UXO that are considered likely to function upon any interaction with exposed persons, including: submunitions, cluster munitions, 40mm high-explosive grenades, white phosphorus (WP) munitions (including practice munitions with sensitive fuzes, but excluding all other practice munitions), and high-explosive anti-tank (HEAT) munitions.</li> <li>• All hand grenades containing an explosive filler.</li> </ul>	30
High explosive (used or damaged) .....	<ul style="list-style-type: none"> <li>• All UXO containing a high-explosive filler (<i>e.g.</i>, RDX, Composition B) that are not considered "sensitive".</li> <li>• All DMM containing a high-explosive filler that have been damaged by burning or detonation.</li> <li>• All DMM containing a high-explosive filler that have deteriorated to the point of instability.</li> </ul>	25
Pyrotechnic .....	<ul style="list-style-type: none"> <li>• All UXO containing pyrotechnic fillers other than white phosphorous (<i>e.g.</i>, flares, signals, simulators, smoke grenades).</li> <li>• All DMM containing pyrotechnic fillers other than white phosphorous (<i>e.g.</i>, flares, signals, simulators, smoke grenades) that have been damaged by burning or detonation or that have deteriorated to the point of instability.</li> </ul>	20

TABLE 1.—CLASSIFICATIONS WITHIN THE EHE MODULE TYPE DATA ELEMENT—Continued

Classification	Description	Score
High explosive (unused) .....	<ul style="list-style-type: none"> <li>All DMM containing a high-explosive filler that have not been damaged by burning or detonation..</li> <li>All DMM containing a high explosive filler that are not deteriorated to the point of instability.</li> </ul>	15
Propellant .....	<ul style="list-style-type: none"> <li>All UXO containing only a single-, double-, or triple-based propellant, or composite propellants (e.g., a rocket motor).</li> <li>All DMM containing only a single-, double-, or triple-based propellant, or composite propellants (e.g., a rocket motor).</li> </ul>	15
Bulk HE, pyrotechnics, or propellant .....	<ul style="list-style-type: none"> <li>Bulk high explosives, including: demolition charges (e.g., C4 blocks), high explosives not contained in a munition, and concentrated mixtures of high explosives or other munitions constituents mixed with environmental media or debris in concentrations that result in the mixture being explosive (e.g., “explosive soil”).</li> <li>All pyrotechnic material that is not contained in a munition (i.e., “bulk pyrotechnics”).</li> <li>All single-, double-, or triple-based propellant, or composite propellants that are not contained in a munition (i.e., “bulk propellant”).</li> </ul>	10
Practice .....	<ul style="list-style-type: none"> <li>All UXO that are a practice munition not associated with a sensitive fuze .....</li> <li>All DMM that are a practice munition not associated with a sensitive fuze that have been damaged by burning or detonation.</li> <li>All DMM that are a practice munition not associated with a sensitive fuze that have deteriorated to the point of instability.</li> </ul>	5
Riot control .....	<ul style="list-style-type: none"> <li>All UXO or DMM containing only a riot control agent (e.g., tear gas) .....</li> </ul>	3
Small arms .....	<ul style="list-style-type: none"> <li>All UXO or DMM that are classified as small arms ammunition. Evidence that no other munitions type (e.g., grenades, subcaliber training rockets, demolition charges) was used or is present on the MRS is required for selection of this category.</li> </ul>	2
Evidence of no munitions .....	<ul style="list-style-type: none"> <li>Following investigation of the MRS, there is physical evidence there are no UXO or DMM present or there is historical evidence indicating that no UXO or DMM are present.</li> </ul>	0

**Notes:**

- Former (as in “former range”) means the MRS is a location that was: (1) Closed by a formal decision made by the DoD Component with administrative control over the location, or (2) put to a use incompatible with the presence of UXO, DMM, or MC.
- Historical evidence means that the investigation: (1) Found written documents or records, or (2) documented interviews of persons with knowledge of site conditions, or (3) found and verified other forms of information.
- Physical evidence means: (1) Recorded observations from on-site investigations, such as finding intact UXO or DMM, or components, fragments, or other pieces of military munitions, or (2) the results of field or laboratory sampling and analysis procedures, or (3) the results of geophysical investigations.
- Practice munitions means munitions that contain an inert filler (e.g., wax, sand, concrete), a spotting charge (i.e., a pyrotechnic charge), and a fuze.
- The term small arms ammunition means solid projectile ammunition that is .50 caliber or smaller and shotgun shells.

The Source of Hazard data element considers the previous uses of the MRS. It reflects the type of munitions that may be present and the manner and extent munitions were used or disposed of at the MRS. The classifications provided are the common locations where a munition can be found during its lifecycle.

The classification former range has the maximum value within the Source of Hazard data element. Former ranges will have supported live-fire training and testing and consist of locations, such as impact areas, that are expected to contain large concentrations of UXO and, therefore, pose the greatest potential explosive hazard. Although some areas on a former range are not expected to contain high concentrations of UXO (e.g., the firing point), there is

still a potential for UXO or DMM to be present. The DoD work group provided a distinct classification for firing points that are separated from other parts of a former range.

Other classifications within Source of Hazard include manufacturing, storage, and transfer facilities—reflecting the early parts of the munition lifecycle—and treatment units and burial pits, which represent the end of the lifecycle. As with the Munitions Type data element, DoD has provided an “evidence of no munitions” classification for the Source of Hazard data element. This classification can only be selected if an investigation finds there is physical or historical evidence indicating there is no UXO or DMM present. The definition for “evidence of no munitions” is important as it

requires DoD to investigate all MRS for the presence of UXO or DMM. Further, DoD adopted the criteria for physical and historical evidence as an affirmation that the DoD Components will collect information upon which to base decisions. This approach to physical or historical evidence is intended to preclude decisions based on the logic that “\* \* \* there is no physical/historical evidence of \* \* \*” which could mean there is an absence of information on what physical or historical evidence is available.

The eleven classifications, the definition for each classification, and associated numerical scores for the Source of Hazard data element are presented in Table 2.

TABLE 2.—CLASSIFICATIONS WITHIN THE EHE MODULE SOURCE OF HAZARD DATA ELEMENT

Classification	Description	Score
Former range .....	<ul style="list-style-type: none"> <li>The MRS is a former military range where munitions (including practice munitions with sensitive fuzes) have been used. Such areas include: impact or target areas, associated buffer and safety zones, firing points, and live-fire maneuver areas.</li> </ul>	10
Former munitions treatment (i.e., OB/OD) unit.	<ul style="list-style-type: none"> <li>The MRS is a location where UXO or DMM (e.g., munitions, bulk explosives, bulk pyrotechnic, or bulk propellants) were burned or detonated for the purpose of treatment prior to disposal.</li> </ul>	8
Former practice munitions range .....	<ul style="list-style-type: none"> <li>The MRS is a former range on which only practice munitions without sensitive fuzes were used.</li> </ul>	6
Former maneuver area .....	<ul style="list-style-type: none"> <li>The MRS is a former maneuver area where no munitions other than flares, simulators, smokes, and blanks were used. There must be evidence that no other munitions were used at the location to place an MRS into this category.</li> </ul>	5
Former burial pit or other disposal area ....	<ul style="list-style-type: none"> <li>The MRS is a location where DMM were buried or disposed of (e.g., disposed of into a water body) without prior thermal treatment.</li> </ul>	5
Former industrial operating facilities .....	<ul style="list-style-type: none"> <li>The MRS is a location that is a former munitions manufacturing or demilitarization facility.</li> </ul>	4
Former firing points .....	<ul style="list-style-type: none"> <li>The MRS is a firing point, when the firing point is delineated as an MRS separate from the rest of a former range.</li> </ul>	4
Former missile or air defense artillery emplacements.	<ul style="list-style-type: none"> <li>The MRS is a former missile defense or air defense artillery (ADA) emplacement not associated with a range.</li> </ul>	2
Former storage or transfer points .....	<ul style="list-style-type: none"> <li>The MRS is a location where munitions were stored or handled for transfer between modes (e.g., rail to truck, truck to weapon system).</li> </ul>	2
Former small arms range .....	<ul style="list-style-type: none"> <li>The MRS is a former military range where only small arms were used. There must be evidence that no other type of munitions (e.g., grenades) were used or are present at the location to place an MRS into this category.</li> </ul>	1
Evidence of no munitions .....	<ul style="list-style-type: none"> <li>Following investigation of the MRS, there is physical evidence that no UXO or DMM are present, or there is historical evidence indicating that no UXO or DMM are present.</li> </ul>	0

**Notes:**

- Former (as in "former range") means the MRS is a location that was: (1) closed by a formal decision made by the DoD Component with administrative control over the location, or (2) put to a use incompatible with the presence of UXO, DMM, or MC.
- Historical evidence means that the investigation: (1) Found written documents or records, or (2) documented interviews of persons with knowledge of site conditions, or (3) found and verified other forms of information.
- Physical evidence means: (1) Recorded observations from on-site investigations, such as finding intact UXO or DMM, or components, fragments, or other pieces of military munitions, or (2) the results of field or laboratory sampling and analysis procedures, or (3) the results of geophysical investigations.
- Practice munitions means munitions that contain an inert filler (e.g., wax, sand, concrete), a spotting charge (i.e., a pyrotechnic charge), and a fuze.
- The term small arms ammunition means solid projectile ammunition that is .50 caliber or smaller and shotgun shells.

(2) Accessibility Factor

The Accessibility factor of the EHE module focuses on the potential for receptors to encounter the UXO or DMM that may be present on a MRS. This factor consists of three data elements that constitute 40 percent of the numerical score of the EHE module.

The data element Information on the Location of Munitions is an evaluation of the following three conditions that were combined into one data element to best represent the potential for encountering munitions.

- The confirmed or suspected presence of munitions based on physical evidence (e.g., presence or absence of munitions, fragments, firing records, anecdotal information)

- The likelihood for direct contact with the munition based on its proximity to the surface
  - The potential for the munitions to be brought to the surface by dynamic site conditions (e.g., erosion).
- This data element differentiates among MRS where intact UXO or DMM are present, as opposed to the MRS where only munitions fragments are found. This data element also differentiates between "confirmed" versus "suspected" evidence. As with both data elements in the Explosive Hazard factor, this data element has an "evidence of no munitions" classification, which can only be used if, after investigation, there is physical or historical evidence that indicates there are no munitions present. The definition for "evidence of no

munitions" is important as it requires DoD to investigate all MRS for the presence of UXO or DMM. Further, DoD adopted the criteria for physical and historical evidence as an affirmative that the DoD Components will collect information upon which to base decisions. This approach to physical or historical evidence is intended to preclude decisions based on the logic that " \* \* \* there is no physical/historical evidence of \* \* \* ", which could mean there is an absence of information on what physical or historical evidence is available.

The classifications, the definition for each classification, and associated numerical scores for the Information on the Location of Munitions data element are presented in Table 3.

TABLE 3.—CLASSIFICATIONS WITHIN THE EHE INFORMATION ON THE LOCATION OF MUNITIONS DATA ELEMENT

Classification	Description	Score
Confirmed surface .....	<ul style="list-style-type: none"> <li>Physical evidence indicates there are UXO or DMM on the surface of the MRS .....</li> <li>Historical evidence (e.g., a confirmed incident report or accident report) indicates there are UXO or DMM on the surface of the MRS.</li> </ul>	25

TABLE 3.—CLASSIFICATIONS WITHIN THE EHE INFORMATION ON THE LOCATION OF MUNITIONS DATA ELEMENT—  
Continued

Classification	Description	Score
Confirmed, subsurface, active .....	<ul style="list-style-type: none"> <li>Physical evidence indicates the presence of UXO or DMM in the subsurface of the MRS and the geological conditions at the MRS are likely to cause UXO or DMM to be exposed in the future by naturally occurring phenomena (e.g., drought, flooding, erosion, frost, heat heave, tidal action), or there are on-going intrusive activities (e.g., plowing, construction, dredging) at the MRS that are likely to expose UXO or DMM.</li> <li>Historical evidence indicates that UXO or DMM are located in the subsurface of the MRS and the geological conditions at the MRS are likely to cause UXO or DMM to be exposed in the future by naturally occurring phenomena (e.g., drought, flooding, erosion, frost, heat heave, tidal action), or there are on-going intrusive activities (e.g., plowing, construction, dredging) at the MRS that are likely to expose UXO or DMM.</li> </ul>	20
Confirmed subsurface, stable .....	<ul style="list-style-type: none"> <li>Physical evidence indicates the presence of UXO or DMM in the subsurface of the MRS and the geological conditions at the MRS are not likely to cause UXO or DMM to be exposed in the future by naturally occurring phenomena, or there are no intrusive activities occurring at the MRS that are likely to either occur, or if the activities do occur, are likely to cause UXO or DMM to be exposed.</li> <li>Historical evidence indicates that UXO or DMM are located in the subsurface of the MRS and the geological conditions at the MRS are not likely to cause UXO or DMM to be exposed in the future by naturally occurring phenomena, or there are no intrusive activities occurring at the MRS that are likely to either occur, or if the activities do occur, are likely to cause UXO or DMM to be exposed</li> </ul>	15
Suspected (physical physical evidence) ....	<ul style="list-style-type: none"> <li>There is physical evidence other than the documented presence of UXO or DMM, indicating that UXO or DMM may be present at the MRS.</li> </ul>	10
Suspected (historical evidence) .....	<ul style="list-style-type: none"> <li>There is historical evidence indicating that UXO or DMM may be present at the MRS.</li> </ul>	5
Subsurface, physical constraint .....	<ul style="list-style-type: none"> <li>There is physical or historical evidence indicating the UXO or DMM may be present in the subsurface, but there is a physical constraint (e.g., pavement, water depth over 120 feet) preventing direct access to the UXO or DMM.</li> </ul>	2
Small arms (regardless of location) .....	<ul style="list-style-type: none"> <li>The presence of small arms ammunitions is confirmed or suspected, regardless of other factors such as geological stability. There must be evidence that no other types of munitions (e.g., grenades) were used or are present at the MRS to include it in this category.</li> </ul>	1
Evidence of no munitions .....	<ul style="list-style-type: none"> <li>Following investigation of the MRS, there is physical evidence there are no UXO or DMM present or there is historical evidence indicating that no UXO or DMM are present.</li> </ul>	0

**Notes:**

- Historical evidence means that the investigation: (1) Found written documents or records, or (2) documented interviews of persons with knowledge of site conditions, or (3) found and verified other forms of information.
- Physical evidence means: (1) Recorded observations from on-site investigations, such as finding intact UXO or DMM, or components, fragments, or other pieces of military munitions, or (2) the results of field or laboratory sampling and analysis procedures, or (3) the results of geophysical investigations.
- In the subsurface means the munition (i.e., a DMM or UXO) is (1) entirely beneath the ground surface, or (2) fully submerged in a water body.
- On the surface means the munition (i.e., a DMM or UXO) is: (1) entirely or partially exposed above the ground surface, or (2) entirely or partially exposed above the surface of a water body (e.g., as a result of tidal activity).
- The term small arms ammunition means solid projectile ammunition that is .50 caliber or smaller and shotgun shells.

The *Ease of Access* data element focuses on the means for a receptor to encounter a munition based on the extent of controls preventing access or entry to the MRS. Both natural obstacles (e.g., dense vegetation, rugged terrain, water) and man-made controls (e.g.,

fencing) are considered in this analysis. DoD initially deliberated over numerous data elements and associated definitions to best capture these conditions. DoD found the conditions within this data element difficult to capture, especially for large MRS that have not been fully

characterized and have varying conditions across the MRS (e.g., short grass and dense swamp).

The classifications, the definition for each classification, and associated numerical scores for the *Ease of Access* element are presented in Table 4.

TABLE 4.—CLASSIFICATIONS WITHIN THE EHE EASE OF ACCESS DATA ELEMENT

Classification	Description	Score
No barrier .....	<ul style="list-style-type: none"> <li>There is no barrier preventing access to all parts of the MRS (i.e., all parts of the MRS are accessible).</li> </ul>	10
Barrier to MRS access is incomplete .....	<ul style="list-style-type: none"> <li>There is a barrier preventing access to parts of the MRS but not the entire MRS ...</li> </ul>	8
Barrier to MRS access is complete but not monitored.	<ul style="list-style-type: none"> <li>There is a barrier preventing access to all parts of the MRS, but there is no surveillance (e.g., by a guard) to ensure that the barrier is effectively preventing access to all parts of the MRS.</li> </ul>	5

TABLE 4.—CLASSIFICATIONS WITHIN THE EHE EASE OF ACCESS DATA ELEMENT—Continued

Classification	Description	Score
Barrier to MRS access is complete and monitored.	<ul style="list-style-type: none"> <li>There is a barrier preventing access to all parts of the MRS, and there is active, continual surveillance (e.g., by a guard, video monitoring) to ensure that the barrier is effectively preventing access to all parts of the MRS.</li> </ul>	0

**Notes:** Barrier means a natural obstacle or obstacles (e.g., difficult terrain, dense vegetation, deep or fast moving water), a man-made obstacle or obstacles (e.g., fencing), or a combination of natural and man-made obstacles.

The last data element in the *Accessibility* factor is *Status of Property*. Its purpose is to differentiate between MRS that DoD controls and MRS that DoD does not control. Based on input received during the development of the Protocol, DoD revised the definition of Non-DoD control to specifically include all Indian lands (i.e., trust lands,

allotments, and Alaska Native Claims Settlement Act (ANCSA)-conveyed property). DoD also included property transferring from DoD control within 3 years in this data element to address those MRS that may be currently controlled by DoD but are planned for transfer to non-DoD entities in the near future. There are three property

classifications, *DoD control*, *Scheduled for transfer from DoD control*, and *Non-DoD control*.

The classifications, the definition for each classification, and associated numerical values for the *Status of Property* data element are presented in Table 5.

TABLE 5.—CLASSIFICATIONS WITHIN THE EHE STATUS OF PROPERTY DATA ELEMENT

Classification	Description	Score
Non-DoD control .....	<ul style="list-style-type: none"> <li>The MRS is at a location that is no longer owned by, leased to, or otherwise possessed or used by the DoD. Examples are privately owned land or water bodies; land or water bodies owned or controlled by American Indian or Alaskan Native Tribes, or State or local governments; and lands or water bodies managed by other Federal agencies.</li> </ul>	5
Scheduled for transfer from DoD control ...	<ul style="list-style-type: none"> <li>The MRS is on land or is a water body that is owned, leased, or otherwise possessed by DoD, and DoD plans to transfer that land or water body to the control of another entity (e.g., a State, American Indian, Alaskan Native, or local government; a private party; or another Federal agency) within 3 years from the date the Protocol is applied.</li> </ul>	3
DoD control .....	<ul style="list-style-type: none"> <li>The MRS is on land or is a water body that is owned, leased, or otherwise possessed by the DoD. With respect to property that is leased or otherwise possessed, DoD must control access to the MRS 24-hours per day, every day of the calendar year.</li> </ul>	0

(3) Receptor Factor

The *Receptor* factor focuses on the human and ecological populations that may be impacted by the presence of UXO or DMM. Its four data elements constitute 20 percent of the numerical score of the EHE module.

The *Population Density* data element is used to assess the number of persons that could potentially access the MRS and potentially be at risk from any known or suspected UXO or DMM present. Using U.S. Census Bureau statistics, *Population Density* is based on the number of people per square mile in the county in which the MRS is located. If the MRS is located in more

than one county, DoD will use the largest population value among the counties. DoD selected county population density for this data element because city population information was not consistently available for all MRS, especially those in rural or remote locations. If the MRS is within or borders on city limits, the population density of the city should be used instead of the county population density. During consultation with States, Tribes, and other Federal agencies, some agencies expressed a desire to use alternate and other readily available data (e.g., daily visitor counts to national recreational areas) in place

of census data. DoD considered this approach but, for consistency in the Protocol's application, determined that such site-specific data would best be addressed through implementation guidance or possibly considered as "risk plus" or "other" factors when determining the sequencing for MRS. DoD also initially considered differentiating between on-site and off-site populations but found such an approach unworkable.

The classifications, the definition for each classification, and associated numerical scores for the *Population Density* data element are presented in Table 6.

TABLE 6.—CLASSIFICATIONS WITHIN THE EHE POPULATION DENSITY DATA ELEMENT

Classification	Description	Score
> 500 persons per square mile .....	<ul style="list-style-type: none"> <li>There are more than 500 persons per square mile in the county in which the MRS is located, based on U.S. Census Bureau data.</li> </ul>	5
100–500 persons per square mile .....	<ul style="list-style-type: none"> <li>There are 100 to 500 persons per square mile in the county in which the MRS is located, based on U.S. Census Bureau data.</li> </ul>	3
< 100 persons per square mile .....	<ul style="list-style-type: none"> <li>There are fewer than 100 persons per square mile in the county in which the MRS is located, based on U.S. Census Bureau data.</li> </ul>	1

**Notes:** If an MRS is in more than one county, the DoD Component will use the largest population value among the counties. If the MRS is within or borders a city or town, the population density for the city or town instead of the county population density is used.

The *Population Near Hazard* data element is estimated based on the number of inhabited structures<sup>2</sup> on the MRS and within a 2-mile distance, extending out from the boundary of the MRS. Although this data element is

defined based on the number of inhabited structures, DoD's focus is on the potential for people to be present in the structures, not on the structures themselves.

The classifications, the definition for each classification, and associated numerical scores for the *Population Near Hazard* data element are presented in Table 7.

TABLE 7.—CLASSIFICATIONS WITHIN THE EHE POPULATION NEAR HAZARD DATA ELEMENT

Classification	Description	Score
26 or more structures .....	<ul style="list-style-type: none"> <li>• There are 26 or more inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.</li> </ul>	5
16 to 25 .....	<ul style="list-style-type: none"> <li>• There are 16–25 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.</li> </ul>	4
11 to 15 .....	<ul style="list-style-type: none"> <li>• There are 11–15 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.</li> </ul>	3
6 to 10 .....	<ul style="list-style-type: none"> <li>• There are 6–10 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.</li> </ul>	2
1 to 5 .....	<ul style="list-style-type: none"> <li>• There are 1–5 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.</li> </ul>	1
0 .....	<ul style="list-style-type: none"> <li>• There are no inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.</li> </ul>	0

**Notes:** The term inhabited structures means permanent or temporary structures, other than DoD munitions-related structures, that are routinely occupied by one or more persons for any portion of a day.

The *Types of Activities/Structures* data element is used to assess the nature of the population near the hazard. Through this element, DoD strives to address multiple factors, including the amount, type, and intrusiveness of activities that may result in an encounter with UXO or DMM and the

likelihood of people to congregate on-site and within a 2-mile radius of the MRS. Residential and recreational areas are weighted highest to reflect the greater number and types of activities and population that may be in their vicinity. In response to Tribal comments, DoD also included

subsistence issues in the highest classification.

The classifications, the definition for each classification, and associated numerical scores for the *Types of Activities/Structures* data element are presented in Table 8.

TABLE 8.—CLASSIFICATIONS WITHIN THE EHE TYPES OF ACTIVITIES/STRUCTURES DATA ELEMENT

Classification	Description	Score
Residential, educational, commercial, or subsistence.	<ul style="list-style-type: none"> <li>• Activities are conducted or inhabited structures are located up to 2 miles from the MRS's boundary or, within the MRS's boundary that are associated with any of the following purposes: residential, educational, child care, critical assets (e.g., hospitals, fire and rescue, police stations, dams), hotels, commercial, shopping centers, play grounds, community gathering areas, religious sites, or sites used for subsistence hunting, fishing, and gathering.</li> </ul>	5
Parks and recreational areas .....	<ul style="list-style-type: none"> <li>• Activities are conducted or inhabited structures are located up to 2 miles from the MRS's boundary or within the MRS's boundary that are associated with parks, nature preserves or other recreational uses.</li> </ul>	4
Agricultural, forestry .....	<ul style="list-style-type: none"> <li>• Activities are conducted or inhabited structures are located up to 2 miles from the MRS's boundary or within the MRS's boundary that are associated with agriculture or forestry.</li> </ul>	3
Industrial or warehousing .....	<ul style="list-style-type: none"> <li>• Activities are conducted or inhabited structures are located up to 2 miles from the MRS's boundary or within the MRS's boundary that are associated with industrial activities or warehousing.</li> </ul>	2
No known or recurring activities .....	<ul style="list-style-type: none"> <li>• There are no known or recurring activities occurring up to 2 miles from the MRS's boundary or within the MRS's boundary.</li> </ul>	1

**Notes:**  
 • The term *inhabited structures* means permanent or temporary structures, other than DoD munitions-related structures, are routinely occupied by one or more persons for any portion of a day.

Through the *Ecological and/or Cultural Resources* data element, DoD recognizes the importance of ecological and cultural resources present on an MRS. This data element considers threatened and endangered species,

critical habitat, sensitive ecosystems, natural resources, historical sites, historic properties, cultural items, archaeological resources, and American Indian and Alaska Native sacred sites. Requirements for determining if a

particular feature is a cultural resource are found in the National Historic Preservation Act, Native American Graves Protection and Repatriation Act, Archaeological Resources Protection Act, Executive Order 13007, and the

<sup>2</sup> Under the DoD Explosives Safety Standards, inhabited structures are considered as structures, including schools, churches, residences, aircraft

passenger terminals, stores, shops, factories, hospitals, and theaters, other than DoD munitions-related structures, routinely occupied for any

portion of the day, both within and outside of DoD facilities. Occupied temporary structures are also included.

American Indian Religious Freedom Act. The greatest weight is awarded to

MRS with both cultural and ecological resources.  
The classifications, the definition for each classification, and associated

numerical scores for the *Ecological and/or Cultural Resources* data element are presented in Table 9.

TABLE 9.—CLASSIFICATIONS WITHIN THE EHE ECOLOGICAL AND/OR CULTURAL RESOURCES DATA ELEMENT

Classification	Description	Score
Ecological and cultural resources present	• There are both ecological and cultural resources present on the MRS .....	5
Ecological resources present .....	• There are ecological resources present on the MRS .....	3
Cultural resources present .....	• There are cultural resources present on the MRS .....	3
No ecological or cultural resources present.	• There are no ecological resources or cultural resources present on the MRS .....	0

**Notes:**

• Ecological resources means that: (1) A threatened or endangered species (designated under the Endangered Species Act (ESA)) is present on the MRS; or (2) the MRS id designated under the ESA as critical habitat for a threatened or endangered species; or (3) there are identified sensitive ecosystems such as wetlands or breeding grounds present on the MRS.

• Cultural resources means there are recognized cultural, traditional, spiritual, religious, or historical features (e.g., structures, artifacts, symbolism) on the MRS. For example, American Indians or Alaska Natives deem the MRS to be of religious significance or there are areas that are used by American Indians or Alaska Natives for subsistence activities (e.g., hunting, fishing). Requirements for determining if a particular feature is a cultural resource are found in the National Historic Preservation Act, Native American Graves Protection and Repatriation Act, Archaeological Resources Protection Act, Executive Order 13007, and the American Indian Religious Freedom Act.

(4) EHE Module Rating

As described earlier in discussion of the EHE module, each data element provides a numeric value that

contributes to the EHE module score. The sum of the nine data elements is the EHE module score.  
There are seven EHE module ratings derived from the EHE module scores, as

illustrated in Table 10, plus three alternatives to account for the explosive hazard potential at an MRS.

TABLE 10.—DETERMINING THE EHE RATING FROM THE EHE MODULE SCORE

Overall EHE Module Score	EHE Rating
The MRS has an overall EHE module score from 92 to 100 .....	EHE Rating A
The MRS has an overall EHE module score from 82 to 91 .....	EHE Rating B
The MRS has an overall EHE module score from 71 to 81 .....	EHE Rating C
The MRS has an overall EHE module score from 60 to 70 .....	EHE Rating D
The MRS has an overall EHE module score from 48 to 59 .....	EHE Rating E
The MRS has an overall EHE module score from 38 to 47 .....	EHE Rating F
The MRS has an overall EHE module score less than 38 .....	EHE Rating G

In addition, there are three other possible outcomes:

• *Evaluation pending.* This category is used when UXO or DMM are believed or known to be present at an MRS, but sufficient information is not available to conduct the evaluation.

• *No longer required.* Within the EHE module, this category is reserved for MRS that no longer require evaluation for an explosives hazard potential because DoD has conducted a response, all response objectives set out in the decision document for the MRS have been achieved, and no further action, except for long-term management and recurring reviews, is required.

• *No known or suspected explosive hazard.* This category is reserved for MRS that do not require evaluation under the EHE module because no potential explosive hazard was identified.

*B. The Chemical Warfare Materiel Hazard Evaluation (CHE) Module*

The second hazard evaluation module comprising an MRS priority is

evaluation of the chemical hazards associated with the physiological effects of chemical warfare materiel (CWM). The CHE module is used only when CWM are known or suspected of being present at an MRS.

CWM is a general term that is comprised of four subcategories:

• *CWM, explosively configured* are all munitions that contain a CWA fill and any explosive component. Examples are M55 rockets with CWA, the M23 VX mine, and the M360 105-millimeter GB artillery cartridge.

• *CWM, nonexplosively configured* are all munitions that contain a CWA but that do not include any energetic material. Examples are any chemical munition that does not contain explosive components (e.g., a burster, fuze), and VX or mustard agent spray canisters.

• *CWM, bulk container* are all non-munitions-configured containers of CWA (e.g., ton containers).

• *Chemical agent identification sets (CAIS)* are military training aids containing small quantities of various

CWA and other chemicals. All forms of CAIS are scored the same in this Protocol, except CAIS K941, toxic gas set M-1; and K942, toxic gas set M-2/E11, which are scored higher due to the relatively large quantities of agent they contain.

The CWA contained in each of the subcategories of CWM are chemicals chosen for military applications, and are intended to kill, seriously injure, or incapacitate a person through physiological effects. CWA is comprised of V- and G-series nerve agents, H-series (i.e., “mustard” agents) and L (i.e., lewisite) blister agents, and certain industrial chemicals used by the military as weapons, including phosgene, hydrogen cyanide (AC), cyanogen chloride (CK), or carbonyl dichloride (called phosgene or CG). CWA does not include riot control agents (e.g., w-chloroacetophenone (CN) and o-chlorobenzylidene malononitrile (CS) tear gas), chemical herbicides, smoke or incendiary compounds, and

industrial chemicals that are not configured as military munitions.

Some CWM will be UXO (e.g., a fired Stoke's mortar round that contains a phosgene fill); some will be DMM (e.g., a discarded munition containing a chemical fill, or CAIS that were buried as a means of disposal).

This module is not used to evaluate environmental media and debris containing chemical warfare agents (i.e., CWA-media and CWA-debris), as they are evaluated using the Relative Risk Site Evaluation module.

Under the CHE module, nine data elements of MRS information comprising three areas are evaluated: *CWM Hazard*, *Accessibility*, and *Receptors*. The CWM Hazard factor is structured to evaluate the unique characteristics of CWM. The data elements in the *Accessibility* factor and

*Receptor* factor are identical with those in the EHE module.

