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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 760

RIN 0560–AG08

Dairy Indemnity Payment Program

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the authority citation for the Dairy Indemnity Payment Program (DIPP) regulations to cover the expenditure of additional funds appropriated under the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2002. The DIPP indemnifies dairy farmers and manufacturers for losses suffered due to contamination of milk and milk products, through no fault of their own.

EFFECTIVE DATE: March 28, 2002.

FOR FURTHER INFORMATION CONTACT: Elizabeth Hill, Agricultural Program Specialist, Price Support Division, FSA, USDA, STOP 0512, 1400 Independence Avenue, SW., Washington, DC 20250–0512; telephone (202) 720–9888; e-mail address is *Elizabeth_Hill@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are Dairy Indemnity Payments, Number 10.053.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule because the Farm Service Agency is not required by 5 U.S.C. 533 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12988

This rule has been reviewed pursuant to Executive Order 12988. To the extent State and local laws are in conflict with these regulatory provisions, these regulations will prevail. The provisions of this rule are not retroactive. Prior to any judicial action in a court of competent jurisdiction, administrative review under 7 CFR part 780 must be exhausted.

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

The amendment to 7 CFR part 760 set forth in this final rule does not contain additional information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35. Existing information collections were approved by OMB and assigned OMB Control Number 0560–0116.

Background

The DIPP was originally authorized by section 331 of the Economic Opportunity Act of 1964. The statutory authority for the program was extended several times. Funds were appropriated for DIPP by the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 ("the 2001 Act"), Pub. L. 106–387, which authorized the program until the funds were expended. Most recently, funds were appropriated for this program by the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2002 ("the 2002 Act"), Pub. L. 107–76, which authorizes the program to be carried out until the funds appropriated under the 2002 Act are expended. The funds appropriated under the 2001 Act that have not been expended will be combined with the funds appropriated under the 2002 Act.

The objective of DIPP is to indemnify dairy farmers and manufacturers of dairy products who, through no fault of their own, suffer income losses with respect to milk or milk products removed from commercial markets because such milk or milk products contain certain harmful residues. In addition, dairy farmers can also be indemnified for income losses with respect to milk required to be removed from commercial markets due to residues of chemicals or toxic substances or contamination by nuclear radiation or fallout.

The regulations governing the program are set forth at 7 CFR part 760.1–760.34. This final rule makes no changes in the provisions of the regulations. Since the only purpose of this final rule is to revise the authority citation pursuant to the 2002 Act, it has been determined that no further public rulemaking is required. Therefore, this final rule shall become effective upon the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 760

Dairy products, Indemnity payments, Pesticides and pests.

Accordingly, 7 CFR part 760 is amended as follows:

PART 760—INDEMNITY PAYMENT PROGRAMS

Subpart—Dairy Indemnity Payment Program

The authority citation for Subpart—Dairy Indemnity Payment Program is revised to read as follows:

Authority: Pub. L. 106–387, 114 Stat. 1549, and Pub. L. 107–76, 115 Stat. 704.

Signed in Washington, DC, on March 8, 2002.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 02–7422 Filed 3–27–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Docket No. FV01–929–3C FR]

Cranberries Grown in the States of Massachusetts, et al.; Increased Assessment Rate; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the final rule published on February 14, 2002 (67 FR 6843), concerning cranberries grown in Massachusetts, *et al.* The correction is made in the amendatory instruction section of the final rule.

DATES: Effective March 28, 2002.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, DC Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, Maryland 20737; telephone: (301) 734–5243, Fax: (301) 734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, 1400 Independence Avenue, SW Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 205–8938.

SUPPLEMENTARY INFORMATION:

Background

This rule increases the assessment rate established under the cranberry marketing order for the 2001–2002 and subsequent fiscal years from $.08 to $.18 per barrel of cranberries handled. This assessment rate increase was recommended by the Committee to fund a domestic market development program to increase demand for cranberries and cranberry products and thus expand cranberry shipments. The rule was issued under Marketing Order No. 929, as amended (7 CFR Part 929). The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

Correction

In FR Doc. 02–3635, published February 14, 2002 (67 FR 6843) make the following correction.

§ 929.236 [Corrected]

On page 6846, in column 1, instruction number 2, and the section heading are corrected to read as follows:

2. Section 929.236 is revised to read as follows:

§ 929.236 Assessment rate.

Dated: March 21, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–7425 Filed 3–27–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–70–AD; Amendment 39–12688; AD 2002–06–51]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2C10 (Regional Jet Series 700 and 701) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 2002–06–51 that was sent previously to all known U.S. owners and operators of certain Bombardier Model CL–600–2C10 (Regional Jet Series 700 and 701) series airplanes by individual notices. This AD requires revising the Airplane Flight Manual to provide procedures for addressing uncommanded transfer of fuel from wing fuel tanks to center fuel tank. This action also requires revising the Minimum Equipment List (MEL); limiting operation of the airplane to flight within 60 minutes of a suitable alternative airport; and ensuring that normal mission fuel requirements are increased by 3,000 pounds. This action was prompted by reports of uncommanded fuel transfer between the wing fuel tanks and the center fuel tank. The actions specified by this AD are intended to ensure that the flight crew has the procedures necessary to address such uncommanded fuel transfer, which could cause the center tank to overfill, and fuel to leak from the center tank vent system or to become inaccessible, and result in engine fuel starvation.

DATES: Effective April 2, 2002, to all persons except those persons to whom it was made immediately effective by emergency AD 2002–06–51, issued on March 12, 2002, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before April 29, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–70–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 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-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–70–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.

Information pertaining to this amendment 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.

FOR FURTHER INFORMATION CONTACT: Rodrigo J. Huete, Test Pilot, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7518; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: On March 12, 2002, the FAA issued emergency AD 2002–06–51, which is applicable to certain Bombardier Model CL–600–2C10 (Regional Jet Series 700 and 701) series airplanes.

That action was prompted by reports of uncommanded fuel transfer between the wing fuel tanks and the center fuel tank. Such uncommanded fuel transfer, if not corrected, could cause the center tank to overfill, and fuel to leak from the center tank vent system or to become

inaccessible, and result in engine fuel starvation In addition, such fuel leakage on the ground could cause a fire.

Explanation of Relevant Service Information

Canadair Regional Jet Series 700 Airplane Flight Manual (AFM) CSP B–012, Temporary Revision (TR) RJ 700/23–1, was issued on March 7, 2002. The TR describes procedures for revising the Limitations section of the AFM that describes requirements for the prohibition of dispatch with the fuel quantity gauging system inoperative. In addition, the TR specifies additional fuel system limitations and additional changes to the "L or R MAIN EJECTOR" of the Abnormal Procedures section.

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, classified the TR as mandatory and issued Canadian airworthiness directive CF–2002–19, dated March 8, 2002, in order 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 the Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the FAA issued emergency AD 2002–06–51 to require revising specified sections of AFM CSP B–012 to provide the flight crew with the appropriate procedures to follow in order to address uncommanded transfer of fuel from the wing fuel tanks to the center fuel tank. The AFM actions are required to be accomplished per the previously referenced TR. This AD also requires each operator to revise the Minimum Equipment List (MEL) by removing certain relieving requirements specified in the MEL. In addition, this AD requires limiting operation of the airplane to flight within 60 minutes of a suitable alternative airport, and, prior to each further flight, ensuring that the normal mission fuel requirements are increased by 3,000 pounds.

Differences Between Canadian Airworthiness Directive and This AD

Although the Canadian airworthiness directive did not include procedures for revising the MEL, or for prohibiting dispatch with fuel quantity inoperative, this AD includes those requirements.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on March 12, 2002 to all known U.S. owners and operators of certain Bombardier Model CL–600–2C10 (Regional Jet Series 700 and 701) series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this 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 under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the 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 that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–70–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it 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. A copy of it, if filed, may be obtained from 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.

Adoption of the Amendment

Accordingly, pursuant to 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. Section 39.13 is amended by adding the following new airworthiness directive:

2002–06–51 Bombardier, Inc. (Formerly Canadair): Amendment 39–12688. Docket 2002–NM–70–AD.

Applicability: Bombardier Model CL–600–2C10 (Regional Jet Series 700 and 701) series airplanes, serial numbers 10005 through 10039 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, 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 (e) 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 the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew has the procedures necessary to address uncommanded fuel transfer between the wing fuel tanks and the center fuel tank, which could cause the center tank to overfill, and fuel to leak from the center tank vent system or to become inaccessible, and result in engine fuel starvation; accomplish the following:

Revision of Airplane Flight Manual (AFM)

(a) Within 2 days after the effective date of this AD, revise the Limitations and Abnormal Procedures sections of Canadair Regional Jet Series 700 of FAA-approved AFM CSP B–012 to include the following information included in paragraphs (a)(1) and (a)(2) of this AD (this may be accomplished by inserting a copy of this AD into the AFM):

(1) Revise the "Limitations—Power Plant," Paragraph 6, "Fuel" to include the following information, per Canadair Temporary Revision (TR) RJ 700/23–1, dated March 7, 2002: "Dispatch with the fuel quantity gauging system inoperative is prohibited."

(2) Revise the "Abnormal Procedures—Fuel," Paragraph H, "L or R Main Ejector" to include the following information, per Canadair TR RJ 700/23–1, dated March 7, 2002:

"H. L or R MAIN EJECTOR

(1) Left and right boost pumps	Confirm operating
(2) Affected engine instruments	Monitor
(3) Fuel tank quantity	Monitor and balance, if required

If centre tank quantity increases abnormally (by more than 227 kg (500 lb)):

(4) Land at the nearest suitable airport.

If centre tank quantity continues to increase (by more than 454 kg (1000 lb)):

(5) Affected engine thrust	IDLE

(6) Consider shutting down affected engine to prevent centre tank transfer.

- Ensure both BOOST PUMPs are operating.

If centre tank quantity further continues to increase (by more than 680 kg (1500 lb)):

(7) Land immediately at the nearest suitable airport."

Revision of Minimum Equipment List (MEL)

(b) Within 2 days after the effective date of this AD, remove the relieving requirements specified in MEL CL–600–2C10 for the following items.

- Transfer Ejectors (Center Tank) (Ref. Master Minimum Equipment List (MMEL) Item 28–13–07).
- Fuel Transfer shutoff values (SOV) (Center Tank) (Ref. MMEL Item 28–13–08).
- Xflow Pump (Ref. MMEL Item 28–13–10).
- Engine Indication and Crew Alerting System (EICAS) Fuel Tank Quantity Readouts (Left, Right, and Total) (Ref. MMEL Item 28–41–01).
- EICAS Center and Total Fuel Tank Quantity Readouts (Ref. MMEL Item 28–41–02).
- Fuel Computer Channels (Ref. MMEL Item 28–41–03).

Operational Limitation

(c) Within 2 days after the effective date of this AD, revise the Limitations section of Canadair Regional Jet Series 700 of FAA-approved AFM CSP B–012 to limit operation of the airplane to flight within 60 minutes of a suitable alternative airport. This action may be accomplished by inserting a copy of this AD into the Limitations section of the AFM.

Operational Requirement

(d) Within 2 days after the effective date of this AD, and prior to each further flight, revise the Limitations section of Canadair Regional Jet Series 700 of FAA-approved AFM CSP B–012 to ensure that the normal mission fuel requirements are increased by 3,000 pounds. This action may be accomplished by inserting a copy of this AD into the Limitations section of the AFM.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished. The operational limitations and requirements of paragraphs (c) and (d) of this AD will be applicable to all special flight permits.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2002–19, dated March 8, 2002.

Effective Date

(g) This amendment becomes effective on April 2, 2002, to all persons except those persons to whom it was made immediately effective by emergency AD 2002–06–51, issued on March 12, 2002, which contained the requirements of this amendment.

Issued in Renton, Washington, on March 21, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–7409 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 255

[Docket No. OST–2002–11577]

RIN 2105–AD09

Extension of Computer Reservations Systems (CRS) Regulations

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Department is amending its rules governing airline computer

reservations systems (CRSs), by changing the expiration date from March 31, 2002, to March 31, 2003. If the expiration date were not changed, the rules would terminate on March 31, 2002. This extension of the current rules will keep them in effect while the Department carries out its reexamination of the need for CRS regulations. The Department has concluded that the current rules should be maintained for another year because they appear to be necessary for promoting airline competition and helping to ensure that consumers and their travel agents can obtain complete and accurate information on airline services. The rules were most recently extended from March 31, 2001, to March 31, 2002.

DATES: This rule is effective on March 31, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION:

Electronic Access

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Section 255.12 of the rules establishes a sunset date for the rules to ensure that we will reexamine the need for the rules and their effectiveness. The original sunset date was December 31, 1997. We have changed it four times, and the current sunset date is March 31, 2002. 62 FR 66272 (December 18, 1997); 64 FR 15127 (March 30, 1999); 65 FR 16808 (March 30, 2000); and 66 FR 17352 (March 30, 2001). We concluded that these extensions were necessary to prevent the harm that would arise if the CRS business were not regulated and that extending the rules would not impose substantial costs on the industry.

We are now changing the sunset date to March 31, 2003, because we have been unable to complete our reexamination of the current rules by March 31, 2002. Since we believed that the rules should remain in effect until we complete that process, we proposed that additional extension of the rules' expiration date. 67 FR 7100 (February 15, 2002). We are continuing to work actively on completing our overall reexamination of the rules. Upon completion of the rulemaking process, we will decide whether the rules are necessary and, if so, how they should be updated.

Comments were filed by Worldspan, Amadeus Global Travel Distribution, United, Delta, Northwest, America West, the Air Carrier Association of America ("ACAA"), the American Society of Travel Agents ("ASTA"), RADIUS, the National Business Travel Association ("NBTA"), and a number of individual travel agents. The commenters disagree over whether the rules should be extended, as discussed below.

Background

We adopted our rules governing CRS operations, 14 CFR part 255, on the basis of our findings that they were necessary to protect airline competition and to ensure that consumers can obtain accurate and complete information on airline services. 57 FR 43780 (September 22, 1992). Market forces did not discipline the price and quality of services offered airlines by the systems, because almost all airlines found it essential to participate in each system. Travel agents relied on CRSs to obtain airline information and make bookings for their customers, and typically each travel agency office entirely or predominantly used one system for these tasks. Moreover, one or more airlines or airline affiliates owned each of the systems and could operate the system in ways designed to prejudice the competitive position of other airlines.

Our rules included a sunset date to ensure that we would reexamine whether the rules were necessary and effective after they had been in force for several years. 14 CFR 255.12; 57 FR 43829–43830 (September 22, 1992). To conduct that reexamination, we began a proceeding to determine whether the rules are necessary and should be readopted and, if so, whether they should be modified, by issuing an advance notice of proposed rulemaking. 62 FR 47606 (September 10, 1997). We later published a supplemental advance notice of proposed rulemaking that asked the parties to update their comments in light of recent developments, primarily the changes in the systems' ownership, which meant that airlines had little or no control over some systems, and the increasing importance of the Internet in airline distribution, and to comment on whether any rules should be adopted regulating the use of the Internet in airline distribution. 65 FR 45551, 45554–45555 (July 24, 2000). Almost all of the parties responding to our supplemental advance notice of proposed rulemaking (and the initial advance notice of proposed rulemaking) contended that CRS rules remained necessary. Some of the parties argued that the continued regulation of the CRS business would be harmful and unnecessary.

In addition to issuing the two advance notices of proposed rulemaking, we have been informally studying recent developments in airline distribution. We have also been investigating the business plan and operations of Orbitz, the on-line travel agency developed by five major U.S. airlines.

Our Proposed Extension of the CRS Rules

We have been unable to finish our overall reexamination of our rules by March 31, 2002, their current expiration date. We therefore proposed to change the rules' expiration date to March 31, 2003, so that they would remain in effect while we complete our reexamination of the need for the rules and their effectiveness. 67 FR 7100 (February 15, 2002).

We reasoned that changing the rules' sunset date to March 31, 2003, would preserve the status quo until we determine whether the rules should be readopted and, if so, how they should be modified. Keeping the current rules in place would be consistent with the expectations of the systems and their users that each system would operate in compliance with the rules. The systems, airlines, and travel agencies, moreover, would be unreasonably burdened if we allowed the rules to expire and later determined that those rules (or similar rules) should be adopted, since they could have changed their business methods in the meantime.

We tentatively determined that extending the rules appeared necessary to protect airline competition and consumers against unreasonable and unfair practices. 67 FR 7103. Our past examinations of the CRS business and airline marketing showed that CRSs were still essential for the marketing of the services of almost all airlines. 67 FR 7102, citing 57 FR 43780, 43783–43784 (September 22, 1992). CRS rules were necessary because the airlines relied heavily on travel agencies for

distribution, because travel agencies relied on CRSs, because most travel agency offices used only one CRS, because creating alternatives for CRSs and getting travel agencies to use them would be difficult, and because non-owner airlines were unable to induce agencies to use a CRS that provided airlines better or less expensive service instead of another that provided poorer or more expensive service. If an airline did not participate in a system used by a travel agency, that agency was less likely to book its customers on that airline. As a result of the importance of marginal revenues in the airline industry, an airline could not afford to lose access to a significant source of revenue. Almost all airlines therefore had to participate in each CRS, and CRSs did not need to compete for airline participants. We believed that these findings were still valid despite such developments as the increasing importance of the Internet for airline distribution. 67 FR 7102. We noted that most of the commenters that responded to the advance notice of proposed rulemaking and the supplemental advance notice of proposed rulemaking contended that the rules remained necessary. 67 FR 7102. We therefore tentatively concluded that our past findings on the need for CRS rules are sufficiently valid to justify a short-term extension of the rules' expiration date. 67 FR 7103.

We additionally noted that an extension would be consistent with our obligation under section 1102(b) of the Federal Aviation Act, recodified as 49 U.S.C. 40105(b), to act consistently with the United States' obligations under treaties and bilateral air services agreements. Many of the United States' bilateral agreements assure the airlines of each party a fair and equal opportunity to compete. Our rules provide an assurance of fair and nondiscriminatory treatment for foreign airlines. 67 FR 7103.

We stated, however, that we have not determined in our review of the current rules whether they should be readopted. 67 FR 7102.

Comments

Amadeus, America West, ACAA, ASTA, NBTA, and RADIUS either explicitly support the proposed extension or implicitly do so by urging us to modify the existing rules in ways that would assertedly promote competition and protect consumers. Several travel agencies and travel agents argue that we must strengthen the rules to protect travel agencies and their customers. United, Delta, and Northwest oppose the proposed extension. Worldspan contends that we should suspend the rules for two years on an experimental basis.

Amadeus Global Travel Distribution, one of the systems, supports the proposed extension of the rules. Amadeus asks us to act promptly on one issue, the alleged tying by some airlines that own or market a system of access to their corporate discount fares with the use by a travel agency or corporate travel department of their affiliated systems. Amadeus additionally argues, among other things, that we have the statutory authority to regulate all systems, whether or not owned or controlled by an airline.

America West states that it supports our proposed extension of the rules, since "the current CRS regulations remain necessary to protect airline competition and to protect consumers from unreasonable and unfair practices." America West Comments at 1. The airline argues that we should address the booking fee issue promptly, since the systems have been increasing the fees imposed on airline participants.

ACAA, a trade association commenting on behalf of low-fare airlines, argues that we should immediately suspend section 255.10(a) of our rules, which requires each system to make available to all participating airlines any marketing and booking data generated from the bookings made through the system. ACAA asserts that the data sold by the systems enable the large airlines to eliminate competition from low-fare airlines.

ASTA, the largest travel agency trade association, supports the proposed extension of the rules, which are assertedly essential for maintaining competition and preventing abuses of market power in the system-travel agency subscriber relationship. ASTA also asks us to take immediate action on two CRS issues due to Delta's recent elimination of base commissions for all travel agencies. ASTA urges us to ban productivity pricing provisions in contracts between systems and travel agencies that effectively penalize travel agents for making bookings through the Internet instead of the system used by the agency (productivity pricing clauses typically require travel agencies to pay substantially higher fees for CRS service if they do not make a minimum number of bookings each month through the system). The productivity pricing clauses deter travel agents from booking tickets through the Internet, often the only source for the airlines' E-fares, which are usually the lowest available fares. Secondly, ASTA asks us to prohibit systems from selling marketing and booking data to airlines that show the bookings made by individual travel agencies.

RADIUS, which states that it is the world's largest travel management company, argues that we should apply the rules to all Internet sites used for the sale of airline tickets. RADIUS contends that we should also require airlines to make available through the systems all of the fares offered to the public through airline websites. RADIUS agrees with ACAA and ASTA that we should prohibit airlines from obtaining data showing bookings made by individual travel agencies.

The NBTA, which represents corporate travel managers at large companies, urges us to rule that travel agencies and corporations should have full access to the airlines' E-fares by requiring airlines to make those fares saleable through the systems. Each airline now typically makes its E-fares available only through its own website and Orbitz. NBTA additionally asks us to prohibit systems from enabling large airlines to get data on the bookings made by individual travel agencies and corporate travel departments.

Several individual travel agencies and travel agents have submitted comments in this docket urging us to require airlines to give travel agencies the ability to sell their E-fares. Worldspan, one of the systems, suggests that we suspend the operation of the rules for two years so that we can see from experience whether the rules are still needed. Such an experimental suspension would additionally eliminate the anomalies allegedly now created by the rules. One such anomaly is that the rules' continuing applicability to Sabre and Galileo depends on whether they continue to be marketed by airlines; Worldspan, in contrast, is clearly subject to the rules, since it is owned and controlled by three airlines. Worldspan's three owners—American, Delta, and Northwest—are the only U.S. airlines still subject to the mandatory participation rule, since the U.S. airlines that formerly held an ownership interest in other systems have divested their CRS stock (the mandatory participation rule requires airlines with a significant ownership interest in one CRS to choose the same level of participation in competing systems that they choose in their own system, if the competing systems' terms for participation are commercially reasonable). Worldspan further contends that there is no evidence that a system would be operated in a way that would prejudice airline competition or mislead consumers.

Delta alleges that the Internet and other developments have substantially eroded the original basis for the rules' adoption. Delta agrees with those parties supporting the rules' abolition due to the requirement that Delta, as a system owner, participate in each system competing with Worldspan while other airlines that market a system have no obligation to participate in systems competing with their affiliated system. As an alternative, Delta supports Worldspan's proposal that we suspend the rules for a two-year period. Delta also opposes suggestions for regulating the Internet, particularly proposals that airlines must make their E-fares (or webfares) available for sale by travel agents through the systems. Delta points out that travel agents can book Delta's E-fares through the website created by Delta for travel agent use.

United argues that we no longer have a legal or factual basis for regulating the systems. United asserts that the rules were originally adopted because airlines controlled each of the systems and that two of the four systems are no longer controlled by any airlines. While conceding that the rules by their terms cover systems marketed by an airline, United asserts that no evidence exists showing that a marketing relationship between an airline and system creates a risk of anticompetitive conduct. United additionally argues that the other two systems' ownership by three airlines means that they are also unlikely to engage in anticompetitive conduct. The growth of the Internet has assertedly given airlines alternatives to CRS participation and thereby ended the systems' market power as to airlines. Finally, United contends that the rules in effect protect the systems from competition and enable them to impose high fees on participating airlines.

Northwest contends that letting the rules sunset would better serve competition and the public interest than would their continuation. If we nonetheless maintain the rules, Northwest argues that we must repeal the mandatory participation rule, clearly require all systems to comply with the same rules. prohibit systems from tying access to their travel agency subscribers with the airlines' provision of other fares and services, and not regulate use of the Internet in airline distribution.

Final Rule

We are changing the rules' sunset date to March 31, 2003, as we proposed. Although we have not determined whether we should readopt the rules at the end of our reexamination of them, our past findings on the need for the rules and evidence submitted in Docket 2881, the docket for the reexamination of the rules, indicate that allowing the rules to expire now could create a significant risk that the systems and their airline owners would engage in unfair methods of competition and that the systems would engage in unfair and deceptive practices by biasing their displays of airline services, as explained below. That possible risk justifies another short-term extension of the rules while we finish our reexamination of the need for the rules and their effectiveness.

The comments submitted on our proposed extension of the rules underscore the need to complete our review of the rules promptly and determine on the basis of the extensive record in the proceeding whether the rules should be readopted (with or without changes) or allowed to expire. Our staff is moving forward expeditiously to bring the rulemaking to completion. In our reexamination we are doing what Delta requests—we are "carefully examin[ing] each section and subpart of the current rules one-by-one to determine if it is essential to protect airline competition in today's marketplace." Delta Comments at 4.

Among the issues that we are addressing are those raised by commenters in this docket: whether we should keep, expand, or abolish the mandatory participation rule, whether we should regulate the Internet, whether airlines should make their E-fares saleable through the systems used by travel agents, whether the systems should be able to sell detailed marketing and booking data to airlines, and whether we should regulate booking fee levels. Although some of the commenters assert that individual rulemaking issues require action by us before we complete our overall reexamination of the rules, we think that we can most efficiently resolve the issues by addressing all of them in a single proceeding, which we are now doing. For the same reason we will consider there whether the rules should be temporarily suspended, as suggested by Worldspan and Delta. Since we did not propose a two-year suspension of the rules in our notice, we doubt that we could adopt their suggestion as our final decision in this docket. We will consider the parties' comments in this docket along with those filed in Docket 2881 in our review of the current rules.