(1) CWM Hazard Factor

The *CWM Hazard* factor is comprised of two data elements, *CWM Configuration* and *Sources of CWM*, and constitutes 40 percent of the CHE module score. The *CWM Hazard* factor is similar to the *Explosive Hazard* factor of the EHE module, but has been modified to address the unique characteristics of CWM.

The *CWM Configuration* data element estimates the potential hazard based on the amount of CWA that may be contained in the munition, its likelihood to be dispersed, and the condition of the munition. Similar to the *Munitions Type* data element in the EHE module, DoD has also included an "evidence of no CWM" classification, which can only be used if, after investigation, there is physical or

historical evidence that indicates there is no CWM present. The definition for "evidence of no CWM" is important as it requires DoD to investigate all MRS for the presence of CWM. Further, DoD's adoption of the criteria for physical and historical evidence serves as an affirmation that the DoD Components will collect information upon which to base decisions. This approach to physical or historical evidence is intended to preclude decisions based on the logic that " \* \* \* there is no physical/historical evidence of \* \* \*" where the phrase could mean that there is an absence of information on what physical or historical evidence is available.

The classifications, the definition for each classification, and associated numerical scores for the *CWM Configuration* data element are presented in Table 11.

TABLE 11.—CLASSIFICATIONS WITHIN THE CHE CWM CONFIGURATION DATA ELEMENT

Classification	Description	Score
CWM, explosive configuration, either UXO or damaged DMM.	The CWM known or suspected of being present at the MRS is: ..... • Explosively configured CWM that are UXO (i.e., CWM/UXO). • Explosively configured CWM that are DMM that have been damaged (CWM/DMM)	30
CWM mixed with UXO .....	• The CWM known or suspected of being present at the MRS are CWM/DMM that are co-mingled with conventional munitions that are UXO.	25
CWM, explosive configuration that are DMM (unused).	• The CWM known or suspected of being present at the MRS are explosively configured CWM/DMM that have not been damaged.	20
CWM, not-explosively configured or CWM, bulk container.	The CWM known or suspected of being present at the MRS is: ..... • Non-explosively configured CWM/DMM • Bulk CWM/DMM (e.g., ton container)	15
CAIS K941 and CAIS K942 .....	• The CWM/DMM known or suspected of being present at the MRS is CAIS K941-toxic gas set M-1 or CAIS K942-toxic gas set M-2/E11.	12
CAIS (chemical agent identification sets) ..	• The CWM known or suspected of being present at the MRS are only CAIS/DMM. The CAIS present cannot include CAIS K941, toxic gas set M-1; and K942, toxic gas set M-2/E11 for the MRS to be assigned this rating.	10
Evidence of no CWM .....	• Following investigation, the physical evidence indicates that CWM are not present at the MRS, or the historical evidence indicates that CWM are not present at the MRS.	0

**Notes:**

- The notation CWM/DMM means CWM that are DMM.
- The term CWM /UXO means CWM that are UXO.
- Historical evidence means that the investigation: (1) Found written documents or records, or (2) documented interviews of persons with knowledge of site conditions, or (3) found and verified other forms of information.
- Physical evidence means: (1) Recorded observations from on-site investigations, such as finding intact UXO or DMM, or components, fragments, or other pieces of military munitions, or (2) the results of field or laboratory sampling and analysis procedures, or (3) the results of geo-physical investigations.

The *Sources of CWM* data element addresses the type of activities that were conducted at the MRS and how and to what extent CWM were used or may be present. The source expected to pose the greatest hazard is a range that supported live-fire testing or training using explosively configured CWM. MRS

where chemical munitions were only stored or transferred during transport pose the least hazard. As with the *CWM Configuration* data element, DoD has provided an "evidence of no CWM" classification for the *Sources of CWM* data element.

The classifications, the definition for each classification, and associated numerical scores for the *Sources of CWM* data element are presented in Table 12.

TABLE 12.—CLASSIFICATIONS WITHIN THE CHE SOURCES OF CWM DATA ELEMENT

Classification	Description	Score
Live-fire involving CWM .....	<ul style="list-style-type: none"> <li>The MRS is a range that supported live-fire of explosively configured CWM, and the CWM/UXO are known or suspected of being present on the surface or in the subsurface</li> <li>The MRS is a range that supported live-fire with conventional munitions, and CWM/DMM are on the surface or in the subsurface co-mingled with conventional munitions that are UXO</li> </ul>	10
Damaged CWM/DMM or CAIS/DMM, surface or subsurface.	<ul style="list-style-type: none"> <li>There are damaged CWM/DMM on the surface or in the subsurface at the MRS</li> </ul>	10
Undamaged CWM/DMM or CAIS/DMM, surface.	<ul style="list-style-type: none"> <li>There are undamaged CWM/DMM on the surface at the MRS</li> </ul>	10
Undamaged CWM/DMM, or CAIS/DMM, subsurface.	<ul style="list-style-type: none"> <li>There are undamaged CWM/DMM in the subsurface at the MRS</li> </ul>	5
Production facilities of CWM or CAIS .....	<ul style="list-style-type: none"> <li>The MRS is a facility that engaged in production of CWM, and there are CWM/DMM suspected of being present on the surface or in the subsurface</li> </ul>	3
Research, Development, Testing, and Evaluation (RDT&E) facility using CWM or CAIS.	<ul style="list-style-type: none"> <li>The MRS is at a facility that was involved in non-live fire RDT&amp;E activities (including static testing) involving CWM, and there are CWM/DMM suspected of being present on the surface or in the subsurface</li> </ul>	3
Training facility using CWM or CAIS .....	<ul style="list-style-type: none"> <li>The MRS is a location that was involved in training activities involving CWM and/or CAIS (e.g., training in recognition of CWA, decontamination training), and CWM/DMM are suspected of being present on the surface or in the subsurface</li> </ul>	2
Storage or transfer points of CWM .....	<ul style="list-style-type: none"> <li>The MRS is a former storage facility or transfer point (e.g., inter-modal transfer) for CWM</li> </ul>	1
Evidence of no CWM .....	<ul style="list-style-type: none"> <li>Following investigation, the physical evidence indicates that CWM are not present at the MRS, or the historical evidence indicates that CWM are not present at the MRS</li> </ul>	0

**Notes:**

- The notation CWM/DMM means CWM that are DMM.
- The term CWM /UXO means CWM that are UXO.
- Historical evidence means that the investigation: (1) Found written documents or records, or (2) documented interviews of persons with knowledge of site conditions, or (3) found and verified other forms of information.
- Physical evidence means: (1) Recorded observations from on-site investigations, such as finding intact UXO or DMM, or components, fragments, or other pieces of military munitions, or (2) the results of field or laboratory sampling and analysis procedures, or (3) the results of geophysical investigations.
- In the subsurface means the CWM (e.g., a DMM or UXO) is: (1) Entirely beneath the ground surface, or (2) fully submerged in a water body.
- On the surface means the CWM (i.e., a DMM or UXO) is: (1) Entirely or partially exposed above the ground surface, or (2) entirely or partially exposed above the surface of a water body (e.g., as a result of tidal activity).

(2) Accessibility Factor

The *Accessibility* factor of the CHE module focuses on the potential for receptors to encounter the CWM known or suspected to be present on a MRS. This factor consists of three elements that constitute 40 percent of the CHE module numerical score.

The data element *Information on the Location of CWM* is an evaluation of the following three conditions that were combined into one data element to best

represent the potential for encountering CWM:

- The confirmed or suspected presence of CWM based on physical evidence (e.g., presence or absence of munitions fragments, firing records, anecdotal information)
- The likelihood for direct contact with CWM based on its proximity to the surface
- The potential for the CWM to reach the surface due to dynamic site conditions (e.g., erosion).

This data element attempts to differentiate MRS where a true hazard is present opposed to the numerous MRS where only CWM fragments remain or where CWM were only transferred or stored. It also differentiates between “known” versus “suspected” evidence.

The classifications, the definition for each classification, and associated numerical scores for the Information on the Location of CWM element are presented in Table 13.

TABLE 13.—CLASSIFICATIONS WITHIN THE CHE INFORMATION ON THE LOCATION OF CWM DATA ELEMENT

Classification	Description	Score
Confirmed surface .....	<ul style="list-style-type: none"> <li>Physical evidence indicates there are CWM on the surface of the MRS .....</li> <li>Historical evidence (e.g., a confirmed incident report or accident report) indicates there are CWM on the surface of the MRS.</li> </ul>	25
Confirmed subsurface, active .....	<ul style="list-style-type: none"> <li>Physical evidence indicates the presence of CWM in the subsurface of the MRS and the geological conditions at the MRS are likely to cause CWM to be exposed in the future by naturally occurring phenomena (e.g., drought, flooding, erosion, frost, heat heave, tidal action), or there are on-going intrusive activities (e.g., plowing, construction) at the MRS that are likely to expose CWM.</li> <li>Historical evidence indicates that CWM are located in the subsurface of the MRS and the geological conditions at the MRS are likely to cause CWM to be exposed in the future by naturally occurring phenomena (e.g., drought, flooding, erosion, frost, heat heave, tidal action), or there are on-going intrusive activities (e.g., plowing, construction, dredging) at the MRS that are likely to cause CWM.</li> </ul>	20

TABLE 13.—CLASSIFICATIONS WITHIN THE CHE INFORMATION ON THE LOCATION OF CWM DATA ELEMENT—Continued

Classification	Description	Score
Confirmed subsurface, stable .....	<ul style="list-style-type: none"> <li>Physical evidence indicates the presence of CWM in the subsurface of the MRS and the geological conditions at the MRS are not likely to cause CWM to be exposed in the future by naturally occurring phenomena, or there are no intrusive activities occurring at the MRS that are likely to either occur, or if the activities do occur, are likely to cause CWM to be exposed..</li> <li>Historical evidence indicates that CWM are located in the subsurface of the MRS and the geological conditions at the MRS are not likely to cause CWM to be exposed in the future by naturally occurring phenomena, or there are no intrusive activities occurring at the MRS that are likely to either occur, or if the activities do occur, are likely to cause CWM to be exposed.</li> </ul>	15
Suspected (physical evidence) .....	<ul style="list-style-type: none"> <li>There is physical evidence other than the documented presence of CWM, indicating that CWM may be present at the MRS.</li> </ul>	10
Suspected (historical evidence) .....	<ul style="list-style-type: none"> <li>There is historical evidence indicating that CWM may be present at the MRS .....</li> </ul>	10
Subsurface, physical constraint .....	<ul style="list-style-type: none"> <li>There is physical or historical evidence indicating the CWM may be present in the subsurface, but there is a physical constraint (e.g., pavement, water depth over 120 feet) preventing direct access to the CWM.</li> </ul>	2
Evidence of no CWM .....	<ul style="list-style-type: none"> <li>Following investigation of the MRS, there is physical evidence there is no CWM present, or there is historical evidence indicating that no CWM are present.</li> </ul>	0

**Notes:**

- *Historical evidence* means that the investigation: (1) found written documents or records, or (2) documented interviews of persons with knowledge of site conditions, or (3) found and verified other forms of information.
- *Physical evidence* means: (1) Recorded observations from on-site investigations, such as finding intact UXO or DMM, or components, fragments, or other pieces of military munitions, or (2) the results of field or laboratory sampling and analysis procedures, or (3) the results of geophysical investigations.
- *In the subsurface* means the munition (i.e., a DMM or UXO) is (1) entirely beneath the ground surface, or (2) fully submerged in a water body.
- *On the surface* means the CWM (e.g., a DMM or UXO) is (1) entirely or partially exposed above the ground surface, or (2) entirely or partially exposed above the surface of a water body (e.g., as a result of tidal activity).
- The term *small arms ammunition* means solid projectile ammunition that is .50 caliber or smaller and shotgun shells.

The Ease of Access data element focuses on the means for an encounter with CWM based on the extent of controls preventing access or entry to the MRS. Both natural obstacles (e.g., dense vegetation, rugged terrain, water) and man-made controls (e.g., fencing)

are considered in this analysis. DoD deliberated over numerous data elements and associated definitions to best capture these conditions. DoD found the conditions within this data element difficult to capture, especially for large MRS that have not been

characterized and had varying conditions across the MRS (e.g., short grass and dense swamp).

The classifications, the definition for each classification, and associated numerical scores for the Ease of Access data element are presented in Table 14.

TABLE 14.—CLASSIFICATIONS WITHIN THE CHE EASE OF ACCESS DATA ELEMENT

Classification	Description	Score
No barrier .....	<ul style="list-style-type: none"> <li>There is no barrier preventing access to all parts of the MRS (i.e., all parts of the MRS are accessible).</li> </ul>	10
Barrier to MRS access is incomplete .....	<ul style="list-style-type: none"> <li>There is a barrier preventing access to parts of the MRS but not the entire MRS ...</li> </ul>	8
Barrier to MRS access is complete but not monitored.	<ul style="list-style-type: none"> <li>There is a barrier preventing access to all parts of the MRS, but there is no surveillance (e.g., by a guard) to ensure that the barrier is effectively preventing access to all parts of the MRS.</li> </ul>	5
Barrier to MRS access is complete and monitored.	<ul style="list-style-type: none"> <li>There is a barrier preventing access to all parts of the MRS, and there is active continual surveillance (e.g., by a guard, video monitoring) to ensure that the barrier is effectively preventing access to all parts of the MRS.</li> </ul>	0

**Notes:** Barrier means a natural obstacle or obstacles (e.g., difficult terrain, dense vegetation, deep or fast moving water), a man-made obstacle or obstacles (e.g., fencing), or a combination of natural and man-made obstacles.

The last data element in the *Accessibility* factor is *Status of Property*. Its purpose is to differentiate between MRS that DoD controls and MRS that DoD does not control. Based on comments received during the consultation with the Tribes, DoD revised the definition of Non-DoD control to specifically include all Indian

lands (i.e., trust lands, allotments, and Alaska Native Claims Settlement Act (ANCSA)-conveyed property). DoD also included property transferring from DoD control within 3 years in this data element to address those MRS that may be currently controlled by DoD but are planned for transfer to non-DoD entities in the near future. There are three

classifications, *DoD control*, *Scheduled for transfer from DoD control*, and *Non-DoD control*.

The classifications, the definition for each classification, and associated numerical scores for the Status of Property data element are presented in Table 15.

TABLE 15.—CLASSIFICATIONS WITHIN THE CHE STATUS OF PROPERTY DATA ELEMENT

Classification	Description	Score
Non-DoD control .....	<ul style="list-style-type: none"> <li>The MRS is at a location that is no longer owned by, leased to, or otherwise possessed or used by the DoD. Examples are privately owned land or water bodies; land or water bodies owned or controlled by American Indian or Alaskan Native Tribes, or State or local governments; and lands or water bodies managed by other Federal agencies.</li> </ul>	5
Scheduled for transfer from DoD control ...	<ul style="list-style-type: none"> <li>The MRS is on land or is a water body that is owned, leased, or otherwise possessed by control DoD, and DoD plans to transfer that land or water body to control of another entity (e.g., a State, American Indian, Alaskan Native, or local government; a private party; another Federal agency) within 3 years from the date the Protocol is applied.</li> </ul>	3
DoD control .....	<ul style="list-style-type: none"> <li>The MRS is on land or is a water body that is owned, leased, or otherwise possessed by the DoD. With respect to property that is leased or otherwise possessed, DoD controls access to the property 24-hours per day, every day of the calendar year.</li> </ul>	0

(3) Receptor Factor

The Receptor factor focuses on the human and ecological populations that may be impacted by the presence of CWM. Its four data elements constitute 20 percent of numerical score of the CHE module.

The *Population Density* data element is used to both assess the number of persons that could potentially access the MRS and potentially be at risk from known or suspected CWM present at the MRS. Using U.S. Census Bureau data, it is based on the number of people per square mile in the county in which the MRS is located. If the MRS is located in

more than one county, DoD will use the largest population value among the counties. DoD selected county population density for this element because city population information was not consistently available for all MRS, especially those in more rural or remote locations. If the MRS is within or borders on city limits, the population density of the city should be used instead of the county population density. During consultation with States, Tribes, and other Federal agencies, some agencies expressed a desire to use alternate and other readily available data (e.g., daily visitor counts to national recreational areas) in place

of census data. DoD considered this approach but, for consistency in the Protocol's application, determined that such site-specific data would best be addressed in implementation guidance or considered as "risk plus" or "other" factors when determining the sequencing for MRS. DoD also initially considered differentiating between on-site and off-site populations but found such an approach unworkable.

The classifications, the definition for each classification, and associated numerical scores for the *Population Density* data element are presented in Table 16.

TABLE 16.—CLASSIFICATIONS WITHIN THE CHE POPULATION DENSITY DATA ELEMENT

Classification	Definition	Score
> 500 persons per square mile .....	<ul style="list-style-type: none"> <li>There are more than 500 persons per square mile in the county in which the MRS is located, based on U.S. Census Bureau data.</li> </ul>	5
100-500 persons per square mile .....	<ul style="list-style-type: none"> <li>There are 100 to 500 persons per square mile in the county in which the MRS is located, based on U.S. Census Bureau data.</li> </ul>	3
< 100 persons per square mile .....	<ul style="list-style-type: none"> <li>There are fewer than 100 persons per square mile in the county in which the MRS is located, based on U.S. Census Bureau data.</li> </ul>	1

Notes:

• If an MRS is in more that one county, the DoD Component will use the largest population value among the counties. If the MRS is within or borders a city or town, the population density for the city or town instead of the county population density is used.

The *Population Near Hazard* data element is estimated based on the number of inhabited structures<sup>3</sup> on the MRS and within a 2-mile distance extending out from the boundary of the MRS. Although this element is defined

based on the number of inhabited structures, DoD's focus is on the potential for human populations within the structures, not on the structures themselves.

The classifications, the definition for each classification, and associated numerical scores for the *Population Near Hazard* data element are presented in Table 17.

TABLE 17.—CLASSIFICATIONS WITHIN THE CHE POPULATION NEAR HAZARD DATA ELEMENT

Classification	Description	Score
26 or more structures .....	<ul style="list-style-type: none"> <li>There are 26 or more inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.</li> </ul>	5
16 to 25 .....	<ul style="list-style-type: none"> <li>There are 16 — 25 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.</li> </ul>	4

<sup>3</sup> Under the DoD Explosive Safety Standards, inhabited structures are considered as structures, including schools, churches, residences, aircraft

passenger terminals, stores, shops, factories, hospitals, and theaters, other than DoD munitions-related structures, routinely occupied for any

portion of the day, both within and outside of DoD facilities. Occupied temporary structures are also included.

TABLE 17.—CLASSIFICATIONS WITHIN THE CHE POPULATION NEAR HAZARD DATA ELEMENT—Continued

Classification	Description	Score
11 to 15 .....	<ul style="list-style-type: none"> <li>There are 11 — 15 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.</li> </ul>	3
6 to 10 .....	<ul style="list-style-type: none"> <li>There are 6 — 10 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.</li> </ul>	2
1 to 5 .....	<ul style="list-style-type: none"> <li>There are 1 —5 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.</li> </ul>	1
0 .....	<ul style="list-style-type: none"> <li>There are no inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.</li> </ul>	

**Notes:** The term inhabited structures means permanent or temporary structures, other than DoD munitions-related structures, that are routinely occupied by one or more persons for any portion of a day.

The *Types of Activities/Structures* data element is used to assess information about the population and activities near the hazard. Through this data element, DoD strives to address multiple factors, including the amount, type, the intrusiveness of activities, and the likelihood of people to congregate

onsite and within a 2-mile radius of the MRS. Consideration is made to reflect the nature of the activities that may result in an encounter with CWM. Residential and recreational areas are weighted highest to reflect the types of activities and population (e.g., children) that may be in their vicinity. In response

to Tribal comments, DoD included subsistence issues in the highest classification.

The classifications, the definition for each classification, and associated numerical scores for the *Types of Activities/Structures* element are presented in Table 18.

TABLE 18.—CLASSIFICATIONS WITHIN THE CHE TYPES OF ACTIVITIES/STRUCTURES DATA ELEMENT

Classification	Description	Score
Residential, educational, commercial, or subsistence.	<ul style="list-style-type: none"> <li>Activities are conducted or inhabited structures are located up to 2 miles from the MRS's boundary, or within the MRS's boundary that are associated with any of the following purposes; residential, educational, child care, critical assets (e.g., hospitals, fire and rescue, police stations, dams), hotels, commercial shopping centers, playgrounds, community gathering areas, religious sites or sites used for subsistence hunting, fishing, and gathering.</li> </ul>	5
Parks and recreational areas .....	<ul style="list-style-type: none"> <li>Activities are conducted or inhabited structures are located up to 2 miles from the MRS's boundary or within the MRS's boundary that area associated with parks, nature preserves or other recreational uses.</li> </ul>	4
Agricultural, forestry .....	<ul style="list-style-type: none"> <li>Activities are conducted or inhabited structures are located up to 2 miles from the MRS's boundary, within the MRS's boundary that are associated with agriculture or forestry.</li> </ul>	3
Industrial or warehousing .....	<ul style="list-style-type: none"> <li>Activities are conducted or inhabited structures are located up to 2 miles from the MRS's boundary, within the MRS's boundary that are associated with industrial activities or warehousing.</li> </ul>	2
No known or recurring activities .....	<ul style="list-style-type: none"> <li>There are no known of recurring recurring activities occurring up to 2 activities miles from the MRS's boundary or within the MRS's boundary.</li> </ul>	1

**Notes:** The term inhabited structures means permanent or temporary structures, other than DoD munitions-related structures, are routinely occupied by one or more persons for any portion of a day.

Through the *Ecological and/or Cultural Resources* data element, DoD recognizes the importance of the ecological and cultural resources present on an MRS. This data element considers threatened and endangered species, critical habitat, sensitive ecosystems, natural resources, historical sites, historic properties, cultural items, archeological resources, and American Indians or Alaska Natives spiritual sites

(e.g., the MRS is deemed by American Indian or Alaska Natives to be of spiritual significance, or there are areas that are used by American Indian and Alaska Natives for subsistence activities, such as hunting or fishing). Requirements for determining if a particular feature is a cultural resource are found in the National Historic Preservation Act, Native American Graves Protection and Repatriation Act,

Archeological Resources Protection Act, Executive Order 13007, and the American Indian Religious Freedom Act. The greatest weight is awarded to MRS with both cultural and ecological resources.

The classifications, the definition for each classification, and associated numerical scores for the *Ecological and/or Cultural Resources* data element are presented in Table 19.

TABLE 19.—CLASSIFICATIONS WITHIN THE CHE ECOLOGICAL AND/OR CULTURAL RESOURCES DATA ELEMENT

Classification	Description	Score
Ecological and cultural resources present	<ul style="list-style-type: none"> <li>There are both ecological and cultural resources present on the MRS .....</li> </ul>	5
Ecological resources present .....	<ul style="list-style-type: none"> <li>There are ecological resources present on the MRS .....</li> </ul>	3
Cultural resources present .....	<ul style="list-style-type: none"> <li>There are cultural resources present on the MRS .....</li> </ul>	3

TABLE 19.—CLASSIFICATIONS WITHIN THE CHE ECOLOGICAL AND/OR CULTURAL RESOURCES DATA ELEMENT—Continued

Classification	Description	Score
No ecological or cultural resources present.	• There are no ecological resources or cultural resources present on the MRS .....	0

**Notes:**

- Ecological resources means that: (1) A threatened or endangered species (designated under the Endangered Species Act (ESA)) is present on the MRS; or (2) the MRS is designated under the ESA as critical habitat for a threatened or endangered species; or (3) there are identified sensitive ecosystems such as wetlands or breeding grounds present on the MRS.
- Cultural resources means there are recognized cultural, spiritual, traditional, religious, or historical features (e.g., structures, artifacts, symbolism) on the MRS. For example, American Indians or Alaska Natives deem the MRS to be of spiritual significance or there are areas that are used by American Indians or Alaska Natives for subsistence activities (e.g., hunting, fishing). Requirements for determining if a particular feature is a cultural resource are found in the National Historic Preservation Act, Native American Graves Protection and Repatriation Act, Archeological Resources Protection Act, Executive Order 13007, and the American Indian Religious Freedom Act.

(4) CHE Module Rating

As described earlier in discussion of the CHE module, each data element provides a numeric value that contributes to the CHE module score. The sum of the nine data elements is the CHE module score.

There are seven CHE module ratings derived from the CHE module scores, as illustrated in Table 20, plus three alternatives to account for the chemical hazard potential at an MRS.

TABLE 20.—DETERMINING THE CHE RATING FROM THE CHE MODULE SCORE

Overall CHE module score	CHE rating
The MRS has an overall CHE module score from 92 to 100.	CHE Rating A
The MRS has an overall CHE module score from 82 to 91	CHE Rating B
The MRS has an overall CHE module score from 71 to 81	CHE Rating C
The MRS has an overall CHE module score from 60 to 70	CHE Rating D
The MRS has an overall CHE module score from 48 to 59	CHE Rating E
The MRS has an overall CHE module score from 38 to 47	CHE Rating F
The MRS has an overall CHE module score less than 38	CHE Rating G

In addition, there are three other possible outcomes:

- *Evaluation pending.* This category is used when CWM is believed or known to be present but sufficient information is not available to conduct the evaluation.
- *No longer required.* This category is reserved for MRS that no longer require an evaluation for a potential CWM hazard because DoD has conducted a response, all response objectives set out in the decision document for the MRS have been achieved, and no further

action, except for long-term management and recurring reviews, is required.

- *No known or suspected CWM Hazard.* This category is reserved for MRS that do not require evaluation under the CHE module.

**C. The Relative Risk Site Evaluation (RRSE) Hazard Module**

In 1994, the DoD Inter-Service Relative Risk Working Group, comprised of representatives from the DoD Components, developed the RRSE framework for use in prioritizing sites under the Installation Restoration program (IRP) category of the DERP. The RRSE framework addresses chronic health and environmental effects of many of the chemicals known to have been released into the environment from activities at DoD installations and FUDS. The RRSE was revised in 1997, to address questions, comments, and DoD initiatives that arose during the first twenty months of implementation.

DoD will use the RRSE module to evaluate the potential hazards posed by munitions constituents or CWA at a MRS relative to the hazard potential at other MRS. The grouping of MRS into *high, medium, or low* relative risk categories is not a substitute for a baseline risk assessment or health assessment, nor is it a means for selecting a remedy or placing MRS into a Response Complete/No Further Action category.

DoD has elected to apply the RRSE framework to evaluate the potential chronic health and environmental effects of munitions constituents at MRS because it has been successfully used at sites in the IRP. Using the same framework to evaluate IRP sites and MRS ensures consistency in the approach taken to evaluate chronic health and environmental effects of chemicals released to the environment.

In the RRSE module, MRS with releases of munitions constituents or CWA are grouped in high, medium, and low priority categories based on an

evaluation of MRS information using three factors and four media and their exposure endpoints:

- **Factors:**
  - Contaminant hazard factor (CHF)
  - Migration pathway factor (MPF)
  - Receptor factor (RF)
- **Endpoints:**
  - Groundwater, considering only a human receptor endpoint
  - Surface water, using both a human and an ecological endpoint
  - Sediments, using both a human and an ecological endpoint
  - Surface soils (*i.e.*, soils in the depth range of 0–6 inches) using a human endpoint.

Each environmental medium is evaluated using three factors that relate to the three structural components of the conceptual site model used in environmental risk assessments: source, pathway, and receptor. In the RRSE, the CHF (relationship of contaminants to comparison values) is the source term; MPF (likelihood/extent of contaminant migration) is the pathway term; and RF (likelihood of receptor exposure to contamination) is the receptor term.

Each of these three factors is rated on a scale of three values (*e.g.*, the scale for the contaminant hazard factor is *significant, moderate, or minimal*) based on up-to-date and representative MRS information. For each environmental medium, factor ratings are combined to determine the environmental medium-specific rating of *high, medium, or low*. The MRS is then placed in an overall priority category of high, medium, or low, based on the highest medium-specific rating.

(1) Contaminant Hazard Factor

The CHF is based on the ratio of the maximum concentration of a contaminant detected in an environmental medium to an established risk-based comparison value for the contaminant in that medium. The CHF is rated significant, moderate or minimal. A significant rating is given when the sum of ratios of the maximum concentration of a contaminant detected

to the comparison value is greater than 100. A moderate rating is given when the ratios are greater than 2 but less than 100. A minimal rating is assigned when

the ratios are less than 2. The framework uses available site information to evaluate three media of concern:

groundwater, surface water and sediment, and surface soils.

The calculation is shown in Figure 2.

<u>Contaminants</u>		<u>Calculation****</u>		<u>Rating</u>
Carcinogen A:	[A]*max	$\frac{[A]^*max}{Std^{**}} + \frac{[B]max}{Std^{**}} + \frac{[C]max}{Std^{***}}$	= X <sub>1</sub>	>100 = <u>Significant CHF</u> 2-100 = <u>Moderate CHF</u> <2 = <u>Minimal CHF</u>
Carcinogen B:	[B]max			
Non-carcinogen C:	[C]max			
Ecological D:	[D]max	$\frac{[D]max}{Std^{****}}$	= X <sub>2</sub>	
[A]* - Maximum concentration in medium Std** - Comparison value based on 10 <sup>-4</sup> human cancer incidence Std*** - Comparison value based on reference dose for humans Std**** - Comparison value for ecological receptors where available  ****Use comparison values in Appendix B				
Note: Contaminants posing a threat to ecological receptors (i.e., ecological contaminants) must be evaluated separately from those posing a threat to human receptors				

**Figure 2: Contaminant Hazard Factor Calculation**

The comparison values used for this evaluation are provided in the Relative Risk Site Evaluation Primer (Summer 1997, Revised Edition), which can be referenced through the World Wide Web in the publications sections at <http://www.dtic.mil/envirodod>. DoD will update these values on an as needed basis to reflect the latest information available from sources such as the Integrated Risk Information System (IRIS) maintained by the EPA or the EPA Region IX Preliminary Remediation Goals (PRGs).

#### (2) Migration Pathway Factor

The MPF represents the likelihood of transport of contaminants through groundwater, surface water and sediment, and soil. The MPF is determined by matching available site information on pathways with the corresponding definitions about the likelihood of contaminant migration. The MPF is rated evident, potential, or confined according to the following definitions about the likelihood of contaminant migration for each environmental medium:

##### (a) Groundwater

- *Evident*—Analytical data or observable evidence indicates that contamination in the groundwater is moving or has moved away from the source area.
- *Potential*—Contamination in the groundwater has moved only slightly

beyond the source (i.e., tens of feet), could move but is not moving appreciably, or information is not sufficient to make a determination of Evident or Confined.

- *Confined*—Information indicates that the potential for contaminant migration from the source via the groundwater is limited (due to geological structures or physical controls).

##### (a) Surface Water and Sediment

- *Evident*—Analytical data or observable evidence indicates that contamination in surface water and/or sediment is present at, moving toward, or has moved to a point of exposure.