As stated above, we have not determined whether all or some of the rules should be kept. We are nonetheless unwilling at this time to allow the rules to expire, as requested by United, because the record suggests that the Internet, the changes in the systems' ownership, and other airline distribution developments may not have eliminated the potential for anticompetitive conduct or deceptive practices by the systems. We also are unwilling at this point to agree with United that we have no jurisdiction to regulate systems not owned and controlled by one or more airlines. The current rules govern systems owned or marketed by an airline, and require each airline that owns or markets a system to ensure that the system complies with the rules. The rules by their terms also directly impose requirements on the systems. No one challenged our decision in our last overall rulemaking to apply the rules to systems owned or marketed by airlines.

The fundamental basis for our readoption of the rules was each system's market power with respect to almost all airlines. Most airlines rely on travel agencies for the sale of the majority of their tickets, travel agents rely on the systems to determine what airline services are available and to make bookings, and few travel agency offices make extensive use of more than one system, as we stated when we proposed the extension. 67 FR 7102–7103. For the purposes of a one-year extension of the rules, these findings still seem valid. Northwest, which opposes the extension, agrees that the systems still have market power, Northwest Comments at 6:

> There continue to be only four computer reservation systems used by U.S. travel agents. Sales to consumers over the Internet, via both airline websites and online agents, have provided significant new competition to CRSs, but each CRS typically remains the only means by which to reach the travel agents who use that system. Each CRS therefore continues to have significant market power based on the travel agents to which it has exclusive access.

United has not persuaded us that the Internet has ended the systems' ability to engage in anti-competitive conduct. Consumers are, of course, increasingly using the Internet for airline bookings, and, as United asserts, some low-fare airlines are now obtaining a large share of their total revenues from Internet bookings. All of the on-line travel agencies, however, use one of the systems at least for some booking functions. Furthermore, even the low-fare airlines, except for Southwest and JetBlue, have found it necessary to continue participating in the systems, notwithstanding the high fees charged by the system. 62 FR 47608. The network airlines like United thus far have not succeeded as well in encouraging consumers to use the Internet. United itself does not claim

that the Internet has made it possible for United to end its reliance on participation in the systems, and United admits that most airline tickets are still sold by travel agents. United Comments at 12. As long as travel agencies are an important distribution channel, most airlines will need to participate in the systems used by the agencies, since airlines cannot afford to lose access to any important distribution channel. 57 FR 43783; Orbitz Supp. Reply, Daniel Kasper Statement at 7 (Docket 2881); 62 FR 59789, quoting comments submitted by the Justice Department.

Since we are not convinced yet by United's argument that the systems no longer have market power, we do not agree with United's contention that the rules themselves enable the systems to impose high fees on airline participants, because the rules allegedly eliminate any need for the systems to negotiate with airlines over the price and terms of airline participation. United Comments at 8–9. United's own conduct seems inconsistent with its claim that airlines could obtain better terms without the rules. United is no longer subject to the mandatory participation rule and so could lower its level of participation in any of the systems, or withdraw entirely, if it believes that the price and terms for participation are unreasonable. United has not done that. That suggests that United is not free for business reasons to withdraw, since its services would then no longer be readily saleable by the travel agents using the system. We are not persuaded by United's claim that any withdrawal by United would be ineffective due to our rule barring systems from discriminating against some airline participants. United is so large an airline that its insistence on obtaining better terms should have an effect, even if the system would have to apply the same terms to other airline participants. However, one of the key issues in our overall reexamination of the rules is the extent of the systems' market power and whether that would justify maintaining all or some of the current rules.

We are also not persuaded that we have no legal basis to maintain the rules. United may err in assuming that we may regulate only airlines and travel agencies under 49 U.S.C. 41712, recodifying section 411 of the Federal Aviation Act ("section 411"). Section 411 authorizes us to regulate "ticket agents", and the statutory definition of "ticket agent" may include the systems. Whether it does is an issue we are considering in our overall reexamination of the rules. While United relies on *Official Airline Guides, Inc.* v. *FTC*, 630 F.2d 920 (2nd Cir. 1980), for the ruling that section 411 does not cover the Official Airline Guide, a publisher of airline schedules, United Comments at 3, n.2, that decision does not resolve the issue of whether section 411 would cover the systems, which do more than just publish schedules. United additionally overstates the court's holding on the scope of the Federal Trade Commission's comparable authority to prohibit unfair methods of competition in other industries. United claims that the FTC (and thus this Department) could never regulate a monopolist's conduct on the basis of that firm's impact on a second industry in which it does not compete. United Comments at 17. However, the Second Circuit suggested that the FTC could regulate a monopolist's conduct in one industry in order to prevent that firm from carrying out an intent to restrain competition in a second industry or from acting coercively. 630 F.2d at 927–928. *See also LaPeyre* v. *FTC*, 366 F.2nd 117 (5th Cir. 1966).

Although United argues that the antitrust principles used to support the rules' original adoption by the Civil Aeronautics Board ("the Board") and their readoption by us could never be validly applied to the systems, United Comments at 4, 6, the Seventh Circuit held that these antitrust principles did justify the Board's decision to regulate the systems. *United Air Lines* v. *CAB*, 766 F.2nd 1107 (7th Cir. 1985). Whether the principles would again support a readoption of the rules is a question that we are considering in our reexamination of the rules.

As we noted in our proposal, we have an obligation under 49 U.S.C. 40105(b) to act consistently with the United States' obligation under treaties and bilateral air services agreements. Those agreements typically assure the airlines of each party a fair and equal opportunity to compete, and many have provisions designed to ensure that the systems operating in one country do not discriminate against the airlines of the other party. We think the extension of the rules is the most effective way to carry out those provisions, even if the existing rules may not be the only way of doing so.

Despite United's claim to the contrary, there has been evidence that systems marketed by airlines or owned by more than one airline would engage in behavior requiring regulation. Ownership by several airlines in the past has not prevented anti-competitive or deceptive conduct. After United ceased to be the sole owner of Galileo, for example, Galileo gave United access to booking data that were not made available to other participating airlines, in violation of our rules. 57 FR 43788. United also caused Galileo to adopt a display algorithm that unreasonably downgraded the position of single-plane service in order to improve the display position of the connecting services operated by United and other airlines that followed a hub-and-spoke route strategy. Galileo kept using that algorithm even though travel agents then could not easily find the services that best met their customer's needs. 61 FR 42208, 42212–42213 (August 14, 1996).

Similarly, a marketing relationship between an airline and a system may lead to a distortion of competition. There have been cases where an airline marketing a system denied competing systems complete access to its fare data and booking features in order to compel travel agencies in areas where that airline was the dominant airline to use the system affiliated with that airline. 61 FR 42197, 42206 (August 14, 1996). Several of the parties, including Amadeus and some travel agencies, have alleged that some airlines that own or market a system often force travel agencies and corporate travel departments to use the airline's affiliated system in order to obtain access to its corporate discount fares.

The systems, moreover, could potentially engage in deceptive conduct even without any ties to travel suppliers. Northwest alleges, for example, that systems not owned by airlines could sell display bias to individual airlines. Northwest Comments at 7. One of the commenters in the overall rulemaking has alleged that one of his clients, a rental car company, was harmed because a system sold a preferential display position to a competing rental car company. Marshall A. Fein Comments (Docket 2881). United's assertion that publicly-owned systems would have no incentive to create misleading displays for travel agents, United Comments at 7, n. 10, thus is not necessarily valid.

In addition, United's opposition to the proposed extension ignores one basis for our rules, the systems' past adoption of contract practices with their travel agency subscribers that deterred or prohibited travel agencies from using more than one system or from using other databases for obtaining airline information and making bookings, such as the Internet. When we readopted the rules, we found it necessary to prohibit some such contract practices. 57 FR 43822–43826. In addition, the systems had generally required travel agency subscribers to use equipment provided by the system and barred them from

accessing other systems or databases from that equipment. Since keeping separate equipment for accessing different systems was usually impracticable for travel agencies, these practices prevented travel agency offices from making extensive use of more than one system. We accordingly adopted a rule giving travel agencies the right to acquire their own equipment and to access any system or database from that equipment. 57 FR 43796–43797. And to give airlines a greater ability to choose which level of service they would purchase from each system, we barred each system from enforcing certain contract clauses that deny participating airlines that ability, as long as the airline does not own or market a competing system. 62 FR 59784 (November 5, 1997). We adopted these rules in order to reduce the systems' market power and enable airlines to use alternative means of communicating electronically with travel agencies.

We are also not prepared now to accept United's suggestion that we can eliminate the rules by relying instead on our section 411 enforcement authority on an *ad hoc* basis to keep systems and affiliated airlines from engaging in anti-competitive practices. Since the system practices that we have found could constitute unfair methods of competition or unfair and deceptive practices have generally been industry-wide practices, maintaining industry-wide rules would be the more efficient method of addressing potential problems while we complete our reexamination of the rules.

Finally, United implicitly concedes that maintaining the rules for another year will not impose significant costs on the systems and their users, if we do not accept its theory that the rules enable the systems to charge higher fees. United Comments at 8.

We recognize the point of the Worldspan owners' complaint about the applicability of the mandatory participation clause, since the rule currently covers only the owners of Worldspan and Amadeus and does not cover airlines marketing a system. Whether that rule should be kept, and, if so, whether its reach should be extended or narrowed, are issues that we are considering in our review of the rules. In our judgment, the Worldspan owners' continuing obligation to participate in competing systems would not justify allowing the CRS rules to expire. The mandatory participation rule by its terms exempts an airline owner from the obligation to participate in a competing system's feature or functionality if the terms for participation are not commercially reasonable. That should enable Delta and Northwest to avoid participating in system services when the fees are too high or the quality of service is too low. And Delta and Northwest have not shown that the mandatory participation rule is currently causing them harm, for example, by forcing them to participate in expensive and unnecessary system features. In addition, some parties have alleged in the overall rulemaking (Docket 2881) that Northwest and Delta have limited their participation in competing systems, or denied users of competing systems access to the airlines' corporate discount fares, in order to give Worldspan an unfair competitive advantage in areas where Delta or Northwest is the dominant airline. System One Comments at 3–4, 6–7; Galileo Supp. Comments at 12, n. 11; Continental Reply to Amadeus petition at 2. Those allegations (which we are reviewing along with the responses by Delta and Northwest) make us unwilling to suspend the mandatory participation rule before we complete our reexamination of all of the rules.

We are not suspending or amending section 255.10(a) as requested by ACAA, ASTA, RADIUS, and NBTA. That rule requires each system to make available to all participating airlines any data that it chooses to generate from the bookings made by travel agents. Suspending the section would not prevent large airlines from gaining access to the marketing and booking data produced and sold by the systems. Suspending the section would only end the systems' obligation to make the data available to all participating airlines. Unless we adopted a rule prohibiting the release of the data, the systems could continue selling it to airline and non-airline firms. We recognize the importance of reexamining the provision, as we stated in our advance notice of proposed rulemaking, 62 FR 47610, and we are doing so in the context of our overall reexamination of the rules.

Several travel agencies have submitted comments that argue, like NBTA's comments, that we should require each airline to allow travel agencies to sell all of the low fares available on the airline's own website or through on-line travel agencies like Orbitz. The current rules do not impose such a requirement on the airlines. Whether the rules should do so is one of the issues we are now examining.

Finally, we are not taking immediate action on ASTA's request that we bar systems from enforcing productivity pricing clauses in subscriber contracts. Whether and how we should continue regulating subscriber contracts is an issue that we are exploring in the overall rulemaking.

Effective Date

We have determined for good cause to make this amendment effective on March 31, 2002, rather than thirty days after publication as required by the Administrative Procedure Act except for good cause shown. 5 U.S.C. 553(d). To keep the current rules in force, we must make this amendment effective by March 31, 2002. Since the amendment preserves the status quo, it will not require the systems, airlines, or travel agencies to change their operating methods. Making this amendment effective on less than thirty days notice accordingly will not impose an undue burden on anyone.

Regulatory Process Matters

Regulatory Assessment

This rulemaking is a nonsignificant regulatory action under section 3(f) of Executive Order 12866 and has not been reviewed by the Office of Management and Budget under that order. The proposal is also not significant under the regulatory policies and procedures of the Department of Transportation, 44 FR 11034 (February 26, 1979).

In our notice of proposed rulemaking, we tentatively concluded that maintaining the current rules should not impose significant costs on the systems. They have already taken the steps necessary for compliance with the rules' requirements on displays and functionality, and complying with those rules on a continuing basis does not impose a substantial burden on the systems. Keeping the rules in force would benefit participating airlines, since otherwise they could be subjected to unreasonable terms for participation, and consumers, who might otherwise obtain incomplete or inaccurate information on airline services. The rules would also prevent some types of abuses by systems in their competition for travel agency subscribers.

In our last major CRS rulemaking, we published a tentative economic analysis with our notice of proposed rulemaking and included a final analysis in our final rule. Our notice proposing to extend the rules to March 31, 2003, stated that the analysis should be applicable to our proposal and that no new regulatory impact statement appeared to be necessary. We stated that we would consider comments from any party on that analysis before we make our proposal final. 67 FR 7103.

No one filed comments on the economic analysis, so we are basing this rule on the analysis used in our last

overall CRS rulemaking. We will prepare a new economic analysis as part of our reexamination of our existing rules, if we determine that CRS rules remain necessary.

This rule does not impose unfunded mandates or requirements that will have any impact on the quality of the human environment.

Small Business Impact

Congress enacted the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, to keep small entities from being unnecessarily and disproportionately burdened by government regulations. The act requires agencies to review proposed regulations that may have a significant economic impact on a substantial number of small entities. For purposes of this rule, small entities include smaller U.S. airlines and smaller travel agencies.

Our notice of proposed rulemaking set forth the reasons for our proposed extension of the rules' expiration date and the objectives and legal basis for that proposal. We also pointed out that maintaining the current rules would not modify the existing regulation of small businesses. We noted that the final rule in our last major CRS rulemaking contained a regulatory flexibility analysis on the impact of the rules. Relying on that analysis, we tentatively determined that this regulation would not have a significant economic impact on a substantial number of small entities. We stated that that analysis appeared to be valid for our proposed extension of the rules' termination date. We therefore adopted that analysis as our tentative regulatory flexibility statement, and we stated that we would consider any comments filed on that analysis in connection with the proposed extension of the rules. 67 FR 7103–7104.

While maintaining the CRS rules would primarily affect two types of small entities, smaller airlines and travel agencies, the rules would also affect all small entities that purchase airline tickets. If the rules enable airlines to operate more efficiently and to reduce their costs, airline fares may be somewhat lower than they would otherwise be, although the difference may be small.

Continuing the rules would protect smaller non-owner airlines from several potential system practices that could injure their ability to operate profitably and compete successfully. No smaller airline has a CRS ownership interest. Market forces do not significantly influence the systems' treatment of airline participants. As a result, if there were no rules, the airlines affiliated with the systems could use them to prejudice the competitive position of other airlines. The rules therefore provide important protection to smaller airlines. For example, by prohibiting systems from ranking and editing displays of airline services on the basis of carrier identity, they limit the ability of each system to bias its displays in favor of its affiliated airlines and against other airlines. The rules also prohibit the systems from charging participating airlines discriminatory fees. The rules, on the other hand, impose no significant costs on smaller airlines.

The CRS rules affect the operations of smaller travel agencies, primarily by prohibiting certain CRS practices that could unreasonably restrict the travel agencies' ability to use more than one system or to switch systems. The rules prohibit CRS contracts that have a term longer than five years, give travel agencies the right to use third-party hardware and software, and prohibit certain types of contract clauses, such as minimum use and parity clauses, that restrict an agency's ability to use multiple systems. Since the rules prohibit display bias based on carrier identity, they also enable travel agencies to obtain more useful displays of airline services.

We invited interested persons to address our tentative conclusions under the Regulatory Flexibility Act in their comments on the notice of proposed rulemaking. 67 FR 7104.

Since no one commented on our Regulatory Flexibility Act analysis, we are adopting the analysis set forth in the notice of proposed rulemaking.

This rule contains no direct reporting, recordkeeping, or other compliance requirements that would affect small entities. There are no other federal rules that duplicate, overlap, or conflict with our proposed rules.

I certify under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. *et seq.*) that this regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no collection-of-information requirements subject to the Paperwork Reduction Act, Public Law No. 96–511, 44 U.S.C. chapter 35.

Federalism Assessment

We stated that we had reviewed our proposed rule in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and determined that it 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. This rule will not limit the policymaking discretion of the States. Nothing in this rule will directly preempt any State law or regulation. We are adopting this amendment primarily under the authority granted us by 49 U.S.C. 41712 to prevent unfair methods of competition and unfair and deceptive practices in the sale of air transportation. Our notice of proposed rulemaking stated our belief that the policy set forth in this rule is consistent with the principles, criteria, and requirements of the Federalism Executive Order and the Department's governing statute.

We invited comments on these conclusions. 67 FR 7104. No one commented on our federalism assessment. We will therefore make it final. Because the rule will have no significant effect on State or local governments, as discussed above, no consultations with State and local governments on this rule were necessary.

List of Subjects in 14 CFR Part 255

Air carriers, Antitrust, Consumer protection, Reporting and recordkeeping requirements, Travel agents.

Accordingly, the Department of Transportation amends 14 CFR part 255 as follows:

PART 255—(AMENDED)

1. The authority citation for part 255 continues to read as follows:

Authority: 49 U.S.C. 40101, 40102, 40105, 40113, 41712.

2. Section 255.12 is revised to read as follows:

§ 255.12. Termination.

The rules in this part terminate on March 31, 2003.

Issued in Washington, DC on March 25, 2002, under authority delegated by 49 CFR 1.56a(h)2.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 02–7510 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–62–P

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1301

Revision of Tennessee Valley Authority Freedom of Information Act Regulations

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: The Tennessee Valley Authority is amending its Freedom of Information Act (FOIA) regulations to reflect an organizational reassignment of the FOIA function within TVA. It also provides a new address for filing FOIA appeals.

EFFECTIVE DATE: March 28, 2002.

FOR FURTHER INFORMATION CONTACT: Denise Smith, FOIA Officer, Tennessee Valley Authority, 400 W. Summit Hill Drive (ET 5D), Knoxville, Tennessee 37902–1499, telephone number (865) 632–6945.

SUPPLEMENTARY INFORMATION: This rule was not published in proposed form since it relates to internal agency organization and administration. Since this rule is nonsubstantive, it is being made effective March 28, 2002.

List of Subjects in 18 CFR Part 1301

Freedom of Information, Government in the Sunshine, Privacy.

For the reasons stated in the preamble, TVA amends 18 CFR Part 1301 as follows:

PART 1301—PROCEDURES

1. The authority citation for part 1301, Subpart A, continues to read as follows:

Authority: 16 U.S.C. 831–831ee, 5 U.S.C. 552.

2. In § 1301.9, revise paragraph (a) to read as follows:

§ 1301.9 Appeals.

(a) *Appeals of adverse determinations.* If you are dissatisfied with TVA's response to your request, you may appeal an adverse determination denying your request, in any respect, to TVA's FOIA Appeal Official, the Vice President, External Communications, Tennessee Valley Authority, 400 Summit Hill Drive (ET 6A), Knoxville, TN 37902–1499. You must make your appeal in writing and it must be received by the Vice President, External Communications within 30 days of the date of the letter denying your request. Your appeal letter may include as much or as little related information as you wish, as long as it clearly identifies the TVA determination (including the assigned request number, if known) that you are appealing. An adverse determination by the TVA Appeal Official will be the final action of TVA.

* * * * *

Tracy S. Williams,

Vice President, External Communications, Tennessee Valley Authority.

[FR Doc. 02–7432 Filed 3–27–02; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1300, 1309, 1310

[DEA Number 163F]

RIN 1117–AA44

Implementation of the Comprehensive Methamphetamine Control Act of 1996; Regulation of Pseudoephedrine, Phenylpropanolamine, and Combination Ephedrine Drug Products and Reports of Certain Transactions to Nonregulated Persons

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: DEA is amending its regulations to implement the requirements of the Comprehensive Methamphetamine Control Act of 1996 (MCA) with respect to the regulation of pseudoephedrine, phenylpropanolamine, and combination ephedrine drug products as List I chemicals, and the reporting of certain transactions involving pseudoephedrine, phenylpropanolamine, and combination ephedrine drug products.

The MCA removed the previous exemption from regulation as List I chemicals which had applied to pseudoephedrine, phenylpropanolamine, and combination ephedrine drug products. This action makes persons who distribute the products subject to the registration requirement. Also, distributions, importations, and exportations of the products became subject to the existing chemical controls relating to regulated transactions, except in certain circumstances specified in the MCA. The MCA also requires that reports be submitted for certain distributions involving pseudoephedrine, phenylpropanolamine, and ephedrine (including drug products containing those chemicals) by Postal Service or private or commercial carrier to nonregulated persons.

This final rule amends the regulations to make them consistent with the language of the MCA and to establish specific procedures to be followed to satisfy the new reporting requirement. DEA has, where possible, taken action to limit the public impact of these new requirements while remaining consistent with the intent of the MCA to attack the diversion of regulated drug products to the clandestine manufacture of methamphetamine.

EFFECTIVE DATE: April 29, 2002.

FOR FURTHER INFORMATION CONTACT: Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION:

Special Notice Regarding Phenylpropanolamine

On November 6, 2000, the Food and Drug Administration (FDA) issued a public advisory announcing that it is taking steps to remove phenylpropanolamine from all drug products and has requested that all drug companies discontinue marketing products containing phenylpropanolamine.

What Is the Basis for This Action?

The Comprehensive Methamphetamine Control Act of 1996 was enacted on October 3, 1996, to provide a comprehensive system of controls relating to the distribution, importation, and exportation of pseudoephedrine, phenylpropanolamine, and combination ephedrine drug products, along with other strong tools to attack the illicit traffic in regulated chemicals. The MCA retained the existing Controlled Substances Act (CSA) requirements for distributors of List I chemicals and made certain changes with respect to the regulation of drug products containing pseudoephedrine, phenylpropanolamine, and ephedrine.

What Are the Requirements of the MCA?

Principal among the changes made by the MCA was amendment of the definition of regulated transaction (21 U.S.C. 802(39)) to remove the exemption for drug products that contain pseudoephedrine, phenylpropanolamine, or ephedrine and to establish a 24 gram threshold for the sale of pseudoephedrine or phenylpropanolamine products by a retail distributor or a distributor required to make reports by section 310(b)(3) of the CSA (21 U.S.C. 830(b)(3)). The definition was also amended to provide that the sale of ordinary over-the-counter

pseudoephedrine or phenylpropanolamine products by retail distributors shall not be a regulated transaction.

The MCA also added two new definitions:

The term ordinary over-the-counter pseudoephedrine or phenylpropanolamine product is defined in section 102(45) of the CSA (21 U.S.C. 802(45)) as a product containing pseudoephedrine or phenylpropanolamine that is regulated pursuant to the CSA and, except for liquids, is packaged with not more than 3 grams of pseudoephedrine or phenylpropanolamine base per package, contained in blister packs, with not more than two dosage units per blister, or where the use of blister packs is not technically feasible, packaged in unit dose packets or pouches. For liquids, the product is sold in package sizes of not more than 3 grams of pseudoephedrine or phenylpropanolamine base per package.

The term retail distributor is defined in section 102(46) of the CSA (21 U.S.C. 802(46)) as a grocery store, general merchandise store, drug store, or other entity or person whose activities as a distributor relating to pseudoephedrine or phenylpropanolamine products are limited almost exclusively to sales for personal use, both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales. Sale for personal use is defined by the MCA as the sale of below-threshold quantities in a single transaction to an individual for legitimate medical use.

The MCA also defined combination ephedrine product and established a 24 gram single transaction limit, notwithstanding the form of product packaging, for sales by retail distributors and distributors required to submit a report under section 310(b)(3) of the CSA (21 U.S.C. 830(b)(3)), and a 1-kilogram threshold for transactions by other distributors, importers, and exporters.

Additionally, the MCA amended section 310(b)(3) of the CSA (21 U.S.C. 830(b)(3)) to require that regulated persons who engage in transactions with pseudoephedrine, phenylpropanolamine, or ephedrine (including drug products containing those chemicals) to non-regulated persons (i.e., someone who does not further distribute the product) and use or attempt to use the Postal Service or any private or commercial carrier shall submit a report of all such transactions each month.

The MCA also provided expanded opportunity for reinstatement of a product exemption, through amendment of section 204 of the CSA (21 U.S.C. 814(e)), if it is determined that the product is manufactured and distributed in a manner that prevents diversion, and changed the record retention period for List I chemical transactions to 2 years from 4 years.

The requirements with respect to the regulation of combination ephedrine drug products and reports of sales to nonregulated individuals went into effect on October 3, 1996. In order to allow uninterrupted availability of the products while companies applied for and received their registrations, DEA published interim and final rules in the **Federal Register** on February 10, 1997 and October 7, 1997 (62 FR 5914 and 62 FR 52253) respectively, establishing a temporary waiver of the registration requirement for any person who submitted an application for registration prior to December 3, 1997. DEA also published a notice regarding the reporting requirement on February 7, 1997 (62 FR 5851), which provided affected persons guidance regarding submission of the required reports to DEA and requested certain additional information be submitted with the reports.

The requirements with respect to pseudoephedrine and phenylpropanolamine became effective on October 3, 1997.

What Regulatory Amendments Is DEA Making?

This rule makes final the notice of proposed rulemaking (NPRM) that DEA published in the **Federal Register** on October 7, 1997 (62 FR 52294), which proposed to implement certain regulatory changes mandated by the MCA. The changes included conforming regulatory definitions to the language of the MCA; new record retention, threshold and reporting requirements; and expanding waivers of the registration requirement. These changes are discussed in greater detail in the following paragraphs.

Because many of the requirements of the MCA were set out in such detail as to be self-implementing, many of the proposed regulatory changes are conforming amendments to make the language of the regulations consistent with that of the new law. The definitions of regulated transaction and retail distributor are updated and the definitions of ordinary over-the-counter pseudoephedrine or phenylpropanolamine product and combination ephedrine product are inserted. Additionally, 21 CFR 1310.04 was proposed to be amended to reflect the new List I chemical record retention period and new threshold requirements; 21 CFR 1310.04–06 were proposed to be updated to reflect the new reporting requirement; and 21 CFR 1309.71 was proposed to be amended to reflect that in retail settings open to the public ephedrine drug products, in both single-entity and combination form, must be stored behind a counter where only employees have access. Finally, 21 CFR part 1309 was proposed to be amended to consolidate the various waivers of the registration requirement into one section, expand the current waiver of registration for retail distributors of combination ephedrine products to include retail distributors of pseudoephedrine and phenylpropanolamine products, and to provide a temporary waiver of the registration requirement for persons who distribute, import, or export pseudoephedrine or phenylpropanolamine drug products provided they submitted an application on or before December 3, 1997.

What Comments Were Received?

The comment period for the NPRM closed on December 8, 1997. Twenty comments were submitted which, while supportive of the efforts of the law and regulations to control the diversion of drug products and the illicit manufacture of methamphetamine, raised the following issues and concerns:

Registration Requirement

A number of comments focused on the registration requirement, expressing concerns that the paperwork burden and cost of registration are not commensurate with the volume of business being conducted in the products or that the manner in which the products are packaged or distributed is not conducive to diversion. The commenters recommended that DEA adopt alternative registration requirements, allowing for:

1. Exempting below threshold sales from the registration requirement;

2. A related general recommendation was also made that the retail distribution exemption for ordinary over-the-counter products be extended to the wholesale level;

3. Exempting distributors that purchase '2 pill packs' (presumably products that meet the definition of ordinary over-the-counter pseudoephedrine and phenylpropanolamine products) to manufacture retail displays and refills that contain 24 to 30 packs, for sale to distributors who, in turn, sell to retailers. This segment of the industry should not be subject to registration on

the grounds that clandestine laboratory operators are not interested in '2 pill packs' and the $595.00 cost of registration would be more than many of the distributors of these products would be willing to pay.

4. Exempting any distributor that purchases less than the threshold amount in a calendar month; and

5. Exempting vending machine sales from the registration requirement.

The first two recommendations, exemption of below threshold sales and extension of the retail exemption for ordinary over-the-counter pseudoephedrine and phenylpropanolamine products to wholesale distributions of the products were discussed at length in DEA's final rule, published in the **Federal Register** on October 7, 1997 (62 FR 52253) (DEA–154F, RIN 1117–AA42), entitled Implementation of the Comprehensive Methamphetamine Control Act of 1996; Possession of Listed Chemicals Definitions, Record Retention, and Temporary Exemption From Chemical Registration for Distributors of Combination Ephedrine Products. In summary, DEA noted with respect to below threshold sales that the chemical registration requirement was patterned after the system of registration required for controlled substances handlers. The controlled substances registration system, while providing exemptions for certain products that contain controlled substances, does not take into consideration the quantity of controlled substance involved when determining whether registration is required; either a product is exempt from registration or it is not, the amount of the product involved in the transaction is immaterial. To clarify the fact that it is product exemption, rather than transaction exemption, that applies, §1309.21 is being amended to clarify that the exemption in §1300.02(b)(28)(i)(D) is determined irrespective of the threshold provisions in §1300.02(b)(28)(i)(D)(2).

With respect to the issue of extension of the retail distributor exemption for ordinary over-the-counter products to wholesale activities within the retail distribution chain, DEA noted that the MCA does not exempt retail distributors, it exempts sales by retail distributors, which sales are defined in section 401(b)(4) of the MCA as "* * * either directly to walk-in customers or in face-to-face transactions by direct sales." The sales are further qualified in section 401(b)(4) of the MCA as involving "* * * below threshold quantities in a single transaction to an individual for legitimate medical use." The specific language of the MCA in defining the type of transactions that are exempted from the requirements of the law makes it clear that only qualifying retail transactions are to be exempted; the language does not contemplate the exemption of a major class of wholesale distributions.

In connection with the first two recommendations, certain commenters also raised the concern that, based on their sales, the initial registration fee of $595.00 was too high. It should be noted that on October 17, 1997, DEA published a notice in the **Federal Register** (62 FR 53958) waiving a substantial portion of the registration fee, reducing it from $595.00 to $116.00. The reduction of the fee should address those concerns.

With respect to the issue of '2 packs', the assertion of the commenter that such products would not be of interest to clandestine laboratory operators at the retail level given their pricing and the 24 gram transaction limit may be true. However, at the wholesale level, with its much higher thresholds and size of transactions, 2 packs, while not the most convenient, would still represent a worthwhile source of material. The reduction of the fee should address the principal concern of this industry with respect to registration.

The fourth recommendation, exempting distributors from registration if they purchase less than a threshold amount in a calendar month, while appearing to be reasonable on the surface, would pose a potentially fatal flaw in the chemical control system. The basic premise of the registration system is to require identification of the participants in the system to DEA and give DEA the opportunity to review their credentials and background. Allowing an entire class of distributors to engage in general distribution outside of this system would provide an opportunity for illicit manufacturers to obtain the supplies they need. The current thresholds for pseudoephedrine and phenylpropanolamine at the wholesale level are 1 kilogram (2.2 pounds) and 2.5 kilograms (5.5 pounds) respectively. Under the proposed scenario, anyone could obtain drug products containing 2 pounds of pseudoephedrine and 5 pounds of phenylpropanolamine per month without being identified to DEA or subject to any background checks to confirm their legitimacy. This volume of product would allow, at the currently estimated conversion ratio of 50% to 70% in clandestine laboratories, the manufacture of between 1 and 1.4 pounds of methamphetamine and 2.5 to 3.5 pounds of amphetamine per month. In light of the opportunistic nature of the clandestine laboratory operators, providing such an unregulated source of supply would be a golden opportunity. Further, the reduction of the new application fee minimizes the economic burden associated with registration for this class of distributor.

The fifth issue, vending machine sales, is apparently based on the mistaken assumption that vending machine sales and the supplying of vending machines is a form of wholesale distribution. DEA considers the sale of regulated drug products via vending machines to be retail sales. The sales are made in 'face-to-face' transactions to individual users for their personal medical use in amounts less than the 24 gram threshold. In a related issue, an individual owner of vending machines may receive and distribute regulated drug products to his/her machines without obtaining a registration as a distributor. DEA recognizes that, as a rule, vending machines are placed in locations that are not under the control of the machine owner and to which the owner cannot usually have supplies delivered. Under such circumstances, the owner of the machines may receive regulated drug products at another location for the purpose of resupplying the machines, without having to be registered as a distributor.

After careful review of the comments, DEA has concluded that its current waivers of the registration requirement constitute an appropriate balance between minimizing regulatory burden and preventing diversion. DEA believes that expanding the registration waivers as suggested in the above comments could result in an appreciable increase in the potential for diversion.

Security Requirements

Three commenters expressed concerns regarding the proposed requirement that combination ephedrine drug products be maintained behind the counter, noting that such a requirement appears to be inconsistent with the waiver of registration for retail distributors of these products. The diversion of ephedrine products at the retail level has been a significant problem in the past and remains an issue today. DEA is aware that there is some level of retail diversion and is concerned that, as controls at higher levels in the distribution system become more effective, the pressure to divert from retail sources will increase. However, in lieu of requiring that combination ephedrine products be maintained behind the counter, DEA will continue to monitor diversion from this level and, if circumstances require,

will consider additional controls, including removing the exemption from registration for retail distributors of non-ordinary over-the-counter drug products as well as imposition of additional security requirements. The existing requirement that single-entity ephedrine drug products be stocked behind the counter, where only employees have access, remains in effect.

Mail Order Reporting Requirement

A number of comments were received regarding the mail order reporting requirement. The comments focused on the following issues:

1. In addition to requiring that all distributions (regardless of amount) of ephedrine, pseudoephedrine, or phenylpropanolamine to non-regulated persons be reported under the mail order reporting requirement, the MCA also establishes a general distribution threshold of 24 grams in a single transaction, rather than the existing thresholds set forth in §1310.04, for persons required to submit mail order reports. Some commenters expressed the position that the 24 gram threshold applies only to those transactions that must be reported and not to all transactions of the distributor;

2. The reporting requirement should be amended to exclude pharmacies that deliver or mail prescriptions to patients and to exclude mail order transactions that are below established thresholds;

3. The reporting requirement is in conflict with patient confidentiality requirements; and

4. The additional information required by DEA adds to an already burdensome requirement, especially the requirement for the date of transaction and the lot number, which should be stricken from the requirement.

The first of the commenters' concerns relates to specific requirements of the MCA with respect to reporting mail order transactions over which DEA has no discretion. The MCA requires, at Section 402 (codified at 21 U.S.C. 830(b)(3)), that all distributions (regardless of quantity) of ephedrine, pseudoephedrine, or phenylpropanolamine to non-regulated persons be reported to DEA monthly in a format determined by the Attorney General (delegated to DEA). In section 401 (codified at 21 U.S.C. 802(39)(A)(iv)(II), the MCA also defines a "regulated transaction," which is subject to various other regulatory requirements of Section 830 and elsewhere, to be any single transaction of 24 grams or more by a mail order distributor (the statute refers to "distributors required to submit reports by section 830(b)(3) of this title"). For this business sector, the higher distribution thresholds set forth in §1310.04 (e.g., 1 kilogram for pseudoephedrine and 2.5 kilograms for phenylpropanolamine) are not applicable. Therefore, the position expressed by the commenters that the 24 gram threshold applies only to those transactions that must be reported under the mail order reporting requirement, and not to all transactions of a mail order distributor, runs contrary to the law as interpreted by the agency.

One commenter noted that the proposed amendment to §1310.04(f)(ii) should be amended to reflect that the single transaction threshold also applies to distributions by persons required to report mail order transactions. This correction has been made to the final regulations.

As to the issue of waiving the reporting requirement for pharmacies for delivering or mailing regulated drug products to patients, the law provides no discretion to waive the reporting requirement for any categories of transactions; all described transactions must be reported. A legislative amendment is being considered to address this issue.

Amending the mail order requirement to exclude the delivery or mailing of prescriptions would also address the issue of patient confidentiality. Pending such an amendment, it must be noted that DEA often reviews prescription information, including the names and addresses of patients, in the course of investigations and audits. Disclosure of such information from DEA's files is made only to other law enforcement and regulatory agencies engaged in the enforcement of controlled substances or chemical control laws; when relevant in any investigation or proceeding for the enforcement of controlled substances or chemical control laws; and when necessary for compliance by the United States under treaty or other international agreement. Other requests for disclosure of such information must be made under the Freedom of Information Act and are subject to the full requirements and protections of the Privacy Act. Further, section 310 of the CSA (21 U.S.C. 830), which requires chemical records and reports, including the mail order reports, also contains protections against the disclosure of confidential business information collected by DEA pursuant to the section. DEA is amending §1310.06 to add a paragraph clarifying that the protections set forth in 21 U.S.C. 830(c) for confidential business information will also apply to information collected in the mail order reports.

With respect to the additional information (name of recipient, if different from the purchaser; address of purchaser, if different from address delivered to; shipping date; and lot number, if drug products) that DEA is requesting in the reports, such information is important in helping to identify efforts to divert the chemicals, especially where orders are being placed with a number of different mail order providers. It is not unusual for traffickers to attempt to circumvent the chemical controls by ordering small, apparently innocuous amounts of product from a variety of different sources or having a number of individuals place orders for delivery to the same location. The availability of the additional information is critical for identification of such efforts. The lot numbers for drug products are important in allowing DEA to track and identify the source of products that are found at clandestine laboratory sites. Finally, to reflect organizational changes within DEA, references to "Chemical Operations Section" have been changed to "Chemical Control Section".

One commenter requested clarification of the shipment date, package type, and package quantity. Shipment date refers to the date the product is shipped by the regulated person to the non-regulated person. Package type refers to the specific form of packaging of the product, i.e., bottle, blister pack, etc., and package quantity refers to the number of packages shipped. Section 1310.06 has been amended to include examples for items, where appropriate, for clarification.

One commenter expressed concern that with the mail order reporting requirement "* * * DEA is unfairly creating an 'unlevel' playing field between retail distributors and mail order distributors."

The statutory language enacting the mail order reporting requirement is clear and unequivocal and allows DEA no discretion to limit the requirement or exclude any categories of mail order transactions; all mail order transactions by a regulated person with a non-regulated person must be reported. As noted earlier, DEA is considering a legislative amendment to allow some discretion in the enforcement of this requirement of the MCA. However, until such an amendment is passed by Congress and signed into law, DEA must enforce the requirement as written.

In a related issue, two commenters that distribute ephedrine and pseudoephedrine products to Occupational Health Clinics requested that proposed §1310.04(f)(1)(i)(B)(2) and (D)(2) be amended to increase the

threshold from 24 grams to 160 grams for products packaged in unit dose form. DEA has responded directly to each of the commenters clarifying the fact that distributions to Occupational Health Clinics would not be subject to the mail order reporting requirement. If the commenters' activities are restricted to such sales they would be subject to the appropriate wholesale thresholds for ephedrine and pseudoephedrine and not to the threshold that applies to persons required to submit mail order reports.

Waiver of the Registration Requirement for Retail Distributors

One commenter objected to DEA's waiver of registration, contained in §1309.24(e), for retail distributors of regulated drug products "* * * irrespective of the form of packaging * * *. The commenter argued that Congress intended that the exemption apply only to 'ordinary over-the-counter products' and that the commenter was unaware of * * * any authority that DEA has to determine that 'minimizing the burden on industry' is more important than implementing public law."

The implementation of any law that has an impact on legitimate commerce is a balancing act between the specific requirements of the law and the impact that the law will have on the industry engaged in such commerce. The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Executive Order 12866, and the Small Business Regulatory Enforcement Fairness Act of 1996 all require that implementation of regulatory requirements be accomplished in such a manner as to minimize the burden on the public to the greatest possible extent while remaining consistent with the requirements of the law. DEA has, in implementing the requirements of the MCA, acted consistently with those principles.

The definition of 'retail distributor' established by Congress is sufficiently restrictive that, as noted in the proposed rule, * * * the new controls of the MCA should, as a practical matter, significantly reduce the potential for major diversion from this level (provided retailers comply with the law and are alert to attempts to circumvent the controls.) Because of the limited amount of product permitted to be distributed in an individual transaction, attempts to divert the products by the retail distributors should be noticeable, given that the volume of material required is out of proportion with any reasonable amount that might be purchased for personal use." This fact, coupled with the widespread concern that these regulations have the smallest necessary impact on public access to the products at the retail level led DEA to exercise its authority under section 302(d) of the CSA (21 U.S.C. 822(d)) to exempt retail distributors from the registration requirement.

It should be noted that waiver of registration for retail distributors does not confer 'ordinary over-the-counter' status on products not meeting the definition of that category. Retail distributors whose transactions in listed chemicals consist solely of 'ordinary over-the-counter' products are exempt from the registration, recordkeeping, and reporting requirements of §1310.05, but not the reporting requirements of §1310.03(c). Retail distributions of products not meeting the definition of that category that exceed the retail threshold of 24 grams in a single transaction are subject to the registration, recordkeeping, and reporting requirements.

In granting the waiver of registration for retail distributors of regulated drug products irrespective of the form of packaging, DEA has acted within the bounds of responsible rulemaking without jeopardizing the requirements or intent of the MCA. Two commenters, representing elements of the manufacturing and retail distribution industry, recognized the waiver as * * * a rational interpretation of the MCA" and commended DEA for the action.

Miscellaneous

One commenter, while acknowledging the analysis of regulatory alternatives in the proposed rule, expressed concern that DEA has overlooked a class of affected entities that deserves additional consideration: wholesalers that distribute their products to small independent retailers. The commenter suggested that DEA consider less frequent reporting or waive the registration requirement for such small wholesalers.

DEA is familiar with the independent wholesale industry, having worked with the national trade associations representing this segment of the industry on a number of occasions since the passage of the MCA regarding its requirements and impact on the industry. As a result of requests from this part of the industry, DEA waived a substantial portion of the registration fee in order to reduce the economic impact of registration on the wholesalers. However, as noted earlier, waiving the registration requirement altogether is not an acceptable alternative; to do so would establish an unregulated portion of the industry that could become a source of supply for clandestine laboratory operators. This segment of the industry has been the subject of a substantial portion of DEA's enforcement efforts. Since October, 1997, there have been at least 33 criminal convictions and 23 civil fines obtained against wholesalers, all for violations of the CSA involving sales of regulated drug products. Additionally, at least 4 wholesalers have surrendered their registrations for violations involving regulated drug products, 6 have had their registrations suspended, and 13 companies are the subject of administrative actions to deny an application or revoke a registration. A recent national enforcement action directed at this segment of the industry resulted in over 170 arrests and seizure of sufficient product to provide over 12 tons of pseudoephedrine to the methamphetamine traffickers. Thus, it is clear that some level of regulation and oversight of this sector of the industry is necessary.

With respect to the issue of reporting, the only reports that must be made periodically are mail order reports, which are mandated by Congress. DEA has no discretion to modify the required reporting period. All other reports are to be submitted on an as-needed basis using the guidance of §1310.05. In total, DEA has taken action where possible to limit the burden on industry without compromising the legislative efforts to attack the problem of diversion of regulated drug products to clandestine laboratories.

In a related issue, two commenters objected to the characterization of the wholesale industry as the source of choice for the clandestine laboratory operators. It has never been the intent of DEA to cast the wholesale industry in a negative light. The majority of the industry is honest and reputable and has worked with DEA and Congress in an effort to address the diversion problem. However, there are the few proverbial 'bad apples' whose activities reflect poorly on the industry as a whole. These individuals, who are the focus of DEA's enforcement efforts, have taken advantage of their position within the wholesale industry to sell their products to clandestine laboratory operators or those who supply them, in order to gain illicit profits. DEA recognizes that while the clandestine laboratory operators have been able to obtain their supplies through this route, the actions of the few corrupt wholesalers are in no way a reflection of the industry as a whole. DEA looks forward to working with the legitimate industry in dealing with the problem of

diversion of regulated drug products to clandestine laboratories.

One commenter requested clarification regarding the status of a variety of activities, such as contract processors, vending machine sales, and samples and donations. The commenter also proposed that DEA should more clearly define the evidentiary standards for reinstatement of the drug product exemption.

DEA recognizes that there are within the chemical and drug product industry certain activities of which regulation is not necessary for effective enforcement of the law. In that regard, DEA is preparing a separate proposed rule regarding the waiver for certain activities, including those listed in the previous paragraph, from either the registration requirement or the fee requirement. Until such waivers are finalized, however, the full requirements of the law and regulations apply.

With respect to the exemption criteria, DEA understands the desire on the part of industry for concrete, objective evidentiary guidelines to be satisfied in requesting reinstatement of the exemptions for certain drug products. However, the variety of circumstances that could affect a decision to grant such a reinstatement for any product is so great that the establishment of a concise and exclusive standard is not possible. As an alternative, DEA maintains a policy of open discussion with applicants for reinstatement. If there are any questions regarding an application or is a need for additional information, DEA will work with the applicant in an effort to address the issues.

One commenter objected that during the course of pre-registration investigations, DEA investigators were requesting information to which DEA is not entitled. This concern was also brought directly to DEA's attention by the commenter and has been resolved through a modification of the pre-registration investigation information collection procedures.

One commenter noted that the difficulties and burdens experienced by small distributors in complying with the recordkeeping requirement reinforce the need to establish waivers from the regulations where possible. DEA is committed to ensuring that the requirements of the chemical control program are applied with the least possible public burden while remaining consistent with the intent of the law. As noted earlier, DEA is preparing a proposal to exempt certain activities from the registration or fee requirement. DEA will continue to review the chemical control requirements to try and identify further waivers that might be possible.

Note Regarding Amendments to the Regulations

On October 17, 2001, DEA published a final rule in the **Federal Register** entitled "Control of Red Phosphorus, White Phosphorus, and Hypophosphorous Acid (and its salts) as List I Chemicals". That final rule added new text to 21 CFR 1309.29. This final rule removes 21 CFR 1309.29 and incorporates its text into 21 CFR 1309.24. The amendments made in the October 17, 2001, final rule have been incorporated into new 21 CFR 1309.24, where appropriate.

Regulatory Flexibility Act

The Administrator in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it hereby certifies that this rulemaking will not have a significant economic impact upon a substantial number of small entities for the following reasons. As discussed in the NPRM, in the section regarding SMALL BUSINESS IMPACT AND REGULATORY FLEXIBILITY CONCERNS, consideration was given to the population that would be impacted, the potential impact of varying levels of regulation, and the nature of the problem to be addressed by the regulations.

As noted in the NPRM, there are two distinct, but related, groups within the industry: retail distributors and wholesalers. There are an estimated 750,000 retail distributors who distribute the regulated drug products directly to the public. Their activities are, by law, limited almost exclusively to sales of 24 grams or less directly to walk-in customers or in face-to-face sales for personal medical use. Wholesalers, while far fewer in number (approximately 3,500) and engaging in fewer transactions, account for as great a level of commerce as retail distributors through significantly larger transaction sizes.

There were three basic enforcement options available to DEA in applying the requirements of the MCA:

1. Apply the requirements to both the retail and wholesale distributor industries;

2. Regulate only the retail distributors; or

3. Regulate only the wholesale distributors.

In reviewing the options, it became clear that the burdens associated with regulation of retail distributors would potentially be enormous. As detailed in the NPRM, the initial registration cost for 750,000 retail distributors at $255.00 each would be over $190 million, with a subsequent annual reregistration cost, at $116.00 each, of approximately $87 million. Additionally, there would be a 150,000 hour annual paperwork burden associated with the registration requirement. For DEA, the administrative burden of handling 750,000 applications per year would be enormous. Further, the new requirements of the MCA with respect to retail distributors should reduce the potential for significant diversion, provided that retailers comply with the requirements of the law and are alert to attempts to circumvent the controls. Because of the limited amount of product permitted to be distributed in a single transaction, attempts to divert the products at the retail level should be noticeable, given that the volume of material required is out of proportion with any reasonable amount that might be purchased for personal use. Under the circumstances, the monetary and administrative burdens associated with registration and regulation of the retail industry would be out of proportion with the benefits to be derived and might unnecessarily interfere with legitimate public access to the products.

Registration and regulation of the wholesale industry would have a much lesser impact. With respect to registration, the cost for initial registration would be slightly more than $2 million (3,500 registrations at $595.00 each) and annual reregistration costs would be approximately $1.7 million (3,500 at $477.00 each). The annual paperwork burden associated with registration would be 700 hours per year. With respect to regulation, the recordkeeping requirement would be minimal, since the transaction information DEA requires would generally be maintained by a business as a matter of good business practice, and the reporting requirements (except for the mail order reporting requirement which is non-discretionary) are limited to an "as-needed" basis using the guidance of §1310.05. Weighing these much lower economic and administrative costs against the larger volumes of products per transaction at wholesale, the opportunity for relatively anonymous transactions, and the existing history of diversion point to the need for adequate registration and regulatory controls at this level of the industry.

Therefore, to best achieve the intended results of the MCA, while minimizing the burden on the industry, DEA has determined that the registration and regulatory controls will

apply to the manufacturer/wholesale level, while retail distributors will be exempt from the registration and recordkeeping requirements provided that the requirements of the law and regulations with respect to retail distributions are met.

These regulations provide a system of controls to prevent the diversion of the drug products to clandestine laboratories that is consistent with the intent of the MCA, while providing regulatory relief for the approximately 750,000 retail distributors, most of whom are small businesses. For the remaining 3000 to 4000 wholesale distributors, importers, and exporters that became subject to registration and regulation, DEA reduced the initial registration fee from $595.00 to $116.00, thus minimizing the financial impact. With respect to the other requirements, DEA has traditionally based the recordkeeping requirement on standard business practices, thus minimizing the impact. Further, the MCA reduced the record retention period from 4 years to 2 years. As for reports, the MCA is absolute in the requirement that mail order reports be submitted monthly; DEA has no discretion to modify that requirement. For other reports, the requirement is limited to reporting only those transactions that are suspicious or unusual; it is not necessary for the regulated persons to report all their transactions.