- *Potential*—Contamination in surface water or sediment has moved only slightly beyond the source (i.e., tens of feet), could move but is not moving appreciably, or information is not sufficient to make a determination of Evident or Confined.

- *Confined*—Information indicates a low potential for contaminant migration from the surface water or sediment source to a potential point of exposure (could be due to presence of geological structures or physical controls).

##### (c) Soils

- *Evident*—Analytical data or observable evidence that contamination in the soil is present at, is moving toward, or has moved to a point of exposure.

- *Potential*—Contamination in the soil has moved only slightly beyond the source (i.e., tens of feet), could move but is not moving appreciably, or information is not sufficient to make a determination of Evident or Confined.

- *Confined*—Information indicates a low possibility for contamination to be present at or migrate to a point of exposure.

#### (3) Receptor Factor

Information about the present or future likelihood of receptors for each MRS is summarized as the Receptor Factor (RF). RF of identified, potential, or limited are determined by analysis of available information on receptors at MRS. Human and ecological receptors (i.e., endpoints for exposure) to be considered are as follows:

##### (a) Groundwater

Human receptors include those individuals that may be exposed to groundwater contamination via onsite and down gradient water supply wells used for human consumption or in food production. Groundwater is classified using the EPA's *Guidelines for Groundwater Classification Under the EPA Groundwater Protection Strategy*, Office of Groundwater Protection, 1986. Ecological receptors are not evaluated.

##### (b) Surface Water and Sediment

These two media are discussed together since they potentially affect the same receptors. Human receptors for

surface water and sediment share the same migration pathway and, therefore, include those individuals that may be exposed to surface water or sediment contamination through onsite and down gradient water supplies and recreational areas. Receptors include down gradient water supplies used for drinking water, irrigation of food crops, watering of livestock, aquaculture, and recreational activities such as fishing. Ecological receptors for surface water and sediment are limited to critical habitats and other similar environments that are reasonably expected to be impacted by a MRS.

(c) Surface Soil.  
Human receptors include residents, people in schools and daycare, and workers who have direct access to contamination on a frequent basis. Ecological receptors are not considered for evaluation of the surface soil since ecological standards are generally not available for the CHF calculation; however, ecological receptors may be incorporated into the soil evaluation if ecological standards become available.

(4) Calculation of the RRSE Module Rating

For each medium at a MRS, the CHF, MPF, and RF are combined to obtain the

relative risk (high, medium, or low) for that medium. The highest RRSE result for a medium determines the RRSE designation for the MRS. If there is insufficient information to complete the RRSE evaluation, the MRS is assigned a value of "evaluation pending." DoD will determine each MRS's relative priority after combining its RRSE rating with the ratings determined from the EHE and CHE modules.

The matrix for assigning the overall RRSE hazard rating is provided in Table 21.

TABLE 21.—RELATIVE RISK SITE EVALUATION MODULE HAZARD RATING

Contaminant hazard factor and receptor factor	Migration pathway		
	Evident	Potential	Confined
Significant:			
Identified .....	High .....	High .....	Medium.
Potential .....	High .....	High .....	Medium.
Limited .....	Medium .....	Medium .....	Low.
Moderate:			
Identified .....	High .....	High .....	Low.
Potential .....	High .....	Medium .....	Low.
Limited .....	Medium .....	Low .....	Low.
Minimal:			
Identified .....	High .....	Medium .....	Low.
Potential .....	Medium .....	Low .....	Low.
Limited .....	Low .....	Low .....	Low.

D. Assigning the MRS Priority—Integrating the EHE, CHE, and RRSE Module Ratings

As illustrated in Table 22, DoD proposes a MRS prioritization concept for comment that considers the results of the three hazard evaluation modules.

The concept involves comparing the individual evaluation of the EHE, CHE, and RRSE modules using Table 22. Once the appropriate ratings are selected for each hazard evaluation module, the module with the lowest numerical value (e.g., Priority 1 versus

Priority 5) determines the MRS priority. For example, if the EHE module rating for an MRS is Hazard Rating A, the CHE module rating is Hazard Rating E, and the RRSE module rating is medium, the MRS would be assigned to Priority 2, based on the EHE module rating.

TABLE 22.—MRS PRIORITY BASED ON HIGHEST HAZARD EVALUATION MODULE RATING

EHE module rating	Priority	CHE module rating	Priority	RRSE module rating	Priority		
Hazard Evaluation A (Highest) .....	2	Hazard Evaluation A (Highest) .....	1	High (highest) .....	2		
Hazard Evaluation B .....	3	Hazard Evaluation B .....	2				
Hazard Evaluation C .....	4	Hazard Evaluation C .....	3				
Hazard Evaluation D .....	5	Hazard Evaluation D .....	4				
Hazard Evaluation E .....	6	Hazard Evaluation E .....	5			Medium .....	5
Hazard Evaluation F .....	7	Hazard Evaluation F .....	6				
Hazard Evaluation G (Lowest) .....	8	Hazard Evaluation G (Lowest) .....	7				
No Longer Required .....	.....	No Longer Required .....	.....	Low .....	8		
Evaluation Pending .....	.....	Evaluation Pending .....	.....				
No Known or Suspected Explosive Hazard.	.....	No Known or Suspected CWM Hazard.	.....			.....	N/A

Each MRS will ultimately be assigned one of eight MRS priorities based on the ratings of the three hazard evaluation modules. Only MRS with a potential CWM hazard can be assigned to Priority 1, and no MRS with CWM can be assigned to Priority 8. A "prioritization

no longer required" designation is used to indicate that a MRS no longer requires prioritization. This designation is used only when all three hazard evaluation modules are rated as "no longer required" or "no known or

suspected explosive hazard" or "no known or suspected CWM hazard." As described previously, any hazard evaluation module for which there is insufficient information to complete the hazard evaluation will be placed into an "evaluation pending" rating for that

module, and the MRS priority will be assigned based on the modules (if any) for which sufficient data were available for a complete evaluation of the hazard. The Protocol will be reapplied to the MRS when data to complete evaluation of the remaining modules is obtained.

DoD Components will review each MRS priority at least annually and update the priority as necessary to reflect new information that has become available. The Protocol will be reapplied at a MRS under the following circumstances:

(1) Upon completion of a response action that could change the site conditions evaluated by the hazard evaluation modules at the MRS.

(2) To update or validate a previous module evaluation at an MRS when new information is available.

(3) To update or validate an MRS priority that was previously assigned based on evaluation of only one or two of the three hazard evaluation modules.

(4) Upon further delineation and characterization of an MRA into MRS.

(5) To categorize MRS previously classified as "evaluation pending."

DoD Components are directed to develop and maintain records on the application of the Protocol for each MRS. At a minimum, the records shall contain references to all information and documents used for the evaluation (e.g., field logs, data from preliminary assessments, site inspections, or remedial investigations/feasibility studies, risk assessments), evaluation documentation (e.g., worksheets), and database records. These records will be included in the Administrative Record for the MRS.

DoD Components will also report the MRS priority and the ratings for each hazard evaluation module to the Office of the Deputy Under Secretary of Defense (Installations & Environment) for inclusion in the DERP Annual Report to Congress.

### **IX. Schedule for Application of the Protocol and for Addressing MRS Assigned a Rating of "Evaluation Pending"**

DoD intends that the Protocol be applied to any given MRS as soon as the information required to populate any of the modules is available. Where a DoD Component has some, but not all the data to apply any of the modules, DoD believes it appropriate to establish programmatic goals and specific milestones for applying the Protocol. For example, the Formerly Used Defense Sites (FUDS) program has most of the data required for application of the EHE and CHE modules at a significant number of FUDS. This is

known because FUDS have been evaluated using the risk assessment code, one of the two interim tools DoD adopted to prioritize munitions responses. There are also a much smaller number of sites that have been evaluated using the RRSE tool, the other interim tool DoD adopted in the Management Guidance to prioritize munitions responses. DoD also realizes that it does not have any of the data required to apply the Protocol at other MRS. These MRS will be initially assigned the rating of "evaluation pending."

DoD intends to establish specific milestones for applying the Protocol that differentiate among MRS that have undergone a RAC or RRSE evaluation, MRS with a status of "evaluation pending," and MRS identified after May 31, 2003. While DoD does not intend to include such goals and milestones in the final regulation, DoD believes that input from interested parties may prove valuable in determining an appropriate time frame for application of this Protocol to the MRS in the inventory, and suggests the following goals are appropriate:

- For each MRS in the inventory as of May 31, 2003, that has not been evaluated using the RAC or RRSE tools and which is assigned a status of "evaluation pending:"

- A priority will be assigned based on an evaluation using at least one hazard evaluation module by May 31, 2007.

- A priority will be assigned based on an evaluation using all hazard evaluation modules by May 31, 2012.

- For each MRA or MRS identified after May 31, 2003:

- A priority will be assigned based on an evaluation using at least one hazard module within 2 years of identification or by May 31, 2007, whichever is later.

- A priority will be assigned based on an evaluation using all hazard modules within 4 years of identification or by May 31, 2012, whichever is later.

### **X. Protocol Testing Methodology**

In developing the Protocol, DoD conducted extensive testing of various alternative constructions. This testing helped DoD develop the numeric values for the data elements and factors, achieve consistent and repeatable results, ensure an appropriate spread of MRS across the priority outcomes, and ensure MRS were assigned appropriate outcomes based on site conditions.

#### *A. Selection of Sites*

During development of the Protocol, more than 70 MRS were tested using the Protocol. The majority of MRS selected for testing were FUDS because DoD had the most data for these MRS. Within FUDS, MRS ranging from a minimal hazard to the highest hazard were tested. In addition, DoD selected MRS known to contain multiple hazards (i.e., EHE, CHE, and/or RRSE) as a means to test the logic of the evaluation of each hazard module and the overall Protocol.

#### *B. Testing Format*

DoD tested the Protocol on numerous occasions. Testing was completed during presentations to stakeholders, during weekly internal working group meetings, and during several concentrated testing sessions with DoD personnel. Testing working groups typically consisted of a small group of DoD experts knowledgeable in munitions response and environmental restoration. The majority of testing was conducted by a core group of participants to promote consistency.

The group testing the model typically scored three to five MRS at a time, reviewing available data and documenting their findings in a worksheet developed specifically for the testing. Worksheets were developed specific to each module. Other personnel compiled the scores as the group testing the model completed each grouping of MRS. The compiled scores facilitated discussion held after every three to five MRS to give the group a chance to discuss any significant issues or problems encountered. As revisions were made to the Protocol, additional testing was performed to ensure the validity of the changes.

#### *C. Testing Conclusions*

After the final testing session, DoD performed a detailed data analysis on both the results received from hands-on testing, as well as extensive modeling analysis. Testing was completed to ensure that there was a logical spread across MRS, and that the scores themselves were logical for each MRS. Modeling was conducted as a final step to analyze the logic in the scorings and weightings. Upon completion of the analysis, the DoD work group discussed the results and made the necessary modifications.

DoD is confident that the testing conducted indicated the Protocol provides a useful tool for prioritizing MRS. The testing and the comments received from stakeholders were critical in assisting DoD with developing this proposal.

## XI. Determination of Site Sequencing

DoD believes that the sequencing of MRS for implementation of response actions should be based primarily on the relative priority assigned by the Protocol, but may also consider other factors. This approach to decision making is embodied in the current Management Guidance and grew out of the recommendations of the Federal Facilities Environmental Restoration Dialogue Committee (FFERDC). One of the main issues the Committee considered was need to set priorities due to the magnitude of the challenge of environmental restoration at Federal facilities. The Committee believed that priority setting and funding allocation must be done in a manner that stakeholders perceive fair and inclusive. The Committee developed consensus policy recommendations aimed at improving the process by which Federal facility environmental restoration decisions are made, such that these decisions reflect the priorities and concerns of all stakeholders. In the area of consideration of human health and environmental risk and other factors in Federal facility environmental restoration decision making, the Committee made the following recommendation:

Risk to human health and the environment is an important and well-established factor that should continue to be a primary consideration in Federal facility cleanup decision making, including setting environmental cleanup priorities and milestones. However:

(a) Human health and environmental risk assessments and other analytical tools used to evaluate risks to human health (including non-cancer as well as cancer health effects) and the environment all have scientific limitations and require assumptions in their development. As decision-aiding tools, risk assessments should only be used in a manner that recognizes those limitations and assumptions. Moreover, risk assessments ought not be used by any party as a basis for unilaterally setting aside legal requirements that embody public health principles and other important societal values.

(b) In addition to human health and environmental risk, other factors that warrant consideration in setting environmental cleanup priorities and milestones include:

- Cultural, social, and economic factors, including environmental justice considerations,
- Short-term and long-term ecological effects and environmental impacts in general, including damage to natural resources and lost use,
- Making land available for other uses,
- Acceptability of the action to regulators, Tribes, and public stakeholders,
- Statutory requirements and legal agreements,
- Life cycle costs,

- Pragmatic considerations, such as the ability to execute cleanup projects in a given year, and the feasibility of carrying out the activity in relation to other activities at the facility,
- Overall cost and effectiveness of a proposed activity, and
- Actual and anticipated funding availability.

The sequencing process described in this regulation builds on DoD's experience in implementing the FFERDC recommendations over the past 10 years. In addition, DoD received comments from a wide range of stakeholders supporting a decision making process that considers other factors in making sequencing decisions.

Generally, MRS that present a greater relative risk to human health, safety, or the environment will be addressed before MRS that present a lesser risk; however, in evaluating other factors as part of making sequencing decisions, DoD will consider a broad range of factors. These "risk-plus" or "other management" factors do not influence or change the prioritization results but may influence the sequence in which MRS are addressed. Specific examples of factors DoD may consider include:

- Concerns expressed by stakeholders.
- Cultural and social factors.
- Economic factors, including economic considerations pertaining to environmental justice issues, economies of scale, evaluation of total lifecycle costs, and estimated valuations of long-term liabilities.

• The reasonably anticipated future land use, especially when planning response actions, conducting evaluations of response alternatives, or establishing specific response action objectives.

- Community reuse requirements at BRAC installations.
- Implementation and execution considerations (e.g., funding availability; the availability of the necessary equipment and people to implement a particular action; examination of alternatives to responses that entail significant capital investments, a lengthy period of operation, or costly maintenance; considering alternatives to removal or treatment of contamination when existing technology cannot achieve established standards, such as maximum contaminant levels.

- The availability of technology to detect, discriminate, recover, and destroy UXO or DMM.
- Implementing standing commitments including those in formal agreements with regulatory agencies, requirements for continuation of

remedial action operations until response objectives are met, other long-term management activities, and program administration.

- Tribal trust lands, which are lands held in trust by the United States for the benefit of any Indian Tribe or individual. The United States holds the legal title to the land and the Tribe holds the beneficial interest.
- Established program goals and initiatives.
- Short-term and long-term ecological effects and environmental impacts in general, including injuries to natural resources.

DoD uses its process for developing and updating Management Action Plans (MAP) or an equivalent document as the vehicle for making sequencing decisions. Each installation or FUDS is required to develop and maintain a MAP or its equivalent. MAPs are required to be updated on at least an annual basis. Guidance on preparing and updating the MAP is provided in the *Management Guidance*. Sequencing decisions at installations and FUDS are developed with input from stakeholders, such as the regulatory and community members of an installation's RAB, and are documented in the MAP.

During the annual update of the MAP, installation or FUDS personnel will be required to publish an announcement in a local community publication notifying the public of the following:

- (1) The existence of MRS, including a brief description of each MRS addressed, the conditions, and assigned priority,
- (2) The intention to develop or update the MAP for the MRS,
- (3) The intention to apply the Protocol to each MRS,
- (4) The specific means the public or Tribes can use to submit information about each MRS that may influence the priority assigned or the funding sequence assigned, and
- (5) The name and contact information for the designated DoD spokesperson for each MRS.

Final sequencing may also be impacted by DoD Component program management considerations. If the sequencing of any MRS is changed from the sequencing reflected in the current MAP, the DoD Component will provide information to the stakeholders documenting the reasons for the sequencing change and will request their review and comment on that decision.

In addition, DoD Components will ensure that all information influencing the sequencing of an MRS is included in the Administrative Record and the Information Repository. On a

programmatic level, DoD Components will report the results of sequencing to the ODUSD (I&E).

## XII. Consultation

The provisions of 10 U.S.C. 2710 required the DoD to develop this proposed Protocol in consultation with States and Tribes. DoD has followed Congress' direction, specifically working with States, Tribes, and other interested stakeholders throughout the development process. DoD appreciates the involvement and contributions of these stakeholders in the development process. Many of the comments received were incorporated into the Protocol. Some of the actions DoD took include:

*A. Advanced Notice of Proposed Rulemaking.* On March 20, 2002, DoD published an *Advanced Notice of Proposed Rulemaking* in the **Federal Register** to inform stakeholders of DoD's efforts to develop a tool for prioritizing MRS and to request suggestions on current prioritizing methods in use and factors to consider in developing the Protocol. DoD has reviewed all comments received and has considered them in its development of the Protocol.

*B. DENIX Web site.* Beginning in March 2002, DoD established a Website specific to the Protocol development effort on the Defense Environmental Network & Information eXchange. DoD provided information on the Protocol regarding background and status of development efforts as well as an opportunity for stakeholders to submit comments electronically.

*C. Consultation with other Federal Agencies.* In December 2002 and February 2003, ODUSD (I&E) personnel met with representatives from the U.S. Department of Agriculture, U.S. Department of Interior, and EPA to discuss their concerns and comments on the Protocol.

### *D. Consultation With States*

(1) *Formal Notice for Protocol Development.* Although DoD discussed the Protocol with State representatives at meetings of various organizations, the Deputy Under Secretary of Defense (Environment) (ADUSD(E)) sent a letter to the head (*e.g.*, Secretary, Commissioner, Director) of the environmental agency for each State and U.S. territory providing notification and background on the Protocol development effort and requesting a point of contact for future correspondence. DoD received formal responses from 15 States and territories. DoD considered all submitted comments during its development of the Protocol.

(2) *State Meeting.* To facilitate State involvement in the development of the

Protocol, in November 2002 and February 2003, DoD invited representatives from the 50 States and U.S. territories to attend a meeting to discuss State concerns. Participants reviewed the Protocol and discussed their comments with representatives from the ODUSD (I&E) and DoD Components.

(3) *Munitions Response Committee.* DoD established the Munitions Response Committee (MRC) to coordinate, identify and synchronize efforts among DoD, other Federal agencies, the States, and Tribes to ensure munitions responses at locations on other than operational ranges are conducted in a manner that protects public health and the environment while allowing the military to fulfill its mission. DoD worked with the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) and National Association of Attorneys General (NAAG) to determine how best to achieve representation of State interests and concerns on the MRC. Delegates from the ASTSWMO Board of Directors and Committees served as representatives expressing potential State concerns in managing activities at MRS. DoD also engaged the National Congress of American Indians (NCAI) to participate in the MRC. DoD discussed its Protocol development efforts with the MRC at meetings held in March, May, July, and November 2002, as well as through numerous teleconferences. The July meeting was conducted in conjunction with the annual Defense and State Memorandum of Agreement Conference.

(4) *ASTSWMO.* In addition to coordination with the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) through the MRC, DoD also sought to engage ASTSWMO members directly. In October 2002 and April 2003, DoD representatives participated in ASTSWMO's annual meeting—presenting a brief update at a breakout session and individually discussing the Protocol with members.

### *E. Consultation With Tribes*

DoD is committed to working with Tribes on a government-to-government basis in recognition of their sovereignty and in a continuing effort to implement the 1998 DoD American Indian and Alaska Native Policy. In recognition of this commitment and policy and to fulfill congressional requirements, DoD consulted with Tribes throughout the development of the Protocol.

(1) *Formal Notice for Protocol Development.* In April 2002, the ADUSD(E) sent a letter to each Tribal

leader of the 586 Federally-recognized Tribes notifying them of the effort to develop the Protocol to prioritize MRS known or suspected to have UXO, DMM, or MC, inviting them to participate in the effort, and requesting of them any information regarding the presence of UXO, DMM, or MC on their lands.

(2) *National Tribal Conference on Environmental Management.* In June 2002, DoD participated in the 6th National Tribal Conference on Environmental Management. DoD representatives briefed interested conference attendees on the background and develop of the Protocol and requested comments and factors to consider in its development. DoD asked several interested Tribal members to participate in a subsequent MRC meeting.

(3) *Tribal Consultation Meetings.* In September 2002 and April 2003, DoD hosted meetings specifically for Tribes whose lands may be impacted by UXO, DMM, or MC. The meeting was intended to ensure that DoD fully considers concerns specific to Tribes in the Protocol. DoD briefed the Tribal participants on the status of the development efforts and discussed their comments and concerns.

(4) *National Congress of American Indians.* In November 2002, DoD attended the 59th Annual Session of the National Congress of American Indians. DoD briefed conference participants in a breakout session on the draft Protocol construct and requested participants to provide their comments and concerns.

(5) *Native American Lands Environmental Mitigation Program Meeting.* DoD provided materials for distribution to interested Tribal members at the annual meeting of the Native American Lands Environmental Mitigation Program in November of 2002 in Juneau, Alaska.

### *F. DoD Response to Preliminary Comments*

In developing this Protocol, DoD actively solicited ideas from interested stakeholders on the scope, structure, and specific features of a Protocol for prioritizing MRS. In addition to the **Federal Register** notice announcing development of the Protocol and requesting input from interested parties, DoD set up a Web site where parties could submit comments and ideas. DoD also actively sought ideas in numerous meetings with other Federal agencies, States, Tribes, and the public.

DoD was pleased with the response to its request for ideas, having received comments and ideas from other Federal agencies, States, Tribes, and members of

the public. The comments and ideas received were in five general areas, including:

- *Definitions.* Most of these comments and ideas submitted addressed recommendations that would provide greater clarity in the definitions.

- *Factors or Data Elements.* Most of these comments and ideas addressed the need for a specific data element that the commenter thought should be included in the Protocol. Other comments addressed the scores for each of the data elements and factors included in one of the deliberative drafts provided to stakeholders during the development process.

- *Policy.* In general, the comments and ideas in this area related to questions or recommendations related to the scope and application of the Protocol.

- *Other Protocols.* These comments and ideas focused primarily on other Protocols or tools that DoD should evaluate for their utility as a prioritization tool. Other comments addressed specific features (e.g., data elements) of other tools that the commenter thought DoD should consider in developing this Protocol.

- *Other Issues.* The comments and ideas in this area were unrelated to the development of this Protocol. Examples include comments regarding the inventory of MRS required under 10 U.S.C. 2710(a) and funding policy.

DoD carefully reviewed and considered each of the comments submitted. The value of these comments and ideas is shown by the fact that this Protocol incorporates many of the ideas provided by interested parties. DoD would like to express its gratitude to all who gave of their time and effort by submitting comments and ideas. To ensure that DoD did consider each of the comments or ideas submitted, a matrix was developed, each comment tracked, and DoD's response to the comment documented. A summary of the comments and DoD's responses can be found at [http://www.denix.mil/MMRP\\_Protocol/comments.html](http://www.denix.mil/MMRP_Protocol/comments.html).

### XIII. Notice of Proposed Rulemaking

DoD now solicits comments from the public on this Protocol. In particular, DoD seeks comment on the form and workability of the Protocol, the data elements considered in each module, the factors considered in each module, the rating system for each module, the weight afforded to each module in determining its evaluation hazard score, and the rating system for each MRS priority.

### XIV. Summary

The Protocol developed by DoD in consultation with States and Tribes is proposed for public comment for subsequent codification in the Code of Federal Regulations. DoD developed the Protocol to meet the requirements set out in the 10 U.S.C. 2710 to consider and assign relative priorities to MRS based on environmental and explosive hazards. These hazards are evaluated in three areas:

- The explosive hazards posed by any UXO or DMM present at the MRS,
- The hazards posed by any CWM present at the MRS, and
- The health and environmental hazards posed by any MC at the MRS.

The priority assigned to each MRS, as well as the ratings of each of the three hazard evaluation modules (i.e., Explosive Hazard Evaluation, Chemical Warfare Materiel Hazard Evaluation, and Relative Risk Site Evaluation) will be reported in an inventory.

### XV. Administrative Requirements

#### A. Regulatory Impact Analysis Under Executive Order 12866

Executive Order 12866, (58 FR 51735 (October 4, 1993)) requires each Agency taking regulatory action to determine whether that action is "significant." The Agency must submit any regulatory actions that qualify as "significant" to the Office of Management and Budget (OMB) for review, assess the costs and benefits anticipated as a result of the proposed action, and otherwise ensure that the action meets 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 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.

DoD has determined that today's Protocol is not a significant rule under Executive Order 12866 because it is not likely to result in a rule that will meet any of the four prerequisites.

(1) The Protocol will not 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.

The primary effect on the economy will be the necessity for State and/or local governments to conduct oversight of the environmental restoration activities. The Department of Defense has determined it would not place a burden in excess of \$100 million each year on State, local, and Tribal governments from implementing the Protocol.

In completing (in FY02) the initial inventory of MRS known or suspected to contain UXO, DMM, or MC, the DoD Components identified 2,307 MRS. The current estimate of the costs of munitions responses is in excess of \$11.5 billion, which will be expended over many years. Although this is a significant expenditure, the proposed rule will not increase or decrease response costs, it will only prioritize the response effort among sites.

In determining the total burden placed on State oversight as a result of applying the Protocol at these MRS, a number of specific oversight steps are assumed. Assumptions regarding individual steps in Protocol application and the estimated time necessary to complete each step were based on experience gained during Protocol testing as well as DoD's experience in the application of other priority-setting models, such as the *Risk Assessment Code* (RAC) applied to FUDS and BRAC installations, the *Range Rule Risk Methodology* (R3M) used to screen explosives hazards, as well as other models. In addition, DoD has developed a significant body of experience in conducting activities similar to those required in application of the Protocol during the course of its execution of the DERP. DoD estimates that State regulators, when applying the Protocol to MRS, will first perform a preliminary document review. It is assumed that this step would include reviewing the Protocol materials and guidance; reviewing existing site background documents, such as USACE Archive Search Reports or State and local property records; and preparing materials for a site inspection. DoD assumes this step to take between 2 and 8 hours. DoD then assumes State regulators would perform a non-invasive site inspection, including a site walkthrough and various interviews with personnel familiar with the site. DoD assumes an after-action report, detailing the findings and results of the site inspection, would then be written

by the State regulators. For the site inspection, interviews, and after action report, DoD estimates this step to require between 3 and 24 hours. The final step in State oversight of applying the Protocol would be for the regulators to meet with DoD personnel to discuss and apply the Protocol to MRS using the available information. DoD estimates this step would require between 3 and 8 hours. In total, between 8 and 40 hours would be required for State oversight at each site.

An average labor cost of \$24.25 per hour for oversight is assumed. To arrive at this average, DoD assumed an average yearly salary as \$50,000, with 2,060 business hours per year. For the purposes of this estimate, DoD assumes a State would use a three-person team to accomplish all requirements of overseeing the application of the Protocol within their State. To this end, DoD estimates the approximate average per MRS cost for State oversight of administering the Protocol is between \$194 and \$2,910. These low and high site estimates translate into an estimated oversight cost of between \$340,276 and \$10,208,280 for the entire munitions response site inventory. In addition, since DoD reimburses States for the costs incurred as a result of oversight through the Defense and State Memorandum of Agreement (DSMOA) program, the overall impact to a State is further reduced.

Otherwise, the Protocol will not adversely affect the economy as a whole, any particular sector of the economy, productivity, competition, or jobs since the Protocol does not establish any new spending amounts. Rather, the Protocol merely provides guidance on allocating funds among the MRS.

The Protocol does not have a direct adverse effect on the environment, public health, and safety even though certain sites will be designated as a low priority and, as a result, not see response activities begin in the near-term. Any adverse effects were either a result of the actions that caused the UXO, DMM, or MC to be present at the site (e.g., use as a range, treatment of waste military munitions, all of which pre-date the application of the Protocol) or are the result of the munitions response activities that are implemented after the application of the Protocol. In the former instance, any effects should have been evaluated as part of the decision to undertake the actions. In the latter case, munitions response activities are undertaken under CERCLA and the NCP. The evaluation of response alternatives under CERCLA and the NCP has been determined by the U.S.

Department of Justice (DOJ) to be the functional equivalent of an assessment under the National Environmental Policy Act (NEPA).

The Protocol also does not have any adverse affect on the economy, environment, public health, and/or safety programs of State, local, or Tribal governments or communities near a MRS. Again, any adverse effects were either a result of the actions that caused the UXO, DMM, or MC to be present at the site (e.g., use as a range, treatment of waste military munitions, all of which pre-date the application of the Protocol) or are the result of the munitions response activities that are implemented after the application of the Protocol. With respect to impacts occurring as a result of the munitions response at the MRS, State, local, or Tribal governments are offered the opportunity to be involved in the planning and execution of the munitions response. The DoD has estimated that the cost of engaging or overseeing munitions response activities is not significant, as that measure is defined by Executive Order 12866. Further, DoD believes that the resources expended on oversight will be returned in the form of benefits to the community through reuse of the property.

For these reasons, DoD has determined that the Protocol will not 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) The Protocol will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

Implementation of the Protocol will not create a serious inconsistency or otherwise interfere with another agency's action because DoD has lead authority for administering the DERP under 10 U.S.C. 2701(a)(1). The DERP statute delineates the responsibilities of DoD and authority of EPA to some extent. The DoD is required by 10 U.S.C. 2701(a)(3) to consult with the EPA in its administration of the environmental restoration program. Further, Section 2701(c)(2) of the statute gives DoD the responsibility of conducting environmental restoration activities on all properties owned or leased by it, except those for which EPA has entered into a settlement with a potentially responsible party. The Protocol ranking system will not interfere with the Hazard Ranking System (HRS) maintained by the EPA because each serves its own purpose. EPA uses the HRS to place uncontrolled waste sites

on the National Priorities List (NPL). EPA does not use the HRS to determine the priority in funding EPA remedial response actions. The DoD will use the Protocol to rank the risks posed by each site, relative to other sites, and may use the Protocol as a basis for determining which sites will receive funding. The DoD's use of the Protocol generally will not interfere with EPA's use of the HRS. DoD action may interfere with EPA action in a situation where EPA decides to pursue response action at a site that DoD has designated as a low priority. Where this occurs, DoD will cooperate with EPA to the extent possible and rely on existing interagency processes to reach agreement on site priorities and response actions. Based on the above reasoning, DoD has determined that there is minimal potential for inconsistencies or interference with action by any other agency.

(3) The Protocol does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

The Protocol will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof because no entitlements, grants, user fees, or loan programs are invoked through prioritization of sites for response activities.

(4) The Protocol will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Finally, the Protocol does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Regulatory Impact Analysis. Congress has already established the requirement for environmental restoration of MRS and for DoD's development of a Protocol for prioritization of MRS. The Protocol is merely a method for DoD to determine a relative priority of MRS for response action. DoD has identified no novel legal or policy issues that this Protocol will create on either a MRS-specific basis or overall. Nor has DoD identified any novel legal or policy issues arising out of the President's priorities or principles set forth in the Regulatory Impact Analysis.