DEA has not restricted its consideration of the impact of the MCA to this rulemaking only. DEA continues to work with the industry in identifying areas in which regulation is not necessary for effective enforcement of the chemical controls. As noted earlier, DEA is drafting a separate proposed rule to exempt certain other activities from either registration or registration fees. As the chemical program matures, DEA will continue to work to focus the controls where they are necessary. A copy of this rulemaking has been provided to the Chief Counsel for Advocacy at the Small Business Administration.

Executive Order 12866

This rulemaking has been drafted and reviewed in accordance with Executive Order 12866. This rulemaking has been determined to be a significant action and, therefore, this rulemaking has been reviewed and approved by the Office of Management and Budget.

Executive Order 12988

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

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

This rule contains a new reporting requirement, Report of Mail Order Transactions, that has been reviewed and approved by the Office of Management and Budget and issued OMB approval number 1117–0033.

List of Subjects

21 CFR Part 1300

Definitions, Drug traffic control.

21 CFR Part 1309

Administrative practice and procedure, Drug traffic control, List I and II chemicals, Security measures.

21 CFR Part 1310

Drug traffic control, List I and II chemicals, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR parts 1300, 1309, and 1310 are amended as follows:

PART 1300—[AMENDED]

1. The authority citation for part 1300 continues to read as follows:

Authority: 21 U.S.C 802, 871(b), 951, 958(f).

2. Section 1300.02 is amended by revising paragraph (b)(28)(i)(D) and by adding new paragraphs (b)(31) and (32) to read as follows:

§ 1300.02 Definitions relating to listed chemicals.

* * * * *

(b) * * *

(28) * * *

(i) * * *

(D) * * *

(1)(i) the drug contains ephedrine or its salts, optical isomers, or salts of optical isomers, pseudoephedrine or its salts, optical isomers, or salts of optical isomers, or phenylpropanolamine or its salts, optical isomers, or salts of optical isomers unless otherwise exempted under § 1310.11 of this chapter, except that any sale of ordinary over-the-counter pseudoephedrine or phenylpropanolamine products by retail distributors shall not be a regulated transaction; or

(ii) The Administrator has determined pursuant to the criteria in §1310.10 of this chapter that the drug or group of drugs is being diverted to obtain the listed chemical for use in the illicit production of a controlled substance; and

(2) The quantity of ephedrine, pseudoephedrine, phenylpropanolamine, or other listed chemical contained in the drug included in the transaction or multiple transactions equals or exceeds the threshold established for that chemical, except that the threshold for any sale of products containing pseudoephedrine or phenylpropanolamine by retail distributors or by distributors required to submit reports by §1310.03(c) shall be 24 grams of pseudoephedrine or 24 grams of phenylpropanolamine in a single transaction. For combination ephedrine products the threshold for any sale by retail distributors or by distributors required to submit reports by §1310.03(c) shall be 24 grams of ephedrine in a single transaction.

* * * * *

(31) The term ordinary over-the-counter pseudoephedrine or phenylpropanolamine product means any product containing pseudoephedrine or phenylpropanolamine that is—

(i) Regulated pursuant to the Act; and

(ii)(A) Except for liquids, sold in package sizes of not more than 3.0 grams of pseudoephedrine base or 3.0 grams of phenylpropanolamine base, and that is packaged in blister packs, each blister containing not more than two dosage units, or where the use of

blister packs is technically infeasible, that is packaged in unit dose packets or pouches, and

(B) For liquids, sold in package sizes of not more than 3.0 grams of pseudoephedrine base or 3.0 grams of phenylpropanolamine base.

(32) The term combination ephedrine product means a drug product containing ephedrine or its salts, optical isomers, or salts of optical isomers, and therapeutically significant quantities of another active medicinal ingredient.

PART 1309—[AMENDED]

1. The authority citation for part 1309 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 830, 871(b), 875, 877, 958.

2. Section 1309.21 is revised to read as follows:

§ 1309.21 Persons required to register.

(a) Every person who distributes, imports, or exports any List I chemical, other than those List I chemicals contained in a product exempted under §1300.02(b)(28)(i)(D) of this chapter (irrespective of the threshold provisions under § 1300.02(b)(28)(i)(D)(2) of this chapter), or who proposes to engage in the distribution, importation, or exportation of any List I chemical, shall obtain annually a registration specific to the List I chemicals to be handled, unless exempted by law or pursuant to §§ 1309.24 through 1309.26 of this part. Only persons actually engaged in such activities are required to obtain a registration; related or affiliated persons who are not engaged in such activities are not required to be registered. (For example, a stockholder or parent corporation of a corporation distributing List I chemicals is not required to obtain a registration.)

(b) Every person who distributes or exports a List I chemical they have manufactured, other than a List I chemical contained in a product exempted under § 1300.02(b)(28)(i)(D) of this chapter, or proposes to distribute or export a List I chemical they have manufactured, shall obtain annually a registration specific to the List I chemicals to be handled, unless exempted by law or pursuant to §§ 1309.24 through 1309.26 of this part.

3. Section 1309.22 is amended by revising paragraph (b) to read as follows:

§ 1309.22 Separate registration for independent activities.

* * * * *

(b) Every person who engages in more than one group of independent activities shall obtain a separate registration for each group of activities, unless otherwise exempted by the Act or §§ 1309.24 through 1309.26, except that a person registered to import any List I chemical shall be authorized to distribute that List I chemical after importation, but no other chemical that the person is not registered to import.

4. Section 1309.24 is revised to read as follows:

§ 1309.24 Waiver of registration requirement for certain activities.

(a) The requirement of registration is waived for any agent or employee of a person who is registered to engage in any group of independent activities, if such agent or employee is acting in the usual course of his or her business or employment.

(b) The requirement of registration is waived for any person who distributes a product containing a List I chemical that is regulated pursuant to § 1300.02(b)(28)(i)(D), if that person is registered with the Administration to manufacture, distribute or dispense a controlled substance.

(c) The requirement of registration is waived for any person who imports or exports a product containing a List I chemical that is regulated pursuant to § 1300.02(b)(28)(i)(D), if that person is registered with the Administration to engage in the same activity with a controlled substance.

(d) The requirement of registration is waived for any person who distributes a prescription drug product containing a List I chemical that is regulated pursuant to § 1300.02(b)(28)(i)(D) of this chapter.

(e) The requirement of registration is waived for any retail distributor whose activities with respect to List I chemicals are limited to the distribution of below-threshold quantities of a pseudoephedrine, phenylpropanolamine, or combination ephedrine product that is regulated pursuant to §1300.02(b)(28)(i)(D) of this chapter, in a single transaction to an individual for legitimate medical use, irrespective of whether the form of packaging of the product meets the definition of ordinary over-the-counter pseudoephedrine or phenylpropanolamine product under § 1300.02(b)(31) of this chapter. The threshold for a distribution of a product in a single transaction to an individual for legitimate medical use is 24 grams of pseudoephedrine, phenylpropanolamine, or ephedrine base.

(f) The requirement of registration is waived for any person whose activities with respect to List I chemicals are limited to the distribution of red phosphorus, white phosphorus, or hypophosphorous acid (and its salts) to: another location operated by the same firm solely for internal end-use; or an EPA or State licensed waste treatment or disposal firm for the purpose of waste disposal.

(g) The requirement of registration is waived for any person whose distribution of red phosphorus or white phosphorus is limited solely to residual quantities of chemical returned to the producer, in reusable rail cars and isotainers (with capacities greater than or equal to 2500 gallons in a single container).

(h) The requirement of registration is waived for any manufacturer of a List I chemical, if that chemical is produced solely for internal consumption by the manufacturer and there is no subsequent distribution or exportation of the List I chemical.

(i) If any person exempted under paragraph (b), (c), (d), (e), (f) or (g) of this section also engages in the distribution, importation or exportation of a List I chemical, other than as described in such paragraph, the person shall obtain a registration for such activities, as required by § 1309.21 of this part.

(j) The Administrator may, upon finding that continuation of the waiver would not be in the public interest, suspend or revoke a waiver granted under paragraph (b), (c), (d), (e), (f) or (g) of this section pursuant to the procedures set forth in §§ 1309.43 through 1309.46 and 1309.51 through 1309.55 of this part. In considering the revocation or suspension of a person's waiver granted pursuant to paragraph (b) or (c) of this section, the Administrator shall also consider whether action to revoke or suspend the person's controlled substance registration pursuant to 21 U.S.C. 824 is warranted.

(k) Any person exempted from the registration requirement under this section shall comply with the security requirements set forth in §§ 1309.71–1309.73 of this part and the recordkeeping and reporting requirements set forth under parts 1310 and 1313 of this chapter.

5. Section 1309.25 is revised to read as follows:

§ 1309.25 Temporary exemption from registration for chemical registration applicants.

(a) Each person required by section 302 of the Act (21 U.S.C. 822) to obtain a registration to distribute, import, or export a combination ephedrine product is temporarily exempted from the registration requirement, provided that the person submits a proper application

for registration on or before July 12, 1997. The exemption will remain in effect for each person who has made such application until the Administration has approved or denied that application. This exemption applies only to registration; all other chemical control requirements set forth in this part 1309 and parts 1310, and 1313 of this chapter remain in full force and effect.

(b) Each person required by section 302 of the Act (21 U.S.C. 822) to obtain a registration to distribute, import, or export a pseudoephedrine or phenylpropanolamine drug product is temporarily exempted from the registration requirement, provided that the person submits a proper application for registration on or before October 3, 1997. The exemption will remain in effect for each person who has made such application until the Administration has approved or denied that application. This exemption applies only to registration; all other chemical control requirements set forth in this part 1309 and parts 1310 and 1313 of this chapter remain in full force and effect.

6. Sections 1309.27, 1309.28 and 1309.29 are removed.

7. Section 1309.71 is amended by revising paragraph (a)(2) to read as follows:

§ 1309.71 General security requirements.

(a) * * *

(2) In retail settings open to the public where drugs containing ephedrine as the sole active medicinal ingredient are distributed, such drugs will be stocked behind a counter where only employees have access.

* * * * *

PART 1310—[AMENDED]

1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

2. Section 1310.03 is amended by adding a new paragraph (c) to read as follows:

§ 1310.03 Persons required to keep records and file reports.

* * * * *

(c) Each regulated person who engages in a transaction with a nonregulated person which involves ephedrine, pseudoephedrine, or phenylpropanolamine (including drug products containing these chemicals), and uses or attempts to use the Postal Service or any private or commercial carrier shall file monthly reports of each such transaction as specified in § 1310.05 of this part.

3. Section 1310.04 is amended by removing paragraph (g) and revising paragraph (f)(1) to read as follows:

§ 1310.04 Maintenance of records.

* * * * *

(f) * * *

(1) List I chemicals:

(i) Except as provided in paragraph (f)(1)(ii) of this section, the following thresholds have been established for List I chemicals.

Chemical	Threshold by base weight
(A) Anthranilic acid, its esters, and its salts	30 kilograms.
(B) Benzyl cyanide	1 kilogram.
(C) Ephedrine, its salts, optical isomers, and salts of optical isomers	No threshold. All transactions regulated.
(D) Ergonovine and its salts	10 grams.
(E) Ergotamine and its salts	20 grams.
(F) N-Acetylanthranilic acid, its esters, and its salts	40 kilograms.
(G) Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers	2.5 kilograms.
(H) Phenylacetic acid, its esters, and its salts	1 kilogram.
(I) Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers	2.5 kilograms.
(J) Piperidine and its salts	500 grams.
(K) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers	1 kilogram.
(L) 3,4–Methylenedioxyphenyl-2-propanone	4 kilograms.
(M) Methylamine and its salts	1 kilogram.
(N) Ethylamine and its salts	1 kilogram.
(O) Propionic anhydride	1 gram.
(P) Isosafrole	4 kilograms.
(Q) Safrole	4 kilograms.
(R) Piperonal	4 kilograms.
(S) N-Methylephedrine, its salts, optical isomers, and salts of optical isomers (N-Methylephedrine)	1 kilogram.
(T) N-Methylpseudoephedrine, its salts, optical isomers, and salts of optical isomers	1 kilogram.
(U) Hydriodic Acid	1.7 kilograms (or 1 liter by volume).
(V) Benzaldehyde	4 kilograms.
(W) Nitroethane	2.5 kilograms.

(ii) Notwithstanding the thresholds established in paragraph (f)(1)(i) of this section, the following thresholds will apply for the following List I chemicals that are contained in drug products that are regulated pursuant to § 1300.02(b)(28)(i)(D) of this chapter (thresholds for retail distributors and distributors required to report under § 1310.03(c) of this part are for a single transaction; the cumulative threshold provision does not apply. All other distributions are subject to the cumulative threshold provision.):

Chemical	Threshold by weight
(A) Ephedrine, its salts, optical isomers, and salts of optical isomers as the sole therapeutically significant medicinal ingredient.	No threshold. All transactions regulated.
(B) Ephedrine, its salts, optical isomers, and salts of optical isomers in combination with therapeutically significant amounts of another medicinal ingredient:	
(1) Distributions by retail distributors	24 grams.

Chemical	Threshold by weight
(2) Distributions by persons required to report under § 1310.03(c) of this part	24 grams.
(3) All other domestic distributions (other than paragraphs (f)(1)(ii)(B) (1) and (2) of this section)	1 kilogram.
(4) Imports and Exports	1 kilogram
(C) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers (other than ordinary over-the-counter products):	
(1) Distributions by retail distributors	24 grams.
(2) Distributions by persons required to report under §1310.03(c) of this part	24 grams.
(3) All other domestic distributions, (other than paragraphs (f)(1)(ii)(C) (1) and (2) of this section)	1 kilogram.
(4) Imports and Exports	1 kilogram.
(D) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers (ordinary over-the-counter products):	
(1) Distributions by retail distributors	Exempt.
(2) Distributions by persons required to report under §1310.03(c) of this part	24 grams.
(3) All other domestic distributions (other than paragraphs (f)(1)(ii)(D) (1) and (2) of this section)	1 kilogram.
(4) Imports and Exports	1 kilogram.
(E) Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers (other than ordinary over-the-counter products):	
(1) Distributions by retail distributors	24 grams.
(2) Distributions by persons required to report under § 1310.03(c) of this part	24 grams.
(3) All other domestic distributions (other than paragraphs (f)(1)(ii)(E) (1) and (2) of this section)	2.5 kilograms.
(4) Imports and Exports	2.5 kilograms.
(F) Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers (ordinary over-the-counter products):	
(1) Distributions by retail distributors	Exempt.
(2) Distributions by persons required to report under §1310.03(c) of this part	24 grams.
(3) All other domestic distributions (other than paragraphs (f)(1)(ii)(F) (1) and (2) of this section)	2.5 kilograms.
(4) Imports and Exports	2.5 kilograms.

4. Section 1310.05 is amended by adding a new paragraph (e) to read as follows:

§ 1310.05 Reports.

* * * * *

(e) Each regulated person required to report pursuant to § 1310.03(c) of this part shall either:

(1) Submit a written report, containing the information set forth in § 1310.06(i) of this part, on or before the 15th day of each month following the month in which the distributions took place. The report shall be submitted under company letterhead, signed by the person authorized to sign the registration application forms on behalf of the registrant, to the Chemical Control Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537; or

(2) Upon request to and approval by the Administration, submit the report in electronic form, either via computer disk or direct electronic data transmission, in such form as the Administration shall direct. Requests to submit reports in electronic form should be submitted to the Chemical Control Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, ATTN: Electronic Reporting.

5. Section 1310.06 is amended by adding new paragraphs (i) and (j) to read as follows:

§ 1310.06 Content of records and reports.

* * * * *

(i) Each monthly report required by § 1310.05(e) of this part shall provide the following information for each distribution:

(1) Supplier name and registration number.

(2) Purchaser's name and address.

(3) Name/address shipped to (if different from purchaser's name/address).

(4) Name of the chemical and total amount shipped (i.e. Pseudoephedrine, 250 grams).

(5) Date of shipment.

(6) Product name (if drug product).

(7) Dosage form (if drug product) (i.e., pill, tablet, liquid).

(8) Dosage strength (if drug product) (i.e., 30mg, 60mg, per dose etc.).

(9) Number of dosage units (if drug product) (100 doses per package).

(10) Package type (if drug product) (bottle, blister pack, etc.).

(11) Number of packages (if drug product) (10 bottles).

(12) Lot number (if drug product).

(j) Information provided in reports required by § 1310.05(e) of this part which is exempt from disclosure under section 552(a) of Title 5, by reason of section 552(b)(6) of Title 5, will be provided the same protections from disclosure as are provided in section 310(c) of the Act (21 U.S.C. 830(c)) for confidential business information.

6. Section 1310.10 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 1310.10 Removal of the exemption of drugs distributed under the Food, Drug, and Cosmetic Act.

* * * * *

(d) Any manufacturer seeking reinstatement of a particular drug product that has been removed from an exemption may apply to the Administrator for reinstatement of the exemption for that particular drug product on the grounds that the particular drug product is manufactured and distributed in a manner that prevents diversion. In determining whether the exemption should be reinstated the Administrator shall consider:

* * * * *

Dated: March 18, 2002.

Asa Hutchinson,

Administrator.

[FR Doc. 02–7258 Filed 3–27–02; 8:45 am]

BILLING CODE 4410–09–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–02–006]

RIN 2115–AE47

Drawbridge Operation Regulation; Mississippi River, Iowa and Illinois

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule; request for comments.

SUMMARY: The Commander, Eighth Coast Guard District is temporarily changing the regulation governing the Rock Island Railroad and Highway

Drawbridge, Mile 482.9, Upper Mississippi River due to imminent failure of the upper tread plates if the drawbridge continues to operate in accordance with the existing regulation. The drawbridge will remain in the closed-to-navigation position on weekdays from 5:30 a.m. to 7 a.m. and from 2:45 p.m. to 4:15 p.m. All other times including weekends and Federal Holidays the drawbridge will remain in the open-to-navigation position. Allowing the drawbridge to remain in the open-to-navigation position most of the time will reduce the number of turns of the swing span and extend the life of the deteriorated upper tread plates until they can be replaced.

DATES: This temporary rule is effective from 8 a.m. on March 13, 2002, to 8 a.m. on December 31, 2002. Comments must be received by May 28, 2002.

ADDRESSES: Material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD08–02–006 and are available for inspection or copying at room 2.107f in the Robert A. Young Federal Building at the Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832, between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832, at (314) 539–3900, extension 378.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This rule is being promulgated without an NPRM due to the short time frame allowed between the submission of the request by the Department of the Army, Rock Island Arsenal and the date of requested closure. The Coast Guard received the request from the Department of the Army, Rock Island Arsenal, on March 5, 2002.

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**. If the drawbridge continues to operate at its normal frequency, the failure of the upper tread plates is imminent. Failure of the upper tread plates will result in total loss of operation of the drawbridge with catastrophic consequences to traffic on the Mississippi River. This temporary drawbridge operation amendment has been coordinated with the commercial waterway operators. No objections were raised.

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for the rulemaking [CGD08–02–006], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8 ½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received. We may change this rule in view of them.

Public Meeting

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

Background and Purpose

On March 5, 2002, the Department of the Army, Rock Island Arsenal requested a temporary change to the operation of the Rock Island Railroad and Highway Drawbridge across the Upper Mississippi River, Mile 482.9 at Rock Island, Illinois. Department of the Army, Rock Island Arsenal requested that the drawbridge remain closed to navigation from 5:30 a.m. to 7 a.m. and from 2:45 p.m. to 4:15 p.m. All other times including weekends and Federal Holidays the drawbridge will remain in the open-to-navigation position. The deteriorated upper tread plates make it necessary to reduce the number of turns of the swing span.

The Rock Island Railroad and Highway Drawbridge has a vertical clearance of 23.8 feet above normal pool in the closed-to-navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. Presently, the draw opens on signal for passage of river traffic. The Department of the Army, Rock Island Arsenal requested the drawbridge be permitted to remain closed-to-navigation from 5:30 a.m. to 7 a.m. and from 2:45 p.m. to 4:15 p.m. All other times including weekends and Federal Holidays the drawbridge will remain in the open-to-navigation position. Limiting the operation of the swing span will extend the life of the worn tread plates until they can be replaced during the 2002 winter maintenance season. If this regulatory action is not taken, catastrophic consequences to traffic on the Mississippi River are imminent. This temporary drawbridge operation amendment has been coordinated with the commercial waterway operators. No objections were raised.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of the temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

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.

Since the proposed regulation change will have little effect on present operating conditions for rail or river traffic, 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.

Assistance for Small Entities

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

or, believes he or she qualifies as a small entity and requires assistance with the provisions of this rule, may contact Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch, at (314) 539–3900, extension 378.

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 contains 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 this rule 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 regulation 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 or $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 affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1 (series), this rule is categorically excluded from further environmental documentation. Promulgation of changes to drawbridge regulations has been found not to have significant effect on the human environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. Sec. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From 8 a.m., March 13, 2002, through 8 a.m., December 31, 2002, § 117.T–408 is added to read as follows:

§ 117.T–408 Upper Mississippi River.

From 8 a.m., March 13, 2002, through 8 a.m., December 31, 2002, the Rock Island Railroad Drawbridge, mile 482.9, may be maintained in the closed-to-navigation position on weekdays from 5:30 a.m. to 7 a.m. and from 2:45 p.m. to 4:15 p.m. All other times, including weekends and Federal Holidays, the drawbridge will remain in the open-to-navigation position.

Dated: March 13, 2002.

J.R. Whitehead,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard District, Acting.

[FR Doc. 02–7356 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–15–U

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual Changes to Announce the Periodicals Accuracy, Grading, and Evaluation (PAGE) Program

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule provides a change to certain sections applicable to Periodicals mail in the *Domestic Mail Manual* (DMM). It adds a new optional method a publisher may use to determine per-copy weights and to substantiate the advertising percentage in each edition of each issue of a periodical. The new option is called the Periodicals Accuracy, Grading, and Evaluation (PAGE) Program.

EFFECTIVE DATE: March 11, 2002.

FOR FURTHER INFORMATION CONTACT: Charles Tricamo, New York Rates and Classification Service Center, at (212) 613–8754.

SUPPLEMENTARY INFORMATION: In this rulemaking, the Postal Service announces the adoption of an optional method that will eliminate a publisher's need to submit a manually marked copy showing the percentage of advertising for each edition of each issue at the time of mailing. It also eliminates the requirement for Postal Service acceptance employees to determine per-copy weights by weighing 10 copies of each edition at the time of mailing.

Because of technology innovations made in the publishing industry, the

Postal Service developed an evaluation program to test the accuracy of Publishing and Print Planning (PPP) software to calculate advertising percentages and copy weights. This new optional program, designed in cooperation with the Periodicals industry, allows publishers to submit postage statements completed entirely with electronically generated per-copy weights in a totally automated environment. The Postal Service will sample a limited amount of actual copies to ensure the weights are accurate. If the sampling determines that the publisher's weights are not within tolerance, a postage adjustment will be generated.

On October 10, 2001, the Postal Service published for public comment in the **Federal Register** a proposed rule (66 FR 51617–51619) regarding the new optional Periodicals Accuracy, Grading, and Evaluation (PAGE) Program. The Postal Service received four comments during the 30-day comment period. One mailer commented that the company applauds the initiative of the PAGE Program claiming it is a more efficient way to determine weights and it reduces workhours for both the mailers and the Postal Service. A second mailer submitted a statement of support to establish the new optional method for determining per-copy weights and advertising percentages electronically and considers PAGE a major step forward in reduction of longtime costs associated with the processing of Periodicals mail. The third and fourth mailers "fully support" and "fully agree" with implementation of the PAGE Program.

After full consideration of the comments received, and for the reasons cited above, the Postal Service believes it appropriate to adopt a rulemaking for the Periodicals Accuracy, Grading, and Evaluation (PAGE) Program.

Program Information and Participation

To participate in this program, publishers must successfully complete three stages of authorization.

Stage One—Product Certification for Software Developers

Developers may have their PPP software PAGE-certified by applying to the National Customer Support Center (NCSC) and paying the appropriate fee. Developers are charged the software analysis fee of $1,000.00 for testing. One charge will cover up to three certification reviews of a specific software package by a software developer. If a developer requires an on-site analysis, the fee is $2,500.00. An additional $1,500.00 will be charged for each subsequent certification review of a specific software package required at a developer's site. A developer's software will be certified for one PAGE cycle only. A PAGE cycle is one year beginning March 11, and ending March 10 of the following year. Certification for the next PAGE cycle will require payment of an analysis fee of either $1,000.00 for NCSC analysis or $2,500.00 for an on-site analysis. Publishers must use PPP software certified by the Postal Service to generate per-copy weights and advertising percentages to progress to stage 2.

The first testing cycle will begin March 11, 2002.

Stage Two—User Certification for PPP Software.