#### *B. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), requires that an agency conduct a regulatory flexibility analysis when

publishing a notice of rulemaking for any proposed or final rule. The regulatory flexibility analysis determines the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to state the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

DoD hereby certifies that the Protocol will not have a significant economic impact on a substantial number of small entities. The nature of the Protocol here provides the factual basis for a determination that no regulatory flexibility analysis is required. The Protocol merely provides a procedure by which DoD may prioritize MRS for remediation. No costs are directly imposed on small entities, nor is any action directly required of small entities through this Protocol. Because DoD bears the financial responsibility for remediating MRS, and the source of its funding is Congress, implementation of the Protocol will not directly affect small entities in a financial manner. For the foregoing reasons, DoD believes that this proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities.

### C. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Section 202 of the UMRA requires that, prior to promulgating proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, the Agency must prepare a written statement, including a cost-benefit analysis of the rule. Under section 205 of the UMRA, DoD must also identify and consider a reasonable number of regulatory alternatives to the rule and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. Certain exceptions to section 205 exist. For example, when the requirements of section 205 are inconsistent with applicable law, section 205 does not apply. In addition, an Agency may adopt an alternative other than the least costly, most cost-effective, or least burdensome in those cases where the Agency publishes with

the final rule an explanation of why such alternative was not adopted. Section 203 of the UMRA requires that the Agency develop a small government agency plan before establishing any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments. The small government agency plan must include procedures for notifying potentially affected small governments, providing officials of affected small governments with the opportunity for meaningful and timely input in the development of regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The DoD has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments in the aggregate, or by the private sector in any one year. The term "Federal mandate" means any provision in statute or regulation or any Federal court ruling that imposes "an enforceable duty" upon State, local, or Tribal governments, and includes any condition of Federal assistance or a duty arising from participation in a voluntary Federal program that imposes such a duty. The Protocol does not contain a Federal mandate because it imposes no enforceable duty upon State, Tribal or local governments. DoD is responsible for funding munitions responses and imposes no costs on other entities by prioritizing MRS using this Protocol. DoD recognizes that the State, local or Tribal government may expend funds to conduct oversight of the response activities. The Protocol, however, does not require such oversight. To the degree such oversight is required, it is required by pre-existing law on which the Protocol has no effect.

### D. Paperwork Reduction Act

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, prohibits a Federal agency from conducting or sponsoring a collection of information that requires OMB approval, unless such approval has been obtained, and the collection request displays a currently valid OMB control number. Nor is any person required to respond to an information collection request that has not complied with the PRA. The term "collection of information" includes collection of information from ten or more persons. The DoD has determined that the PRA does not apply to this regulatory action because, although DoD will collect information on the MRS, it will not use people who

are not agency personnel as the source of such information. Therefore, the PRA does not apply to this Protocol.

### E. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), directs Federal agencies to use voluntary consensus for technical standards in its regulatory activities, except in those cases in which using such standards would be inconsistent with applicable law or otherwise impractical. "Technical standards" means performance-based or design-specific technical specifications and related management systems practices. Voluntary consensus means that the technical standards are developed or adopted by voluntary consensus standards organizations. In those cases in which a Federal agency does not use voluntary consensus standards that are available and applicable, the agency must provide OMB with an explanation.

Proposal of this Protocol does not involve performance-based or design-specific technical specifications or related management systems practices. The values for relative risk used in the Relative Risk Site Evaluation module, to the extent they qualify as technical standards, were formed through consensus. The Protocol is therefore in compliance with the NTTAA.

### F. Executive Order 12898: Environmental Justice

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," a Federal agency must, where practicable and appropriate, collect, maintain, and analyze information assessing and comparing environmental and human health risks borne by populations identified by race, national origin, or income. To the extent practical and appropriate, Federal agencies must then use this information to determine whether their activities have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations.

DoD believes that implementation of this Protocol will address environmental justice concerns in several ways. First, the Protocol will address environmental justice by ensuring that prioritization is based primarily on risk to the human health and environment of all populations. The DoD recognizes that prioritization of MRS for response action could result a

low-priority designation for some MRS located in low-income or minority neighborhoods. Under the risk-based approach, however, such prioritization would result in environmental injustice only if low-income and minority populations were disproportionately located near low-risk MRS. If this is, in fact, the case, DoD will reassess its Protocol once an initial ranking is conducted. Second, DoD has reserved a step in the Protocol for consideration of environmental justice concerns, having supplemented the risk-based prioritization decision with consideration of whether low-income or minority populations are near the MRS. Third, because the Protocol will provide DoD with an established method for choosing which MRS to address first, it will ensure uniformity among decisions and eliminate the potential for intentional discrimination against low-income and minority populations. Finally, DoD's engagement with various stakeholders, most notably Native American governments, in developing the Protocol, has helped to build consideration of environmental justice concerns into the Protocol.

DoD plans to continue to study the environmental justice effects once the Protocol is implemented. Until that time, no data exists regarding whether low-income and minority populations live near high-risk MRS as opposed to low-risk MRS. As such, there is currently no way of determining whether generally focusing response efforts first at those MRS that pose a relatively higher risk will in any way adversely affect these segments of the population. DoD decided to include environmental justice considerations in the body of the Protocol as a precautionary measure, but will examine the effect of the Protocol on low-income and minority populations once DoD has implemented it and has data from which to draw.

At this time, DoD believes that no action will directly result from the proposed rule that will have a disproportionately high and adverse human health and environmental effect on any segment of the population. DoD will examine, however, the effects of implementation to ensure that no disproportionately high and adverse human health or environmental effect occurs.

#### *G. Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), establishes certain requirements for Federal agencies issuing regulations, legislative comments, proposed legislation, or other policy statements or

actions that have "Federal implications." Under the Executive Order, any of these agency documents or actions have "Federal implications" when they 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." Section 6 of the Executive Order prohibits any agency from issuing a regulation that has Federal implications, imposes substantial direct compliance costs on State and local governments, and is not required by statute. Such a regulation may only be issued if the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. Further, a Federal agency may issue a regulation that has Federalism implications and preempts State law only if the agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The statute authorizing DoD's environmental restoration program, 10 U.S.C. 2701, clearly defines the role and responsibilities of DoD with respect to State and local governments. The role and primary responsibility of DoD is to implement an appropriate environmental restoration program at MRS. The DoD funds environmental restoration activities and does not directly affect States in any manner. The only potential dispute regarding distribution of power may arise where the State attempts to require DoD to remediate its property under a State hazardous waste law, and DoD has not ranked the MRS as a high priority or allocated funding for environmental restoration of the MRS. Such a situation, however, would be dealt with per established legal principles regarding the relationship of States to the Federal government. The Protocol does not alter this relationship. Additionally, it would not be appropriate for this proposed rule to attempt to assign roles to DoD or any State because such assignment of roles is outside the scope of the statutory mandate. The Protocol does not impose direct compliance costs on State or local

governments because DoD funds environmental restoration activities. Nevertheless, DoD consulted with State and local officials throughout development of this Protocol. Finally, development of a Protocol for prioritizing action at MRS was specifically required by statute. The requirements of section 6 of the Executive Order therefore do not apply to this rule.

#### **List of Subjects in 32 CFR Part 179**

Government property; Military personnel; Hazardous substances; Environmental protection.

Accordingly, 32 CFR part 179 is proposed to be added to Chapter 1, Subchapter H to read as follows:

#### **PART 179—MUNITIONS RESPONSE SITE PRIORITIZATION PROTOCOL**

Sec.	
179.1	Purpose.
179.2	Applicability and scope.
179.3	Definitions.
179.4	Policy.
179.5	Responsibilities.
179.6	Procedures.
179.7	Sequencing.

Appendix A to 32 CFR part 179—Tables of the Munitions Response Site Prioritization Protocol

**Authority:** 10 U.S.C. 2710 *et seq.*

#### **§ 179.1 Purpose.**

The Department of Defense (DoD) is adopting this Munitions Response Site Prioritization Protocol (hereinafter referred to as the "Protocol") under the authority of 10 U.S.C. 2710. Provisions of 10 U.S.C. 2710 require that DoD assign to each munitions response site in the inventory required by 10 U.S.C. 2710(a) a relative priority for response activities based on the overall conditions at each location and taking into consideration various factors related to safety and environmental hazards.

#### **§ 179.2 Applicability and scope.**

(a) This part applies to the Office of the Secretary of Defense, the Military Departments, the Defense Agencies and the DoD Field Activities, and any other DoD organizational entity or instrumentality established to perform a government function (hereafter referred to collectively as the "DoD Components").

(b) This part and the Protocol described herein shall be applied at all locations:

- (1) That are, or were, owned by, leased to, or otherwise possessed or used by the DoD, and
- (2) That are known to, or suspected of, containing unexploded ordnance

(UXO), discarded military munitions (DMM), or munitions constituents (MC), and

(3) That are included in the inventory established pursuant to 10 U.S.C. 2710(a).

(c) This part and the Protocol described herein shall not be applied at the locations not included in the inventory required under 10 U.S.C. 2710(a). The locations not included in the inventory are:

(1) Locations that are not, or were not, owned by, leased to, or otherwise possessed or used by the DoD,

(2) Locations not known to, or suspected of, containing UXO, DMM, or MC,

(3) Locations outside the United States,

(4) Locations where the presence of military munitions resulted solely from combat operations,

(5) Operating military munitions storage and manufacturing facilities,

(6) Locations that are used for, or were permitted for, the treatment or disposal of military munitions, and

(7) Operational ranges.

### § 179.3 Definitions.

This part includes definitions for many terms that clarify its scope and applicability. Many of the terms relevant to this part are already defined, either in 10 U.S.C. 2710(e) or the Code of Federal Regulations. Where this is the case, the statutory and regulatory definitions are repeated here strictly for ease of reference. Unless used elsewhere in the U.S. Code or the Code of Federal Regulations, these terms are defined only for purposes of this part.

*Barrier* means a natural obstacle or obstacles (e.g., difficult terrain, dense vegetation, deep or fast moving water), a man-made obstacle or obstacles (e.g., fencing), and combinations of natural and man-made obstacles.

*Chemical warfare agents (CWA)* means the V- and G-series nerve agents, H-series (i.e., "mustard" agents) and L (i.e., lewisite) blister agents, and certain industrial chemicals used by the military as weapons, including hydrogen cyanide (AC), cyanogen chloride (CK), or carbonyl dichloride (called phosgene or CG). CWA does not include riot control agents (e.g., w-chloroacetophenone (CN) and o-chlorobenzylidenemalononitrile (CS) tear gas), chemical herbicides, smoke or incendiary compounds, and industrial chemicals that are not configured as a military munition.

*Chemical Warfare Material (CWM)* is a general term that is comprised of four subcategories of specific materials:

(1) *CWM, explosively configured* are all munitions that contain a CWA fill

and any explosive component. Examples are M55 rockets with CWA, the M23 VX mine, and the M360 105-mm GB artillery cartridge.

(2) *CWM, nonexplosively configured* are all munitions that contain a CWA fill but that do not contain any explosive components. Examples are any chemical munition that does not contain an explosive components and VX or mustard agent spray canisters.

(3) *CWM, bulk container* are all non-munitions-configured containers of CWA (e.g., a ton container).

(4) *Chemical agent identification sets (CAIS)* are military training aids containing small quantities of various CWA and other chemicals. All forms of CAIS are scored the same in this Protocol, except CAIS K941, toxic gas set M-1; and K942, toxic gas set M-2/E11, which are scored higher due to the relatively large quantities of agent they contain.

*Defense site* means locations that are or were owned by, leased to, or otherwise possessed or used by the Department of Defense. The term does not include any operational range, operating storage or manufacturing facility, or facility that is used for or was permitted for the treatment or disposal of military munitions. (10 U.S.C. 2710(e)(1))

*Department of Defense (DoD) Components* means the Office of the Secretary of Defense, the Military Departments, the Defense Agencies, the DoD Field Activities, and any other DoD organizational entity or instrumentality established to perform a government function.

*Discarded military munitions (DMM)* means military munitions that have been abandoned without proper disposal or removed from storage in a military magazine or other storage area for the purpose of disposal. The term does not include unexploded ordnance, military munitions that are being held for future use or planned disposal, or military munitions that have been properly disposed of, consistent with applicable environmental laws and regulations. (10 U.S.C. 2710(e)(2))

*Military munitions* means all ammunition products and components produced for or used by the armed forces for national defense and security, including ammunition products or components under the control of the Department of Defense, the Coast Guard, the Department of Energy, and the National Guard. The term includes confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries, including bulk explosives and chemical warfare

agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. The term does not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components, except that the term does include nonnuclear components of nuclear devices that are managed under the nuclear weapons program of the Department of Energy after all required sanitization operations under the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*) have been completed. (10 U.S.C. 2710(e)(3) and 40 CFR 260.10)

*Military range* means designated land and water areas set aside, managed, and used to research, develop, test, and evaluate military munitions, other ordnance, or weapon systems, or to train military personnel in their use and handling. Ranges include firing lines and positions, maneuver areas, firing lanes, test pads, detonation pads, impact areas, and buffer zones with restricted access and exclusionary areas. (40 CFR 266.201)

*Munitions constituents* means any materials originating from unexploded ordnance, discarded military munitions, or other military munitions, including explosive and non-explosive materials, and emission, degradation, or breakdown elements of such ordnance or munitions. (10 U.S.C. 2710(e)(4))

*Munitions response* means response actions, including investigation, removal actions, and remedial actions, to address the explosives safety, human health, or environmental risks presented by unexploded ordnance (UXO), discarded military munitions (DMM), or munitions constituents (MC).

*Munitions response area (MRA)* means any area on a defense site that is known or suspected to contain UXO, DMM, or MC. Examples are former ranges or munitions burial areas. An MRA is comprised of one or more munitions response sites.

*Munitions response site (MRS)* means a discrete location within an MRA that is known to require a munitions response.

*Operational range* means a military range that is used for range activities, or a military range that is not currently being used but that is still considered by the Secretary to be a range area, is under the jurisdiction, custody, or control of the Department of Defense, and has not been put to a new use that is

incompatible with range activities. (10 U.S.C. 2710(e)(5))

*Range activities* means research, development, testing, and evaluation of military munitions, other ordnance, and weapons systems; and the training of military personnel in the use and handling of military munitions, other ordnance, and weapons systems.

*Unexploded ordnance (UXO)* means military munitions that:

(1) Have been primed, fuzed, armed, or otherwise prepared for action;

(2) Have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installations, personnel, or material; and

(3) Remain unexploded either by malfunction, design, or any other cause. (10 U.S.C. 2710(e)(9) and 40 CFR 266.201)

*United States* means, in a geographic sense, the States, territories, and possessions and associated navigable waters, contiguous zones, and ocean waters of which the natural resources are under the exclusive management authority of the United States. (10 U.S.C. 2710(e)(10))

#### § 179.4 Policy.

(a) In assigning a relative priority for response activities, DoD generally considers those MRS posing the greatest hazard as having the highest priority for action. The priority assigned should be based on the overall conditions at each location, taking into consideration various factors relating to safety and environmental hazard potential.

(b) It is DoD policy to ensure that EPA, other Federal agencies (as appropriate or required), State regulatory agencies, Native American or Alaskan Native Tribes, local restoration advisory boards (RABs) or technical review committees (TRCs), and local stakeholders are offered opportunities to participate in the application of the Protocol and making sequencing decisions.

#### § 179.5 Responsibilities.

For the MRS in the inventory required under 10 U.S.C. 2710(a), each DoD Component shall:

(a) Apply the Protocol to each MRS:

- (1) Under its administrative control.
- (2) Within an MRA such that the total acreage of each MRA is evaluated.
- (3) When sufficient data are available to populate all the data elements within at least one of the three hazard evaluation modules that comprise the Protocol.

(i) In such cases where data are not sufficient to populate one or two of the hazard evaluation modules (*e.g.*, there is

no constituent sampling data for the relative risk site evaluation module), DoD Components will assign an MRS priority based on the hazard evaluation modules evaluated and reapply the Protocol once sufficient data to run the remaining hazard evaluation modules are available.

(ii) When an MRS comprises the total area of its MRA (*i.e.*, the MRA has either not been characterized such that more than one MRS has been delineated, or characterization has determined that further delineation is not necessary), DoD Components shall apply the Protocol to that MRS when sufficient data are available to populate all the data elements within at least one of the three hazard evaluation modules. Upon further delineation and characterization of the MRA into more than one MRS, Components shall reapply the Protocol to all MRS within the MRA.

(b) Ensure that EPA, other Federal agencies (as appropriate or required), State regulatory agencies, Native American or Alaskan Native Tribes, local RABs or TRCs, and local community stakeholders are offered opportunities as early as possible and throughout the process to participate in the application of the Protocol and making sequencing decisions.

(1) To ensure EPA, other Federal agencies, State regulatory agencies, Native American and Alaskan Native Tribes, and local government officials are aware of the opportunity to participate in the initial application of the Protocol, the DoD Component organization responsible for implementing a munitions response at the MRS shall send a certified letter to the heads of these organizations (or their designated point-of-contact), as appropriate, seeking their involvement. A copy of these letters will be placed in the Administrative Record and Information Repository for the MRS.

(2) To ensure the local community is aware of the opportunity to participate in the initial application of the Protocol, the DoD Component organization responsible for implementing a munitions response at the MRS shall publish an announcement in a local community publication requesting information pertinent to prioritization or sequencing decisions.

(c) Establish a quality assurance panel to review all MRS prioritization decisions. This panel will not include any participant involved in applying the Protocol to the MRS. If the panel recommends a change that results in a different priority, the DoD Component shall report, in the inventory data submitted to the Office of the Deputy Under Secretary of Defense

(Installations & Environment), the rationale for this change. The DoD Component shall also provide this rationale to the appropriate regulatory agencies and involved stakeholders for comment before finalizing the change.

(d) Following the panel review, submit the results of applying the Protocol along with the other inventory data that 10 U.S.C. 2710(c) requires be made publicly available, to the ODUSD (I&E). ODUSD (I&E) shall publish this information in the *Defense Environmental Restoration Program Annual Report to Congress* for that fiscal year. If sequencing decisions result in action at an MRS with a lower MRS priority ahead of an MRS with a higher MRS priority, the DoD Component shall provide specific justification to ODUSD (I&E).

(e) Document in a Management Action Plan (MAP) or its equivalent all aspects of the munitions responses required at all MRS for which that MAP is applicable. DoD guidance requires that MAPs are developed and maintained at an installation (or Formerly Used Defense Site (FUDS) property) level. For the FUDS program, a State-wide MAP may also be developed.

(f) Sequencing decisions at installations and FUDS shall be developed with input from stakeholders, such as the regulatory and community members of an installation's RAB or TRC, and be documented in the MAP. Final sequencing may be impacted by DoD Component program management considerations. If the sequencing of any MRS is changed from the sequencing reflected in the current MAP, the DoD Component shall provide information to the stakeholders documenting the reasons for the sequencing change and shall request their review and comment on that decision.

(g) Ensure that information provided by stakeholders that may influence the MRS priority assigned or sequencing decision concerning an MRS is included in the Administrative Record and the Information Repository.

(h) Review each MRS priority, at least annually, and update the priority as necessary, to reflect new information. Reapplication of the Protocol is required under any of the following circumstances:

(1) Upon completion of a response action that could change site conditions evaluated by the hazard evaluation modules at the MRS.

(2) To update or validate a previous module evaluation at an MRS when new information is available.

(3) To update or validate an MRS priority that was previously assigned based on evaluation of only one or two of the three hazard evaluation modules.

(4) Upon further delineation and characterization of an MRA into MRS.

(5) To categorize any MRS previously classified as "evaluation pending."

#### § 179.6 Procedures.

The Protocol is comprised of the following three hazard evaluation modules.

(a) *Explosive Hazard Evaluation (EHE) Module*. (1) The EHE module provides a single, consistent, DoD-wide approach for the evaluation of explosive hazards. This module is used when there is a known or suspected presence of an explosive hazard. The EHE module is composed of three factors, each of which is comprised of two to four data elements that are intended to assess the specific conditions at an MRS. These factors are:

(i) *Explosive hazard*, which has the data elements *Munitions Type and Source of Hazard* (see Appendix A to this part, Tables 1 and 2) and comprises 40 percent of the EHE module score.

(ii) *Accessibility*, which has the data elements *Location of Munitions, Ease of Access, and Status of Property* (see Appendix A to this part, Tables 3, 4, and 5) and comprises 40 percent of the EHE module score.

(iii) *Receptors*, which has the data elements *Population Density, Population Near Hazard, Types of Activities/Structures, and Ecological and/or Cultural Resources* (see Appendix A to this part, Tables 6, 7, 8, and 9) and comprises 20 percent of the EHE module score.

(2) Based on MRS-specific information, each data element is assigned a numeric value, and the sum of these values is the EHE module score. The EHE module score results in an MRS being placed into one of the following ratings (See Appendix A to this part, Table 10):

(i) *Hazard Evaluation A (Highest)* is assigned to MRS with an EHE module score of more than 91.

(ii) *Hazard Evaluation B* is assigned to MRS with an EHE module score between 82 and 91.

(iii) *Hazard Evaluation C* is assigned to MRS with an EHE module score between 71 and 81.

(iv) *Hazard Evaluation D* is assigned to MRS with an EHE module score of between 60 and 70.

(v) *Hazard Evaluation E* is assigned to MRS with an EHE module score of between 48 and 59.

(vi) *Hazard Evaluation F* is assigned to MRS with an EHE module score between 38 and 47.

(vii) *Hazard Evaluation G (Lowest)* is assigned to MRS with an EHE module score less than 38.

(3) There are also three other possible outcomes for the EHE module:

(i) *Evaluation pending*. This category is used when there are known or suspected UXO or DMM, but sufficient information is not available to populate the nine data elements of the EHE module.

(ii) *No longer required*. This category is reserved for MRS that no longer require an assigned priority because DoD has conducted a response, all objectives set out in the decision document for the MRS have been achieved, and no further action, except for long-term management and recurring reviews, is required.

(iii) *No Known or Suspected Explosive Hazard*. This rating is reserved for MRS that do not require evaluation under the EHE module.

(4) The EHE module rating shall be considered with the CHE and RRSE module ratings to determine the MRS priority.

(5) MRS lacking information for determining an EHE module rating shall be programmed for additional study and evaluated as soon as sufficient data are available. Until an EHE module rating is assessed, MRS shall be rated as "evaluation pending" for the EHE module.

(b) *Chemical Warfare Materiel Hazard Evaluation (CHE) Module*. (1) The CHE module provides an evaluation of the chemical hazards associated with the physiological effects of CWM. The CHE module is used only when CWM are known or suspected of being present at an MRS. Like the EHE module, the CHE module is comprised of three factors, each of which is comprised of two to four data elements that are intended to assess the conditions at an MRS.

(i) The *CWM Hazard* factor is comprised of two data elements, *CWM Configuration and Sources of CWM*, and constitutes 40 percent of the CHE score. (See Appendix A to this part, Tables 11 and 12.)

(ii) The *Accessibility* factor focuses on the potential for receptors to encounter the CWM known or suspected to be present on an MRS. This factor consists of three data elements, *Location of CWM, Ease of Access, and Status of Property*, and constitutes 40 percent of the CHE score. (See Appendix A to this part, Tables 13, 14, and 15.)

(iii) The *Receptor* factor focuses on the human and ecological populations that may be impacted by the presence of CWM. It has the data elements *Population Density, Population Near Hazard, Types of Activities/Structures,*

and *Ecological and/or Cultural Resources* and constitutes 20 percent of the CHE score. (See Appendix A to this part, Tables 16, 17, 18, and 19.)

(2) Similar to the EHE module, each data element is assigned a numeric value, and the sum of these values (*i.e.*, the CHE module score) is used to determine the CHE rating (See Appendix A to this part, Table 20):

(i) *Hazard Evaluation A (Highest)* is assigned to MRS with a CHE score greater than 91.

(ii) *Hazard Evaluation B* is assigned to MRS with a CHE score between 82 and 91.

(iii) *Hazard Evaluation C* is assigned to MRS with a CHE score between 71 and 81.

(iv) *Hazard Evaluation D* is assigned to MRS with a CHE score between 60 and 70.

(v) *Hazard Evaluation E* is assigned to MRS with a CHE score between 48 and 59.

(vi) *Hazard Evaluation F* is assigned to MRS with a CHE score between 38 and 47.

(vii) *Hazard Evaluation G (Lowest)* is assigned to MRS with a CHE score less than 38.

(3) There are also three other potential outcomes for the CHE module:

(i) *Evaluation pending*. This category is used when there are known or suspected CWM, but sufficient information is not available to populate the nine data elements of the CHE module.

(ii) *No longer required*. This category is reserved for MRS that no longer require an assigned priority because DoD has conducted a response, all objectives set out in the decision document for the MRS have been achieved, and no further action, except for long-term management and recurring reviews, is required.

(iii) *No Known or Suspected CWM Hazard*. This category is reserved for MRS that do not require evaluation under the CHE module.

(4) The CHE rating shall be considered with the EHE module and RRSE module ratings to determine the MRS priority.

(5) MRS lacking information for assessing a CHE module rating shall be programmed for additional study and evaluated as soon as sufficient data are available. Until a CHE module rating is assigned, MRS shall be rated as "evaluation pending" for the CHE module.

(c) *Relative-Risk Site Evaluation (RRSE)*. (1) The RRSE, described in the *Relative-Risk Site Evaluation Primer* (Summer 1997, Revised Edition) provides a single, consistent DoD-wide

approach for evaluating the relative risk to human health and the environment posed by chemical contamination present at an MRS (the *RRSE Primer* can be found in the publications section at <http://www.dtic.mil/envirodod>). The RRSE module shall be used for evaluating the potential hazards posed by munitions constituents (MC) and other chemical contaminants.

(2) Evaluation of three factors—contaminants present, environmental migration pathways, and receptors—applied to four media—soil, surface water, groundwater, and sediments—results in the placement of MRS into RRSE module ratings of “high,” “medium,” or “low.” (See Table 21 of Appendix A to this part.)

(3) The RRSE module rating shall be considered with the EHE and CHE module ratings to determine the MRS priority.

(4) There are also two other potential outcomes for the RRSE module:

(i) *Evaluation pending*. This category is used when there are known or suspected MC or chemical contaminants, but sufficient information is not available to determine the RRSE module rating.

(ii) *No longer required*. This category is reserved for MRS that no longer require an assigned MRS priority because DoD has conducted a response, all objectives set out in the decision document for the MRS have been achieved, and no further action, except for long-term management and recurring reviews, is required.

(iii) MRS lacking information sufficient for assessing an RRSE module rating shall be programmed for additional study and evaluated as soon as sufficient data are available. Until an RRSE module rating is assigned, MRS shall be classified as “evaluation pending” for the RRSE module.

(d) *Determining the MRS Priority*. (1) An MRS priority is determined based on the ratings from the EHE, CHE, and RRSE modules (see Appendix A to this part, Table 22). Until all three hazard evaluation modules have been evaluated, the MRS priority shall be based on the results of the modules completed.

(2) Each MRS is assigned to one of eight MRS priorities based on the ratings of the three hazard evaluation modules, where Priority 1 indicates the highest potential hazard and Priority 8 the lowest potential hazard. Under the Protocol, only MRS with CWM can be assigned to Priority 1 and no MRS with CWM can be assigned to Priority 8.

(3) Where there is insufficient information to assess any of the three hazard evaluation modules, MRS shall

receive an “evaluation pending” rating for that module. DoD shall develop program metrics focused on reducing the number of MRS with a status of “evaluating pending” for any of the three modules.

(4) A “prioritization not required” rating is used to indicate that a MRS no longer requires prioritization. This designation is used only when all three hazard evaluation modules are rated as “no longer required” or “no known or suspected explosive hazard” or “no known or suspected CWM hazard.”

#### § 179.7 Sequencing.

(a) *Sequencing considerations*. The sequencing of MRS for action shall be based primarily on the MRS priority determined through applying the Protocol. Generally, MRS that present a greater relative hazard to human health, safety, or the environment will be addressed before MRS that present a lesser relative hazard. Other factors, however, may warrant consideration when determining the sequencing for specific MRS. In evaluating other factors in its sequencing decisions, DoD will consider a broad range of issues. These “risk-plus” or “other” factors do not influence or change the MRS priority but may influence the sequencing for action. Examples of factors that DoD may consider are:

(1) Concerns expressed by stakeholders

(2) Cultural and social factors

(3) Economic factors, including economic considerations pertaining to environmental justice issues, economies of scale, evaluation of total lifecycle costs, and estimated valuations of long-term liabilities

(4) The findings of health, safety, or ecological risk assessments or evaluations based on MRS-specific data

(5) The reasonably anticipated future land use, especially when planning response actions, conducting evaluations of response alternatives, or establishing specific response action objectives

(6) Community reuse requirements at BRAC installations

(7) Tribal trust lands, which are lands held in trust by the United States for the benefit of any Indian Tribe or individual. The United States holds the legal title to the land and the Tribe holds the beneficial interest.

(8) Implementation and execution considerations (e.g., funding availability; the availability of the necessary equipment and people to implement a particular action; examination of alternatives to responses that entail significant capital investments, a lengthy period of

operation, or costly maintenance; considering alternatives to removal or treatment of contamination when existing technology cannot achieve established standards (e.g., maximum contaminant levels)

(9) For responses to address UXO or DMM, the availability of technology to detect, discriminate, recover, and destroy the UXO or DMM

(10) Implementing standing commitments including those in formal agreements with regulatory agencies, requirements for continuation of remedial action operations until response objectives are met, other long-term management activities, and program administration

(11) Established program goals and initiatives

(12) Short-term and long-term ecological effects and environmental impacts in general, including injuries to natural resources.

(b) *Procedures and documentation for sequencing decisions*. (1) Each installation or FUDS is required to develop and maintain a MAP or its equivalent. Sequencing decisions, which will be documented in the MAP, at installations and FUDS shall be developed with input from stakeholders, such as the regulatory and community members of an installation’s RAB or TRC. If the sequencing of an MRS is changed from the sequencing reflected in the current MAP, information documenting the reasons for the sequencing change will be provided for inclusion in the MAP. Notice of the change in the sequencing shall be provided to those stakeholders that provided input to the sequencing process.

(2) In addition to the information on prioritization, DoD Components shall ensure that information provided by stakeholders that may influence the sequencing of a MRS is included in the Administrative Record and the Information Repository.

(3) DoD Components shall report the results of sequencing to ODUSD (I&E) (or successor organizations). ODUSD (I&E) shall compile the sequencing results reported by each DoD Component and publish the sequencing in the *Defense Environmental Restoration Program Annual Report to Congress*. If sequencing decisions result in action at an MRS with a lower MRS priority ahead of MRS with a higher priority, specific justification shall be provided to ODUSD (I&E).

**Appendix A to 32 CFR Part 179—  
Tables of the Munitions Response Site  
Prioritization Protocol**

The tables in this Appendix are solely for use in implementing 32 CFR part 179.

**TABLE 1.—CLASSIFICATIONS WITHIN THE EHE MODULE MUNITIONS TYPE DATA ELEMENT**

Classification and description	Score
<b>Sensitive:</b>	
All UXO that are considered likely to function upon any interaction with exposed persons ( <i>i.e.</i> , submunitions, cluster munitions, 40mm high-explosive grenades, white phosphorus (WP) munitions (including practice munitions with sensitive fuzes, but excluding all other practice munitions), and high explosive anti-tank (HEAT) munitions)	30
All hand grenades containing an explosive filler	30
<b>High explosive (used or damaged):</b>	
All UXO containing a high-explosive filler ( <i>e.g.</i> , RDX, Composition B) that are not considered “sensitive”	25
All DMM containing a high-explosive filler that have been damaged by burning or detonation	25
All DMM containing a high-explosive filler that have deteriorated to the point of instability	25
<b>Pyrotechnic:</b>	
All UXO containing pyrotechnic fillers other than white phosphorous ( <i>e.g.</i> , flares, signals, simulators, smoke grenades)	20
All DMM containing pyrotechnic fillers other than white phosphorous ( <i>e.g.</i> , flares, signals, simulators, smoke grenades) that have been damaged by burning or detonation or that have deteriorated to the point of instability	20
<b>High explosive (unused):</b>	
All DMM containing a high-explosive filler that have not been damaged by burning or detonation	15
All DMM containing a high explosive filler that are not deteriorated to the point of instability	15
<b>Propellant:</b>	
All UXO containing only a single-, double-, or triple-based propellant, or composite propellants ( <i>e.g.</i> , a rocket motor)	15
All DMM containing only a single-, double-, or triple-based propellant, or composite propellants ( <i>e.g.</i> , a rocket motor)	15
<b>Bulk HE, pyrotechnics, or propellant:</b>	
Bulk high explosives, including: demolition charges ( <i>e.g.</i> , C4 blocks), high explosives not contained in a munition, and concentrated mixtures of high explosives or other munitions constituents mixed with environmental media or debris in concentrations that result in the mixture being explosive ( <i>e.g.</i> , “explosive soil”)	10
All pyrotechnic material that is not contained in a munition ( <i>i.e.</i> , “bulk pyrotechnics”)	10
All single-, double-, or triple-based propellant, or composite propellants that is not contained in a munition ( <i>i.e.</i> , “bulk propellant”)	10
<b>Practice:</b>	
All UXO that are a practice munition not associated with a sensitive fuze	5
All DMM that are a practice munition not associated with a sensitive fuze that have been damaged by burning or detonation	5
All DMM that are a practice munition not associated with a sensitive fuze that have deteriorated to the point of instability	5
Riot control: All UXO or DMM containing only a riot control agent ( <i>e.g.</i> , tear gas)	3
Small arms: All UXO or DMM that are classified as small arms ammunition. Evidence that no other munitions type ( <i>e.g.</i> , grenades, sub-caliber training rockets, demolition charges) was used or is present on the MRS is required for selection of this category	2
Evidence of no munitions: Following investigation of the MRS, there is physical evidence there are no UXO or DMM present or there is historical evidence indicating that no UXO or DMM are present	0

**Notes:**

*Former* (as in “former range”) means the MRS is a location that was: (1) closed by a formal decision made by the DoD Component with administrative control over the location, or (2) put to a use incompatible with the presence of UXO, DMM, or MC.

*Historical evidence* means that the investigation: (1) Found written documents or records, or (2) documented interviews of persons with knowledge of site conditions, or (3) found and verified other forms of information.

*Physical evidence* means: (1) Recorded observations from on-site investigations, such as finding intact UXO or DMM, or components, fragments, or other pieces of military munitions, or (2) the results of field or laboratory sampling and analysis procedures, or (3) the results of geophysical investigations.

*Practice munitions* means munitions that contain an inert filler (*e.g.*, wax, sand, concrete), a spotting charge (*i.e.*, a pyrotechnic charge), and a fuze.

The term *small arms ammunition* means solid projectile ammunition that is .50 caliber or smaller and shotgun shells.

**TABLE 2.—CLASSIFICATIONS WITHIN THE EHE MODULE SOURCE OF HAZARD DATA ELEMENT**

Classification and description	Score
Former range: The MRS is a former military range where munitions (including practice munitions with sensitive fuzes) have been used. Such areas include: impact or target areas, associated buffer and safety zones, firing points, and live-fire maneuver areas.	10
Former munitions treatment ( <i>i.e.</i> , OB/OD) unit: The MRS is a location where UXO or DMM ( <i>e.g.</i> , munitions, bulk explosives, bulk pyrotechnic, or bulk propellants) were burned or detonated for the purpose of treatment prior to disposal	8
Former practice munitions range: The MRS is a former range on which only practice munitions without sensitive fuzes were used	6
Former maneuver area: The MRS is a former maneuver area where no munitions other than flares, simulators, smokes, and blanks were used. There must be evidence that no other munitions were used at the location to place an MRS into this category	5
Former burial pit or other disposal area: The MRS is a location where DMM were buried or disposed of ( <i>e.g.</i> , disposed of into a water body) without prior thermal treatment	5
Former industrial operating facilities: The MRS is a location that is a former munitions manufacturing or demilitarization operating facility	4
Former firing points: The MRS is a firing point, when the firing point is delineated as an MRS separate from the rest of a former range	4
Former missile or air defense artillery emplacements: The MRS is a former missile defense or air defense artillery (ADA) emplacement not associated with a range	2
Former storage or transfer points: The MRS is a location where munitions were stored or handled for transfer between different modes of transportation ( <i>e.g.</i> , rail to truck, truck to weapon system)	2

TABLE 2.—CLASSIFICATIONS WITHIN THE EHE MODULE SOURCE OF HAZARD DATA ELEMENT—Continued

Classification and description	Score
Former small arms range: The MRS is a former military range where only small arms were used. There must be evidence that no other type of munitions (e.g., grenades) were used or are present at the location to place an MRS into this category .....	1
Evidence of no munitions: Following investigation of the MRS, there is physical evidence that no UXO or DMM are present, or there is historical evidence indicating that no UXO or DMM are present .....	0

**Notes:**

*Former* (as in “former range”) means the MRS is a location that was: (1) closed by a formal decision made by the DoD Component with administrative control over the location, or (2) put to a use incompatible with the presence of UXO, DMM, or MC.

*Historical evidence* means that the investigation: (1) Found written documents or records, or (2) documented interviews of persons with knowledge of site conditions, or (3) found and verified other forms of information.

*Physical evidence* means: (1) Recorded observations from on-site investigations, such as finding intact UXO or DMM, or components, fragments, or other pieces of military munitions, or (2) the results of field or laboratory sampling and analysis procedures, or (3) the results of geophysical investigations.

*Practice munitions* means munitions that contain an inert filler (e.g., wax, sand, concrete), a spotting charge (i.e., a pyrotechnic charge), and a fuze.

The term *small arms ammunition* means solid projectile ammunition that is .50 caliber or smaller and shotgun shells.

TABLE 3.—CLASSIFICATIONS WITHIN THE EHE INFORMATION ON THE LOCATION OF MUNITIONS DATA ELEMENT

Classification and description	Score
Confirmed surface:	
Physical evidence indicates there are UXO or DMM on the surface of the MRS .....	25
Historical evidence (e.g., a confirmed incident report or accident report) indicates there are UXO or DMM on the surface of the MRS .....	25
Confirmed subsurface, active:	
Physical evidence indicates the presence of UXO or DMM in the subsurface of the MRS and the geological conditions at the MRS are likely to cause UXO or DMM to be exposed in the future by naturally occurring phenomena (e.g., drought, flooding, erosion, frost, heat heave, tidal action), or there are on-going intrusive activities (e.g., plowing, construction, dredging) at the MRS that are likely to expose UXO or DMM .....	20
Historical evidence indicates that UXO or DMM are located in the subsurface of the MRS and the geological conditions at the MRS are likely to cause UXO or DMM to be exposed in the future by naturally occurring phenomena (e.g., drought, flooding, erosion, frost, heat heave, tidal action), or there are on-going intrusive activities (e.g., plowing, construction, dredging) at the MRS that are likely to expose UXO or DMM .....	20
Confirmed subsurface, stable:	
Physical evidence indicates the presence of UXO or DMM in the subsurface of the MRS and the geological conditions at the MRS are not likely to cause UXO or DMM to be exposed in the future by naturally occurring phenomena, or there are no intrusive activities occurring at the MRS that are likely to either occur, or if the activities do occur, are likely to cause UXO or DMM to be exposed .....	15
Historical evidence indicates that UXO or DMM are located in the subsurface of the MRS and the geological conditions at the MRS are not likely to cause UXO or DMM to be exposed in the future by naturally occurring phenomena, or there are no intrusive activities occurring at the MRS that are likely to either occur, or if the activities do occur, are likely to cause UXO or DMM to be exposed .....	15
Suspected (physical evidence): There is physical evidence other than the documented presence of UXO or DMM, indicating that UXO or DMM may be present at the MRS .....	10
Suspected (historical evidence): There is historical evidence indicating that UXO or DMM may be present at the MRS .....	5
Subsurface, physical constraint: There is physical or historical evidence indicating the UXO or DMM may be present in the subsurface, but there is a physical constraint (e.g., pavement, water depth over 120 feet) preventing direct access to the UXO or DMM .....	2
Small arms (regardless of location): The presence of small arms ammunitions is confirmed or suspected, regardless of other factors such as geological stability There must be evidence that no other types of munitions (e.g., grenades) were used or are present at the MRS to include it in this category .....	1
Evidence of no munitions: Following investigation of the MRS, there is physical evidence there are no UXO or DMM present or there is historical evidence indicating that no UXO or DMM are present .....	0

**Notes:**

*Historical evidence* means that the investigation: (1) Found written documents or records, or (2) documented interviews of persons with knowledge of site conditions, or (3) found and verified other forms of information.

*Physical evidence* means: (1) Recorded observations from on-site investigations, such as finding intact UXO or DMM, or components, fragments, or other pieces of military munitions, or (2) the results of field or laboratory sampling and analysis procedures, or (3) the results of geophysical investigations.

*In the subsurface* means the munition (i.e., a DMM or UXO) is (1) entirely beneath the ground surface, or (2) fully submerged in a water body.

*On the surface* means the munition (i.e., a DMM or UXO) is: (1) entirely or partially exposed above the ground surface, or (2) entirely or partially exposed above the surface of a water body (e.g., as a result of tidal activity).

The term *small arms ammunition* means solid projectile ammunition that is .50 caliber or smaller and shotgun shells.

TABLE 4.—CLASSIFICATIONS WITHIN THE EHE EASE OF ACCESS DATA ELEMENT

Classification and description	Score
No barrier: There is no barrier preventing access to all parts of the MRS (i.e., all parts of the MRS are accessible) .....	10
Barrier to MRS access is incomplete: There is a barrier preventing access to parts of the MRS but not the entire MRS .....	8
Barrier to MRS access is complete but not monitored: There is a barrier preventing access to all parts of the MRS, but there is no surveillance (e.g., by a guard) to ensure that the barrier is effectively preventing access to all parts of the MRS .....	5

TABLE 4.—CLASSIFICATIONS WITHIN THE EHE EASE OF ACCESS DATA ELEMENT—Continued

Classification and description	Score
Barrier to MRS access is complete and monitored: There is a barrier preventing access to all parts of the MRS, and there is active, continual surveillance (e.g., by a guard, video monitoring) to ensure that the barrier is effectively preventing access to all parts of the MRS .....	0

**Note:** *Barrier* means a natural obstacle or obstacles (e.g., difficult terrain, dense vegetation, deep or fast moving water), a man-made obstacle or obstacles (e.g., fencing), or a combination of natural and man-made obstacles.

TABLE 5.—CLASSIFICATIONS WITHIN THE EHE STATUS OF PROPERTY DATA ELEMENT

Classification and description	Score
Non-DoD control: The MRS is at a location that is no longer owned by, leased to, or otherwise possessed or used by the DoD. Examples are privately owned land or water bodies; land or water bodies owned or controlled by American Indian or Alaskan Native Tribes or State or local governments; and lands or water bodies managed by other Federal agencies .....	5
Scheduled for transfer from DoD control: The MRS is on land or is a water body that is owned, leased, or otherwise possessed by DoD, and DoD plans to transfer that land or water body to the control of another entity (e.g., a State, American Indian, Alaskan Native, or local government; a private party; another Federal agency) within 3 years from the date the Protocol is applied .....	3
DoD control: The MRS is on land or is a water body that is owned, leased, or otherwise possessed by the DoD. With respect to property that is leased or otherwise possessed, DoD must control access to the MRS 24-hours per day, every day of the calendar year .....	0

TABLE 6.—CLASSIFICATIONS WITHIN THE EHE POPULATION DENSITY DATA ELEMENT

Classification and definition	Score
> 500 persons per square mile: There are more than 500 persons per square mile in the county in which the MRS is located, based on U.S. Census Bureau data .....	5
100–500 persons per square mile: There are 100 to 500 persons per square mile in the county in which the MRS is located, based on U.S. Census Bureau data .....	3
< 100 persons per square mile: There are fewer than 100 persons per square mile in the county in which the MRS is located, based on U.S. Census Bureau data .....	1

**Note:** If an MRS is in more than one county, the DoD Component will use the largest population value among the counties. If the MRS is within or borders a city or town, the population density for the city or town instead of the county population density is used.

TABLE 7.—CLASSIFICATIONS WITHIN THE EHE POPULATION NEAR HAZARD DATA ELEMENT

Classification and description	Score
26 or more structures: There are 26 or more inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both .....	5
16 to 25: There are 16–25 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both .....	4
11 to 15: There are 11–15 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both .....	3
6 to 10: There are 6–10 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both .....	2
1 to 5: There are 1–5 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both .....	1
0: There are no inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both .....	0

**Note:** The term *inhabited structures* means permanent or temporary structures, other than DoD munitions-related structures, that are routinely occupied by one or more persons for any portion of a day.

TABLE 8.—CLASSIFICATIONS WITHIN THE EHE TYPES OF ACTIVITIES/STRUCTURES DATA ELEMENT

Classification and description	Score
Residential, educational, commercial, or subsistence: Activities are conducted or inhabited structures are located up to 2 miles from the MRS's boundary or, within the MRS's boundary that are associated with any of the following purposes: residential, educational, child care, critical assets (e.g., hospitals, fire and rescue, police stations, dams), hotels, commercial, shopping centers, play grounds, community gathering areas, religious sites, or sites used for subsistence hunting, fishing, and gathering .....	5
Parks and recreational areas: Activities are conducted or inhabited structures are located up to 2 miles from the MRS's boundary or within the MRS's boundary that are associated with parks, nature preserves or other recreational uses .....	4
Agricultural, forestry: Activities are conducted or inhabited structures are located up to 2 miles from the MRS's boundary or within the MRS's boundary that are associated with agriculture or forestry .....	3
Industrial or warehousing: Activities are conducted or inhabited structures are located up to 2 miles from the MRS's boundary or within the MRS's boundary that are associated with industrial activities or warehousing .....	2
No known or recurring activities: There are no known or recurring activities occurring up to 2 miles from the MRS's boundary or within the MRS's boundary .....	1

**Note:** The term *inhabited structures* means permanent or temporary structures, other than DoD munitions-related structures, are routinely occupied by one or more persons for any portion of a day.

TABLE 9.—CLASSIFICATIONS WITHIN THE EHE ECOLOGICAL AND/OR CULTURAL RESOURCES DATA ELEMENT

Classification and description	Score
Ecological and cultural resources present: There are both ecological and cultural resources present on the MRS .....	5
Ecological resources present: There are ecological resources present on the MRS .....	3
Cultural resources present: There are cultural resources present on the MRS .....	3
No ecological or cultural resources present: There are no ecological resources or cultural resources present on the MRS .....	0

**Notes:** *Ecological resources* means that: (1) A threatened or endangered species (designated under the Endangered Species Act (ESA)) is present on the MRS; or (2) the MRS is designated under the ESA as critical habitat for a threatened or endangered species; or (3) there are identified sensitive ecosystems such as wetlands or breeding grounds present on the MRS.

*Cultural resources* means there are recognized cultural, traditional, spiritual, religious, or historical features (e.g., structures, artifacts, symbolism) on the MRS. For example, American Indians or Alaska Natives deem the MRS to be of religious significance or there are areas that are used by American Indians or Alaska Natives for subsistence activities (e.g., hunting, fishing). Requirements for determining if a particular feature is a cultural resource are found in the National Historic Preservation Act, Native American Graves Protection and Repatriation Act, Archeological Resources Protection Act, Executive Order 13007, and the American Indian Religious Freedom Act.

TABLE 10.—DETERMINING THE EHE RATING FROM THE EHE MODULE SCORE

Overall EHE module score	EHE rating
The MRS has an overall EHE module score from 92 to 100 .....	EHE Rating A
The MRS has an overall EHE module score from 82 to 91 .....	EHE Rating B
The MRS has an overall EHE module score from 71 to 81 .....	EHE Rating C
The MRS has an overall EHE module score from 60 to 70 .....	EHE Rating D
The MRS has an overall EHE module score from 48 to 59 .....	EHE Rating E
The MRS has an overall EHE module score from 38 to 47 .....	EHE Rating F
The MRS has an overall EHE module score less than 38 .....	EHE Rating G

TABLE 11.—CLASSIFICATIONS WITHIN THE CHE CWM CONFIGURATION DATA ELEMENT

Classification and description	Score
CWM, explosive configuration, either UXO or damaged DMM: The CWM known or suspected of being present at the MRS is: Explosively configured CWM that are UXO (i.e., CWM/UXO) .....	30
Explosively configured CWM that are DMM that have been damaged (CWM/DMM) .....	30
CWM mixed with UXO: The CWM known or suspected of being present at the MRS are CWM/DMM that are co-mingled with conventional munitions that are UXO .....	25
CWM, explosive configuration that are DMM (unused): The CWM 20 known or suspected of being present at the MRS are explosively configured CWM/DMM that have not been damaged .....	20
CWM, not-explosively configured or CWM, bulk container: The CWM known or suspected of being present at the MRS is: Non-explosively configured CWM/DMM .....	15
Bulk CWM/DMM (e.g., ton container) .....	15
CAIS K941 and CAIS K942: The CWM/DMM known or suspected of being present at the MRS is CAIS K941-toxic gas set M-1 or CAIS K942-toxic gas set M-2/E11 .....	12
CAIS (chemical agent identification sets): The CWM known or suspected of being present at the MRS are only CAIS/DMM. The CAIS present cannot include CAIS K941, toxic gas set M-1; and K942, toxic gas set M-2/E11 for the MRS to be assigned this rating .....	10
Evidence of no CWM: Following investigation, the physical evidence indicates that CWM are not present at the MRS, or the historical evidence indicates that CWM are not present at the MRS .....	0

**Notes:**

The notation *CWM/DMM* means CWM that are DMM.

The term *CWM/UXO* means CWM that are UXO.

*Historical evidence* means that the investigation: (1) Found written documents or records, or (2) documented interviews of persons with knowledge of site conditions, or (3) found and verified other forms of information.

*Physical evidence* means: (1) Recorded observations from on-site investigations, such as finding intact UXO or DMM, or components, fragments, or other pieces of military munitions, or (2) the results of field or laboratory sampling and analysis procedures, or (3) the results of geophysical investigations.

TABLE 12.—CLASSIFICATIONS WITHIN THE CHE SOURCES OF CWM DATA ELEMENT

Classification and description	Score
Live-fire involving CWM: The MRS is a range that supported live-fire of explosively configured CWM and the CWM/UXO are known or suspected of being present on the surface or in the subsurface .....	10
The MRS is a range that supported live-fire with conventional munitions, and CWM/DMM are on the surface or in the subsurface co-mingled with conventional munitions that are UXO .....	10
Damaged CWM/DMM or CAIS/DMM, surface or subsurface: There are damaged CWM/DMM on the surface or in the subsurface at the MRS .....	10
Undamaged CWM/DMM or CAIS/DMM, surface: There are undamaged CWM/DMM on the surface at the MRS .....	10
Undamaged CWM/DMM, or CAIS/DMM, subsurface: There are undamaged CWM/DMM in the subsurface at the MRS .....	5
Production facilities of CWM or CAIS: The MRS is a facility that engaged in production of CWM, and there are CWM/DMM suspected of being present on the surface or in the subsurface .....	3

TABLE 12.—CLASSIFICATIONS WITHIN THE CHE SOURCES OF CWM DATA ELEMENT—Continued

Classification and description	Score
Research, Development, Testing, and Evaluation (RDT&E) facility using CWM or CAIS: The MRS is at a facility that was involved in non-live fire RDT&E activities (including static testing) involving CWM, and there are CWM/DMM suspected of being present on the surface or in the subsurface .....	3
Training facility using CWM or CAIS: The MRS is a location that was involved 2 in training activities involving CWM and/or CAIS (e.g., training in recognition of CWA, decontamination training) and CWM/DMM are suspected of being present on the surface or in the subsurface .....	2
Storage or transfer points of CWM: The MRS is a former storage facility or transfer point (e.g., inter-modal transfer) for CWM .....	1
Evidence of no CWM: Following investigation, the physical evidence indicates that CWM are not present at the MRS, or the historical evidence indicates that CWM are not present at the MRS .....	0

**Notes:**

The notation *CWM/DMM* means CWM that are DMM.

The term *CWM/UXO* means CWM that are UXO.

*Historical evidence* means that the investigation: (1) Found written documents or records, or (2) documented interviews of persons with knowledge of site conditions, or (3) found and verified other forms of information.

*Physical evidence* means: (1) Recorded observations from on-site investigations, such as finding intact UXO or DMM, or components, fragments, or other pieces of military munitions, or (2) the results of field or laboratory sampling and analysis procedures, or (3) the results of geophysical investigations.

*In the subsurface* means the CWM (i.e., a DMM or UXO) is (1) Entirely beneath the ground surface, or (2) fully submerged in a water body.

*On the surface* means the CWM (i.e., a DMM or UXO) is: (1) Entirely or partially exposed above the ground surface, or (2) entirely or partially exposed above the surface of a water body (e.g., as a result of tidal activity).

TABLE 13.—CLASSIFICATIONS WITHIN THE CHE INFORMATION ON THE LOCATION OF CWM DATA ELEMENT

Classification and description	Score
Confirmed surface:	
Physical evidence indicates there are CWM on the surface of the MRS .....	25
Historical evidence (e.g., a confirmed incident report or accident report) indicates there are CWM on the surface of the MRS .....	25
Confirmed subsurface, active:	
Physical evidence indicates the presence of CWM in the subsurface of the MRS and the geological conditions at the MRS are likely to cause CWM to be exposed in the future by naturally occurring phenomena (e.g., drought, flooding, erosion, frost, heat heave, tidal action), or there are on-going intrusive activities (e.g., plowing, construction, dredging) at the MRS that are likely to expose CWM .....	20
Historical evidence indicates that CWM are located in the subsurface of the MRS and the geological conditions at the MRS are likely to cause CWM to be exposed in the future by naturally occurring phenomena (e.g., drought, flooding, erosion, frost, heat heave, tidal action), or there are on-going intrusive activities (e.g., plowing, construction, dredging) at the MRS that are likely to expose CWM .....	20
Confirmed subsurface, stable:	
Physical evidence indicates the presence of CWM in the subsurface of the MRS and the stable geological conditions at the MRS are not likely to cause CWM to be exposed in the future by naturally occurring phenomena, or there are no intrusive activities occurring at the MRS that are likely to either occur, or if the activities do occur, are likely to cause CWM to be exposed .....	15
Historical evidence indicates that CWM are located in the subsurface of the MRS and the geological conditions at the MRS are not likely to cause CWM to be exposed in the future by naturally occurring phenomena, or there are no intrusive activities occurring at the MRS that are likely to either occur, or if the activities do occur, are likely to cause CWM to be exposed .....	15
Suspected (physical evidence): There is physical evidence other than the documented presence of CWM, indicating that CWM may be present at the MRS .....	10
Suspected (historical evidence): There is historical evidence indicating that CWM may be present at the MRS .....	5
Subsurface, physical constraint: There is physical or historical evidence indicating the CWM may be present in the subsurface, but there is a physical constraint (e.g., pavement, water depth over 120 feet) preventing direct access to the CWM .....	2
Evidence of no CWM: Following investigation of the MRS, there is physical evidence there is no CWM present or there is historical evidence indicating that no CWM are present .....	0

**Notes:**

*Historical evidence* means that the investigation: (1) Found written documents or records, or (2) documented interviews of persons with knowledge of site conditions, or (3) found and verified other forms of information.

*Physical evidence* means: (1) Recorded observations from on-site investigations, such as finding intact UXO or DMM, or components, fragments, or other pieces of military munitions, or (2) the results of field or laboratory sampling and analysis procedures, or (3) the results of geophysical investigations.

*In the subsurface* means the CWM (i.e., a DMM or UXO) is (1) entirely beneath the ground surface, or (2) fully submerged in a water body.

*On the surface* means the CWM (i.e., a DMM or UXO) is (1) entirely or partially exposed above the ground surface, or (2) entirely or partially exposed above the surface of a water body (e.g., as a result of tidal activity).

The term *small arms ammunition* means solid projectile ammunition that is .50 caliber or smaller and shotgun shells.

TABLE 14.—CLASSIFICATIONS WITHIN THE CHE EASE OF ACCESS DATA ELEMENT

Classification and description	Score
No barrier: There is no barrier preventing access to all parts of the MRS (i.e., all parts of the MRS are accessible) .....	10
Barrier to MRS access is incomplete: There is a barrier preventing access to parts of the MRS but not the entire MRS .....	8
Barrier to MRS access is complete but not monitored: There is a barrier preventing access to all parts of the MRS, but there is no surveillance (e.g., by a guard) ensure that the barrier is effectively preventing access to all parts of the MRS .....	5

TABLE 14.—CLASSIFICATIONS WITHIN THE CHE EASE OF ACCESS DATA ELEMENT—Continued

Classification and description	Score
Barrier to MRS access is complete and monitored: There is a barrier preventing access to all parts of the MRS, and there is active continual surveillance (e.g., by a guard, video monitoring) to ensure that the barrier is effectively preventing access to all parts of the MRS .....	0

**Notes:** *Barrier* means a natural obstacle or obstacles (e.g., difficult terrain, dense vegetation, deep or fast moving water), a man-made obstacle or obstacles (e.g., fencing), or a combination of natural and man-made obstacles.

TABLE 15.—CLASSIFICATIONS WITHIN THE CHE STATUS OF PROPERTY DATA ELEMENT

Classification and description	Score
Non-DoD control: The MRS is at a location that is no longer owned by, leased to, or otherwise possessed or used by the DoD. Examples are privately owned land or water bodies; land or water bodies owned or controlled by American Indian or Alaskan Native Tribes, or State or local governments; and lands or water bodies managed by other Federal agencies .....	5
Scheduled for transfer from DoD control: The MRS is on land or is a water body that is owned, leased, or otherwise possessed by control DoD, and DoD plans to transfer that land or water body to control of another entity (e.g., a State, American Indian, Alaskan Native, or local government; a private party; another Federal agency) within 3 years from the date the Protocol is applied .....	3
DoD control: The MRS is on land or is a water body that is owned, leased, or otherwise possessed by the DoD. With respect to property that is leased or otherwise possessed, DoD controls access to the property 24-hours per day, every day of the calendar year .....	0

TABLE 16.—CLASSIFICATIONS WITHIN THE CHE POPULATION DENSITY DATA ELEMENT

Classification and definition	Score
> 500 persons per square mile: There are more than 500 persons per square mile in the county in which the MRS is located, based on U.S. Census Bureau data .....	5
100–500 persons per square mile: There are 100 to 500 persons per square mile in the county in which the MRS is located, based on U.S. Census Bureau data .....	3
< 100 persons per square mile: There are fewer than 100 persons per square mile in the county in which the MRS is located, based on U.S. Census Bureau data .....	1

**Note:** If an MRS is in more than one county, the DoD Component will use the largest population value among the counties. If the MRS is within or borders a city or town, the population density for the city or town instead of the county population density is used.

TABLE 17.—CLASSIFICATIONS WITHIN THE CHE POPULATION NEAR HAZARD DATA ELEMENT

Classification and description	Score
26 or more structures: There are 26 or more inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both .....	5
16 to 25: There are 16–25 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both .....	4
11 to 15: There are 11–15 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both .....	3
6 to 10: There are 6–10 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both .....	2
1 to 5: There are 1–5 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both .....	1
0: There are no inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both .....	0

**Note:** The term *inhabited structures* means permanent or temporary structures, other than DoD munitions-related structures, that are routinely occupied by one or more persons for any portion of a day.

TABLE 18.—CLASSIFICATIONS WITHIN THE CHE TYPES OF ACTIVITIES/STRUCTURES DATA ELEMENT

Classification and description	Score
Residential, educational, commercial, or subsistence: Activities are conducted or inhabited structures are located up to 2 miles from the MRS's boundary or within the MRS's boundary that are associated with any of the following purposes: residential, educational, child care, critical assets (e.g., hospitals, fire and rescue, police stations, dams), hotels, commercial, shopping centers, play grounds, community gathering areas, religious sites or sites used for subsistence hunting, fishing, and gathering .....	5
Parks and recreational areas: Activities are conducted or inhabited structures are located up to 2 miles from the MRS's boundary or within the MRS's boundary that are associated with parks, nature preserves or other recreational uses .....	4
Agricultural, forestry: Activities are conducted or inhabited structures are located up to 2 miles from the MRS's boundary, within the MRS's boundary that are associated with agriculture or forestry .....	3
Industrial or warehousing: Activities are conducted or inhabited structures are located up to 2 miles from the MRS's boundary, within the MRS's boundary that are associated with industrial activities or warehousing .....	2
No known or recurring activities: There are no known or recurring activities occurring up to 2 miles from the MRS's boundary or within the MRS's boundary .....	1

**Notes:** The term *inhabited structures* means permanent or temporary structures, other than DoD munitions-related structures, are routinely occupied by one or more persons for any portion of a day.

TABLE 19.—CLASSIFICATIONS WITHIN THE CHE ECOLOGICAL AND/OR CULTURAL RESOURCES DATA ELEMENT

Classification and description	Score
Ecological and cultural resources present: There are both ecological and cultural resources present on the MRS .....	5
Ecological resources present: There are ecological resources present on the MRS .....	3
Cultural resources present: There are cultural resources present on the MRS .....	3
No ecological or cultural resources present: There are no ecological resources or cultural resources present on the MRS .....	10

**Notes:**

*Ecological resources* means that: (1) A threatened or endangered species (designated under the Endangered Species Act (ESA)) is present on the MRS; or (2) the MRS is designated under the ESA as critical habitat for a threatened or endangered species; or (3) there are identified sensitive ecosystems such as wetlands or breeding grounds present on the MRS.