A publisher may participate in the PAGE Program only when its employees or agents who use the PPP software have been certified by the Postal Service to use PAGE-certified software. Publishers must apply to the NCSC to be certified for all employees who will input data into their PPP software program. Publishers will be charged $25.00 for a User Testing Package and Analysis Kit for each employee. There will be a $25.00 fee for each attempt at user certification. Each user must reapply for certification every 2 years. Any new employees who will use PPP software must be certified before using the software if a publisher has been authorized to submit Periodicals mailings using the PAGE Program. As an option, a publisher may purchase a reference kit containing mailing standards, Postal Service Customer Service Support Rulings (and updates), Publication 32, *Glossary of Postal Terms,* and Postal Explorer for $20.00.

Users testing cycle begins April 11, 2002.

Stage Three—PAGE Program Authorization

Publishers must complete an application for authorization to submit PAGE-certified calculated copy weights and advertising percentages to participate in the program. The application may be obtained from and must be returned to the New York Rates and Classification Service Center (RCSC) U.S. Postal Service, 1250 Broadway, 14th Floor, New York, NY 10095–9599. A publisher must report all authorized Periodicals publications and print sites that will use PAGE-certified software. There is no charge for this authorization, and the publisher is required to reapply annually.

List of Subjects in 39 CFR Part 111

Postal Service.

Accordingly, the Postal Service adopts the following amendments to the *Domestic Mail Manual,* which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 407, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. Revise the following sections of the *Domestic Mail Manual* as follows:

Domestic Mail Manual (DMM)

* * * * *

P Postage and Payment Methods

P000 Basic Information

P010 General Standards

* * * * *

P013 Rate Application and Computation

* * * * *

7.0 COMPUTING POSTAGE—PERIODICALS

7.1 Percentage of Advertising

[Add the following sentence at the end of 7.1:]

* * * Advertising percentages may also be calculated through the Periodicals Accuracy, Grading, and Evaluation (PAGE) Program using the procedures in P200.4.

7.2 Weight Per Copy

[Add the following sentence at the end of 7.2:]

* * * Per-copy weights may also be calculated through the Periodicals Accuracy, Grading, and Evaluation (PAGE) Program using the procedures in P200.4.

* * * * *

P200 Periodicals

* * * * *

1.0 BASIC INFORMATION

* * * * *

1.2 Marked Copy

[Add the following sentence at the end of 1.2:]

* * * Mailers do not have to submit marked copies if certified by the Postal Service to use the Periodicals Accuracy, Grading, and Evaluation (PAGE) Program in P200.4.

* * * * *

[Add new 4.0 as follows:]

4.0 PERIODICALS ACCURACY, GRADING, AND EVALUATION (PAGE) PROGRAM

4.1 Basic Information

The Periodicals Accuracy, Grading, and Evaluation (PAGE) Program is a process to evaluate Publishing and Print Planning (PPP) software and to determine its accuracy in computing per-copy weights and calculating advertising percentages for Periodicals mail using DMM standards. Certification of PAGE software is available only to those companies that develop or write PPP software. PAGE certification does not guarantee acceptance of the publisher's per-copy weights and advertising percentages prepared with PAGE-certified software.

4.2 Process

The PAGE Program evaluates and tests PPP software. In addition, the PAGE Program tests and qualifies publishing personnel to submit data to the Postal Service using PAGE-certified PPP software. The Postal Service National Customer Support Center (NCSC) in Memphis, Tennessee, is the Postal Service location for certifying developer's software and a publisher's employees to use certified PPP software to submit Periodicals mailings. The PAGE Program involves the following three elements:

Stage One—Product Certification for Software Developers

NCSC evaluates the accuracy of the calculations of PPP software by processing a test publication file either at the NCSC or at the developer's location (through an on-site visit).

Stage Two—User Certification for PPP Software

NCSC provides test packages to the users and evaluates the results.

Stage Three—PAGE Program Authorization

Only publishers who have PAGE-certified users and use PAGE-certified software to submit per-copy weight and calculated advertising percentages may apply for authorization to the Manager, New York Rates and Classification Service Center.

4.3 Participation

For information about charges and the PAGE Program, publishers may request a technical guide (including order forms) from the NCSC by calling 1–800–238–3150. Additional information is also available from the New York Rates and Classification Service Center at (212) 613–8676.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–7388 Filed 3–27–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301221; FRL–6828–3]

RIN 2070–AB78

Propiconazole; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation re-establishes a time-limited tolerance for combined residues of the fungicide propiconazole and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound in or on blueberries at 1.0 part per million (ppm) for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2003. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on blueberries. Section 408(1)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation is effective March 28, 2002. Objections and requests for hearings, identified by docket control number OPP–301221, must be received on or before May 28, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301221 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Dan Rosenblatt, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9375; e-mail address: rosenblatt.dan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301221. The official record

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

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of January 20, 1999 (64 FR 2995) (FRL–6049–8), which announced that on its own initiative under section 408 of FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170), it established a time-limited tolerance for the combined residues of propiconazole and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound in or on blueberries at 1.0 ppm, with an expiration date of December 31, 1999. This time-limited tolerance was subsequently extended via a **Federal Register** notice published on August 16, 2000 (65 FR 49924) (FRL–6737–1), which had the effect of extending the time-limited tolerance for blueberries until December 31, 2001. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of propiconazole on blueberries for this year's growing season due to the continued problems posed by pathogens that cause mummy berry disease, *Monilinia vaccinium-corymbosi*. After having reviewed the submission, EPA concurs that emergency conditions continue to exist. EPA has authorized under FIFRA section 18 the use of propiconazole on blueberries for control of mummy berry disease in the 2002 growing season.

EPA assessed the potential risks presented by residues of propiconazole in or on blueberries. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule published in the **Federal Register** of January 20, 1999 (64 FR 2995) (FRL–6049–8). Based on that data and information considered, the Agency reaffirms that the re-establishment of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is re-established for an additional 2–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on December 31, 2003, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on blueberries after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301221 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 28, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

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

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

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–

5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

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

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301221, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

IV. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides

and pests, Reporting and recordkeeping requirements.

Dated: March 12, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.434 [Amended]

2. In § 180.434, amend the table in paragraph (b) by revising the "Expiration/revocation date" "12/31/01" for the commodity "Blueberrries" to read "12/31/03."

[FR Doc. 02–7494 Filed 3–27–02; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF ENERGY

48 CFR Parts 902, 904, 909, 913, 914, 915, 916, 917, 925, 931, 933, 950, 952, and 970

RIN 1991–AB51

Acquisition Regulation: Technical and Administrative Amendments

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) to make technical and administrative changes to the regulation. This rulemaking incorporates technical and administrative changes to the DEAR that include: expanding definitions to distinguish the National Nuclear Security Administration (NNSA) as an agency within the DOE; acknowledging the Administrator of the NNSA as an agency head; and recognizing the Senior Procurement Executives for DOE, the NNSA, and the Federal Energy Regulatory Commission (FERC). Additional changes include removing obsolete coverage; renumbering and updating certain parts of the regulation to conform with the Federal Acquisition Regulation (FAR); and correcting typographical errors. These changes have no significant impact on non-agency persons such as contractors or offerors.

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

FOR FURTHER INFORMATION CONTACT: Denise P. Wright, Office of Procurement and Assistance Policy (ME–61), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone 202–586–6217.

SUPPLEMENTARY INFORMATION:

I. Explanation of Revisions

1. Section 902.200, Definitions Clause, is amended to the definitions for "Head of Agency" and "DOE" and to add a definition for "Senior Procurement Executive." These changes are made pursuant to the establishment of the NNSA under the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65), sections 3202 and 3212 of which provide that the Under Secretary for Nuclear Security shall serve as the Administrator for Nuclear Security and head of the NNSA and carry out the functions as specified in Section 3212. The clause is further amended to correct typographical errors.

2. Section 904.404, Contract clause, paragraph (4) is amended to correct typographical errors.

3. Section 904.7102, Waiver by the Secretary, is amended to reflect organizational changes within the DOE.

4-5. Part 909, Contractor Qualifications, 909.403 Definitions, is amended to revise the designation for "Debarring Official" and "Suspending Official" for DOE, the NNSA, and the FERC to be the Director, Office of Procurement and Assistance Management, DOE, or designee.

6. Part 913, Simplified Acquisition Procedures, 913.3 Fast Payment Procedure, 913.4 Imprest Fund, and 913.5 Purchase Orders, are amended to conform to the FAR.

7. Section 914.406, Mistake in bids, 914.406–3 Other mistakes disclosed before award, and 914.406–4 Mistakes after award, are amended. The changes are made to conform to current FAR numbering.

8. Section 915.606, Agency procedures. (DOE coverage-paragraph (b)) is amended. The location for submission of unsolicited proposals is changed. The change is made to ensure consistency in current DOE procedure.

9. Section 916.6, Time and Materials, Labor Hour, and Letter Contracts, is amended to incorporate an approved class deviation to the requirement at 48 CFR 16.601, paragraph (c), for a determination and findings documenting the suitability of a time and materials contract.

10. Section 917.602, Policy, is amended to clarify that only the Secretary may authorize non-competitive awards and extensions of management and operating contracts pursuant to Section 301 of Public Law 106–377.

11. Section 925.901, Omission of the audit, is amended to reflect organizational changes within the DOE.

12. Section 931.205–19, Insurance and Indemnification, is amended to revise the reference to the prescribed contract clause.

13. Section 933.103, Protests to the agency, is amended to reflect organizational changes within the DOE.

14. Section 950.104, Reports, is deleted current FAR coverage is sufficient.

15. Section 952.202–1, Definitions, is amended to revise the terms "Head of Agency" and "DOE," and to add a definition for "Senior Procurement Executive."

16. Sections 952.208–7, 952.217–70, 952.227–13, 952.233–2, 952.236–72, and 952.250–70 are revised to update incorrect references.

17. Section 952.231–71, Insurance-Litigation and Claims, is added to clarify coverage for certain non-management and operating contracts.

18. Section 952.236–70, Administrative terms for architect-engineer contracts, is removed in its entirety. The coverage is determined to be obsolete.

19. Section 952.249–70, Termination clause for cost-reimbursement architect-engineer contracts, is removed. The current FAR coverage at 52.249–6, Termination (Cost-Reimbursement), is sufficient.

20. Section 970.3102–05–53, Preexisting conditions, is amended to renumber as 970.3102–05–70 since the coverage is unique to DOE and does not supplement the FAR.

21. Section 970.5228–1, Insurance-litigation and claims, is amended to revise paragraphs (e)(2), (h), and (j)(4) to correct references.

II. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant

regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed regulations meet the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires preparation of an initial regulatory flexibility analysis for any rule that must be proposed for public comment and that is likely to have significant economic impact on a substantial number of small entities. There is no legal requirement to propose today's rule for public comment, and, therefore, the Regulatory Flexibility Act does not apply to this rulemaking proceeding.

D. Review Under the Paperwork Reduction Act

No new collection of information or recordkeeping requirement is imposed by this rulemaking. Accordingly, no OMB clearance is required subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*).

E. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's rule and has determined that it does not preempt State law and does 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. No further action is required by Executive Order 13132.

F. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), the Department of Energy has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Pursuant to appendix A of subpart D of 10 CFR part 1021, National Environmental Policy Act Implementing Procedures (57 FR 15122, 15152, April 24, 1992) (Categorical Exclusion A6), the Department of Energy has determined that this rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 requires each Agency to assess the effects of Federal regulatory action on State, local, and tribal governments and the private sector. The Department has determined that today's regulatory action does not impose a Federal mandate on State, local, or tribal governments or on the private sector.

H. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, the Department of Energy will report to Congress promulgation of the rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(3).

List of Subjects in 48 CFR Parts 902, 904, 909, 913, 914, 915, 916, 917, 925, 931, 933, 950, 952, and 970

Government procurement.

Issued in Washington, DC, on March 20, 2002.

Spencer Abraham,

Secretary of Energy.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

1. The authority citation for Parts 902, 904, 909, 914, 915, 916, 917, 925, 931, 933, 950, and 952 is revised to read as follows:

Authority: 42 U.S.C. 7101 *et seq.*; 41 U.S.C. 418(b); and 50 U.S.C. 2401 *et seq.*

PART 902 —DEFINITIONS OF WORDS AND TERMS

2. Section 902.200 is revised to read as follows:

902.200 Definitions clause.

As prescribed by FAR subpart 2.2, insert the clause at FAR 52.202–1, Definitions, but modify it to limit the definition at paragraph (a) of the clause, to encompass only the Secretary, Deputy Secretary, or the Under Secretaries of the Department of Energy, and the Chairman, Federal Energy Regulatory Commission. The contracting officer shall also add paragraphs (h) and (i) or (g) and (h) if Alternate I of the FAR clause is used. Paragraph (h) defines "DOE" as meaning the United States Department of Energy, "FERC" as meaning the Federal Energy Regulatory Commission, and "NNSA" as meaning the National Nuclear Security Administration. Paragraph (i) identifies the Senior Procurement Executive, DOE, as the Director, Office of Procurement and Assistance Management; the Senior Procurement Executive, NNSA, as the Administrator for Nuclear Security, NNSA; and the Senior Procurement Executive, FERC, as the Chairman, Federal Energy Regulatory Commission.

PART 904—ADMINISTRATIVE MATTERS

904.4 [Amended]

3. Section 904.404 is amended as follows:

a. In paragraph (4) remove "should" and add in its place "may".

904.7102 [Amended]

4. Section 904.7102 is amended in paragraph (b) by removing "Office of Clearance and Support" and adding in its place "Office of Contract Management"

PART 909—CONTRACTOR QUALIFICATIONS

5.–6. Section 909.403 is revised to read as follows:

909.403 Definitions.

In addition to the definitions set forth at FAR 9.403, the following definitions apply to this subpart:

Debarring Official. The Debarring Official for both DOE and NNSA is the Director, Office of Procurement and Assistance Management, DOE, or designee.

Suspending Official. The Suspending Official for both DOE and NNSA is the Director, Office of Procurement and Assistance Management, DOE, or designee.

7. Revise Part 913 to read as follows:

PART 913—SIMPLIFIED ACQUISITION PROCEDURES

Subpart 913.3—Simplified Acquisition Methods

Sec.
913.307 Forms

Subpart 913.4—Fast Payment Procedure

913.402 General.

Authority: 42 U.S.C. 7101 *et seq.*, 41 U.S.C. 418(b); 50 U.S.C. 2401 *et seq.*

Subpart 913.3—Simplified Acquisition Methods

913.307 (b))

(b) Optional Forms 347 and 348, or DOE F 4250.3, may be used for purchase orders using simplified acquisition procedures. These forms shall not be used as the contractor's invoice. See 48 CFR 12.204 regarding the use of SF–1449 for the acquisition of commercial items using simplified acquisition procedures.

Subpart 913.4—Fast Payment Procedure

913.402 General.

The fast payment procedure delineated in FAR subpart 13.4 is not to be used by DOE.

PART 914—SEALED BIDDING

914.4 [Amended]

8. Redesignate sections 914.406, 914.406–3, and 914.406–4 as sections 914.407, 914.407–3, and 914.407–4, respectively.

9. Redesignated section 914.407–3 is amended in paragraph (e) as follows:

a. In first sentence remove "14.406–3(e)" and "14.406–3" and add in their place "14.407–3(e)" and "14.407–3," respectively.

b. In the second sentence remove "14.406–3" and add in its place "14.407–3."

10. Redesignated section 914.407–4 is amended as follows:

a. In the first sentence remove "14.406–4" and add in its place "14.407–4"

b. In the second sentence remove "14.406–4(e) and add in its place "14.407–4(e)."

PART 915—CONTRACTING BY NEGOTIATION

11. Section 915.606 is amended by removing "Office of Procurement and Assistance, Washington, DC 20585", and adding in its place "U.S. Department of Energy, National Energy Technology Laboratory (PGH), Pittsburgh, PA 15236–0940."

PART 916—TYPES OF CONTRACTS

12. Subpart 916.6 is added to read as follows:

Subpart 916.6—Time and Materials, Labor Hour, and Letter Contracts

916.601 Time and Materials (DOE coverage (c)).

(c) Limitations. The Contracting Officer is not required to execute a separate Determination and Findings as required by FAR 16.601 3(c) if other file documentation adequately justifies contract actions.

13. Section 917.602 is amended in paragraph (c) by removing "Head of the Agency" and adding in its place "Secretary."

PART 925—FOREIGN ACQUISITION

925.901 [Amended]

14. Section 925.901 is amended in paragraph (c) by removing "Office of Clearance and Support" and adding in its place "Office of Contract Management."

PART 931—CONTRACT COST PRINCIPLES AND PROCEDURES

15. Section 931.205–19, paragraph (h) is revised to read as follows:

931.205–19 Insurance and Indemnification. (DOE coverage-paragraph (h)).

(h) The contracting officer shall insert the clause at 48 CFR 952.231–71 in non-management and operating cost reimbursement contracts involving work performed at facilities owned or leased by the Department exceeding $100,000,000.

PART 933—PROTESTS, DISPUTES, AND APPEALS

Subpart 933.1—Protests

933.103 [Amended]

16. Section 933.103 is amended in paragraphs (f)(2), (j), and (k) by removing "Office of Clearance and Support" and adding in its place "Office of Contract Management."

PART 950—EXTRAORDINARY CONTRACTUAL ACTIONS

950.104 [Removed]

17. Section 950.104 is removed.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

18. Section 952.202–1 is revised to read as follows:

952.202–1 Definitions.

(a) As prescribed in 902.200, insert the clause at FAR 52.202–1 in all contracts. The contracting officer shall substitute the following for paragraph (a) of the clause.

(a) *Head of Agency* means: (i) The Secretary; (ii) Deputy Secretary; (iii) Under Secretaries of the Department of Energy and (iiii) the Chairman, Federal Energy Regulatory Commission.

(b) The following shall be added as paragraphs (h) and (i) except that they will be designated paragraphs (g) and (h) if Alternate I of the FAR clause is used.

(h) The term DOE means the Department of Energy, FERC means the Federal Energy Regulatory Commission, and NNSA means the National Nuclear Security Administration.

(i) The term Senior Procurement Executive means, for DOE:

Department of Energy—Director, Office of Procurement and Assistance Management, DOE;

National Nuclear Security Administration—Administrator for Nuclear Security, NNSA; and

Federal Energy Regulatory Commission—Chairman, FERC.

19. In the table below, for each section indicated in the left column remove the language indicated in the middle column and add in its place the language in the right column.

Section	Remove	Add
952.208–7, Introductory Text	908.7101–7	908.1104
952.217–70, Introductory Text	917.7403(c)	917.7403
952.227–13, Introductory Text	927.303(c)	927.303(a)(1)
952.233–2, Introductory Text	Clause	Provision
952.236–72, Introductory Text	936.202(j)	936.202(h)
952.250–70, Note II	(date to be that of the Final Rule resulting from the proposed rule herein.	June 12, 1996

20. Section 952.231–71 is added to read as follows:

952.231–71 Insurance-litigation and claims.

As prescribed in 48 CFR 931.205–19, insert the following clause in applicable non-management and operating contracts:

Insurance-Litigation and Claims (APRIL 2002)

(a) The contractor may, with the prior written authorization of the contracting officer, and shall, upon the request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The contractor shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.

(b) The contractor shall give the contracting officer immediate notice in writing of any legal proceeding, including any proceeding before an administrative agency, filed against the contractor arising out of the performance of this contract. Except as otherwise directed by the contracting officer, in writing, the contractor shall furnish immediately to the contracting officer copies of all pertinent papers received by the contractor with respect to such action. The contractor, with the prior written authorization of the contracting officer, shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.

(c)(1) Except as provided in paragraph (c)(2) of this clause, the contractor shall procure and maintain such bonds and insurance as required by law or approved in writing by the contracting officer.

(2) The contractor may, with the approval of the contracting officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the contractor is qualified pursuant to statutory authority.

(3) All bonds and insurance required by this clause shall be in a form and amount and for those periods as the contracting officer may require or approve and with sureties and insurers approved by the contracting officer.

(d) The contractor agrees to submit for the contracting officer's approval, to the extent and in the manner required by the contracting officer, any other bonds and insurance that are maintained by the contractor in connection with the performance of this contract and for which the contractor seeks reimbursement. If an insurance cost (whether a premium for commercial insurance or related to self-insurance) includes a portion covering costs made unallowable elsewhere in the contract, and the share of the cost for coverage for the unallowable cost is determinable, the portion of the cost that is otherwise an allowable cost under this contract is reimbursable to the extent determined by the contracting officer.

(e) Except as provided in paragraphs (g) and (h) of this clause, or specifically disallowed elsewhere in this contract, the contractor shall be reimbursed—

(1) For that portion of the reasonable cost of bonds and insurance allocable to this contract required in accordance with contract terms or approved under this clause, and

(2) For liabilities (and reasonable expenses incidental to such liabilities, including litigation costs) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or limitation of funds clause of this contract.

(f) The Government's liability under paragraph (e) of this clause is subject to the availability of appropriated funds. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(g) Notwithstanding any other provision of this contract, the contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities, including litigation costs, counsel fees, judgment and settlements)—

(1) Which are otherwise unallowable by law or the provisions of this contract; or

(2) For which the contractor has failed to insure or to maintain insurance as required by law, this contract, or by the written direction of the contracting officer.

(h) In addition to the cost reimbursement limitations contained in 48 CFR part 31, as supplemented in 48 CFR part 931, and notwithstanding any other provision of this contract, the contractor's liabilities to third persons, including employees but excluding costs incidental to workers' compensation actions (and any expenses incidental to such liabilities, including litigation costs, counsel fees, judgments and settlements), shall not be reimbursed if such liabilities were caused by contractor managerial personnel's—

(1) Willful misconduct,

(2) Lack of good faith, or

(3) Failure to exercise prudent business judgment, which means failure to act in the same manner as a prudent person in the conduct of competitive business; or, in the case of a non-profit educational institution, failure to act in the manner that a prudent person would under the circumstances prevailing at the time the decision to incur the cost is made.

(i) The burden of proof shall be upon the contractor to establish that costs covered by paragraph (h) of this clause are allowable and reasonable if, after an initial review of the facts, the contracting officer challenges a specific cost or informs the contractor that there is reason to believe that the cost results from willful misconduct, lack of good faith, or failure to exercise prudent business judgment by contractor managerial personnel.

(j)(1) All litigation costs, including counsel fees, judgments and settlements shall be differentiated and accounted for by the contractor so as to be separately identifiable. If the contracting officer provisionally disallows such costs, then the contractor may not use funds advanced by DOE under the contract to finance the litigation.

(2) Punitive damages are not allowable unless the act or failure to act which gave rise to the liability resulted from compliance with specific terms and conditions of the contract or written instructions from the contracting officer.

(3) The portion of the cost of insurance obtained by the contractor that is allocable to coverage of liabilities

referred to in paragraph (g)(1) of this clause is not allowable.

(4) The term "contractor's managerial personnel" is defined in the Property clause in this contract.

(k) The contractor may at its own expense and not as an allowable cost procure for its own protection insurance to compensate the contractor for any unallowable or unreimbursable costs incurred in connection with contract performance.

(l) If any suit or action is filed or any claim is made against the contractor, the cost and expense of which may be reimbursable to the contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the contractor shall—

(1) Immediately notify the contracting officer and promptly furnish copies of all pertinent papers received;

(2) Authorize Department representatives to collaborate with: in-house or DOE-approved outside counsel in settling or defending the claim; or counsel for the insurance carrier in settling or defending the claim if the amount of the liability claimed exceeds the amount of coverage, unless precluded by the terms of the insurance contract; and

(3) Authorize Department representatives to settle the claim or to defend or represent the contractor in and/or to take charge of any litigation, if required by the Department, if the liability is not insured or covered by bond. In any action against more than one Department contractor, the Department may require the contractor to be represented by common counsel. Counsel for the contractor may, at the contractor's own expense, be associated with the Department representatives in any such claim or litigation. (End of Clause)

952.236–70 [Removed]

21. Section 952.236–70 is removed.

952.249–70 [Removed]

22. Section 952.249–70 is removed.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

23. The authority citation for part 970 continues to read as follows:

Authority: 42 U.S.C. 2201; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

24. 970.3102–05–53 is redesignated as 970.3102–05–70.

25. 970.5228–1 is amended by revising paragraphs (e)(2), (h) introductory language, and (j)(4) to read as follows:

970.5228–1 Insurance-litigation and claims.

* * * * *

(e) * * *

(2) For liabilities (and reasonable expenses incidental to such liabilities, including litigation costs) to third persons not compensated by insurance or otherwise without regard to and as an exception to the clause of this contract entitled, "Obligation of Funds."

* * * * *

(h) In addition to the cost reimbursement limitations contained in 48 CFR part 31, as supplemented by 48 CFR 970.31, and notwithstanding any other provision of this contract, the contractor's liabilities to third persons, including employees but excluding costs incidental to worker's compensation actions, (and any expenses incidental to such liabilities, including litigation costs, counsel fees, judgments and settlements) shall not be reimbursed if such liabilities were caused by contractor managerial personnel's—

* * * * *

(j) * * *

(4) The term "contractor's managerial personnel" is defined in clause paragraph (j) of 48 CFR 970.5245–1.