*Cultural resources* means there are recognized cultural, spiritual, traditional, religious, or historical features (e.g., structures, artifacts, symbolism) on the MRS. For example, American Indians or Alaska Natives deem the MRS to be of spiritual significance or there are areas that are used by American Indians or Alaska Natives for subsistence activities (e.g., hunting, fishing). Requirements for determining if a particular feature is a cultural resource are found in the National Historic Preservation Act, Native American Graves Protection and Repatriation Act, Archeological Resources Protection Act, Executive Order 13007, and the American Indian Religious Freedom Act.

TABLE 20.—DETERMINING THE CHE RATING FROM THE CHE MODULE SCORE

Overall CHE module score	CHE rating
The MRS has an overall CHE module score from 92 to 100 .....	CHE Rating A
The MRS has an overall CHE module score from 82 to 91 .....	CHE Rating B
The MRS has an overall CHE module score from 71 to 81 .....	CHE Rating C
The MRS has an overall CHE module score from 60 to 70 .....	CHE Rating D
The MRS has an overall CHE module score from 48 to 59 .....	CHE Rating E
The MRS has an overall CHE module score from 38 to 47 .....	CHE Rating F
The MRS has an overall CHE module score less than 38 .....	CHE Rating G

TABLE 21.—RELATIVE RISK SITE EVALUATION MODULE HAZARD RATING

Contaminant hazard factor and receptor factor	Migration pathway		
	Evident	Potential	Confined
<b>Significant:</b>			
Identified .....	High .....	High .....	Medium
Potential .....	High .....	High .....	Medium
Limited .....	Medium .....	Medium .....	Low
<b>Moderate:</b>			
Identified .....	High .....	High .....	Low
Potential .....	High .....	Medium .....	Low
Limited .....	Medium .....	Low .....	Low
<b>Minimal:</b>			
Identified .....	High .....	Medium .....	Low
Potential .....	Medium .....	Low .....	Low
Limited .....	Low .....	Low .....	Low

TABLE 22.—MRS PRIORITY BASED ON HIGHEST HAZARD EVALUATION MODULE RATING

EHE module rating	Priority	CHE module rating	Priority	RRSE module rating	Priority
Hazard Evaluation A (Highest) .....	2	Hazard Evaluation A (Highest) ....	1	High (highest) .....	2
Hazard Evaluation B .....	3	Hazard Evaluation B .....	2		
Hazard Evaluation C .....	4	Hazard Evaluation C .....	3		
Hazard Evaluation D .....	5	Hazard Evaluation D .....	4	Medium .....	5
Hazard Evaluation E .....	6	Hazard Evaluation E .....	5		
Hazard Evaluation F .....	7	Hazard Evaluation F .....	6		
Hazard Evaluation G (Lowest) .....	8	Hazard Evaluation G (Lowest) .....	7		
No Longer Required .....	.....	No Longer Required .....	.....	Low .....	8
Evaluation Pending .....	.....	Evaluation Pending .....	.....		
No Known or Suspected Explosive Hazard.	.....	No Known or Suspected CWM Hazard.	.....		
					N/A

Dated: August 11, 2003.

**Patricia L. Toppings,**

*Alternate OSD Federal Register, Liaison  
Officer, Department of Defense.*

[FR Doc. 03-21013 Filed 8-21-03; 8:45 am]

**BILLING CODE 5001-08-C**



# Federal Register

---

**Friday,  
August 22, 2003**

---

**Part V**

## **Department of the Interior**

---

**Office of Surface Mining Reclamation and  
Enforcement**

---

**30 CFR Part 925  
Substituted Federal Enforcement of  
Portions of Missouri's Permanent  
Regulatory Program and Findings on the  
Status of Missouri's Permanent Regulatory  
Program; Final Rule and Proposed Rule**

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 925****Substituted Federal Enforcement of Portions of Missouri's Permanent Regulatory Program and Findings on the Status of Missouri's Permanent Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Final rule.

**SUMMARY:** On November 21, 1980, the Secretary of the Interior (the Secretary) conditionally approved the Missouri permanent regulatory program (Missouri program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). On August 4, 2003, we, the Office of Surface Mining Reclamation and Enforcement (OSM), notified the Governor of Missouri that serious problems exist that are adversely affecting implementation and enforcement of the Missouri program. The Missouri Department of Natural Resources, Air and Land Protection Division, Land Reclamation Program (MLRP) is the regulatory authority responsible for implementing and enforcing the Missouri program. We also told the Governor that because of the severity of these problems, we must immediately substitute Federal enforcement for portions of the Missouri program in the areas of inspection, enforcement, permitting, and bonding activities. Therefore, in accordance with the provisions of our regulations, we are instituting direct Federal enforcement for those portions of the Missouri program that the MLRP is not adequately implementing or enforcing.

Because we believe that it is preferable that States hold the primary responsibility for regulating surface coal mining and reclamation operations, we will provide the MLRP with assistance and guidance, as necessary, to resolve the issues and to regain full authority for those portions of the Missouri program that are not being adequately implemented or enforced. This document also sets forth our findings regarding this action and the status of those portions of the Missouri program that the MLRP will continue to administer.

**EFFECTIVE DATE:** August 22, 2003.

**FOR FURTHER INFORMATION CONTACT:** John W. Coleman, Mid-Continent Regional Coordinating Center, Office of Surface Mining, 501 Belle Street, Alton, Illinois

62002. Telephone: (618) 463-6460. Internet address: [jcoleman@osmre.gov](mailto:jcoleman@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Missouri Program
- II. OSM's Findings on the Status of the Missouri Program
- III. OSM's Decision
- IV. OSM's Actions and State Remedial Actions
- V. Procedural Determinations

**I. Background on the Missouri Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary conditionally approved the Missouri program on November 21, 1980. You can find background information on the Missouri program, including the Secretary's findings, the disposition of comments, and conditions of approval, in the November 21, 1980, **Federal Register** (45 FR 77017). You can also find later actions concerning the Missouri program and program amendments at 30 CFR 925.10, 925.12, 925.15, and 925.16.

The Abandoned Mine Land Reclamation (AMLR) Program was established by Title IV of the Act (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian Tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines. Section 405(c) of the Act also requires States to have an approved State regulatory program before the Secretary can approve a State program for the reclamation of abandoned coal mines. On the basis of these criteria, the Secretary approved the Missouri plan on January 29, 1982. You can find background information on the Missouri plan, including the Secretary's findings, the disposition of

comments, and the approval of the plan in the January 29, 1982, **Federal Register** (47 FR 4253). You can find later actions concerning the Missouri plan and amendments to the plan at 30 CFR 925.25.

Section 410 of SMCRA authorizes the Secretary to use funds under the AMLR program to abate or control emergency situations in which adverse effects of past coal mining pose an immediate danger to the public health, safety, or general welfare. In a **Federal Register** notice dated September 29, 1982 (47 FR 42729), we invited States to amend their AMLR plans for the purpose of undertaking emergency reclamation programs on our behalf. We approved Missouri's assumption of the AMLR emergency program on June 24, 1998. You can find background information, including our findings, the disposition of comments, and the approval of the Missouri AMLR emergency program in the June 24, 1998, **Federal Register** (63 FR 34277).

On June 19, 2003, the MLRP notified us that the Missouri Legislature passed House Bill (HB) 6 that appropriated funds for the Missouri program. HB 6 did not fully fund the Missouri program for the period beginning July 1, 2003, and ending June 30, 2004. The Governor of Missouri signed the appropriation bill on May 30, 2003 (Administrative Record No. MO-664).

On July 2, 2003, we met with the MLRP at the Missouri Department of Natural Resources' office in Jefferson City, Missouri (Administrative Record No. MO-664.1). During the meeting, the MLRP made a presentation, including a series of slides, describing the recently approved appropriation bill. HB 6 contained a severe cut in general revenue dollars available as State matching funds for the regulatory program. The MLRP advised us that the moneys that are available for the regulatory program would only be used for bond forfeiture reclamation activities. Also, the MLRP advised us that the State Legislature appropriated funds for the AMLR program. In addition, the MLRP explained that as of July 18, 2003, existing regulatory program staff, with the exception of four full-time employees, would be transferred to other programs and that it would not be able to implement and maintain its inspection, enforcement, permitting, or bond release responsibilities under the currently approved Missouri program. The four full-time employees would perform the bond forfeiture reclamation activities that were funded by the State Legislature. The MLRP indicated that it

would try to gain full program funding from the Missouri Legislature next year.

On July 11, 2003, the MLRP notified the Missouri coal operators that the Legislature had decided, through the budget process, to withhold funding and staffing for the Missouri program. The MLRP also notified the operators that after July 18, 2003, it would no longer be available for surface coal mining and reclamation regulatory issues (Administrative Record No. MO-664.2).

On July 21, 2003, the Governor of Missouri notified us that the State of Missouri is experiencing difficult budget and revenue shortfalls (Administrative Record No. MO-664.3). As a result of the revenue shortfalls, he requested assistance with permit reviews, inspection activities, and general oversight of the active coal mining operations in the State. He indicated that Missouri continues to have adequate funding and staff available to maintain design and reclamation efforts for bond forfeiture sites, as well as sufficient funding and staff to maintain the AMLR program, including the emergency program. He also indicated that he was hopeful his request would be temporary and that he would continue to work with the Legislature in an attempt to assure adequate funding for all of Missouri's regulatory program responsibilities.

On August 4, 2003, we notified the Governor of Missouri that we were obligated, in accordance with 30 CFR 733.12(e), to substitute Federal enforcement for those portions of the Missouri program that were not fully funded and staffed (Administrative Record No. MO-664.4). We cited Missouri's failure to fund and staff the Missouri program in several areas including inspection, enforcement, permitting, and bonding activities.

All Missouri Administrative Record documents from MO-664 (June 19, 2003) through MO-664.4 (August 4, 2003) are being considered in this rulemaking.

## II. OSM's Findings on the Status of the Missouri Program

On the basis of the record described above, we are making the following findings in accordance with sections 504 and 521(b) of SMCRA and 30 CFR 733.12.

### A. Inspection and Enforcement

The MLRP currently has approximately 46 active and inactive mine sites to inspect. By State law, each active site requires four complete and eight partial inspections per year. Inactive sites require four complete inspections per year and sufficient

partial inspections to ensure compliance with the State program. On July 2, 2003, the MLRP notified us that effective July 18, 2003, existing regulatory program staff, including inspection and enforcement staff, would be transferred to other programs. Therefore, we find that the MLRP does not have the program staff necessary to implement and maintain its inspection and enforcement provisions in the Code of State Regulations (CSR) at 10 CSR 40-8.030 or its civil and criminal penalty provisions at 10 CSR 40-8.040 and 40-8.045. Thus, the MLRP cannot effectively implement, maintain, or enforce the inspection and enforcement aspects of the approved Missouri program and has not demonstrated that it intends to administer these aspects of the program.

### B. Permitting

The MLRP currently has one new permit and several permit revisions that are pending review for possible approval. On July 2, 2003, the MLRP notified us that effective July 18, 2003, existing regulatory program staff, including permitting staff, would be transferred to other programs. Therefore, we find that the MLRP does not have the program staff necessary to implement and maintain its permitting provisions at 10 CSR 40-6.010 through 40-6.120. Thus, the MLRP cannot effectively implement, maintain, or enforce this permitting aspect of the approved Missouri program and has not demonstrated that it intends to administer this aspect of the program.

### C. Bonding

#### 1. Performance Bond Requirements

On July 2, 2003, the MLRP told us that effective July 18, 2003, existing regulatory program staff, with the exception of bond forfeiture reclamation staff, would be transferred to other programs. Therefore, we find that the MLRP does not have the program staff necessary to implement and maintain its general bonding provisions at 10 CSR 40-7.011, bond release provisions at 10 CSR 40-7.021, or bond forfeiture provisions at 10 CSR 40-7.031, with the exception of 10 CSR 40-7.031(3) concerning bond forfeiture reclamation activities. Thus, the MLRP cannot effectively implement, maintain, or enforce all of the bonding aspects of the approved Missouri program and has not demonstrated that it intends to administer these aspects, with the exception of bond forfeiture reclamation activities.

#### 2. Bond Forfeiture Reclamation Activities

On July 2, 2003, Missouri told us that the Missouri Legislature appropriated funds for bond forfeiture reclamation. Missouri indicated that it would use the funds to provide four full-time regulatory program staff to implement this activity. Missouri had approximately 33 sites with bonds forfeited and collected that were unreclaimed as of September 30, 2002. In our 2002 annual evaluation report for Missouri, we found that the State took several actions to improve the effectiveness of its bond forfeiture reclamation. The MLRP developed a work plan for completing reclamation at several forfeiture sites and instituted changes in its internal procedures for handling forfeiture projects. Therefore, we find that Missouri has the program staff necessary to implement, maintain, and enforce the bond forfeiture reclamation requirements of the approved Missouri program.

## III. OSM's Decision

Having reviewed and considered all available information on the MLRP's capability and intent to implement, maintain, and enforce the Missouri program, we made the following determinations.

Missouri has indicated its intent to take steps to resolve the funding and staffing issues for the entire program. For this reason, we find that, at this time, withdrawing approval of Missouri's program is not justified.

We determined that the MLRP does have sufficient funding and staff to implement and maintain bond forfeiture reclamation activities. We also determined that the MLRP does not have adequate staff and resources to implement all other aspects of its program. To ensure that the adverse effects of surface mining are controlled as required under SMCRA, we must assume the responsibility for enforcement of parts of the Missouri program until the MLRP is able to administer all segments of its program.

We will directly enforce the inspection and enforcement provisions, the permitting provisions, and the bonding and insurance provisions, with the exception of bond forfeiture reclamation activities.

We have developed a process by which the MLRP could resume full authority for all aspects of the approved Missouri program. Failure by the MLRP to seek and obtain full authority for the Missouri program or failure by the MLRP to perform satisfactorily in the areas in which it retains enforcement

authority will result in additional Federal action.

To implement this decision, we are amending the Federal regulations at 30 CFR part 925, which codify decisions concerning the Missouri program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a)(3) of SMCRA requires that a State's program demonstrate that the State regulatory authority has sufficient administrative and technical personnel and sufficient funding to enable the State to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA. Effective July 18, 2003, Missouri no longer had sufficient administrative and technical personnel or adequate funding to implement, maintain, and enforce its approved program. Therefore, Federal enforcement of Missouri's program must be made effective immediately to ensure the protection of the public through effective control of surface coal mining and reclamation operations in the State.

#### IV. OSM Actions and State Remedial Actions

##### A. Direct Federal Enforcement of the Missouri Program

Starting on August 22, 2003, we will directly implement, administer and enforce the Missouri program requirements to the extent outlined below in accordance with the enforcement provisions of SMCRA and the Federal regulations. The authority of the MLRP to implement the Missouri program is suspended with regard to those provisions listed below, with the following exceptions. With respect to State enforcement actions initiated before the effective date of this notice, the MLRP will have authority to take administrative actions to process outstanding violations to a final disposition (including issuing proposed assessments, assessing penalties, holding informal conferences and hearings, and collecting penalties). However, any actions by the MLRP to terminate or vacate enforcement actions will not take effect until we approve them. With respect to State bond forfeiture actions initiated before the effective date of this notice, the MLRP will have authority to perform bond forfeiture reclamation activities.

##### 1. Inspection and enforcement

a. We will conduct inspections of all coal exploration and surface coal mining and reclamation operations, including bond release inspections, in accordance with sections 517, 518, 521, 525, and 526 of SMCRA (30 U.S.C. 1267,

1268, 1271, 1275, and 1276), 30 CFR parts 842 through 845, and 43 CFR part 4. With respect to enforcement actions initiated by the MLRP before the effective date of this decision, we will conduct follow-up inspections at all sites with outstanding violations on or after the abatement dates specified in the State-issued notices of violation.

b. We will issue, modify, enforce, and terminate notices of violation, cessation orders, and show cause orders in accordance with sections 517, 518, 521, 525, and 526 of SMCRA (30 U.S.C. 1257, 1268, 1271, 1275, and 1276), 30 CFR parts 842 through 845, and 43 CFR part 4. With respect to enforcement actions initiated by the MLRP before the effective date of this decision, we will reinspect the site and if the operator has not abated the violation by the abatement date set in the State-issued notice of violation, we will take appropriate enforcement action. We will issue a notice of violation for any violation observed by us that has not been previously cited by the MLRP. We will issue a cessation order for any condition or practice that creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

c. We will impose civil and criminal sanctions, as appropriate, for violations of the approved Missouri program in accordance with sections 517, 518, 521, 525, and 526 of SMCRA (30 U.S.C. 1267, 1268, 1271, 1275, and 1276), 30 CFR parts 843 through 845, and 43 CFR part 4.

d. We will promptly inform the MLRP of the results of all follow-up inspections conducted and of enforcement actions taken that pertain to enforcement actions initiated by the MLRP before the effective date of this decision.

e. Administrative and judicial review of our enforcement actions will be in accordance with 43 CFR part 4.

##### 2. Permitting

a. We will review all new applications and issue all new permits, permit revisions, permit renewals, transfer and assignment or sale of permit rights for all surface coal mining and reclamation operations in accordance with the approved Missouri program at sections 444.815 through 444.825, 444.835 through 444.845, and 444.850 of the Missouri Surface Coal Mining Law (MSCML) and 10 CSR 40-6.010 through 40-6.120. This includes pending permit actions for which the MLRP has not made a final decision.

b. Permit fees are required in accordance with section 444.820.1 of MSCML and 10 CSR 40-6.010(6). The fees for all new permitting actions must be submitted to and made payable to OSM.

c. Administrative and judicial review of our permit decisions will be in accordance with sections 525 and 526 of SMCRA (30 U.S.C. 1275 and 1276), 30 CFR part 775, and 43 CFR part 4.

##### 3. Bonding

a. We will determine the amount of the performance bonds for new permitting actions in accordance with section 509 of SMCRA and 30 CFR part 800.

b. We will maintain the amount of the performance bonds for existing permits in accordance with the Missouri program at section 444.830 of MSCML and 10 CSR 40-7.011.

c. We will review and make decisions on performance bond release requests for new and existing permits in accordance with the Missouri program at section 444.875 of MSCML and 10 CSR 40-7.021. For existing bonds, we will make the required determinations for the amount of the bond to be released and submit the determinations to the MLRP for release.

d. New performance bonds must be made payable to the "United States of America and State of Missouri," and they must be submitted to OSM.

e. Administrative and judicial review of our performance bond determinations will be in accordance with 43 CFR part 4.

##### B. State Remedial Actions

To demonstrate its intent and capability to fully implement the Missouri program as approved by the Secretary, we will require the MLRP to complete the following remedial actions. Failure of the MLRP to accomplish these remedial measures could lead to our recommending to the Secretary that approval of the State program be withdrawn.

1. By August 22, 2003, the MLRP must submit to us a list of all outstanding enforcement actions specifying the abatement date set for each cited violation.

2. In accordance with the requirements of the approved Missouri program, the MLRP must complete administrative disposition of all enforcement actions that were initiated before the effective date of this decision.

3. Not later than 30 days from the effective date of this decision, the MLRP must submit to us a plan to reassume full authority for the Missouri program. At a minimum, the proposal must

provide specific and adequate provisions that address the following problems:

a. *Funding*: The proposal must demonstrate to our satisfaction a commitment to fully fund the Missouri program.

b. *Staffing*: The proposal must demonstrate to our satisfaction a commitment to hire a sufficient number of qualified personnel to comply with all inspection and enforcement, permitting, and bonding requirements of the Missouri program.

c. *Adherence to Approved Program*: The proposal must include provisions, policy statements, and other affirmative evidence sufficient to assure us that the MLRP will be in full compliance at all times with the provisions of the Missouri program.

4. Starting three months after the effective date of this decision, the MLRP must submit to us a report once every three months on its progress in obtaining full funding for the Missouri program.

5. Effective September 8, 2003, the MLRP must take all steps necessary to ensure that all records, documents, correspondence, inspector logs, etc. are made secure and to supply copies of all documents to us upon request.

### C. Resumption of State Authority

In order to resume regulatory authority over any portion of the inspection and enforcement, permitting, and bonding aspects of the Missouri program, the MLRP must formally petition us. We will entertain such a petition upon completion of the actions listed above under "State Remedial Actions."

Before making a decision to allow the MLRP to resume regulatory authority over any portion of the inspection and enforcement, permitting, or bonding operations, we will schedule a public comment period and hold a public hearing as outlined under 30 CFR 925.19. On the basis of the information available to us, we will determine if the MLRP will be allowed to resume regulatory authority over the Missouri program.

### D. 30 CFR 733 Action

We will publish any additional findings and decisions on this action in the **Federal Register** and will amend 30 CFR part 925 accordingly. A notice announcing a public comment period and opportunity for a hearing on Missouri's implementation of its program and our substitution of Federal enforcement may be found elsewhere in this edition of the **Federal Register**.

### E. Funding

We have decided that we will not provide additional grant funds to the MLRP for initiating new projects under the approved Missouri AMLR program under Title IV of SMCRA. We will review the status of any uninitiated projects that are currently funded under one or more AMLR construction grants as well as any high-priority proposed projects and take action as appropriate. Also, Missouri currently administers for us the AML emergency program in the State. We will continue to fund this program, as needed.

Because the MLRP's regulatory authority and responsibilities are being modified, funding under future administration and enforcement grants for implementation of the Missouri program must reflect actual regulatory authority responsibilities. The MLRP may submit an application for a new administration and enforcement grant based on its modified responsibilities.

### V. Procedural Determinations

#### Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

#### Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

#### Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

### Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

#### Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Missouri program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Missouri program has no effect on Federally-recognized Indian tribes.

#### Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

#### National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute

major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

#### *Paperwork Reduction Act*

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

#### *Regulatory Flexibility Act*

The Department of the Interior certifies that the substitution of Federal enforcement for portions of Missouri's permanent regulatory program will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule is not expected to result in additional costs to the regulated industry.

#### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the rule is not expected to result in additional costs to the regulated industry.

#### *Unfunded Mandates*

The substitution of Federal enforcement for portions of Missouri's permanent regulatory program will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the nature of the action being taken.

#### **List of Subjects in 30 CFR Part 925**

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 15, 2003.

**Rebecca W. Watson,**

*Assistant Secretary, Land and Minerals Management.*

■ For the reasons set out in the preamble, 30 CFR part 925 is amended as set forth below:

#### **PART 925—MISSOURI**

■ 1. The authority citation for part 925 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

■ 2. Add section 925.17 to read as follows:

##### **§ 925.17 Direct Federal enforcement of the Missouri program.**

Starting on August 22, 2003, OSM will directly implement, administer and enforce the Missouri program requirements to the extent outlined below in accordance with the enforcement provisions of SMCRA and the Federal regulations. The authority of the Missouri Department of Natural Resources, Air and Land Protection Division, Land Reclamation Program (MLRP) to implement the Missouri regulatory program is suspended with regard to those provisions listed below, with the following exceptions. With respect to State enforcement actions initiated before August 22, 2003, the MLRP will have authority to take administrative actions to process outstanding violations to a final disposition (including issuing proposed assessments, assessing penalties, holding informal conferences and hearings, and collecting penalties). However, any actions by the MLRP to terminate or vacate enforcement actions will not take effect until we approve them. With respect to bond forfeiture actions initiated before August 22, 2003, the MLRP will have authority to perform bond forfeiture reclamation activities.

(a) OSM will conduct inspections of all coal exploration and surface coal mining and reclamation operations, including bond release inspections, in accordance with sections 517, 518, 521, 525, and 526 of SMCRA (30 U.S.C. 1267, 1268, 1271, 1275, and 1276), 30 CFR parts 842 through 845, and 43 CFR part 4. With respect to enforcement actions initiated by the MLRP before August 22, 2003, we will conduct follow-up inspections at all sites with outstanding violations on or after the abatement dates specified in the State-issued notices of violation.

(b) OSM will issue, modify, enforce, and terminate notices of violation, cessation orders, and show cause orders for violations of the approved Missouri program, in accordance with sections 517, 518, 521, 525, and 526 of SMCRA (30 U.S.C. 1257, 1268, 1271, 1275, and 1276), 30 CFR parts 842 through 845, and 43 CFR part 4. With respect to enforcement actions initiated by the MLRP before August 22, 2003, we will reinspect the site and if the operator has not abated the violation by the

abatement date set in the State-issued notice of violation, we will take appropriate enforcement action. We will issue a notice of violation for any violation observed by us that has not been previously cited by the MLRP. We will issue a cessation order for any condition or practice that creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(c) OSM will impose civil and criminal sanctions, as appropriate, for violations of the Missouri program in accordance with sections 517, 518, 521, 525, and 526 of SMCRA (30 U.S.C. 1267, 1268, 1271, 1275, and 1276), 30 CFR parts 843 through 845, and 43 CFR part 4.

(d) OSM will promptly inform the MLRP of the results of all follow-up inspections conducted and of enforcement actions taken that pertain to enforcement actions initiated by the MLRP before August 22, 2003.

(e) OSM will review all new applications and issue all new permits, permit revisions, permit renewals, transfer and assignment or sale of permit rights for all surface coal mining and reclamation operations in accordance with the approved Missouri program at sections 444.815 through 444.825, 444.835 through 444.845, and 444.850 of the Missouri Surface Coal Mining Law (MSCML) and 10 CSR 40–6.010 through 40–6.120. This includes pending permit actions for which the MLRP has not made a final decision. Administrative and judicial review will be in accordance with sections 525 and 526 of SMCRA (30 U.S.C. 1275 and 1276), 30 CFR part 775, and 43 CFR part 4.

(f) Permit fees are required in accordance with section 444.820.1 of MSCML and 10 CSR 40–6.010(6). The fees for all new permitting actions must be submitted to and made payable to OSM.

(g) OSM will determine the amount of the performance bonds for new permitting actions in accordance with section 509 of SMCRA and 30 CFR part 800.

(h) OSM will maintain the amount of the performance bonds for existing permits in accordance with the Missouri program at section 444.830 of MSCML and 10 CSR 40–7.011.

(i) OSM will review and make decisions on performance bond release requests for new and existing permits in accordance with the Missouri program at section 444.875 of MSCML and 10 CSR 40–7.021. For existing bonds, we will make the required determinations

for the amount of the bond to be released and submit the determinations to the MLRP for release.

(j) Performance bonds must be made payable to the "United States of America and State of Missouri," and they must be submitted to OSM.

(k) Administrative and judicial review of OSM's enforcement actions, permitting decisions, and performance bond determinations will be in accordance with 43 CFR part 4.

■ 3. Add section 925.18 to read as follows:

**§ 925.18 State remedial actions.**

As a prerequisite to the Missouri Department of Natural Resources, Air and Land Protection Division, Land Reclamation Program (MLRP) reassuming authority to implement the provisions of the Missouri program that are being directly enforced by OSM, as specified under 30 CFR 936.17, the MLRP must complete the remedial measures specified below to demonstrate its intent and capability to fully implement the Missouri program.

(a) By August 22, 2003, the MLRP must submit to OSM a list of all outstanding enforcement actions specifying the abatement date set for each cited violation.

(b) In accordance with the requirements of the approved Missouri program, the MLRP must complete administrative disposition of all

enforcement actions that were initiated before the effective date of this decision.

(c) Not later than September 22, 2003, the MLRP must submit to OSM a plan to reassume full authority for the Missouri program. At a minimum, the proposal must provide specific and adequate provisions that address the following problems:

(1) *Funding*: The proposal must demonstrate to the satisfaction of OSM a commitment to fully fund the Missouri program.

(2) *Staffing*: The proposal must demonstrate to the satisfaction of OSM a commitment to hire a sufficient number of qualified personnel to comply with all inspection and enforcement, permitting, and bonding requirements of the approved Missouri program.

(3) *Adherence to Approved Program*: The proposal must include provisions, policy statements, and other affirmative evidence sufficient to assure OSM that the MLRP will be in full compliance at all times with the provisions of the Missouri program.

(d) Starting November 20, 2003, the MLRP must submit to OSM a report once every three months on its progress in obtaining full funding for the Missouri program.

(e) Effective September 8, 2003, the MLRP must take all steps necessary to ensure that all records, documents, correspondence, inspector logs, etc. are

made secure and to supply copies of all documents to OSM upon request.

■ 4. Add § 925.19 to read as follows:

**§ 925.19 Termination of Federal enforcement of the Missouri program.**

(a) OSM will consider returning to the MLRP the authority suspended under 30 CFR 925.17 provided the following requirements have been met:

(1) The MLRP accomplished to the satisfaction of OSM all remedial actions specified under 30 CFR 925.18.

(2) The MLRP petitioned OSM in writing to consider returning authority to the State.

(b) Upon satisfaction of the requirements specified in paragraph (a) of this section, OSM will schedule a public comment period and hearing on the MLRP's request.

(c) Following the close of the hearing and the comment period, OSM will announce in the **Federal Register** its decision to grant in whole or in part, or to deny the MLRP's request.

(d) Following OSM's decision to grant, in part, or to deny the MLRP's request, we will publish in the **Federal Register** further actions the MLRP will be required to take and the timeframes for taking such actions before OSM will consider a second request from the MLRP to return authority to the State.

[FR Doc. 03-21475 Filed 8-21-03; 8:45 am]

BILLING CODE 4310-05-P

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 925****Missouri Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Public comment period and opportunity for a public hearing.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), have reason to believe that Missouri is not adequately implementing, administering, maintaining, or enforcing its approved regulatory program (Missouri program) to regulate surface coal mining and reclamation operations. Also, based on the information that we currently have, we are substituting Federal enforcement for portions of the Missouri program in accordance with our regulations. We have scheduled a public comment period and opportunity for a public hearing to provide an opportunity for interested persons to express their concerns on Missouri's implementation of its program and our substitution of Federal enforcement for portions of the Missouri program.

This document gives the purposes, dates, and time for the public comment period during which interested persons may submit written comments on Missouri's implementation of its program and on our decision to substitute Federal enforcement for portions of the Missouri program. This document also includes the procedures that we will follow for a public hearing, if one is requested. We are publishing our findings and decision on the substitution of Federal enforcement for portions of the Missouri program in a separate **Federal Register** document.

**DATES:** We will accept written comments until 4 p.m., c.d.t., September 22, 2003. If requested, we will hold a public hearing on September 16, 2003. We will accept requests to speak at a hearing until 4 p.m., c.d.t. on September 8, 2003. We must receive public comments before 4 p.m., c.d.t., on September 22, 2003 at the address listed below, in order to be considered in our findings on the status of the Missouri program.

**ADDRESSES:** You should mail or hand deliver written comments and requests to speak at the hearing to John W. Coleman, Mid-Continent Regional Coordinating Center, at the address listed below.

You may review copies of all administrative record documents referenced in this document and all written comments received in response to this document at the address listed below during normal business hours, Monday through Friday, excluding holidays. John W. Coleman, Mid-Continent Regional Coordinating Center, Office of Surface Mining, 501 Belle Street, Alton, Illinois 62002, Telephone: (618) 463-6460, Internet address: [jcoleman@osmre.gov](mailto:jcoleman@osmre.gov).