* * * * *

[FR Doc. 02–7300 Filed 3–27–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

48 CFR Parts 904, 952, and 970

RIN 1991–AB42

Acquisition Regulation: Security Amendments to Implement Executive Order 12829, National Industrial Security Program

AGENCY: Department of Energy (DOE).

ACTION: Interim final rule.

SUMMARY: The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) to implement Executive Order 12829, National Industrial Security Program, dated January 6, 1993, and Section 828 of the National Defense Authorization Act for Fiscal Year 1997, and to bring the DEAR into conformance with existing practices. DOE is making these changes to its security system to ensure a uniform and simplified security system for contractors and others requiring access authorization for classified national security or restricted atomic energy information. The changes also include a provision to allow the Secretary of Energy to waive the prohibition on award of a national security contract to an entity controlled by a foreign government if an environmental restoration requirement is involved.

EFFECTIVE DATE: This interim final rule will be effective May 28, 2002.

Comment date: Comments should be submitted on or before April 29, 2002.

ADDRESSES: Mail comments to Richard Langston, Office of Procurement and Assistance Policy (MA–51), U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585.

Submit electronic comments to richard.langston@pr.doe.gov.

FOR FURTHER INFORMATION CONTACT: Richard B. Langston, Office of Procurement and Assistance Policy (MA–51), 202–586–8247 or by electronic mail addressed as above.

SUPPLEMENTARY INFORMATION:

I. Background

Executive Order 12829, National Industrial Security Program (January 6, 1993), requires a uniform system for classifying, safeguarding, and declassifying national security information. DOE is making these changes to its security system to ensure a uniform and simplified security system for contractors and others requiring access authorization for classified national security or restricted atomic energy information. The Federal agencies are adopting the National Industrial Security Program (NISP) as the uniform Federal industrial security program within the limitations of their separate statutory requirements. Among the more significant features of the new rule is the use of a Standard Form 328, Certificate Pertaining to Foreign Interests, to gather information relative to foreign ownership, control or influence. Previously, DOE used a separate questionnaire of its own with more and somewhat different questions. Now all agencies will collect the same information. This feature will result in the greatest savings for both contractors and Federal agencies because agencies

will accept each others' clearances on a reciprocal basis, in most circumstances. A DOE clearance was not previously valid for a Department of Defense (DOD) contract and vice versa. In most instances, a contractor interested in seeking a contract requiring a DOE clearance will already have either a DOD or a DOE clearance, and there will be no need to submit the detailed information required to establish a Facility Clearance.

Section 2536(a) of 10 U.S.C. prohibits award of a DOD or DOE contract under a national security program to an entity controlled by a foreign government if it is necessary for that entity to be given access to a proscribed category of information to perform the contract. The cognizant Secretary is authorized to waive this prohibition if the Secretary determines that a waiver is essential to the national security interests of the United States. That prohibition is implemented by Subpart 904.7100 of the Department of Energy Acquisition Regulation (DEAR).

Section 2536(b)(1)(B) of 10 U.S.C. provides separate waiver authority for a contract for environmental restoration, remediation, or waste management at a DOD or DOE facility. For such a contract, the prohibition on award of a contract under a national security program to an entity controlled by a foreign government which requires access to a proscribed category of information to perform the contract may be waived only if the Secretary concerned determines that (1) a waiver will advance the environmental restoration, remediation, or waste management objectives of the cognizant Department, (2) a waiver will not harm the national security interests of the United States, and (3) the entity to which the contract is to be awarded is controlled by a foreign government with which the cognizant Secretary has authority to exchange Restricted Data under section 144.c. of the Atomic Energy Act of 1954 (42 U.S.C. 2164(c)). Section 904.7102 of the DEAR is being revised to reflect this waiver authority.

In order to implement 10 U.S.C. 2536 and the National Industrial Security Program in a timely manner, the Department previously issued interim guidance to its personnel in two Acquisition Letters. Acquisition Letter 97–03 was issued February 4, 1997 to implement the requirements of 10 U.S.C. 2536. Acquisition Letter 99–03 was issued April 2, 1999 to implement the National Industrial Security Program. These issuances will be cancelled upon the effective date of this rule.

II. Explanation of Revisions

We have made the following changes to the DEAR:

1. Restated the authority citation.
2. Added definitions of "Access Authorization" and "Facility Clearance," revised the definitions of "Classified Information" and "Restricted Data," and updated the Executive Order reference at 904.401;
3. Added the word "industrial" between "DOE" and "security" to reflect the uniform nature of the DOD and DOE industrial security programs, added references to the applicable Executive Orders, and substituted the words "Restricted Data" for the words "national security information" in the reference to 10 CFR part 1045 at 904.402;
4. At 904.404, the title is changed from "Contract clause" to "Solicitation provision and contract clause," revisions are made in paragraphs (d)(1) and (d)(2), and a new paragraph (d)(5) is added;
5. Changed the title of Subpart 904.70 "Foreign Ownership, Control or Influence Over Contractors" to "Facility Clearance";
6. Revised the text of 904.7000 to substitute terminology better suited to the National Industrial Security Program;
7. Added a definition for "Facility Clearance" at 904.7002;
8. Revised 904.7003 by making minor wording changes at paragraphs (a) and (b) for brevity and clarity;
9. Removed 904.7005, Solicitation provision and contract clause;
10. Removed the words "a company owned by" which precede the words "an entity controlled by a foreign government" and changed "company" to "entity" following the words "for that" in 904.7100, Scope of Subpart.
11. Added an additional waiver authority for projects involving environmental restoration, remediation or waste management at a DOE site from the prohibition for the national security program on contracting with foreign government controlled entities in 904.7102;
12. Revised 904.7103, Solicitation provision and contract clause, by removing the words "with its Alternate I" at the end of paragraph (a) and changing the citation "952.204–74" to read "952.204–2" at the end of paragraph (b).
13. Revised the Security clause at 952.204–2 by removing the existing paragraph (j) and adding a new paragraph (j), Foreign Ownership Control and Influence;
14. Replaced the current "Foreign Ownership, Control or Influence Over Contractor" with a new provision entitled "Facility Clearance" at 952.204–73;
15. Removed the clause "Foreign Ownership, Control or Influence Over Contractor" at 952.204–74;
16. Restated the authority citation for Part 970.
17. Revised 970.0404–1, Definitions, to add definitions for "Access Authorization" and "Facility Clearance" and to revise the definition of Restricted Data;
18. Revised 970.0404–2, General, to substitute a revised paragraph (a), delete paragraphs (b) through (d) and to redesignate the existing paragraph (e) as paragraph (b);
19. Revised 970.0404–3, Responsibilities of contracting officers, to delete paragraph (a) which is inconsistent with National Industrial Security Program procedures. Paragraphs (b) and (c) will be retained but will be designated paragraphs (a) and (b).

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Accordingly, this rule is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6)

addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this interim final rule meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This interim final rule has been reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, which requires preparation of an initial regulatory flexibility analysis for any rule that is likely to have significant economic impact on a substantial number of small entities. This rule, which would implement provisions of Executive Order 13101 concerning use of recycled materials, would not have a significant economic impact on small entities. While rule requirements may flow down to subcontractors in certain circumstances, the costs of compliance are not estimated to be large and, in any event, would be reimbursable expenses under the contract or subcontract.

Accordingly, DOE certifies that this rule would not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

Information collection or record keeping requirements contained in this rulemaking have been previously cleared under Office of Management and Budget paperwork clearance package Number 1910–0300. There are no new burdens imposed by this rule.

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because the amendments to the DEAR would be strictly procedural (categorical exclusion A6). Therefore, this rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's rule and has determined that it does not preempt State law and does 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. No further action is required by Executive Order 13132.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each agency to assess the effects of Federal regulatory action on State, local and tribal governments, and the private sector. The Department has determined that today's regulatory action does not impose a Federal mandate on State, local or tribal governments or on the private sector.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any rule or policy that may affect family well-being. This rulemaking will have no impact on family well-being.

I. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, the Department of Energy will report to Congress promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(3).

J. Review Under Executive Order 13211

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, (66 FR 28355, May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

List of Subjects in 48 CFR Parts 904, 952 and 970

Government procurement.

Issued in Washington, DC, on March 19, 2002.

Spencer Abraham,

Secretary of Energy.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

1. The authority citation for parts 904 and 952 is revised to read as follows:

Authority: 42 U.S.C. 7101 *et seq.*; 41 U.S.C. 418b; 50 U.S.C. 2401 *et seq.*

PART 904—ADMINISTRATIVE MATTERS

2. Section 904.401 is revised to read as follows:

904.401 Definitions.

Access Authorization means an administrative determination that an individual is eligible for access to classified information or is eligible for access to, or control over, special nuclear material.

Classified Information means information that is classified as Restricted Data or Formerly Restricted Data under the Atomic Energy Act of 1954, as amended, or information determined to require protection against unauthorized disclosure under Executive Order 12958, or prior Executive Orders, which is identified as National Security Information.

Facility Clearance means an administrative determination that a

facility is eligible to access, produce, use or store classified information, or special nuclear material.

Restricted Data means all data concerning the design, manufacture, or utilization of atomic weapons; the production of special nuclear material; or the use of special nuclear material in the production of energy, but does not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2162).

3. Section 904.402 is revised to read as follows:

904.402 General.

(a) The basis of DOE's industrial security requirements is the Atomic Energy Act of 1954, as amended, and Executive Orders 12958 and 12829.

(b) DOE security regulations concerning restricted data are codified at 10 CFR part 1045.

4. Section 904.404 is amended by revising the title and paragraph (d)(1), revising the paragraph (d)(2) heading, revising the phrase "included in DOE 1240.2 (see current version.), Attachment 3, and any subsequent changes" to read "referenced in DOE N 142.1" in the second sentence of paragraph (d)(3), and by adding (d)(5) to read as follows:

904.404 Solicitation provision and contract clause. [DOE Coverage—Paragraph (d)]

(d) * * *

(1) Security, 952.204–2. This clause is required in contracts and subcontracts, the performance of which involves or is likely to involve classified information. DOE utilizes the National Industrial Security Program but DOE's security authority is derived from the Atomic Energy Act which contains specific language not found in other agencies' authorities. For this reason, DOE contracts must contain the clause at 952.204–2 rather than the clause at FAR 52.204–2.

(2) Classification/Declassification, 952.204–70 * * *

* * * * *

(5) Facility Clearance, 952.204–73. This solicitation provision should be used in solicitations expected to result in contracts and subcontracts that require employees to possess access authorizations.

904.70 [Amended]

5. Subpart 904.70 is amended by revising the title "Foreign Ownership, Control, or Influence Over Contractors" to read "Facility Clearance."

6. Section 904.7000 is revised to read as follows:

904.7000 Purpose.

This subpart sets forth the Department of Energy policies and procedures regarding Facility Clearances for contractors and subcontractors that require access to classified information or special nuclear material. A Facility Clearance is based upon a determination that satisfactory safeguards and security measures are carried out for classified activities being performed at the facility and upon a favorable foreign ownership, control, or influence (FOCI) determination.

7. Section 904.7002 is amended by adding the definition of "Facility Clearance" in alphabetical order to read as follows:

904.7002 Definitions.

* * * * *

Facility Clearance means an administrative determination that a facility is eligible to access, produce, use, or store classified information, or special nuclear material.

* * * * *

8. Section 904.7003 is amended by revising paragraphs (a) and (b) as follows:

904.7003 Disclosure of foreign ownership, control, or influence.

(a) If a contract requires a contractor to have a Facility Clearance, DOE must determine whether the contractor is or may be subject to foreign ownership, control or influence before a contract can be awarded.

(b) If, during the performance of a contract, the contractor comes under FOCI, then the DOE must determine whether a continuation of the Facility Clearance may pose an undue risk to the common defense and security through the possible compromise of that information or material. If the DOE determines that such a threat or potential threat exists, the contracting officer shall consider the alternatives of negotiating an acceptable method of isolating the foreign interest which owns, controls, or influences the contractor or terminating the contract.

* * * * *

904.7005 [Removed]

9. Section 904.7005, Solicitation provision and contract clause, is removed.

904.7100 [Amended]

10. In Section 904.7100, remove the words "a company owned by" and revise the word "company" following the words "for that" to read "entity'.

11. Section 904.7102 is revised to read as follows:

904.7102 Waiver by the Secretary.

(a) 10 U.S.C. 2536(b)(1)(A) allows the Secretary of Energy to waive the prohibition on the award of contracts set forth in 10 U.S.C. 2536(a) if the Secretary determines that a waiver is essential to the national security interests of the United States. Any request for a waiver regarding award of a contract or execution of a novation agreement shall address:

(1) Identification of the proposed awardee and description of the control by a foreign government;

(2) Description of the procurement and performance requirements;

(3) Description of why a waiver is essential to the national security interests of the United States;

(4) The availability of other entities to perform the work; and

(5) A description of alternate means available to satisfy the requirement.

(b) 10 U.S.C. 2536(b)(1)(B) allows the Secretary of Energy to waive the prohibition on the award of contracts set forth in 10 U.S.C. 2536(a) for environmental restoration, remediation or waste management contracts at a DOE facility if the Secretary determines that a waiver will advance the environmental restoration, remediation or waste management objectives of DOE; will not harm the national security interests of the United States; and may be authorized because the entity to which the contract is to be awarded is controlled by a foreign government with which the Secretary is authorized to exchange Restricted Data under Section 144.c. of the Atomic Energy Act of 1954 (42 U.S.C. 2164(c)). Any request for such a waiver regarding award of a contract or execution of a novation agreement shall address:

(1) Identification of the proposed awardee and description of the control by a foreign government;

(2) Description of the procurement and performance requirements;

(3) A description of how the Department's environmental restoration, remediation, or waste management objectives will be advanced;

(4) A description of why a waiver will not harm the national security interests of the United States;

(5) The availability of other entities to perform the work;

(6) A description of alternate means available to satisfy the requirement; and

(7) Evidence that the entity to which a contract is to be awarded is controlled by a foreign government with which the Secretary is authorized to exchange Restricted Data under Section 144.c. of the Atomic Energy Act of 1954 (42 U.S.C. 2164(c)).

(c) Any request for a waiver under paragraph (a) or (b) of this section shall be forwarded by the Head of the Contracting Activity to the Office of Contract Management within the Headquarters procurement organization.

(d) If the Secretary decides to grant a waiver for an environmental restoration, remediation, or waste management contract, the Secretary shall notify Congress of this decision. The contract may be awarded or the novation agreement executed only after the end of the 45-day period beginning on the date notification is received by the Senate Committee on Armed Services and the House Committee on National Security.

(e) Any request for a waiver under this subpart shall be accompanied by the information required by DEAR 952.204–73 that has been developed by the Safeguards and Security Lead Responsible Office at the contracting activity.

12. Section 904.7103, Solicitation provision and contract clause, is amended by deleting the words "with its Alternate I" at the end of paragraph (a) and by revising paragraph (b) to read as follows:

904.7103 Solicitation Provision and Contract Clause.

(a) * * *

(b) Any contract, including those awarded under simplified acquisition procedures, under the national security program which require access to proscribed information to enable performance, shall include the clause at 48 CFR 952.204–2.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

13. Section 952.204–2 is amended by revising the clause date and paragraph (j) to read as follows:

952.204–2 Security Requirements.

* * * * *

Security (May 2002)

* * * * *

(j) Foreign Ownership, Control or Influence.

(1) The Contractor shall immediately provide the cognizant security office written notice of any change in the extent and nature of foreign ownership, control or influence over the Contractor which would affect any answer to the questions presented in the Certificate Pertaining to Foreign Interests, Standard Form 328 or the Foreign Ownership, Control or Influence questionnaire executed by the Contractor prior to the award of this contract. In addition, any notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the Contracting Officer.

(2) If a Contractor has changes involving foreign ownership, control or influence, DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE will consider proposals made by the Contractor to avoid or mitigate foreign influences.

(3) If the cognizant security office at any time determines that the Contractor is, or is potentially, subject to foreign ownership, control or influence, the Contractor shall comply with such instructions as the Contracting Officer shall provide in writing to safeguard any classified information or special nuclear material.

(4) The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph, in all subcontracts under this contract that will require subcontractor employees to possess access authorizations. Additionally, the Contractor must require subcontractors to have an existing DOD or DOE Facility Clearance or submit a completed Certificate Pertaining to Foreign Interests, Standard Form 328, required in DEAR 952.204–73 prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the Contracting Officer. For purposes of this clause, subcontractor means any subcontractor at any tier and the term "Contracting Officer" means the DOE Contracting Officer. When this clause is included in a subcontract, the term "Contractor" shall mean Subcontractor and the term "contract" shall mean subcontract.

(5) The Contracting Officer may terminate this contract for default either if the Contractor fails to meet obligations imposed by this clause or if the Contractor creates a FOCI situation in order to avoid performance or a termination for default. The Contracting Officer may terminate this contract for convenience if the Contractor becomes subject to FOCI and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

14. Section 952.204–73 is revised to read as follows:

952.204–73 Facility Clearance.

As prescribed in 904.404(d)(5), insert the following provision in all solicitations which require the use of Standard Form 328, Certificate Pertaining to Foreign Interests for contracts or subcontracts subject to the provisions of 904.70.

Facility Clearance (May 2002)

Notices

Section 2536 of title 10, United States Code, prohibits the award of a contract under a national security program to an entity controlled by a foreign government if it is necessary for that entity to be given access to information in a proscribed category of information in order to perform the contract unless a waiver is granted by the Secretary of Energy. In addition, a Facility Clearance and foreign ownership, control and influence (FOCI) information are required when the contract or subcontract to be awarded is expected to require employees to have access authorizations.

Offerors who have either a Department of Defense or a Department of Energy Facility Clearance generally need not resubmit the following foreign ownership information unless specifically requested to do so. Instead, provide your DOE Facility Clearance code or your DOD assigned commercial and government entity (CAGE) code. If uncertain, consult the office which issued this solicitation.

(a) Use of Certificate Pertaining to Foreign Interests, Standard Form 328.

(1) The contract work anticipated by this solicitation will require access to classified information or special nuclear material. Such access will require a Facility Clearance for the Contractor organization and access authorizations (security clearances) for Contractor personnel working with the classified information or special nuclear material. To obtain a Facility Clearance the offeror must submit a Certificate Pertaining to Foreign Interests, Standard Form 328, and all required supporting documents to form a complete Foreign Ownership, Control or Influence (FOCI) Package.

(2) Information submitted by the offeror in response to the Standard Form 328 will be used solely for the purposes of evaluating foreign ownership, control or influence and will be treated by DOE, to the extent permitted by law, as business or financial information submitted in confidence.

(3) Following submission of a Standard Form 328 and prior to contract award, the Contractor shall immediately submit to the Contracting Officer written notification of any changes in the extent and nature of FOCI which could affect the offeror's answers to the questions in Standard Form 328. Following award of a contract, the Contractor must immediately submit to the cognizant security office written notification of any changes in the extent and nature of FOCI which could affect the offeror's answers to the questions in Standard Form 328. Notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice must also be furnished concurrently to the cognizant security office.

(b) Definitions.

(1) *Foreign Interest* means any of the following:

(i) A foreign government, foreign government agency, or representative of a foreign government;

(ii) Any form of business enterprise or legal entity organized, chartered or incorporated under the laws of any country other than the United States or its possessions and trust territories; and

(iii) Any person who is not a citizen or national of the United States.

(2) *Foreign Ownership, Control, or Influence (FOCI)* means the situation where the degree of ownership, control, or influence over a Contractor by a foreign interest is such

that a reasonable basis exists for concluding that compromise of classified information or special nuclear material may result.

(c) *Facility Clearance* means an administrative determination that a facility is eligible to access, produce, use or store classified information, or special nuclear material. A Facility Clearance is based upon a determination that satisfactory safeguards and security measures are carried out for the activities being performed at the facility. It is DOE policy that all Contractors or Subcontractors requiring access authorizations be processed for a Facility Clearance at the level appropriate to the activities being performed under the contract. Approval for a Facility Clearance shall be based upon:

(1) A favorable foreign ownership, control, or influence (FOCI) determination based upon the Contractor's response to the ten questions in Standard Form 328 and any required, supporting data provided by the Contractor;

(2) A contract or proposed contract containing the appropriate security clauses;

(3) Approved safeguards and security plans which describe protective measures appropriate to the activities being performed at the facility;

(4) An established Reporting Identification Symbol code for the Nuclear Materials Management and Safeguards Reporting System if access to nuclear materials is involved;

(5) A survey conducted no more than 6 months before the Facility Clearance date, with a composite facility rating of satisfactory, if the facility is to possess classified matter or special nuclear material at its location;

(6) Appointment of a Facility Security Officer, who must possess or be in the process of obtaining an access authorization equivalent to the Facility Clearance; and, if applicable, appointment of a Materials Control and Accountability Representative; and

(7) Access authorizations for key management personnel who will be determined on a case-by-case basis, and must possess or be in the process of obtaining access authorizations equivalent to the level of the Facility Clearance.

(d) A Facility Clearance is required prior to the award of a contract requiring access to classified information and the granting of any access authorizations under a contract. Prior to award of a contract, the DOE must determine that award of the contract to the offeror will not pose an undue risk to the common defense and security as a result of its access to classified information or special nuclear material in the performance of the contract. The Contracting Officer may require the offeror to submit such additional information as deemed pertinent to this determination.

(e) A Facility Clearance is required even for contracts that do not require the Contractor's corporate offices to receive, process, reproduce, store, transmit, or handle classified information or special nuclear material, but which require DOE access authorizations for the Contractor's employees to perform work at a DOE location. This type facility is identified as a non-possessing facility.

(f) Except as otherwise authorized in writing by the Contracting Officer, the provisions of any resulting contract must require that the contractor insert provisions similar to the foregoing in all subcontracts and purchase orders. Any Subcontractors requiring access authorizations for access to classified information or special nuclear material shall be directed to provide responses to the questions in Standard Form 328, Certificate Pertaining to Foreign Interests, directly to the prime contractor or the Contracting Officer for the prime contract.

Notice to Offerors—Contents Review (Please Review Before Submitting)

Prior to submitting the Standard Form 328, required by paragraph (a)(1) of this clause, the offeror should review the FOCI submission to ensure that:

(1) The Standard Form 328 has been signed and dated by an authorized official of the company;

(2) If publicly owned, the Contractor's most recent annual report, and its most recent proxy statement for its annual meeting of stockholders have been attached; or, if privately owned, the audited, consolidated financial information for the most recently closed accounting year has been attached;

(3) A copy of the company's articles of incorporation and an attested copy of the company's by-laws, or similar documents filed for the company's existence and management, and all amendments to those documents;

(4) A list identifying the organization's owners, officers, directors, and executive personnel, including their names, social security numbers, citizenship, titles of all positions they hold within the organization, and what clearances, if any, they possess or are in the process of obtaining, and identification of the government agency(ies) that granted or will be granting those clearances; and

(5) A summary FOCI data sheet.

Note: A FOCI submission must be attached for each tier parent organization (*i.e.* ultimate parent and any intervening levels of ownership). If any of these documents are missing, award of the contract cannot be completed.

952.204–74 [Removed]

15. Section 952.204–74 is removed.

16. The authority citation for Part 970 continues to read as follows:

Authority: 42 U.S.C. 2201; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

17. Section 970.0404–1, Definitions, is amended by adding, in alphabetical order, definitions for "Access Authorization" and "Facility Clearance" and revising the definition of "Restricted Data" to read as follows:

970.0404–1 Definitions.

Access Authorization means an administrative determination that an individual is eligible for access to classified information or is eligible for access to, or control over, special nuclear material.

* * * * *

Facility Clearance means an administrative determination that a facility is eligible to access, produce, use or store classified information or special nuclear material.

Restricted Data means all data concerning design, manufacture, or utilization of atomic weapons; the production of special nuclear material; or the use of special nuclear material in the production of energy; but shall not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act of 1954, as amended, (42 U.S.C. 2162).

18. Section 970.0404–2, General, is revised to read as follows:

970.0404–2 General.

(a) Guidance regarding the National Industrial Security Program as implemented by the Department of Energy may be found at 904.4, Safeguarding Classified Information Within Industry. Additional information concerning contractor ownership when national security or atomic energy information is involved may be found at 904.70. Information regarding contractor ownership involving national security program contracts may be found at 904.71.

(b) Executive Order 12333, United States Intelligence Activities, provides for the organization and control of United States foreign intelligence and counterintelligence activities. DOE has established a counterintelligence program subject to this Executive Order which is described in DOE Order 5670.3 (as amended). All DOE elements, including management and operating contractors and other contractors managing DOE-owned facilities which require access authorizations, should undertake the necessary precautions to ensure that DOE and covered Contractor personnel, programs and resources are properly protected from foreign intelligence threats and activities.

19. Section 970.0404–3, Responsibilities of contracting officers, is amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as paragraphs (a) and (b).

[FR Doc. 02–7298 Filed 3–27–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

49 CFR Part 1510

[Docket No. TSA–2001–11120]

RIN 2110–AA01

Imposition and Collection of Passenger Civil Aviation Security Service Fees; Amendment; Reopening of Comment Period.

AGENCY: Transportation Security Administration, DOT.

ACTION: Interim final rule; amendment; reopening of comment period.