**FOR FURTHER INFORMATION CONTACT:** John W. Coleman, Mid-Continent Regional Coordinating Center. Telephone: (618) 463-6460. Internet address: [jcoleman@osmre.gov](mailto:jcoleman@osmre.gov).

**SUPPLEMENTARY INFORMATION:** On June 19, 2003, the Missouri Department of Natural Resources, Air and Land Protection Division, Land Reclamation Program (MLRP) notified us that the Missouri Legislature passed House Bill (HB) 6 that appropriated funds for the Missouri program. In HB 6, the Missouri Legislature did not fully fund the Missouri program for the period beginning July 1, 2003, and ending June 30, 2004. The Governor of Missouri signed the appropriation bill on May 30, 2003 (Administrative Record No. MO-664).

On July 2, 2003, we met with the MLRP at the Missouri Department of Natural Resources' office in Jefferson City, Missouri (Administrative Record No. MO-664.1). During the meeting, the MLRP made a presentation, including a series of slides, describing the recently approved appropriation bill. HB 6 contained a severe cut in general revenue dollars available as State matching funds for the regulatory program. The MLRP advised us that the moneys that are available for the regulatory program would only be used for bond forfeiture reclamation activities. Also, the MLRP advised us that the State Legislature appropriated funds for the abandoned mine land reclamation (AMLR) program. In addition, the MLRP explained that as of July 18, 2003, existing regulatory program staff, with the exception of four full-time employees, would be transferred to other programs and that it would not be able to implement and maintain its inspection, enforcement, permitting, or bond release responsibilities under the currently approved Missouri program. The four full-time employees would perform the bond forfeiture reclamation activities that were funded by the State Legislature. The MLRP indicated that it would try to gain full program funding from the Missouri Legislature next year.

On July 11, 2003, the MLRP notified the Missouri coal operators that the Legislature had decided, through the budget process, to withhold funding and staffing for the Missouri program. The MLRP also notified the operators that after July 18, 2003, it would no longer be available for coal regulatory issues (Administrative Record No. MO-664.2).

On July 21, 2003, the Governor of Missouri notified us that the State of Missouri is experiencing difficult budget and revenue shortfalls (Administrative Record No. MO-664.3). As a result of the revenue shortfalls, he requested assistance with permit reviews, inspection activities, and general oversight of the active coal mining operations in the State. He indicated that Missouri continues to have adequate funding and staff available to maintain design and reclamation efforts for bond forfeiture sites, as well as sufficient funding and staff to maintain the AMLR program, including the emergency program. He also indicated that he was hopeful his request would be temporary and that he would continue to work with the Legislature in an attempt to assure adequate funding for all of Missouri's regulatory program responsibilities.

On August 4, 2003, we notified the Governor of Missouri that we were obligated, in accordance with 30 CFR 733.12(e), to substitute Federal enforcement for those portions of the Missouri program that were not fully funded and staffed (Administrative Record No. MO-664.4). We cited Missouri's failure to fund and staff the Missouri program in several areas including inspection, enforcement, permitting, and bonding activities. A final rule announcing the substitution of Federal enforcement for portions of Missouri's permanent regulatory program may be found elsewhere in this edition of the **Federal Register**.

In accordance with the procedures contained in 30 CFR 733.12(d), we are announcing a public comment period and offering the opportunity for a public hearing to provide interested parties an opportunity to express their concerns on the implementation of the Missouri program. We are particularly interested in the public's views and concerns on the State's ability to implement its program and on possible actions Missouri and OSM should pursue to resolve identified problems.

After the public comment period and review of all available information, we will publish additional findings on the status of Missouri's program implementation in accordance with the provisions of 30 CFR 733.12(e).

## Public Comment Procedures

### *Written Comments*

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this document and include explanations in support of your recommendations. We will not consider your comments if they are received after the close of the comment period (*see DATES*). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Mid-Continent Regional Coordinating Center may not be logged in.

### *Electronic Comments*

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Mid-Continent Regional Coordinating Center at (618) 463-6460.

### *Availability of Comments*

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If

individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

### *Public Hearing*

The scope of the public hearing will include permitting, bonding, inspection, enforcement, and all other matters relevant to the issues of whether a full or partial Federal program or Federal enforcement should be implemented in the State of Missouri.

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.d.t. on September 8, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

In addition, we will follow the hearing format and rules of procedure listed below.

1. The hearing will be informal and follow legislative procedures.
2. Based on the number of speakers in attendance, each participant may be limited to 10 minutes.
3. Participants will be called in the order in which they register.

### **List of Subjects in 30 CFR Part 925**

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 13, 2003.

**Jeffrey D. Jarrett,**

*Director, Office of Surface Mining.*

[FR Doc. 03-21474 Filed 8-21-03; 8:45 am]

**BILLING CODE 4310-05-P**



# Federal Register

---

**Friday,  
August 22, 2003**

---

**Part VI**

## **Securities and Exchange Commission**

---

**17 CFR Parts 200 and 202  
Adoption of Filing Fee Account Rule;  
Final Rule**

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 200 and 202

[Release Nos. 33-8267; 34-48361; 35-27714; 39-2410; IC-26153]

#### Adoption of Filing Fee Account Rule

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission is adopting a new rule that provides for the return of unused filing fees held in filing fee accounts in which there has been no activity for 180 days.

**EFFECTIVE DATE:** October 21, 2003.

**FOR FURTHER INFORMATION CONTACT:** Ronnette McDaniel, Office of Filings and Information Services at (202) 942-8925; Darrell L. Dockery, Office of Financial Management, at (202) 942-0340; Herbert Scholl, Division of Corporation Finance, at (202) 942-2930; or Carolyn Miller, Division of Investment Management, at (202) 942-0510.

#### SUPPLEMENTARY INFORMATION:

Commission rules require fees paid in connection with filings to be submitted to the U.S. Treasury Department depository at Mellon Bank in Pittsburgh, Pennsylvania.<sup>1</sup> The SEC maintains an account for each filer who submits funds to the depository for the purpose of paying required fees. As an accommodation, we have allowed filers to submit funds in advance and to maintain indefinitely running balances in these accounts in anticipation of paying a required fee.

A large number of established fee accounts show outstanding balances with no activity for an extended period of time. Our Office of Financial Management is modifying its practices for maintaining filing fee accounts. The changes will reduce the administrative burdens associated with these inactive accounts and return control of unused funds to filers for more productive purposes, while retaining flexibility for those who are still periodically paying filing fees. We will soon take the following actions relating to current accounts:

- Account statements will be sent to all account holders at the most current account address they have provided to the Commission. Subsequently, each account with activity within 180 calendar days will receive a monthly account statement.

- If an account has had no activity since January 1, 2003 and the balance exceeds \$5.00, the funds will be returned to the account holders.

- Balances of \$5.00 or less in accounts with no activity since January 1, 2003 will be returned to account holders upon request, if a request is made before January 1, 2004. If no such request is received, the funds will be forwarded to the U.S. Treasury general account, in compliance with applicable regulations.

We also are adopting a new rule to codify our future practices relating to these filing fee accounts. The rule, which will be added as new paragraph (c) to Rule 3a, provides that the SEC will return all funds to account holders if there has been no activity in their accounts for 180 calendar days.<sup>2</sup> We will include a reminder of this provision on each monthly account statement sent to active account holders.

The rule also indicates that account statements and returned funds will be sent to the account address provided to the SEC by each filer and that filers must keep this address current. Without current account addresses, we may not be able to provide timely account statements, and we may ultimately be unable to return funds to the account holders. To ensure the timely return of funds, all current account holders should confirm as soon as possible that their account addresses on file with the Commission are up to date.

A company may update its account and other addresses using two different methods. The preferred and most efficient method is to change them online using the EDGAR filing website.<sup>3</sup> This method ensures data integrity and the most timely update. Alternatively, a company may report a change of addresses on an amended Form ID.<sup>4</sup> Simply changing an address in the text of the cover page of a filing made on the

<sup>2</sup> We have chosen 180 calendar days as a reasonable period of time to allow filers flexibility to plan future filings and have money available to pay fees. The administrative and accounting burdens associated with accounts without activity beyond that period begin to outweigh the benefits to filers. The 180-day period begins on the date of the last deposit or withdrawal or other adjustment to an account, regardless of the amount. Consequently, if a filer has a balance in an account that has been inactive for almost 180 days, the filer can avoid the return of funds simply by adding a nominal amount of money to the account via the depository or by making a filing that will draw down a fee, at which point the 180-day period is re-started.

<sup>3</sup> This process is described in the EDGAR Filer Manual (Release 8.5), Vol. 1, Section 6.5.1.

<sup>4</sup> Form ID is used by filers to obtain access codes to make electronic filings on the EDGAR system and requires filers to provide account address information to the Commission [17 CFR 239.63; 17 CFR 249.446; 17 CFR 274.402].

EDGAR system will not be sufficient to update the Commission's account address records.

We also are adopting an update and revision to Rule 200.30-13, delegating authority to the Office of Financial Management to administer Rule 3a(c).<sup>5</sup>

Since this rule relates solely to agency procedure or practice, publication for notice and comment is not required under the Administrative Procedure Act.<sup>6</sup> It follows that the requirements of the Regulatory Flexibility Act do not apply.<sup>7</sup> This rule also imposes no new collection of information under the Paperwork Reduction Act.<sup>8</sup>

#### Statutory Basis

Rule 3a(c) and revised Rule 200.30-13 are promulgated under Sections 6 and 19(a) of the Securities Act of 1933, Sections 4A, 4B, 13(e), 14(g) and 23(a) of the Securities Exchange Act of 1934, Section 319(a) of the Trust Indenture Act of 1939, Section 20(a) of the Public Utility Holding Company Act of 1935, Section 211 of the Investment Advisers Act of 1940 and Section 38 of the Investment Company Act of 1940.

#### List of Subjects

##### 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government Agencies).

##### 17 CFR Part 202

Administrative practice and procedure, Securities.

#### Text of the Amendment

■ In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

#### PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION REQUESTS

■ 1. The authority citation for Part 200, Subpart A—Organization and Program Management, continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77s, 78d-1, 78d-2, 78w, 78ll(d), 78mm, 79t, 77sss, 80a-37, 80b-11, unless otherwise noted.

\* \* \* \* \*

■ 2. By revising § 200.30-13 to read as follows:

#### § 200.30-13 Delegation of authority to Associate Executive Director of the Office of Financial Management.

Pursuant to the provisions of 15 U.S.C. 78d-1 and 78d-2, the Securities

<sup>5</sup> 17 CFR 200.30-13.

<sup>6</sup> 5 U.S.C. 553(b).

<sup>7</sup> 5 U.S.C. 601-612.

<sup>8</sup> 44 U.S.C. 3501-3520.

<sup>1</sup> Rule 3a of the Commission's Informal and Other Procedures [17 CFR 202.3a] and Rule 13(c) of Regulation S-T [17 CFR 232.13(c)].

and Exchange Commission hereby delegates, until the Commission orders otherwise, the following functions to the Associate Executive Director of the Office of Financial Management, to be performed by him or her, or under his or her direction by such person or persons as may be designated from time to time by the Chairman of the Commission:

(a) The compromise and collection of federal claims as required by the Federal Claims Collection Act of 1966, as amended and recodified at 31 U.S.C. 3701–3720, in conformance with standards and procedures jointly promulgated by the Secretary of the Treasury and the Attorney General of the United States in 31 CFR Parts 900–904.

(b) The administration of filing fee account procedures and policies established in § 202.3a of this chapter.

**PART 202—INFORMAL AND OTHER PROCEDURES**

■ 3. The authority citation for Part 202 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77s, 77t, 78d–1, 78u, 78w, 78l(d), 79r, 79t, 77sss, 77uuu, 80a–37,

80a–41, 80b–9, and 80b–11, unless otherwise noted.

\* \* \* \* \*

■ 4. By amending § 202.3a by adding paragraph (c), to read as follows:

**§ 202.3a Instructions for filing fees.**

\* \* \* \* \*

(c) *Filing fee accounts.* (1) A filing fee account is maintained for each filer who submits a filing requiring a fee on the Commission’s EDGAR system or who submits funds to the U.S. Treasury designated depository in anticipation of paying a filing fee. Account statements are regularly prepared and provided to account holders. Account holders must maintain a current account address with the Commission to ensure timely access to these statements.

(2) Funds held in any filing fee account in which there has not been a deposit, withdrawal or other adjustment for more than 180 calendar days will be returned to the account holder, and account statements will not be sent again until a deposit, withdrawal or other adjustment is made with respect to the account. Filers must maintain a current account address to assure the

timely return of funds. It may not be possible to return funds from inactive accounts if the Commission is unable to identify a current account address of an account holder after making reasonable efforts to do so.

*Note to paragraph (c).* A company may update its account and other addresses using two different methods. The preferred and most efficient method is to change them online using the EDGAR filing website. This method ensures data integrity and the most timely update. Alternatively, a company may report a change of addresses on an amended Form ID [17 CFR 239.63; 17 CFR 249.446 and 17 CFR 274.402]. Simply changing an address in the text of the cover page of a filing made on the EDGAR system will not be sufficient to update the Commission’s account address records.

Dated: August 19, 2003.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–21539 Filed 8–21–03; 8:45 am]

**BILLING CODE 8010–01–P**



# Federal Register

---

**Friday,  
August 22, 2003**

---

**Part VII**

## **Department of Education**

---

**Upward Bound Program Participant  
Expansion Initiative; Notice**

**DEPARTMENT OF EDUCATION**

RIN 1840-ZA03

**Upward Bound Program Participant Expansion Initiative****AGENCY:** Office of Postsecondary Education, Department of Education.**ACTION:** Notice of final priority.

**SUMMARY:** The Secretary of Education announces an absolute priority to provide supplemental funds of up to \$100,000 in fiscal year (FY) 2003 to currently funded Upward Bound projects that (1) serve at least one target high school in which at least 50 percent of the students were eligible for free lunch under the National School Lunch Act (Free Lunch program) during the 2001–2002 or 2002–2003 school year, and (2) received supplemental funds in FY 2000 under the Upward Bound Program Participant Expansion Initiative (UBP–PEI).

The Secretary further requires that projects that receive supplemental funds under this priority will use those funds to select and serve students eligible to participate in Upward Bound who (1) attend a target high school in which at least 50 percent of the students were eligible for free lunch under the National School Lunch Act during the 2001–2002 or 2002–2003 school year, and (2) have the greatest need for Upward Bound services. Eligible students having the greatest need for Upward Bound services are those who:

1. Have not met the state academic achievement standard for grade eight in reading/language arts; or
2. Have not met the state academic achievement standard for grade eight in math; or
3. Have a grade point average of 2.5 or less (on a 4.0 scale) for the most recent school year for which grade point averages are available.

By using state academic achievement assessments to determine student eligibility for services, schools can align this initiative with the requirements and activities supported by the No Child Left Behind Act of 2001, Pub. L. 107–110.

Applicants not eligible for the absolute priority are invited to apply and will be funded, subject to the availability of funds, as described in the funding order below. The selected projects must use the supplemental funds to provide services to eligible project participants with the greatest need for those services.

**EFFECTIVE DATE:** This priority is effective 30 days after the date of publication in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Dr. Margarita Benitez, Sheryl Wilson, or Gaby Watts, U.S. Department of Education, 1990 K Street, NW., Room 7020, Washington, DC 20006–8510. Telephone (202) 502–7600. The e-mail address for the Federal TRIO Programs is: [Trio@ed.gov](mailto:Trio@ed.gov). The e-mail address for Dr. Margarita Benitez is: [margarita.benitez@ed.gov](mailto:margarita.benitez@ed.gov).

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 persons listed in the preceding paragraph.

**SUPPLEMENTARY INFORMATION:** The Secretary of Education published a notice of proposed priority in the **Federal Register** on June 24, 2003 (68 FR 37469–37470). This notice of final priority contains several changes from the notice of proposed priority, which are explained fully in the Analysis of Comments and Changes section in this notice.

**Background**

In FY 2003, the Congress appropriated funds for the Federal TRIO Programs. In examining the options available to the Secretary for allocating these funds, the Secretary determined that a portion of the funds should be used to increase support to the Upward Bound Program. The Upward Bound Program, authorized under section 402C of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1070a–13, helps low-income, potential first-generation college students acquire the skills and motivation necessary for success in education beyond secondary school.

The purpose of this supplement is to help the Upward Bound Program achieve one of its key performance goals: increasing the college enrollment rate of low-income, first generation college students. A recent evaluation of the Upward Bound Program found that the program has significant effects on higher risk students, but that the program was inadequately targeting these students.

We intend that, under the absolute priority, there will be an increase in the number of eligible students with the greatest need who are served by the Upward Bound Program. The students with the greatest need are generally those from the lowest income levels who have potential for college but are not performing successfully in high school. The Secretary believes that

limiting supplemental funds to projects that serve the above described target schools is a good way to ensure that projects serve the lowest income students because the Free Lunch program is limited to students from families with the lowest family income. An estimated 180 current Upward Bound projects could receive supplemental funds to serve additional students.

The effectiveness of UBP–PEI will be ultimately measured by the college enrollment rate of these higher-risk, low-income, first generation college students who participate in this initiative. However, in addition to the ultimate measure of college enrollment, the Secretary will also look at “what works” in preparing these students for college, in order to inform program improvements in Upward Bound. Each grantee will be required to work with an independent evaluator retained by the Secretary to measure the expansion initiative’s effectiveness.

The Secretary will consider requests for \$100,000, \$75,000, and \$50,000 under this initiative. An institution that requests \$100,000 must serve at least 20 students, an institution that requests \$75,000 must serve at least 15 students, and an institution that requests \$50,000 must serve at least 10 students.

**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 competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive 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 invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

**Absolute Priority**

Under 34 CFR 75.105(c)(3), the Secretary will give an absolute preference to applications that meet the following absolute priority.

The Secretary will provide supplemental funds of up to 100,000 to

regular Upward Bound Program projects that:

1. Were selected for funding under the FY 2003 Upward Bound Program competition.

2. Serve a target high school in which at least 50 percent of the students were eligible to receive free lunch under the National School Lunch Act during the 2001–2002 or 2002–2003 school year.

3. Received supplemental funds in FY 2000 under the Notice of Final Priority dated July 24, 2000, 65 FR 45698–45699.

4. (a) Agree to select and serve at least 20 students who are eligible for Upward Bound services, attend a target high school in which at least 50 percent of the students were eligible to receive free lunch under the National School Lunch Act during the 2001–2002 or 2002–2003 school year and have the greatest need for project services, if requesting \$100,000.

(b) Agree to select and serve at least 15 students who are eligible for Upward Bound services, attend a target high school in which at least 50 percent of the students were eligible to receive free lunch under the National School Lunch Act during the 2001–2002 or 2002–2003 school year and have the greatest need for project services, if requesting \$75,000.

(c) Agree to select and serve at least 10 students who are eligible for Upward Bound services, attend a target high school in which at least 50 percent of the students were eligible to receive free lunch under the National School Lunch Act during the 2001–2002 or 2002–2003 school year and have the greatest need for project services, if requesting \$50,000.

Students who have the greatest need for project services are those students who:

(i) Have not met the state academic achievement standard for grade eight in reading/language arts;

(ii) Have not met the state academic achievement standard for grade eight in math; or

(iii) Have a grade point average of 2.5 or less (on a 4.0 scale) for the most recent school year for which grade point averages are available.

Veterans Upward Bound projects and Upward Bound Math-Science projects are not eligible to participate in this initiative.

The Secretary will fund applications in the following order:

1. Applications that meet the absolute priority.

2. All other applications that meet criteria 1, 2, and 4 above.

If funds are available after funding all applications that meet the absolute

priority, the Secretary will select from among the remaining applicants that meet criteria 1, 2, and 4 based upon the highest scores received (including prior experience points) in the FY 2003 Upward Bound grant competition. If there are insufficient funds for all applications with the same score, the Secretary will select for funding those applicants with the lowest average cost per Upward Bound participant (Federal funds only) for the 2001–2002 program year.

#### Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, thirty-four parties submitted comments. An analysis of the comments and of changes in the priority since publication of the notice of proposed priority follows. We group major issues by subject. Generally, we do not address technical or other minor changes—and suggested changes the law does not authorize us to make under the applicable statutory authority.

#### Target School Eligibility

*Comments:* Nine commenters responded. Two recommended that eligibility be student-centered, that is, that students with the academic profile outlined in the notice of proposed priority be eligible to participate in the initiative, regardless of whether they were enrolled in a target school. Target schools were defined in the notice of proposed priority as those “in which at least 50 percent of the students were eligible for free lunch under the National School Lunch Act during the 2001–2002 school year and who have the greatest need for Upward Bound services.” One commenter posited that it was unfair to exclude low income, high risk students from the initiative simply because they were not enrolled in a school with 50 percent or more students participating in the Free Lunch program. A third commenter suggested that student eligibility should be determined by the project.

Four commenters questioned the reliability of the Free Lunch program data as the criterion for eligibility to qualify for funding under the initiative. Two remarked that there are more high-poverty areas in the country than those indicated by the Free Lunch program statistics. According to one commenter, some regions of the country, such as Appalachia, have a tradition of low registration in Federal programs, such as the Free Lunch program. All four commenters referred to a significant drop in Free Lunch program participation from the early grades to middle and high school. Two pointed

out that teenagers are more averse than younger children to register in “poverty” programs. One suggested that we use data on both the number of participants in the Free Lunch program and the number of students who qualify for reduced lunch for target school eligibility.

*Discussion:* The Secretary agrees with many of the points made by the commenters. However, for purposes of this initiative, the Secretary believes that the Free Lunch program criterion is a fair, valid, and objective measure of low-income and need for Upward Bound services.

*Changes:* None.

#### Date of Eligibility Data

*Comments:* Two commenters indicated that Free Lunch program data for the 2002–2003 school year was actually easier to obtain and was more current than data for the 2001–2002 school year.

*Discussion:* The Secretary proposed using data for the 2001–2002 year in the notice of proposed priority because the Secretary was uncertain whether more recent data would be available. If that data is available, the Secretary believes that such data may be used.

*Changes:* The Secretary will accept Free Lunch program data for *either* the 2001–2002 or the 2002–2003 school year.

#### Priority for Currently Funded Programs

*Comments:* Six commenters addressed this issue. Four supported the priority in favor of currently funded projects that participated in the FY 2000 expansion initiative, citing their experience, proven commitment, and record of success. Two pointed out the existence of other experienced and well qualified projects, and suggested that others be given the opportunity to serve students from other needy areas.

*Discussion:* The Secretary understands that there are usually more qualified applicants than available funds, and that forces hard choices. In order to increase the chance that this initiative will succeed, the Secretary has chosen to give an absolute priority to experienced Upward Bound projects that have been successful in the past working with eligible target schools and that have the staff capacity to serve additional students. Nonetheless, the Secretary expects that there will be sufficient funds for this initiative to award supplemental grants to a few new projects.

*Changes:* None.

### Length of Funding for UBP-PEI

*Comments:* Four commenters inquired about the expected funding period for this initiative.

*Discussion:* To the extent that the commenters were questioning whether the Secretary planned to provide additional funding in future fiscal years, the Secretary anticipates awarding funds under the UBP-PEI for the next four project/budget years. However, the expenditure of funds in the future is always contingent upon Congressional action, including the size of the Congressional appropriation for a program in a given fiscal year.

*Changes:* None.

### Requests for Clarification on Student Eligibility

*Comments:* Ten commenters asked whether students already enrolled in Upward Bound who took part in the previous Upward Bound initiative could participate in this year's initiative. Eight commenters asked whether all UBP-PEI students must come from the target schools that have 50 percent or more students eligible for the Free Lunch program. Another commenter asked whether grades of C or less in 8th grade core subjects were acceptable if a student's grade point average was unavailable.

*Discussion:* Students currently being served by Upward Bound projects as a consequence of participating in the FY 2000 expansion initiative may participate in UBP-PEI *as long as they meet all UBP-PEI criteria*, that is they are eligible Upward Bound participants who are enrolled in an eligible target high school and meet one or more of the greatest academic need criteria listed in the priority. With regard to the second question, for the reasons explained in a previous response, all UBP-PEI students must attend eligible target schools. With regard to the third question, the Secretary does not wish to add additional criteria. Moreover, the third criterion allows a project to use the grade point average for the most recent school year for which grade point averages are available. Therefore, a relevant grade point average will almost always be available.

*Changes:* None.

### Request To Reduce the Minimum Number of Participants Served

*Comments:* One commenter proposed that eligible projects be given the opportunity to serve the number of needy participants they could manage best. The commenter indicated that project and institutional resources may not be sufficient to accommodate and

serve well 20 additional students, yet resources would be available to serve a smaller number adequately.

*Discussion:* The Secretary considers this suggestion reasonable and viable.

*Changes:* A project may request three levels of funding, \$100,000, \$75,000, or \$50,000. If a project requests \$100,000, it must serve at least 20 students; if it requests \$75,000, it must serve at least 15 students; if it requests \$50,000, it must serve at least 10 students.

### Concerns About Local Impediments That Run Counter to UBP-PEI

*Comments:* Three commenters identified local or regional situations that present difficulties in meeting the UBP-PEI criteria or providing the required services. One was the Appalachia situation that was mentioned above, a second was small rural schools, and a third was jurisdictions like Chicago, where the School Board has mandated students who flunk state tests take summer courses so the students would be unable to participate in the Upward Bound summer component.

*Discussion:* The change discussed above that allows a project to apply for three levels of funding should eliminate the first two concerns. Jurisdictions like Chicago are providing a valuable service to Chicago students, obviating the need for Upward Bound involvement.

*Changes:* See preceding change.

### Suggestions for Additional Criteria for Student Eligibility

*Comments:* Three commenters suggested additional eligibility criteria for program participants: limited English proficiency, English as a second language, and a grade of C or less in core academic subjects.

*Discussion:* As stated earlier, a student currently served by Upward Bound projects may be eligible to participate in UBP-PEI if the student is enrolled in an eligible target high school, and meets one or more of the greatest academic need criteria listed in the priority. The Secretary does not wish to add additional criteria that may be hard to implement consistently across projects nationwide and may confound the evaluation of the impact that UBP-PEI has on the individuals served.

*Changes:* None.

### Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive

order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

### Applicable Program Regulations

34 CFR part 645

### Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/legislation/FedRegister.html>.

To use PDF, you must have the 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 84.047A, Upward Bound Program Participant Expansion Initiative)

**Program Authority:** 20 U.S.C. 1070.

Dated: August 18, 2003.

**Sally L. Stroup,**

*Assistant Secretary, Office of Postsecondary Education.*

[FR Doc. 03-21582 Filed 8-19-03; 8:45 am]

**BILLING CODE 4000-01-P**

### DEPARTMENT OF EDUCATION

[CFDA No: 84.047A]

### Office of Postsecondary Education, Upward Bound Program Participant Expansion Initiative; Notice Inviting Applications for Supplemental Awards for Fiscal Year (FY) 2003

*Purpose of Program:* The purpose of this initiative is to help the Upward Bound Program achieve one of its key performance goals: increasing the college enrollment rate of low-income, first generation college students.

*Eligible Applicants:* All currently funded Upward Bound projects successful in the FY 2003 grant competition. Veterans Upward Bound projects and Upward Bound Math-Science projects are not eligible to participate.

*Applications Available:* August 21, 2003.

*Deadline for Transmittal of Applications:* September 8, 2003.

*Deadline for Intergovernmental Review:* Completed on February 11, 2003.

*Estimated Available Funds:* \$18,000,000.

*Estimated Range of Awards:* \$50,000–\$100,000.

*Estimated Average Size of Awards:* \$100,000.

*Estimated Number of Awards:* 180.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 4 years.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 86, 97, 98, and 99; and (b) the regulations for this program in 34 CFR part 645.

**SUPPLEMENTARY INFORMATION:** Eligible applicants that meet all the criteria for the absolute priority, except for having received supplemental funding under the FY 2000 participant expansion initiative, are invited to apply and will be funded, subject to the availability of funds, as described in the Notice of Final Priority.

Applicants for supplemental awards must submit an application that contains:

- A list, certified by the Upward Bound project director, of the target schools in which at least 50 percent of the students were eligible for the Free Lunch program during the 2001–02 or 2002–03 school year;
- The number of additional students, at least 10 (if requesting \$50,000), at least 15 (if requesting \$75,000), or at least 20 (if requesting \$100,000), that the project plans to serve;
- Agreement to select participants from the identified eligible target schools that have one or more of the greatest need criteria described in the Notice of Final Priority;
- A brief description of the activities that will be supported with the supplemental funding;
- A budget summary; and
- A budget narrative describing how the supplemental funds will be used.

#### **Priority**

##### *Absolute Priority*

Under 34 CFR 75.105(c)(3), the Secretary will give an absolute preference to applications that meet the following absolute priority.

The Secretary will provide supplemental funds of up to \$100,000 to regular Upward Bound Program projects that:

1. Were selected for funding under the FY 2003 Upward Bound Program grant competition;

2. Serve a target high school in which at least 50 percent of the students were eligible to receive free lunch under the National School Lunch Act during the 2001–2002 or 2002–2003 school year;

3. Received supplemental funds in FY 2000 under the Notice of Final Priority dated July 24, 2000, 65 FR 45698–45699; and

4. (a) Agree to select and serve at least 20 students who are eligible for Upward Bound services, attend a target high school in which at least 50 percent of the students were eligible to receive free lunch under the National School Lunch Act during the 2001–2002 or 2002–2003 school year and have the greatest need for project services, if requesting \$100,000.

(b) Agree to select and serve at least 15 students who are eligible for Upward Bound services, attend a target high school in which at least 50 percent of the students were eligible to receive free lunch under the National School Lunch Act during the 2001–2002 or 2002–2003 school year and have the greatest need for project services, if requesting \$75,000.

(c) Agree to select and serve at least 10 students who are eligible for Upward Bound services, attend a target high school in which at least 50 percent of the students were eligible to receive free lunch under the National School Lunch Act during the 2001–2002 or 2002–2003 school year and have the greatest need for project services, if requesting \$50,000.

Students who have the greatest need for project services are those students who:

- a. Have not met the state academic achievement standard for grade eight in reading/language arts;
- b. Have not met the state academic achievement standard for grade eight in math; or
- c. Have a grade point average of 2.5 or less (on a 4.0 scale) for the most recent school year for which grade point averages are available.

Veterans Upward Bound projects and Upward Bound Math-Science projects are not eligible to participate in this initiative.

The Secretary will fund applications in the following order:

1. Applications that meet the absolute priority.
2. All other applications that meet criteria 1, 2, and 4 above.

If funds are available after funding all applications that meet the absolute priority, the Secretary will select from among the remaining applicants based

upon the highest scores received (including prior experience points) in the FY 2003 Upward Bound grant competition. If there are insufficient funds for all applications with the same score, the Secretary will select for funding those applicants with the lowest average cost per Upward Bound participant (Federal funds only) for the 2001–2002 program year.