SUMMARY: On December 31, 2001, the Transportation Security Administration (TSA) published an interim final rule on the imposition and collection of Passenger Civil Aviation Security Service Fees (September 11th Security Fees). The comment period closed on March 1, 2002. Since that time, however, TSA has tentatively determined that some of the data direct air carriers and foreign air carriers are required to submit in the quarterly reports pursuant to § 1510.17 of the interim final rule may be overinclusive. This action amends the requirements under § 1510.17(b) and (c) and reopens the comment period solely with respect to those paragraphs until April 30, 2002. So that TSA may review and consider all comments received on this action, the first quarterly report due by April 30, 2002, need not be submitted until July 31, 2002, i.e., the same date the second quarterly report is due. TSA intends to provide a form for the data required in the quarterly reports and will publish the form together with guidance in the **Federal Register** and on DOT's Web site prior to July 31, 2002.

DATES: This amendment to the interim final rule is effective on March 28, 2002. Comments only with respect to this action, which amends the reporting requirements under § 1510.17 of the interim final rule, will be accepted through April 30, 2002.

ADDRESSES: Submit written, signed comments only with respect to this action to TSA Docket No. 2001–11120, the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard on which the following statement is made: "Comments to Docket No. TSA–2001–11120." The post card will be date stamped and mailed to the sender. Comments also may be sent electronically to the Dockets Management System (DMS) at: *http://dms.dot.gov* at any time. Those who wish to file comments electronically should follow the instructions on the DMS Web site.

FOR FURTHER INFORMATION CONTACT: For guidance involving technical matters: A. Thomas Park, Acting Deputy Chief Financial Officer, Department of Transportation, Office of the Secretary, Office of the Assistant Secretary for Budget and Programs, 400 Seventh St., SW., Room 10101, Washington, DC 20590; telephone (202) 366–9192. For other guidance: Rita M. Maristch, Department of Transportation, Office of the General Counsel, Office of Environmental, Civil Rights and General Law, 400 Seventh St., SW., Room 10102, Washington, DC 20590; telephone (202) 366–9161. Office hours are from 9 a.m. to 5:30 p.m., e.t. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Availability of the Interim Final Rule and Comments Received

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

Internet users can access this document and all comments received by TSA through DOT's docket management system Web site, *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires TSA to comply with small entity requests for information and advice about compliance with statutes and regulations within TSA's jurisdiction. However, because TSA was established on November 19, 2001, pursuant to Aviation and Transportation Security Act, Public Law 107–71, it does not yet have the infrastructure or personnel to provide such information and guidance. Until such time that it does, the Office of the Secretary of Transportation will handle all SBREFA inquiries. Accordingly, any small entity that has a question regarding this document may contact the individuals listed under the caption **FOR FURTHER INFORMATION CONTACT.**

Background

On December 31, 2001, TSA published an interim final rule that imposes a $2.50 fee on each air carrier passenger enplanement in order to help pay for the Federal government's costs in providing aviation security services. *See* 66 FR 67698 (to be codified at 49 CFR part 1510). Passengers may not be charged for more than two enplanements per one-way trip or more than four enplanements per round trip. The fee, commonly referred to as the September 11th Security Fee, was authorized in the landmark Aviation and Transportation Security Act, which was signed into law by President Bush on November 19, 2001. Public Law 107–71. The September 11th Security Fees will help pay for passenger and baggage screeners, security managers and law enforcement personnel at airports, and other aviation security efforts, such as the purchase of explosive detection systems.

According to the interim final rule, direct air carriers, both domestic and foreign, were required to begin collecting the September 11th Security Fee for enplanements originating from U.S. airports beginning February 1, 2002, and transmitting them to DOT's newly established TSA. In addition, the interim final rule at § 1510.17 requires direct air carriers and foreign air carriers to submit quarterly reports to TSA. More specifically, § 1510.17(b) requires that the quarterly reports state the direct air carrier or foreign air carrier involved, the total security service fee imposed, collected, refunded and remitted, the number of enplanements for which a fee was collected, the total number of frequent flyer and nonrevenue passengers, and the total number of enplanements for which the fee was not collected. The reports must explain why any fee imposed under 49 CFR part 1510 was not collected.

Since the publication of the interim final rule, TSA has had an opportunity to review the data to be included in the quarterly report and tentatively believes that some of the data may be overinclusive. Based on its review, TSA believes that the following data would provide the necessary information it seeks and therefore amends § 1510.17(b) to require that all quarterly reports state: (1) The direct air carrier or foreign air carrier involved;

(2) The total amount of September 11th Security Fees imposed on passengers in U.S. currency for each

month during the previous quarter of the calendar year;

(3) The net amount of September 11th Security Fees collected in U.S. currency by the direct air carrier or foreign air carrier for each month during the previous quarter of the calendar year;

(4) The total amount of September 11th Security Fees refunded in U.S. currency by the direct air carrier or foreign air carrier for each month during the previous quarter of the calendar year; and

(5) The total amount of September 11th Security Fees remitted in U.S. currency by the direct air carrier or foreign air carrier for each month during the previous quarter of the calendar year.

This interim final rule also amends § 1510.17(c) to reflect that direct air carriers and foreign air carriers must submit their reports to TSA on the last day of the calendar month following the quarter of the calendar year in which the fees were imposed.

TSA will consider public comment through April 30, 2002, solely with respect to § 1510.17(b) and (c), as amended. Given this fact, TSA has determined that the first quarterly report, which, according to the rule, is due by April 30, 2002, must now be submitted together with, or prior to, the second quarterly report for this calendar year, which is due by July 31, 2002. TSA intends to provide a form for the data required in the quarterly reports and will publish the form together with guidance in the **Federal Register** and on DOT's Web site prior to July 31, 2002.

Good Cause for Immediate Adoption

Section 44940(d)(1) of title 49, U.S.C., explicitly exempts the imposition of the civil aviation security service fees authorized in section 44940 from the procedural rulemaking notice and comment procedures set forth in 5 U.S.C. 553. Apart from that exemption, it would have been impractical and contrary to the public interest to provide for notice and comment before issuing the interim final rule on December 31, 2002. Immediate action was necessary to begin collecting the security service fees provided for by the statute. However, TSA sought comments on the interim final rule through March 1, 2002 and is in the process of reviewing those comments. In the meantime, TSA seeks comments on this action amending the reporting requirements under § 1510.17 through April 30, 2002, but will consider comments filed late to the extent practicable. TSA may further amend the interim final rule in light of the comments it receives.

Paperwork Reduction Act

On January 31, 2002, TSA published a notice in the **Federal Register** announcing that it had submitted a request for emergency processing of a public information collection to the Office of Management and Budget (OMB) regarding the quarterly reporting requirements in § 1510.17 of the interim final rule. On that same date, OMB approved the information collection contained in the interim final rule and assigned it OMB control number 2110–0001. This collection of information is approved through July 31, 2002. *See* 67 FR 7582, February 19, 2002. TSA has determined that this action, which amends § 1510.17 of the interim final rule, will reduce the collection of information burdens originally required by that section and approved by OMB. Therefore, it is not necessary for TSA to apply to OMB for additional emergency approval with respect to this action, but prior to July 31, 2002, TSA will apply for a three-year extension as well as approval of the information collection form it is developing. Interested parties are invited to send comments regarding any aspect of the information collection requirements, including, but not limited to: (1) Whether the collection of information is necessary for the performance of TSA, including whether the information has practical utility; (2) the accuracy of the estimated burden that DOT has provided to OMB; (3) ways to enhance the quality, utility, and clarity of the collection of information, and (4) ways to minimize the collection burden without reducing the quality of the information collected.

Economic Analyses

This rulemaking action is taken in an emergency situation within the meaning of Section 6(a)(3)(D) of Executive Order 12866, Regulatory Planning and Review. It also is considered an emergency regulation under Paragraph 11g of the Department's Regulatory Policies and Procedures. In addition, it is a significant rule within the meaning of the Executive Order and Department's policies and procedures because it may impose significant costs on air carriers and foreign air carriers. An assessment in accordance with the Executive Order will be conducted in the future. No additional regulatory analysis or evaluation accompanies this rule. TSA has not assessed whether this rule will have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act of 1980. When no notice of proposed rulemaking has first been published, the Regulatory Flexibility Act does not apply.

OMB has reviewed this rulemaking action under the provisions of section 6(a)(3)(D) Executive Order 12866.

Executive Order 13132, Federalism

TSA has analyzed this amendment to its interim final rule published on December 31, 2001, under the principles and criteria of Executive Order 13132, Federalism. TSA has determined that the interim final rule, as amended, will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, TSA has determined that this rulemaking action does not have federalism implications.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector.

The requirements of Title II of the Act do not apply when rulemaking actions are taken without the issuance of a notice of proposed rulemaking. Accordingly, the TSA has not prepared a statement under the Act.

Environmental Review

TSA has reviewed this action for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

Energy Impact

The energy impact of this rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended. (42 U.S.C. 6362). It has been determined that this rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 49 CFR Part 1510

Accounting, Auditing, Air carriers, Air transportation, Enforcement, Federal oversight, Foreign air carriers, Reporting

and recordkeeping requirements, Security measures.

Issued in Washington, DC, on March 25, 2002.

John W. Magaw,

Under Secretary of Transportation for Security.

Accordingly, part 1510 of Title 49 CFR is amended as follows:

PART 1510—PASSENGER CIVIL AVIATION SECURITY SERVICE FEES

1. The authority citation for part 1510 continues to read as follows:

Authority: 49 U.S.C. 44940.

2. Paragraphs (b) and (c) of § 1510.17 are revised to read as follows:

§ 1510.17 Reporting requirements.

* * * * *

(b) Quarterly reports must state:

(1) The direct air carrier or foreign air carrier involved;

(2) The total amount of September 11th Security Fees imposed on passengers in U.S. currency for each month during the previous quarter of the calendar year;

(3) The net amount of September 11th Security Fees collected in U.S. currency by the direct air carrier or foreign air carrier for each month during the previous quarter of the calendar year;

(4) The total amount of September 11th Security Fees refunded in U.S. currency by the direct air carrier or foreign air carrier for each month during the previous quarter of the calendar year; and

(5) The total amount of September 11th Security Fees remitted in U.S. currency by the direct air carrier or foreign air carrier for each month during the previous quarter of the calendar year.

(c) The report must be filed by the last day of the calendar month following the quarter of the calendar year in which the fees were imposed.

[FR Doc. 02–7652 Filed 3–26–02; 2:29 pm]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[I.D. 031902D]

Notification of U.S. Fish Quotas and an Effort Allocation in the Northwest Atlantic Fisheries Organization (NAFO) Regulatory Area

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

ACTION: Notification of U.S. fish quotas and an effort allocation.

SUMMARY: NMFS announces that fish quotas and an effort allocation are available for harvest by U.S. fishermen in the NAFO Regulatory Area. This action is necessary to make available to U.S. fishermen a fishing privilege on an equitable basis.

DATES: All fish quotas and the effort allocation are effective March 28, 2002, through December 31, 2002. Expressions of interest regarding U.S. fish quota allocations for all species except 3L shrimp will be accepted throughout 2002. Expressions of interest regarding the U.S. 3L shrimp quota allocation and the 3M shrimp effort allocation will be accepted through April 29, 2002.

ADDRESSES: Expressions of interest regarding the U.S. effort allocation and quota allocations should be made in writing to Patrick E. Moran in the NMFS Office of Sustainable Fisheries, at 1315 East-West Highway, Silver Spring, Maryland 20910 (phone: 301–713–2276, fax: 301–713–2313, e-mail: *pat.moran@noaa.gov).*

Information relating to NAFO fish quotas, NAFO Conservation and Enforcement Measures, and the High Seas Fishing Compliance Act (HSFCA) Permit is available from Jennifer L. Anderson at the NMFS Northeast Regional Office at One Blackburn Drive, Gloucester, Massachusetts 01930 (phone: 978–281–9226, fax: 978–281–9394, e-mail: *jennifer.anderson@noaa.gov*) and from NAFO on the World Wide Web at *http://www.nafo.ca.*

FOR FURTHER INFORMATION CONTACT: Patrick E. Moran, 301–713–2276.

SUPPLEMENTARY INFORMATION:

Background

NAFO has established and maintains conservation measures in its Regulatory Area that include one effort limitation fishery as well as fisheries with total allowable catches (TACs) and member nation quota allocations. The principal species managed are cod, flounder, redfish, American plaice, halibut, capelin, shrimp, and squid. At the 2002 NAFO Special Meeting, the United States received fish quota allocations for three NAFO stocks and an effort allocation for one NAFO stock to be fished during 2002. The species, location, and allocation (in metric tons or effort) of these U.S. fishing opportunities are as follows:

(1) Redfish	NAFO Division 3M	69 mt
(2) Squid	NAFO Subareas 3 & 4	453 mt
(3) Shrimp	NAFO Division 3L	67 mt
(4) Shrimp	NAFO Division 3M	1 vessel/100 days

U.S. Fish Quota Allocations

All U.S. fish quota allocations in NAFO are available to be taken by U.S. vessels in possession of a valid HSFCA permit, which is available from the NMFS Northeast Regional Office (see **ADDRESSES**). All expressions of interest should be directed in writing to Patrick E. Moran in the NMFS Office of Sustainable Fisheries (see **DATES** and **ADDRESSES**). Letters of interest from U.S. vessel owners should include the name, registration and home port of the applicant vessel as required by NAFO in advance of fishing operations. In addition, any available information on intended target species and time of fishing operations should be included. If necessary to ensure equitable access by U.S. vessel owners, NMFS may need to promulgate regulations designed to choose one or more U.S. applicants from among expressions of interest.

Note that vessels issued valid HSFCA permits under 50 CFR part 300 are exempt from multispecies permit, mesh size, effort-control, and possession limit restrictions, specified in 50 CFR parts 648.4, 648.80, 648.82 and 648.86, respectively, while transiting the U.S. exclusive economic zone (EEZ) with multispecies on board the vessel or landing multispecies in U.S. ports that were caught while fishing in the NAFO Regulatory Area, provided:

(1) The vessel operator has a letter of authorization on board the vessel issued by the Regional Administrator;

(2) For the duration of the trip, the vessel fishes exclusively in the NAFO Regulatory Area and does not harvest fish in, or possess fish harvested in or from, the U.S. EEZ;

(3) When transiting the U.S. EEZ, all gear is properly stowed in accordance with one of the applicable methods specified in § 648.23(b); and

(4) The vessel operator complies with the HSFCA permit and all NAFO conservation and enforcement measures while fishing in the NAFO Regulatory Area.

U.S. 3M Effort Allocation

Expressions of interest in harvesting the U.S. portion of the 2002 NAFO 3M shrimp effort allocation (1 vessel/100 days) will be accepted from owners of U.S. vessels in possession of a valid HSFCA permit. All expressions of interest should be directed in writing to Patrick E. Moran in the NMFS Office of Sustainable Fisheries (see **DATES** and **ADDRESSES**).

Letters of interest from U.S. vessel owners should include the name, registration and home port of the applicant vessel as required by NAFO in advance of fishing operations. In the event that multiple expressions of interest are made by U.S. vessel owners, NMFS may need to promulgate regulations designed to choose one U.S. applicant from among expressions of interest.

NAFO Conservation and Management Measures

Relevant NAFO Conservation and Enforcement Measures include, but are not limited to, maintenance of a fishing logbook with NAFO-designated entries; adherence to NAFO hail system requirements; presence of an on-board observer; deployment of a functioning, autonomous vessel monitoring system; and adherence to all relevant minimum size, gear, bycatch, and other requirements. Further details regarding these requirements are available from the NMFS Northeast Regional Office, and can also be found in the current NAFO Conservation and Enforcement Measures on the Internet (see **ADDRESSES**).

Chartering Arrangements

In the event that no adequate expressions of interest in harvesting the U.S. portion of the 2002 NAFO 3L shrimp quota allocation and/or 3M shrimp effort allocation are made on behalf of U.S. vessels, expressions of interest will be considered from U.S. fishing interests intending to make use of vessels of other NAFO Parties under chartering arrangements to fish the 2002 U.S. quota allocation for 3L shrimp and/or the effort allocation for 3M shrimp. Under NAFO rules in effect through 2002, a vessel registered to another NAFO Contracting Party may be chartered to fish the U.S. allocations provided that written consent for the charter is obtained from the vessel's flag state and the U.S. allocations are transferred to that flag state. Such a transfer must be adopted by NAFO Parties through a mail voting process.

A NAFO Contracting Party wishing to enter into a chartering arrangement with the U.S. must be in full current compliance with the requirements outlined in the NAFO Convention and Conservation and Enforcement Measures including, but not limited to, submission of the following reports to the NAFO Executive Secretary: Provisional monthly catches within 30 days following the calender month in which the catches were made; provisional monthly fishing days in Division 3M within 30 days following the calender month in which the catches were made; provisional daily catches of shrimp taken from Division 3L; observer reports within 30 days following the completion of a fishing trip; and an annual statement of actions taken in order to comply with the NAFO Convention. Furthermore, the U.S. may also consider a Contracting Party's previous compliance with the NAFO incidental catch limits, as outlined in the NAFO Conservation and Enforcement Measures, before entering into a chartering arrangement.

Expressions of interest from U.S. fishing interests intending to make use of vessels from another NAFO Party under chartering arrangements should include information required by NAFO regarding the proposed chartering operation, including: the name, registration and flag of the intended vessel; a copy of the charter; the fishing opportunities granted; a letter of consent from the vessel's flag State; the date from which the vessel is authorized to commence fishing on these opportunities; and the duration of the charter (not to exceed 6 months). More details on NAFO requirements for chartering operations are available from NMFS (see **ADDRESSES**). In addition, expressions of interest for chartering operations should be accompanied by a detailed description of anticipated benefits to the United States. Such benefits might include, but are not limited to, the use of U.S. processing facilities/personnel; the use of U.S. fishing personnel; other specific positive effects on U.S. employment; evidence that fishing by the chartered vessel would actually take place; and documentation of the physical characteristics and economics of the fishery for future use by the U.S. fishing industry.

In the event that multiple expressions of interest are made by U.S. fishing interests proposing the use of chartering operations, the information submitted regarding benefits to the United States will be used in making a selection. In the event that applications by U.S. fishing interests proposing the use of chartering operations are considered, all applicants will be made aware of the allocation decision as soon as possible. Once the allocation has been awarded for use in a chartering operation, NMFS will immediately take appropriate steps to transfer the U.S. 3M shrimp effort allocation to the vessel (pending approval by NAFO).

All individuals/companies submitting expressions of interest to NMFS will be contacted once the allocation has been awarded. Please note that once the U.S. portion of the 2002 NAFO 3L or 3M shrimp allocation is awarded to a U.S. vessel or a specified chartering operation, it may not be transferred without the express, written consent of NMFS.

Dated: March 21, 2002.

Bruce C. Morehead,

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

[FR Doc. 02–7512 Filed 3–27–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

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

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Offshore Component in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season amount of the Pacific cod total allowable catch (TAC) apportioned to vessels catching Pacific cod for processing by the offshore component of the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 25, 2002, until 1200 hrs, A.l.t., September 1, 2002.

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

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

The 2002 A season Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area is 1,487 metric tons (mt) as established by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season amount of the Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the offshore component of the Central Regulatory Area of the GOA will be reached. In accordance with § 679.20(a)(11)(iii), Pacific cod bycatch taken between the closure of the A season and opening of the B season shall be deducted from the B season TAC apportionment. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,487 mt. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA.

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

Classification

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

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

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

Dated: March 25, 2002.

John H. Dunigan,

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

[FR Doc. 02–7490 Filed 3–25–02; 2:28 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 60
Thursday, March 28, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE175]; Notice No. 23–02–02–SC

Special Conditions: Installation of Full Authority Digital Engine Control (FADEC) System on The Lancair Company, Model LC40–550FG–E Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for The Lancair Company, Model LC40–550FG–E Airplane, which will use a FADEC System. This airplane will have a novel or unusual design feature associated with the installation of an engine that uses an electronic engine control system in place of the engine's mechanical system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before April 29, 2002.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket, Docket No. CE175, DOT Building, 901 Locust, Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: Docket No. CE175. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4123.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals described in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. CE175." The postcard will be date stamped and returned to the commenter.

Background

On November 8, 2001, The Lancair Company applied to amend Type Certificate A0003SE for the addition of the Model LC40–550FG–E airplane. The Model LC40–550FG–E is a small, utility category airplane. The airplane is powered by one reciprocating engine equipped with an electronic engine control system with full authority capability in place of the hydromechanical control system.

Type Certification Basis

Under the provisions of 14 CFR 21.101(c), The Lancair Company must show that the Model LC40–550FG–E meets the applicable provisions of the certification basis specified in Amendment 6 to TCDS A00003SE except as follows:

- FAR 23.1305 as of Amendment 52.
- FAR 23.1359 as of Amendment 49.
- Special conditions will be applied to the FADEC installation for protection against high intensity radiated fields (HIRF) and for installed system reliability (FAR 23.1309 applicability).

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 23) do not contain adequate or appropriate safety standards for the Model LC40–550FG–E because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model LC40–550FG must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the "Noise Control Act of 1972."

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Lancair Company, Model LC40–550FG–E Airplane will incorporate the following novel or unusual design features:

The Lancair Company, Model LC40–550FG–E Airplane will use an engine that includes an electronic control system with full engine authority capability.

Many advanced electronic systems are prone to either upsets or damage, or both, at energy levels lower than analog systems. The increasing use of high power radio frequency emitters mandates requirements for improved high intensity radiated fields (HIRF) protection for electrical and electronic equipment. Since the electronic engine control system used on the Lancair Company, Model LC40–550FG–E will perform critical functions, provisions for protection from the effects of HIRF

fields should be considered and, if necessary, incorporated into the airplane design data. The FAA policy contained in Notice 8110.71, dated April 2, 1998, establishes the HIRF energy levels that airplanes will be exposed to in service. The guidelines set forth in this Notice are the result of an Aircraft Certification Service review of existing policy on HIRF, in light of the ongoing work of the ARAC Electromagnetic Effects Harmonization Working Group (EEHWG). The EEHWG adopted a set of HIRF environment levels in November 1997 that were agreed upon by the FAA, JAA, and industry participants. As a result, the HIRF environments in this notice reflect the environment levels recommended by this working group. This notice states that a full authority digital engine control is an example of a system that should address the HIRF environments.

Even though the control system will be certificated as part of the engine, the installation of an engine with an electronic control system requires evaluation due to the possible effects on or by other airplane systems (*e.g.*, radio interference with other airplane electronic systems, shared engine and airplane power sources). The regulatory requirements in 14 CFR part 23 for evaluating the installation of complex systems, including electronic systems, are contained in § 23.1309. However, when § 23.1309 was developed, the use of electronic control systems for engines was not envisioned; therefore, the § 23.1309 requirements were not applicable to systems certificated as part of the engine (reference § 23.1309(f)(1)). Also, electronic control systems often require inputs from airplane data and power sources and outputs to other airplane systems (*e.g.*, automated cockpit powerplant controls such as mixture setting). Although the parts of the system that are not certificated with the engine could be evaluated using the criteria of § 23.1309, the integral nature of systems such as these makes it unfeasible to evaluate the airplane portion of the system without including the engine portion of the system. However, § 23.1309(f)(1) again prevents complete evaluation of the installed airplane system since evaluation of the engine system's effects is not required.

Therefore, special conditions are proposed for The Lancair Company, Model LC40–550FG–E to provide HIRF protection and to evaluate the installation of the electronic engine control system for compliance with the requirements of § 23.1309(a) through (e) at Amendment 23–46.

Applicability

As discussed above, these special conditions are applicable to the The Lancair Company, Model LC40–550FG–E Airplane. Should The Lancair Company apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model, The Lancair Company, Model LC40–550FG–E Airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for The Lancair Company, Model LC40–550FG–E Airplane.

1. *High Intensity Radiated Fields (HIRF) Protection.* In showing compliance with 14 CFR part 21 and the airworthiness requirements of 14 CFR part 23, protection against hazards caused by exposure to HIRF fields for the full authority digital engine control system, which performs critical functions, must be considered. To prevent this occurrence, the electronic engine control system must be designed and installed to ensure that the operation and operational capabilities of this critical system are not adversely affected when the airplane is exposed to high energy radio fields.

At this time, the FAA and other airworthiness authorities are unable to precisely define or control the HIRF energy level to which the airplane will be exposed in service; therefore, the FAA hereby defines two acceptable interim methods for complying with the requirement for protection of systems that perform critical functions.

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the external HIRF threat environment defined in the following table:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter peak electrical strength, without the benefit of airplane structural shielding, in the frequency range of 10 KHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation. Data used for engine certification may be used, when appropriate, for airplane certification.

2. *Electronic Engine Control System.* The installation of the electronic engine control system must comply with the requirements of § 23.1309(a) through (e) at Amendment 23–46. The intent of this requirement is not to re-evaluate the inherent hardware reliability of the control itself, but rather determine the effects, including environmental effects addressed in § 23.1309(e), on the airplane systems and engine control system when installing the control on the airplane. When appropriate, engine certification data may be used when showing compliance with this requirement.