#### **FOR APPLICATIONS AND FURTHER**

**INFORMATION CONTACT:** Dr. Margarita Benitez, Sheryl Wilson, or Gaby Watts, U.S. Department of Education, 1990 K Street, NW., Room 7020, Washington, DC 20006–8510. Telephone (202) 502–7600. The e-mail address for the Office of Federal TRIO Programs is: [Trio@ed.gov](mailto:Trio@ed.gov).

The e-mail addresses for Dr. Benitez, Ms. Wilson and Ms. Watts are: [Margarita.Benitez@ed.gov](mailto:Margarita.Benitez@ed.gov), [Sheryl.Wilson@ed.gov](mailto:Sheryl.Wilson@ed.gov), [Gaby.Watts@ed.gov](mailto:Gaby.Watts@ed.gov).

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–888–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraph. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

#### **Electronic Access to This Document**

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Portable Document Format (PDF) on the Internet at the following site: [www.ed.gov/legislation/FedRegister](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 the 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.

You may also view this document in PDF at the following site: <http://www.ed.gov/news.html>.

**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:** 20 U.S.C. 1070.

Dated: August 18, 2003.

**Sally Stroup,**

*Assistant Secretary Office of Postsecondary  
Education.*

[FR Doc. 03-21583 Filed 8-19-03; 3:49 pm]

**BILLING CODE 4000-01-P**

# Reader Aids

## Federal Register

Vol. 68, No. 163

Friday, August 22, 2003

### CUSTOMER SERVICE AND INFORMATION

<b>Federal Register/Code of Federal Regulations</b>	
General Information, indexes and other finding aids	<b>202-741-6000</b>
<b>Laws</b>	<b>741-6000</b>
<b>Presidential Documents</b>	
Executive orders and proclamations	<b>741-6000</b>
<b>The United States Government Manual</b>	<b>741-6000</b>
<b>Other Services</b>	
Electronic and on-line services (voice)	<b>741-6020</b>
Privacy Act Compilation	<b>741-6064</b>
Public Laws Update Service (numbers, dates, etc.)	<b>741-6043</b>
TTY for the deaf-and-hard-of-hearing	<b>741-6086</b>

### ELECTRONIC RESEARCH

#### World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: <http://www.access.gpo.gov/nara>

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: [http://www.archives.gov/federal\\_register/](http://www.archives.gov/federal_register/)

#### E-mail

**FEDREGTOC-L** (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to <http://listserv.access.gpo.gov> and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings)*; then follow the instructions.

**PENS** (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to <http://listserv.gsa.gov/archives/publaws-l.html> and select *Join or leave the list (or change settings)*; then follow the instructions.

**FEDREGTOC-L** and **PENS** are mailing lists only. We cannot respond to specific inquiries.

**Reference questions.** Send questions and comments about the Federal Register system to: [info@fedreg.nara.gov](mailto:info@fedreg.nara.gov)

The Federal Register staff cannot interpret specific documents or regulations.

### FEDERAL REGISTER PAGES AND DATE, AUGUST

45157-45740.....	1
45741-46072.....	4
46073-46432.....	5
46433-46918.....	6
46919-47200.....	7
47201-47440.....	8
47441-47834.....	11
47835-48248.....	12
48249-48528.....	13
48529-48766.....	14
48767-49322.....	15
49323-49682.....	18
49683-50038.....	19
50039-50456.....	20
50457-50680.....	21
50681-50962.....	22

### CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

<b>3 CFR</b>		96.....	48322
		331.....	45787
<b>Executive Orders:</b>		762.....	49723
12722 (See: Notice of		783.....	47499
July 31, 2003).....		983.....	45990
45739		991.....	48575
12724 (See: Notice of		1124.....	46505, 49375
July 31, 2003).....		1131.....	46505
45739		1135.....	49375
13290 (See: Notice of		1778.....	46119
July 31, 2003).....		1910.....	50479
45739		1941.....	50479
13313.....		1965.....	50479
13314.....		2200.....	48814
13222 (See: Notice of		2201.....	48814
August 7, 2003).....		4279.....	46509
47833		<b>8 CFR</b>	
<b>Administrative Orders:</b>		204.....	46925
<b>Notices:</b>		212.....	46926
Notice of July 31,		214.....	46926
2003).....		231.....	46926
45739		233.....	46926
Notice of August 7,		<b>9 CFR</b>	
2003.....		77.....	47201
47833		82.....	45741
Presidential		92.....	50053
Determinations:		94.....	47835
No. 1998-7 of		206.....	47802
December 5, 1997		430.....	50687
(See No. 03-31 of		<b>10 CFR</b>	
August 8, 2003).....		72.....	49683
49325		140.....	46929
No. 2003-30 of August		600.....	50646
7, 2003.....		1015.....	48531
49323		1018.....	48531
No. 2003-31 of August		<b>Proposed Rules:</b>	
8, 2003.....		30.....	45172
49325		72.....	49726
No. 2003-28.....		170.....	46439
47441		171.....	46439
No. 2003-29.....		1015.....	48575
47443		1018.....	48575
<b>5 CFR</b>		<b>11 CFR</b>	
<b>Proposed Rules:</b>		104.....	47386
334.....		107.....	47386
532.....		110.....	47386
47877, 50727		111.....	50688
<b>7 CFR</b>		9001.....	47386
51.....		9003.....	47386
250.....		9004.....	47386
300.....		9008.....	47386
319.....		9031.....	47386
340.....		9032.....	47386
916.....		9033.....	47386
917.....		9034.....	47386
958.....		9035.....	47386
993.....		9036.....	47386
996.....		9038.....	47386
1000.....		<b>Proposed Rules:</b>	
1030.....		100.....	50481
1032.....			
1427.....			
1481.....			
1580.....			
1778.....			
1794.....			
45157			
<b>Proposed Rules:</b>			
Ch. I.....			
48574			
Ch. IX.....			
48574			
Ch. X.....			
48574			
Ch. XI.....			
48574			
52.....			
46504			
91.....			
48322			

102.....50488  
 106.....50481  
 110.....50488  
 114.....50481  
 9004.....50481  
 9034.....50481

**12 CFR**

19.....48256  
 24.....48771  
 263.....48256  
 303.....50457  
 308.....48256  
 333.....50457  
 347.....50457  
 348.....50457  
 359.....50457  
 513.....48256  
 701.....46439

**Proposed Rules:**

3.....45900  
 7.....46119  
 34.....46119  
 208.....45900  
 225.....45900  
 325.....45900  
 567.....45900  
 614.....47502  
 615.....47502

**14 CFR**

15.....48543  
 25.....46428, 47202, 47445,  
           49332, 50054  
 39.....46441, 46443, 46444,  
           47202, 47204, 47207, 47208,  
           47211, 47213, 47216, 47218,  
           47447, 47842, 48274, 48544,  
           48546, 48783, 49334, 49336,  
           49337, 49340, 49342, 49344,  
           49686, 49688, 50055, 50057,  
           50058, 50061, 50064, 50461,  
           50462, 50689, 50693  
 71.....47447, 47448, 47449,  
           47637, 47844, 47846, 48994,  
           49345, 49346, 49348, 49349,  
           49350, 49546, 49690, 49691,  
           50068, 50222, 50464, 50465,  
           50466, 50468  
 91.....50054  
 97.....48276, 48277  
 119.....47798  
 121.....50054, 50069  
 125.....50054, 50069  
 135.....50054, 50069  
 1260.....50468

**Proposed Rules:**

21.....46283  
 39.....45176, 45177, 46514,  
           47267, 47513, 48326, 48576,  
           48833, 48835, 49390, 50491,  
           50729, 50731  
 61.....46283  
 65.....46283  
 71.....47515, 47516, 47518,  
           49727, 50081, 50082, 50083,  
           50084  
 73.....48579, 50838  
 77.....46283  
 91.....47269, 50085  
 107.....46283  
 109.....46283  
 121.....46283, 47269, 50085  
 135.....46283, 47269, 50085  
 145.....46283  
 154.....46283

1260.....48837, 48838

**15 CFR**

732.....50470  
 740.....50470  
 744.....50470  
 750.....50470  
 752.....50470  
 754.....50470  
 758.....50470  
 770.....50470  
 772.....50470  
 902.....49683  
 911.....45160

**Proposed Rules:**

303.....45177

**16 CFR**

305.....47449

**17 CFR**

4.....47221  
 18.....48549  
 30.....46446  
 200.....50954  
 202.....50954  
 240.....46446

**Proposed Rules:**

1.....46516  
 240.....48724

**18 CFR**

35.....49846  
 381.....50696  
 1304.....46930

**Proposed Rules:**

2.....46452  
 35.....49974  
 284.....48133  
 388.....46456

**19 CFR**

4.....48279  
 103.....47453  
 111.....47455  
 122.....50697  
 148.....50698  
 191.....50700

**Proposed Rules:**

103.....48327  
 141.....50733

**20 CFR**

218.....45315  
 225.....45315

**Proposed Rules:**

404.....45180, 47877  
 416.....45180

**21 CFR**

172.....46364, 46403, 50069  
 510.....49703  
 522.....48784, 49350, 49703  
 558.....47237  
 886.....49351

**Proposed Rules:**

310.....48133  
 334.....48133  
 510.....47272  
 558.....47272

**22 CFR**

41.....46948, 47460, 49351  
 42.....49353

**23 CFR**

1225.....50703

**24 CFR**

905.....45730  
**Proposed Rules:**  
 960.....45734  
 3282.....47881

**25 CFR**

170.....48549  
**Proposed Rules:**  
 Ch. 1.....45787

**26 CFR**

1.....45745, 45772, 46081,  
           50710  
 300.....48785  
 301.....46081  
 602.....46081  
**Proposed Rules:**  
 1.....46516, 46983, 48331,  
           50087, 50734  
 14a.....50734  
 301.....49729

**27 CFR**

**Proposed Rules:**  
 9.....48839

**28 CFR**

549.....47847  
**Proposed Rules**  
 16.....47519  
 522.....46138

**29 CFR**

697.....46949  
 4022.....48787  
 4044.....48787  
**Proposed Rules**  
 Ch. X.....46983  
 1926.....48843

**30 CFR**

925.....50944  
 926.....46460  
 938.....48789  
**Proposed Rules**  
 57.....48668  
 72.....47886  
 206.....50087  
 210.....50087  
 925.....50950  
 943.....48844

**31 CFR**

50.....48280  
 591.....45777  
 592.....45777  
**Proposed Rules:**  
 210.....50672

**32 CFR**

21.....47150  
 22.....47150  
 32.....47150  
 34.....47150  
 37.....47150  
**Proposed Rules**  
 179.....50900  
 199.....46526, 49732

**33 CFR**

100.....46087, 47237, 48553  
 117.....45784, 47462, 47850,  
           47851

165.....45164, 45165, 47237,  
 47239, 47241, 47243, 47245,  
 47464, 47465, 47852, 47854,  
 48282, 48284, 48555, 48798,  
 49356, 49359, 49704, 50711

**Proposed Rules:**

100.....48846  
 110.....45190  
 117.....46139, 47520, 47522,  
           49393  
 165.....46984, 47277  
 326.....50108

**36 CFR**

4.....46477  
 7.....50073  
**Proposed Rules:**  
 7.....47524  
 219.....49395  
 242.....49734  
 294.....49395

**37 CFR**

1.....48286  
 2.....48286  
**Proposed Rules:**  
 263.....50493

**39 CFR**

111.....49362  
 224.....47527  
 261.....47527  
 262.....47527  
 263.....47527  
 264.....47527  
 265.....47527  
 266.....47527  
 267.....47527  
 268.....47527  
 3001.....48293  
**Proposed Rules:**  
 111.....45192, 49396

**40 CFR**

52.....45897, 46089, 46099,  
           46101, 46479, 46484, 46487,  
           47466, 47468, 47473, 47477,  
           47482, 48557, 48803  
 60.....46489  
 62.....48558, 49363, 49706  
 63.....46102  
 70.....46489  
 71.....45167  
 81.....47964  
 86.....48561  
 180.....46491, 47246, 48299,  
           48302, 48312  
 261.....46951  
 300.....48314, 50714

**Proposed Rules:**

Ch. 1.....46435  
 19.....45788  
 27.....45788  
 51.....46436  
 52.....46141, 46437, 47279,  
           47530, 45731, 47532, 47533  
 62.....48581, 49406  
 63.....46142  
 70.....46438  
 81.....48848  
 141.....47640, 49548  
 142.....47640, 49548  
 143.....49548  
 194.....47887  
 271.....45192

300.....48331, 49406, 50735	73.....46359, 47282, 47283, 47284, 47285, 49410, 50740	2922.....48996	1503.....49718
432.....48472		2923.....48996	1510.....49718
<b>41 CFR</b>	<b>48 CFR</b>	2924.....48996	1511.....49718
<b>Proposed Rules:</b>	217.....50474	2925.....48996	1540.....49718
51-3.....45195	219.....50476	2926.....48996	1542.....49718
51-4.....45195	237.....50476	2927.....48996	1544.....49718
	252.....50477	2928.....48996	1546.....49718
<b>42 CFR</b>	<b>Proposed Rules:</b>	2929.....48996	1548.....49718
409.....46036, 50840	242.....50495	2930.....48996	1550.....49718
411.....46036	1806.....45168	2931.....48996	<b>Proposed Rules:</b>
412.....45346, 45674, 47637	1807.....45168	2932.....48996	71.....47533
413.....45346, 46036, 50717	1811.....45168	2933.....48996	380.....47890, 48863
417.....50840	1814.....45168	2934.....48996	385.....49737
422.....50840	1815.....45168	2935.....48996	390.....49737
424.....48805	1817.....45168	2936.....48996	391.....47890
440.....46036	1819.....45168	2937.....48996	397.....49737
483.....46036	1825.....45168	2938.....48996	571.....46539, 46546, 49756
488.....46036	1827.....45168	2939.....48996	585.....46546
493.....50722	1844.....45168	2940.....48996	586.....46546
489.....46036	1852.....45168	2941.....48996	589.....46546
<b>Proposed Rules:</b>	1872.....45168	2942.....48996	590.....46546
405.....50428	<b>Proposed Rules:</b>	2943.....48996	596.....46546
410.....47966, 49030	1601.....48851	2944.....48996	1152.....48332
414.....49030, 50735	1602.....48851	2945.....48996	1507.....49410
419.....47966	1604.....48851	2946.....48996	
<b>44 CFR</b>	1615.....48851	2947.....48996	<b>50 CFR</b>
65.....49365	1631.....48851	2948.....48996	17.....46684, 46870
67.....49371	1632.....48851	2949.....48996	20.....50496
	1644.....48851	2950.....48996	21.....50496
<b>46 CFR</b>	1652.....48851	2951.....48996	679.....50509
188.....45785	2901.....48996	2952.....48996	300.....47256, 48572
189.....45785	2902.....48996	2953.....48996	622.....47498
	2903.....48996	9904.....50111	635.....45169
<b>47 CFR</b>	2904.....48996	<b>49 CFR</b>	648.....47264, 49693
1.....48446	2905.....48996	71.....49373, 49712	660.....46112, 49721
2.....46957	2906.....48996	171.....48562	679.....45170, 45766, 46116, 46117, 46502, 47265, 47266, 47875, 49374, 50079
13.....46957	2907.....48996	172.....48562	<b>Proposed Rules:</b>
15.....50725	2908.....48996	173.....48562	15.....46559
25.....47856, 49372	2909.....48996	177.....48562	17.....46143, 46989, 48581
54.....47253, 49707, 50077	2910.....48996	178.....48562	20.....47424, 50016
61.....50077	2911.....48996	179.....48562	32.....48583
69.....46500	2912.....48996	180.....48562	100.....49734
73.....45786, 46286, 46502, 47255, 47256, 48764, 49372, 50725	2913.....48996	191.....46109	600.....45196
80.....46957	2914.....48996	192.....46109	622.....48592
<b>Proposed Rules:</b>	2915.....48996	195.....46109	635.....45196, 47404
2.....49409, 50739	2916.....48996	229.....49713	648.....49758
25.....49409	2917.....48996	390.....47860	660.....49415
	2918.....48996	398.....47860	679.....49416, 50120
	2919.....48996	571.....47485, 48571, 50077	
	2920.....48996	1500.....49718	
	2921.....48996	1502.....49718	

**REMINDERS**

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

**RULES GOING INTO EFFECT AUGUST 22, 2003****AGRICULTURE DEPARTMENT****Food Safety and Inspection Service**

Meat and poultry inspection:

Poultry products (ratite only); importation from Australia and New Zealand into U.S.; published 6-23-03

**ENVIRONMENTAL PROTECTION AGENCY**

Air programs:

State program approvals and delegation of Federal authorities; clarifications; published 6-23-03

Air quality implementation plans; approval and promulgation; various States:

New Jersey; published 7-23-03

New Jersey; correction; published 8-4-03

**FEDERAL ELECTION COMMISSION**

Federal Election Campaign

Act of 1971; deposition transcripts in nonpublic investigations; policy statement; published 8-22-03

**HOMELAND SECURITY DEPARTMENT****Customs and Border Protection Bureau**

Air commerce:

User fee airports; published 8-22-03

Drawback:

Manufacturing substitution drawback; duty apportionment; published 8-22-03

Merchandise entry:

Anticounterfeiting Consumer Protection Act; Customs entry documentation; withdrawn; published 8-22-03

Public international organizations, designated; list update; published 8-22-03

**HOMELAND SECURITY DEPARTMENT****Coast Guard**

Organization, functions, and authority delegations:

Great Lakes Pilotage Director; published 6-23-03

**INTERIOR DEPARTMENT****Surface Mining Reclamation and Enforcement Office**

Permanent program and abandoned mine land reclamation plan submissions: Missouri; published 8-22-03

**LABOR DEPARTMENT****Mine Safety and Health Administration**

Mining products; testing, evaluation, and approval: Mobile battery-powered machines; plug and receptacle-type connectors; alternate locking devices; published 6-23-03

**LABOR DEPARTMENT****Wage and Hour Division**

American Samoa; minimum wage rates; published 8-7-03

**TRANSPORTATION DEPARTMENT****Federal Aviation Administration**

Airworthiness directives: Aerospatiale; published 7-18-03  
Boeing; published 7-18-03  
Bombardier; published 7-18-03

**COMMENTS DUE NEXT WEEK****AGRICULTURE DEPARTMENT****Agricultural Marketing Service**

Cherries (tart) grown in— Michigan et al.; comments due by 8-25-03; published 7-25-03 [FR 03-18985]

Dates (domestic) produced or packed in— California; comments due by 8-27-03; published 7-28-03 [FR 03-19128]

Oranges, grapefruit, tangerines, and tangelos grown in— Florida; comments due by 8-27-03; published 7-28-03 [FR 03-19129]

**AGRICULTURE DEPARTMENT****Agricultural Marketing Service**

Prunes (dried) produced in— California; comments due by 8-25-03; published 6-24-03 [FR 03-15832]

**AGRICULTURE DEPARTMENT****Animal and Plant Health Inspection Service**

Exportation and importation of animals and animal products: Disease-free regions; reestablishment procedures; comments due by 8-25-03; published 6-24-03 [FR 03-15907]

**AGRICULTURE DEPARTMENT****Animal and Plant Health Inspection Service**

Hawaiian and territorial quarantine notices: Sweetpotatoes from Hawaii; irradiation treatment; comments due by 8-25-03; published 6-26-03 [FR 03-16182]

**AGRICULTURE DEPARTMENT****Food Safety and Inspection Service**

Meat and poultry inspection: Recordkeeping and registration requirements; policy statement; comments due by 8-25-03; published 6-25-03 [FR 03-15741]

**COMMERCE DEPARTMENT****National Oceanic and Atmospheric Administration**

International fisheries regulations: Pacific halibut— Oregon sport fisheries; additional access; comments due by 8-29-03; published 8-14-03 [FR 03-20680]

**COMMERCE DEPARTMENT****National Oceanic and Atmospheric Administration**

Ocean and coastal resource management: Coastal Zone Management Act; Federal consistency process; comments due by 8-25-03; published 7-7-03 [FR 03-17033]

**COMMERCE DEPARTMENT****Patent and Trademark Office**

Organization, functions, and authority delegations: Power of attorney practice clarification and assignment rules revision; comments due by 8-26-03; published 6-27-03 [FR 03-16262]

**ENVIRONMENTAL PROTECTION AGENCY**

Air pollutants, hazardous; national emission standards: List of hazardous air pollutants, petition

process, lesser quantity designations, and source category list; comments due by 8-28-03; published 5-30-03 [FR 03-13428]

**ENVIRONMENTAL PROTECTION AGENCY**

Air programs:

Stratospheric ozone protection— Methyl bromide; ban on trade with non-parties to Montreal Protocol; comments due by 8-25-03; published 7-25-03 [FR 03-18856]

**ENVIRONMENTAL PROTECTION AGENCY**

Air programs:

Stratospheric ozone protection— Methyl bromide; ban on trade with non-parties to Montreal Protocol; comments due by 8-25-03; published 7-25-03 [FR 03-18855]

Air quality implementation plans:

Preparation, adoption, and submittal— Prevention of significant deterioration and non-attainment new source review; reconsideration; comments due by 8-29-03; published 7-30-03 [FR 03-19356]

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas: Idaho; comments due by 8-29-03; published 7-30-03 [FR 03-19355]

Air quality implementation plans; approval and promulgation; various States: Texas; comments due by 8-29-03; published 7-30-03 [FR 03-19278]

**ENVIRONMENTAL PROTECTION AGENCY**

Air quality implementation

plans; approval and promulgation; various States: Texas; comments due by 8-29-03; published 7-30-03 [FR 03-19279]

**ENVIRONMENTAL PROTECTION AGENCY**

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities: Bupropion; comments due by 8-25-03; published 6-25-03 [FR 03-15767]

Flufenacet, etc.; comments due by 8-25-03; published 6-25-03 [FR 03-15905]

#### **ENVIRONMENTAL PROTECTION AGENCY**

Superfund program:

National oil and hazardous substances contingency plan—

National priorities list update; comments due by 8-26-03; published 7-28-03 [FR 03-18741]

National priorities list update; comments due by 8-26-03; published 7-28-03 [FR 03-18740]

National priorities list update; comments due by 8-27-03; published 7-28-03 [FR 03-19006]

#### **FEDERAL COMMUNICATIONS COMMISSION**

Digital television stations; table of assignments:

Texas; comments due by 8-28-03; published 7-18-03 [FR 03-18148]

#### **FEDERAL COMMUNICATIONS COMMISSION**

Frequency allocations and radio treaty matters:

4.9 GHz band transferred from Federal government use; comments due by 8-29-03; published 6-30-03 [FR 03-16375]

#### **FEDERAL COMMUNICATIONS COMMISSION**

Radio broadcasting:

AM directional antennas; amendment; comments due by 8-29-03; published 7-28-03 [FR 03-19092]

Radio stations; table of assignments:

Arizona; comments due by 8-25-03; published 7-18-03 [FR 03-18248]

Texas and New York; comments due by 8-25-03; published 7-18-03 [FR 03-18231]

#### **FEDERAL DEPOSIT INSURANCE CORPORATION**

Practice and procedure:

Living trust accounts; insurance regulations; comments due by 8-29-03; published 6-30-03 [FR 03-16400]

#### **HEALTH AND HUMAN SERVICES DEPARTMENT Children and Families Administration**

Child Support Enforcement Program:

Federal tax refund offset; comments due by 8-25-03; published 6-26-03 [FR 03-14883]

#### **HEALTH AND HUMAN SERVICES DEPARTMENT**

##### **Food and Drug Administration**

Animal drugs, feeds, and related products:

Liquid medicated and free-choice medicated animal feed; requirements; comments due by 8-26-03; published 5-28-03 [FR 03-12974]

Food for human consumption:

Infant formula; current good manufacturing practice, quality control procedures, etc.; comments due by 8-26-03; published 6-27-03 [FR 03-16357]

Human drugs:

Oral health care products (OTC)—

Antigingivitis/antiplaque products; monograph establishment; comments due by 8-27-03; published 5-29-03 [FR 03-12783]

##### **HEALTH AND HUMAN SERVICES DEPARTMENT**

##### **Food and Drug Administration**

Human drugs:

Skin protectant products (OTC)—

Astringent products; final monograph; comments due by 8-27-03; published 6-13-03 [FR 03-14818]

##### **HEALTH AND HUMAN SERVICES DEPARTMENT**

##### **Food and Drug Administration**

Human drugs:

Skin protectant products (OTC)—

Astringent products; final monograph; comments due by 8-27-03; published 6-13-03 [FR 03-14819]

Topical antimicrobial products (OTC)—

Health-care antiseptic products; monograph amendment; comments due by 8-27-03; published 5-29-03 [FR 03-13317]

##### **HOMELAND SECURITY DEPARTMENT**

##### **Coast Guard**

Drawbridge operations:

Illinois and Iowa; comments due by 8-28-03; published 7-29-03 [FR 03-19257]

Massachusetts; comments due by 8-25-03; published 6-26-03 [FR 03-15999]

Ports and waterways safety:

Portland, OR; large passenger vessels; safety and security zone; comments due by 8-27-03; published 7-28-03 [FR 03-19145]

Ventura, CA; safety zone; comments due by 8-27-03; published 7-24-03 [FR 03-18761]

#### **HOUSING AND URBAN DEVELOPMENT DEPARTMENT**

Public and Indian housing:

Indian Housing Block Grant Program; minimum funding; comments due by 8-25-03; published 6-24-03 [FR 03-15817]

#### **INTERIOR DEPARTMENT**

##### **Fish and Wildlife Service**

Marine mammals:

Incidental take during specified activities—

Polar bears and Pacific walrus; comments due by 8-25-03; published 7-25-03 [FR 03-18907]

#### **JUSTICE DEPARTMENT**

##### **Prisons Bureau**

Inmate control, custody, care, etc.:

Good conduct time; aliens with confirmed orders of deportation, exclusion, or removal; comments due by 8-25-03; published 6-25-03 [FR 03-15823]

#### **LABOR DEPARTMENT**

##### **Veterans Employment and Training Service**

Services to veterans; Funding formats for grants to states; comments due by 8-29-03; published 6-30-03 [FR 03-16481]

#### **NUCLEAR REGULATORY COMMISSION**

Production and utilization

facilities; domestic licensing: Risk-informed categorization and treatment of structures, systems, and components for nuclear power reactors; comments due by 8-30-03; published 7-30-03 [FR 03-19320]

#### **PERSONNEL MANAGEMENT OFFICE**

Basic concepts and definitions (general); regulatory review; plain language; comments due by 8-29-03; published 6-30-03 [FR 03-16410]

#### **POSTAL SERVICE**

Domestic Mail Manual:

Merchandise Return Service labels; routing barcodes; comments due by 8-25-03; published 7-25-03 [FR 03-18996]

#### **STATE DEPARTMENT**

Visas; nonimmigrant documentation:

Victims of severe forms of trafficking in persons; new visa classification (T) added; comments due by 8-25-03; published 6-26-03 [FR 03-16194]

#### **TRANSPORTATION DEPARTMENT**

Workplace drug and alcohol testing programs:

Medical review officers; reporting specimens as dilute or substituted; comments due by 8-26-03; published 5-28-03 [FR 03-13242]

#### **TRANSPORTATION DEPARTMENT**

##### **Federal Aviation Administration**

Airworthiness directives:

Agusta S.p.A.; comments due by 8-25-03; published 6-26-03 [FR 03-15447]

#### **TRANSPORTATION DEPARTMENT**

##### **Federal Aviation Administration**

Airworthiness directives:

Boeing; comments due by 8-25-03; published 7-9-03 [FR 03-17318]

#### **TRANSPORTATION DEPARTMENT**

##### **Federal Aviation Administration**

Airworthiness directives:

Boeing; comments due by 8-29-03; published 6-30-03 [FR 03-15855]

#### **TRANSPORTATION DEPARTMENT**

##### **Federal Aviation Administration**

Airworthiness directives:

Boeing and McDonnell Douglas; comments due by 8-25-03; published 7-9-03 [FR 03-17317]

Fokker; comments due by 8-28-03; published 7-29-03 [FR 03-19195]

#### **TRANSPORTATION DEPARTMENT**

##### **Federal Aviation Administration**

Airworthiness directives:

Goodrich Avionics Systems, Inc.; comments due by 8-29-03; published 6-30-03 [FR 03-15854]

**TRANSPORTATION  
DEPARTMENT  
Federal Aviation  
Administration**

**Airworthiness directives:**

International Aero Engines; comments due by 8-25-03; published 6-25-03 [FR 03-15994]

Pratt & Whitney; comments due by 8-25-03; published 7-21-03 [FR 03-18244]

**TRANSPORTATION  
DEPARTMENT  
Federal Aviation  
Administration**

**Airworthiness directives:**

Pratt & Whitney; comments due by 8-29-03; published 6-30-03 [FR 03-15992]

Rolls-Royce Corp.; comments due by 8-29-03; published 6-30-03 [FR 03-15993]

**TRANSPORTATION  
DEPARTMENT  
Federal Aviation  
Administration**

Class E airspace; comments due by 8-28-03; published 7-29-03 [FR 03-19158]

**TRANSPORTATION  
DEPARTMENT  
Federal Railroad  
Administration**

**Alcohol and drug use control:**

Random testing and other requirements application to employees of foreign railroad based outside U.S. and perform train or dispatching service in U.S.; comments due by 8-27-03; published 7-28-03 [FR 03-19042]

**TREASURY DEPARTMENT  
Foreign Assets Control  
Office**

Iraqi sanctions regulations:

New transactions authorization; comments due by 8-26-03; published 6-27-03 [FR 03-16216]

**TREASURY DEPARTMENT  
Alcohol and Tobacco Tax  
and Trade Bureau**

Alcohol; viticultural area designations:

Columbia Gorge, Hood River and Wasco Counties, OR and Skamania and Klickitat Counties, WA; comments due by 8-26-03; published 6-27-03 [FR 03-16324]

McMinnville, Yamhill County, OR; comments due by 8-26-03; published 6-27-03 [FR 03-16325]

**VETERANS AFFAIRS  
DEPARTMENT**

Vocational rehabilitation and education:

Veterans education—  
Certification of enrollment; comments due by 8-29-03; published 6-30-03 [FR 03-16265]

**LIST OF PUBLIC LAWS**

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-741-6043. This list is also available online at <http://www.nara.gov/fedreg/plawcurr.html>.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.access.gpo.gov/nara/nara005.html>. Some laws may not yet be available.

**H.R. 1018/P.L. 108-70**

To designate the building located at 1 Federal Plaza in New York, New York, as the "James L. Watson United States Court of International Trade Building". (Aug. 14, 2003; 117 Stat. 886)

**H.R. 1761/P.L. 108-71**

To designate the facility of the United States Postal Service located at 9350 East Corporate Hill Drive in Wichita, Kansas, as the "Garner E. Shriver Post Office Building". (Aug. 14, 2003; 117 Stat. 887)

**Last List August 15, 2003**

**Public Laws Electronic  
Notification Service  
(PENS)**

**PENS** is a free electronic mail notification service of newly enacted public laws. To subscribe, go to <http://listserv.gsa.gov/archives/publaws-l.html>

**Note:** This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.