Issued in Kansas City, Missouri on February 5, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–7503 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–124–AD]

RIN 2120–AA64

Airworthiness Directives; de Havilland Inc. Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain de Havilland Inc. (de Havilland) Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes. This proposed AD would establish a life limit for the front fuselage struts and would require you to repetitively replace the front fuselage struts every 15 years or repetitively inspect the struts for corrosion or fatigue damage and replace when the damage exceeds a certain level. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Canada. The actions specified by the proposed AD are intended to prevent structural failure of the front fuselage caused by corrosion or fatigue damage to the struts that develops over time, which could result in reduced or loss of control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before May 10, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–124–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. 98–CE–124–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 service information that applies to this proposed AD from Bombardier Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5; telephone: (416) 633–7310. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Hjelm, Aerospace Engineer, New York Aircraft Certification Office, 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581–1200; telephone: (516) 256–7523; facsimile: (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I Comment on This Proposed AD?

The FAA invites comments on this proposed 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. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed 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 contact we have with the public that concerns the substantive parts of this proposed AD.

How can I be Sure FAA Receives my Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 98–CE–124–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

Transport Canada, which is the airworthiness authority for Canada, notified FAA that an unsafe condition may exist on certain de Havilland Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes. Transport Canada reports numerous incidents of corrosion of the front fuselage struts. Further analysis of the front fuselage struts reveals that these parts are not life limited and incur corrosion and fatigue damage over time.

What are the Consequences if the Condition is not Corrected?

Corrosion damage, if not detected and corrected, could result in failure of the front fuselage and possible reduced or loss of control of the airplane.

Is There Service Information That Applies to This Subject?

De Havilland Inc. has issued Parts Service Manual (PSM) No. 1–2–2, Part 5, Temporary Revision 2–22; and PSM No. 1–2T–2, Part 5, Temporary Revision 2T–6, both dated August 3, 1998. These service documents establish a life limit of 15 years for the front fuselage struts. The procedures for replacement of the front fuselage struts are included in the applicable maintenance manual.

What Action did the Transport Canada Take?

Transport Canada issued Canadian AD CF–98–37, dated September 29, 1998, in order to ensure the continued airworthiness of these airplanes in Canada. This Canadian AD established a 15-year life limit on the front fuselage struts and requires replacement at that time on the affected airplanes in the Canadian registry.

Transport Canada revised this AD (Canadian AD CF–98–37R1, dated August 20, 1999) to allow repetitive inspections of the front fuselage struts until corrosion damage exceeds a certain limit. When it exceeds this limit, front fuselage strut replacement is mandatory.

Was This in accordance With the Bilateral Airworthiness Agreement?

These airplane models are manufactured in Canada and are 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, Transport Canada has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of this Proposed AD

What has FAA Decided?

The FAA has examined the findings of Transport Canada; 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 de Havilland Inc. Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes of the same type design that are on the U.S. registry;

—A life limit of 15 years should be established on the front fuselage struts of the affected airplanes; and

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

What Would This Proposed AD Require?

This proposed AD would establish a life limit for the front fuselage struts and would require you to repetitively replace the front fuselage struts every 15 years or repetitively inspect the struts for corrosion or fatigue damage and replace when the damage exceeds a certain level.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD would affect 354 airplanes in the U.S. registry.

What Would be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish each proposed replacement:

Labor cost	Parts cost per airplane	Total cost per airplane	Total cost on U.S. operators
108 workhours X $60 an hour = $6,480 per airplane	$2,352	$8,832	$3,126,528 per replacement

Compliance Time of this Proposed AD

What Would be the Compliance Time of This Proposed AD?

The replacement compliance time of this proposed AD is upon accumulating 15 years from the date of installation of the front fuselage struts or within the next 12 calendar months after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 15 years. If the repetitive inspection option is used, then the repetitive compliance time interval would be at 1 and 5 years depending on the method used (provided certain corrosion or damage limits are not exceeded).

Why is the Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?

The compliance of the proposed AD is presented in calendar time instead of hours TIS. The need for establishing a life limit for the front fuselage struts as specified in the proposed AD is the result of reports of corrosion found in this area on the affected airplanes. Corrosion can occur regardless of whether the aircraft is in operation. In order to ensure that the unsafe condition specified in the proposed AD does not go undetected if the airplane was not in operation for an extended period of time, the compliance is presented in calendar time instead of hours TIS.

Regulatory Flexibility Determination and Analysis

What are the requirements of the Regulatory Flexibility Act?

The Regulatory Flexibility Act of 1980 was enacted by Congress to assure that small entities are not unnecessarily or disproportionately burdened by government regulations. This Act establishes "as principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation." To achieve this principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that the rule will, the Agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

What is FAA's Determination?

The FAA has determined that this proposed AD could have a significant economic impact on a substantial number of small entities. However, we have determined that we should continue with this proposed action in order to address the unsafe condition and ensure aviation safety.

You may obtain a copy of the complete Regulatory Flexibility Analysis (entitled "Initial Regulatory Flexibility Analysis") that was prepared for this proposed AD from the Docket file at the location listed under the **ADDRESSES** section of this document.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

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 proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed 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) if promulgated, could 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 has been placed 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, under 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. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

de Havilland Inc.: Docket No. 98–CE–124–AD

(a) *What airplanes are affected by this AD?* This AD affects all serial numbers of Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes 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 structural failure of the front fuselage caused by corrosion or fatigue damage to the struts that develops over time, which could result in reduced or loss of control of the airplane.

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

Actions	Compliance	Procedures
(1) Replace each front fuselage strut with a new strut. Part numbers for existing and replacement front fuselage struts parts are presented in paragraph (e) of this AD.	Initially replace upon accumulating 15 years on each front fuselage strut or within the next 12 calendar months after the effective date of this AD, whichever occurs later. Repetitively replace thereafter upon accumulating 15 years on each front fuselage strut.	In accordance with the applicable maintenance manual, as specified in de Havilland Parts Service Manual 1–2–2, Part 5, Temporary Revision 2–22; and de Havilland Parts Service Manual 1–2T–2, Part 5, Temporary Revision 2T–6, both dated August 3, 1998.
(2) As an alternative method of compliance to the replacements in paragraph (d)(1) of this AD, you may repetitively inspect each front fuselage strut, as follows:	Initially inspect upon accumulating 15 years on each front fuselage strut or within the next 12 calendar months after the effective date of this AD, whichever occurs later. Accomplish the repetitive detailed inspection thereafter at intervals not to exceed 12 months and the ultrasonic thickness measurement at intervals not to exceed 5 years. Accomplish the corrosion prevention work prior to further flight after each inspection. Accomplish the replacement prior to further flight after damage is found or the thickness is found below 0.030 inches. Then after replacement either replace with a new strut at 15-year intervals thereafter or repetitively inspect as prescribed above beginning at 15 years after each replacement.	For the detailed inspection, use an inspection light, inspection mirror, and 10X magnifying glass. For the ultrasonic inspection, use FAA-approved procedures that follow a similar calibration and measures strut thickness to that detailed in Bombardier Service Bulletin 2/49, Revision C.
(i) perform a detailed inspection of each front fuselage strut and all fittings attached to the frame for damage (corrosion, cracks, dents). When fatigue damage is found, you must replace the damaged strut. After each inspection, clean the drain holes around the bottom end fitting and protect the tube with an appropriate corrosion preventive spray. Part numbers for existing and replacement front fuselage struts parts are presented in paragraph (e) of this AD.		
(ii) perform an ultrasonic thickness measurement of all surfaces on each front months and the Service fuselage strut. When minimum thickness is below 0.030 inches, you must replace the affected strut. Part numbers for existing and replacement front fuselage struts parts are presented in paragraph (e) of this AD.		

Actions	Compliance	Procedures
(3) Do not install, on any affected airplane, any front fuselage strut unless it has a part number specified in the Replacement Part Number column of the chart presented in paragraph (e) of this AD.	As of the effective date of this AD	Not Applicable.

(e) *What part number front fuselage struts should I use for replacements?* The following charts presents the part numbers for existing parts and replacement parts for the front fuselage strut replacements:

Installed part number	Replacement part number	Description
C2FS209 or C2FS3281A	C2FS3281A	Strut Assembly Front Fuselage, Left.
C2FS210 or C2FS3282A	C2FS3282A	Strut Assembly Front Fuselage, Right.

(f) *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 Manager, New York Aircraft Certification Office, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office.

Note 1: 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 (f) 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, specify actions you propose to address it.

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact Jon Hjelm, Aerospace Engineer, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone: (516) 256–7523; facsimile: (516) 256–2716.

(h) *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.

(i) *How do I get copies of the documents referenced in this AD?* You may direct technical questions to or get copies of the documents referenced in this AD from Bombardier Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5; telephone: (416) 633–7310. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in Canadian AD CF–98–37R1, dated August 20, 1999.

Issued in Kansas City, Missouri, on March 20, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–7417 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–01–AD]

RIN 2120–AA64

Airworthiness Directives; Hamilton Sundstrand Power Systems (Formerly Sundstrand Power Systems, Turbomach, and Solar) T–62T Series Auxiliary Power Units

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to Hamilton Sundstrand Power Systems (formerly Sundstrand Power Systems, Turbomach, and Solar) T–62T series auxiliary power units (APU's) with compressor wheel part number (P/N) 100636–1 installed. This proposal would require the replacement of compressor wheels P/N 100636–1. This proposal is prompted by a manufacturer's stress analysis that indicates stress levels high enough to initiate and drive crack growth in these compressor wheels. The actions specified by the proposed AD are intended to mandate the replacement of the affected compressor wheels, which if not replaced, could result in uncontained compressor wheel failure and damage to the airplane.

DATES: Comments must be received by May 28, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–01–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: "9–ane–adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in the proposed rule may be obtained from Hamilton Sundstrand Power Systems, Technical Publications Department, P.O. Box 7002, Rockford, IL, 61125–7002; telephone (815) 623–5983; fax (815) 966–8525. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Roger Pesuit, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5251, fax (562) 627–5210.

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, 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.

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 2002–NE–01–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–01–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

Hamilton Sundstrand Power Systems recently informed the FAA that models T–62T–2C, T–62T–25, T–62T–29, and T–62T–39 APU's with compressor wheel P/N 100636–1 installed, have high probability of uncontained compressor wheel failure caused by low-cycle fatigue. Several low-cycle fatigue failures of compressor wheels on the larger, Hamilton Sundstrand Power Systems model T–62T–40C APU, triggered the manufacturer to perform analysis of the geometrically similar compressor wheel P/N 100636–1. Although no uncontained failures of compressor wheel P/N 100636–1 have been known to occur in APU's installed on airplanes of U.S. registry, inspections of some compressor wheels during maintenance revealed cracks in attachment holes that are a precursor to failure. The manufacturer is aware also that four compressor wheels of the affected P/N have failed in APU's installed on U.S. military aircraft. This condition, if not corrected, could result in uncontained compressor wheel failure and damage to the airplane.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other aircraft with Hamilton Sundstrand Power Systems (formerly Sundstrand Power Systems, Turbomach, and Solar) models T–62T–2C, T–62T–25, T–62T–29, and T–62T–39 APU's installed, the proposed AD would require replacement at new reduced cycle life limits of compressor wheels P/N 100636–1, with compressor wheel P/N 4503164, 4504174, or M4504174. Two manufactured types of compressor wheel P/N 100636–1 exist. One type is a cast steel compressor wheel, identifiable by a four-digit casting lot vendor identification number, used as a prefix to the serial number. The other type is a wrought steel compressor wheel, identifiable by a serial number beginning with the letter W.

Cast steel compressor wheel replacement schedule:

- Replace compressor wheels with 2,350 or greater cycles-since-new (CSN) on the effective date of the proposed AD within 250 cycles-in-service (CIS) after the effective date of the proposed AD.
- Replace compressor wheels with less than 2,350 CSN on the effective date of the proposed AD before accumulating 2,600 CSN.

Wrought steel compressor wheel replacement schedule:

- Replace compressor wheels with 3,600 or greater CSN on the effective date of the proposed AD within 500 CIS after the effective date of the proposed AD.
- Replace compressor wheels with less than 3,600 CSN on the effective date of the proposed AD before accumulating 4,100 CSN.

Economic Analysis

There are approximately 492 Hamilton Sundstrand Power Systems (formerly Sundstrand Power Systems, Turbomach, and Solar) models T–62T–2C, T–62T–25, T–62T–29, and T–62T–39 APU's of the affected design in the worldwide fleet. The FAA estimates that 337 APU's installed on airplanes of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 40 work hours per APU to do the proposed actions, and that the average labor rate is $60 per work hour. The cost of a replacement compressor wheel is estimated to be $16,799. Based on these figures, the total cost of the proposed AD on U.S. operators is estimated to be $6,470,063.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

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 the following new airworthiness directive:

Hamilton Sundstrand Power Systems: Docket No. 2002–NE–01–AD.

Applicability: This airworthiness directive (AD) is applicable to aircraft with Hamilton Sundstrand Power Systems (formerly Sundstrand Power Systems, Turbomach, and Solar) models T–62T–2C, T–62T–25, T–62T–29, and T–62T–39 auxiliary power units (APU's) installed that have compressor wheel part number (P/N) 100636–1 installed. These APU's are installed on, but not limited to, Fairchild FH–227, Dassault Falcon 20, Lockheed 1329 series (Jetstar), British Aerospace Jetstream 3101, Raytheon Aircraft HS125–600,—700,—800, and Sabreliner

Corporation 60 and 80 aircraft, and Boeing Defense & Space Group 234 Series Helicopters.

Note 1: This AD applies to each APU identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For APU's 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 (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair of the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To replace affected compressor wheels P/N 100636–1, which if not replaced, could result in uncontained compressor wheel failure and damage to the airplane, do the following.

Cast Steel Compressor Wheel Replacement

(a) For compressor wheels, P/N 100636–1, made of cast steel, identifiable by a four-digit casting lot vendor identification number used as a prefix to the serial number, replace compressor wheels with compressor wheel P/N 4503164, 4504174, or M4504174 as follows:

(1) Replace cast steel compressor wheels with 2,350 or greater cycles-since-new (CSN) on the effective date of this AD within 250 cycles-in-service (CIS) after the effective date of this AD.

(2) Replace cast steel compressor wheels with less than 2,350 CSN on the effective date of this AD before accumulating 2,600 CSN.

Wrought Steel Compressor Wheel Replacement

(b) For compressor wheels, P/N 100636–1 made of wrought steel, identifiable by a serial number beginning with the letter W, replace compressor wheels with compressor wheel P/N 4503164, 4504174, or M4504174 as follows:

(1) Replace wrought steel compressor wheels with 3,600 or greater CSN on the effective date of this AD within 500 CIS after the effective date of this AD.

(2) Replace wrought steel compressor wheels with less than 3,600 CSN on the effective date of this AD before accumulating 4,100 CSN.

(c) Information on procedures for replacing compressor wheel P/N 100636–1 may be found in Hamilton Sundstrand Power Systems service bulletin No. SB–T–62T–49–148, Revision 1, dated December 20, 2001.

Reduced Life Limits

(d) This AD establishes new cyclic life limits for compressor wheels P/N 100636–1, of 2,600 CSN for cast steel compressor wheels and 4,100 CSN for wrought steel compressor wheels. Except as provided in paragraph (e) of this AD, no alternate life limits for these parts may be approved.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be done.

Issued in Burlington, Massachusetts, on March 20, 2002.

Francis A. Favara,

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

[FR Doc. 02–7416 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–289–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Fokker Model F.28 Mark 0070 and 0100 series airplanes. This proposal would require a one-time general visual inspection to detect any missing attachment bolts in the replaceable frame struts, and corrective actions, if necessary. This action is necessary to prevent excessive deformation of the floor structure in the event of rapid decompression in the lower cargo hold due to missing attachment bolts in the replaceable frame struts. Such deformation may result in the flight and engine control cables becoming jammed, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 29, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–289–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 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*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–289–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 Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

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 2001–NM–289–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. 2001–NM–289–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority—The Netherlands (CAA–NL), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on all Fokker Model F.28 Mark 0070 and 0100 series airplanes. The CAA–NL advises that an operator discovered that an airframe strut connecting the floor beams and the fuselage frame was missing the lower attachment bolt; the bolt hole was not drilled and only a pilot hole was present. This condition, if not corrected, could result in excessive deformation of the floor structure in the event of a rapid decompression in the lower cargo hold. Such deformation may result in the flight and engine control cables becoming jammed, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Fokker Services B.V. has issued Service Bulletin SBF100–53–096, dated April 11, 2001. The service bulletin describes procedures for performing a one-time general visual inspection for detecting any missing attachment bolts in the replaceable frame struts; for drilling a new hole; and for installing a new bolt (including a nut and washer), if necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA–NL classified this service bulletin as mandatory and issued Dutch airworthiness directive 2001–055, dated April 27, 2001, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

These airplane models are manufactured in the Netherlands and are 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 CAA–NL has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA–NL, 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.

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 designs registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously. If any missing attachment bolts are detected, the proposed AD would also require a general visual inspection to detect any deformation or crack in the affected floor beams and the fuselage frame C-channel at the strut attachment, and repair, if necessary.

Cost Impact

The FAA estimates that 139 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $8,340, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed 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.

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 adding the following new airworthiness directive:

Fokker Services B.V.: Docket 2001–NM–289–AD.

Applicability: All Model F.28 Mark 0070 and 0100 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, 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 (c) 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 the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent excessive deformation of the floor structure to the extent that flight and engine control cables might jam, accomplish the following:

Inspection

(a) Within 14 months after the effective date of this AD, do a one-time general visual inspection to detect any missing attachment bolts in the replaceable frame struts per Part 1, Part 2, and Part 3 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–096, dated April 11, 2001; as applicable.

Corrective Actions

(b) If any attachment bolts are found missing during the inspection required by paragraph (a) of this AD, before further flight, do the actions specified in paragraphs (b)(1) and (b)(2) of this AD.

(1) Drill a new hole and install a new bolt (including nut and washer), per the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–096, dated April 11, 2001.

(2) Do a general visual inspection to detect any deformation or crack in the affected floor beams and the fuselage frame C-channel at the strut attachment. If any deformation or crack exists, before further flight, repair per a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Civil Aviation Authority—The Netherlands (CAA–NL) (or its delegated agent).

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Dutch airworthiness directive 2001–055, dated April 27, 2001.

Issued in Renton, Washington, on March 22, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–7429 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–388–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Model 650 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Cessna Model 650 airplanes. This proposal would require a one-time inspection of the side brace mechanism assemblies of the left and right main landing gears (MLG) to detect any incorrect part number, and corrective actions if necessary. This action is necessary to prevent inadvertent disengagement of the locking mechanism of the side brace mechanism assembly, which could lead to collapse of the respective MLG, and result in a gear-up landing and possible injury to passengers and crew. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 13, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–388–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*. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–388–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 Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Robert P. Busto, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4157; fax (316) 946–4407.

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 2000–NM–388–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. 2000–NM–388–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Four incidents of main landing gear (MLG) collapse were reported on Cessna Model 650 airplanes upon landing. In one of those incidents, the right MLG became unlocked, while in two of those incidents, the left MLG became unlocked. In the fourth incident, the left MLG became unlocked, and, after the MLG struck a landing light fixture, the right MLG became unlocked. Another incident occurred during maintenance of an airplane, when the right outboard tire was overpressurized, causing failure of the tire/wheel in the hangar, and resulting in the right MLG becoming unlocked and consequent collapse of the MLG. Such conditions, if not corrected, could result in gear-up landing and possible injury to passengers and crew.

Background Information

The MLG actuators are operated hydraulically to retract and extend the MLGs during normal operation. During such operation, the actuators are retracted/extended by the airplane's hydraulic system. In addition, the emergency system is used to extend the actuators, while the MLG side brace incorporates a locking mechanism that locks the side brace in the extended position to prevent the MLG from collapsing when fully extended. When hydraulic pressure is applied to retract the MLG, the locking mechanism is unlocked.

Explanation of Relevant Service Information

The FAA has reviewed and approved the technical content of the initial issue of Cessna Service Bulletin SB650–32–47, including Cessna Service Bulletin Supplemental Data SB650–32–47, both dated August 14, 2000, which describes procedures for replacing any side brace mechanism assembly having an incorrect part number with a new, improved assembly. The new assembly includes an improved actuator that minimizes the chance of inadvertent unlock of the MLG. This replacement action is intended to address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time inspection of the side brace mechanism assemblies of the left and right MLGs to detect any incorrect part number, and corrective actions if necessary. If an assembly having the correct part number is found, no further action is required by this proposed AD. However, if an assembly having an incorrect part number is found, corrective actions include removing the side brace mechanism assembly of the respective main landing gear; and installing a new, improved assembly having the correct part number. The proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed Rule and Service Bulletin

The previously referenced service bulletin specifies a compliance time of approximately 1 year for accomplishing the replacement action. However, the FAA has determined that a 1-year compliance time would not address the identified unsafe condition in a timely manner because of the consequences of MLG failure, as described earlier. In developing an appropriate compliance time for this proposed AD, the FAA considered the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the one-time inspection. In light of all of these factors, the FAA finds a 6-month compliance time for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 353 Model 650 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 282 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 10 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $169,200, or $600 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed 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.

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 adding the following new airworthiness directive:

Cessna Aircraft Company: Docket 2000–NM–388–AD.

Applicability: Model 650 airplanes, serial numbers –0001 through –0241 inclusive, and serial numbers –7001 through –7112 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, 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 (c) 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 the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent disengagement of the locking mechanism of the side brace mechanism assembly of the left or right main landing gear (MLG), which could lead to collapse of the respective MLG, and result in gear-up landing and possible injury to passengers and crew; accomplish the following:

One-Time Inspection

(a) Within 6 months after the effective date of this AD, do a one-time inspection of the side brace mechanism assemblies of the left and right MLGs to detect any incorrect part number (P/N) found installed, as specified in Cessna Service Bulletin SB650–32–47, including Cessna Service Bulletin Supplemental Data SB650–32–47, both dated August 14, 2000.

(1) If the correct part number is found installed on the left side brace mechanism assembly, P/N 6217076–201, and on the right side brace mechanism assembly, P/N 6217076–202, no further action is required by paragraph (a) of this AD.

Corrective Action

(2) If incorrect P/N 6217076–2, 6217076–4, or 6217076–9 is found installed on either the left or right side brace mechanism assembly: Prior to further flight, replace any incorrect left side brace mechanism assembly with a new, improved assembly, P/N 6217076–201; and replace any incorrect right side brace mechanism assembly with a new, improved assembly, P/N 6217076–202; per Cessna Service Bulletin SB650–32–47, including Cessna Service Bulletin Supplemental Data SB650–32–47, both dated August 14, 2000. After the replacement action, no further action is required by this AD.

Spares

(b) As of the effective date of this AD, no person shall install a left or right MLG side brace mechanism assembly, P/N 6217076–2, 6217076–4, or 6217076–9, on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permit

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 22, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–7428 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Parts 22 and 51

[Public Notice 3950]

Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: This rule proposes fees for consular services. The rule also makes appropriate implementing and other related changes in affected portions set forth in these regulations. Specifically, the rule makes changes in the Schedule of Fees for Consular Services ("Schedule of Fees" or "Schedule") and makes technical changes concerning passport fees. The primary objective of the adjustments to the Schedule of Fees is to ensure that the costs of consular services are recovered through user fees to the maximum extent appropriate and permitted by law. As a result of new data on the cost of services, most fees are being increased. The proposed Schedule lowers the notarial fee by shifting some of the costs of this service to appropriations. In addition, the Schedule of Fees is being restructured and streamlined, making the Schedule easier to read and understand. Some services have been removed from the Schedule; in most cases, this is because services have been consolidated. Certain consular services performed for no fee are included in the Schedule so that members of the public will be aware of significant consular services provided by the Department that they may request and for which they will not be charged. Codes are being added to the Schedule to facilitate consular officers' use of the Department's consular accounting codes when the fees are actually collected.

DATES: Written comments must be received on or before April 29, 2002.

ADDRESSES: Interested persons are invited to submit written comments to: Office of the Executive Director, Bureau of Consular Affairs, Department of State, Suite H1004, 2401 E Street NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Susan Abeyta, Office of the Executive Director, Bureau of Consular Affairs, telefax: (202) 663–2499; e-mail: *fees@state.gov.*

SUPPLEMENTARY INFORMATION:

Background

The majority of the Department of State's consular fees are established pursuant to the general user charges statute, 31 U.S.C. 9701, and/or U.S.C. 4219, which, as implemented through Executive Order 10718 of June 27, 1957, authorizes the Secretary of State to establish fees to be charged for official services provided by embassies and consulates. Fees established under these authorities include fees for immigrant and nonimmigrant visa processing, for fingerprints, and for overseas citizens services. In addition, a number of statutes address specific fees: Passport application fees (including the cost of passport issuance and use) are authorized by 22 U.S.C. 214, as are fees for the execution of passport applications. (This provision was amended on November 29, 1999, by Public Law 106–113, to permit collection of a nonrefundable application fee subject to promulgation of implementing regulations, which are at 22 CFR parts 51 and 53.) Section 636 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, 110 Stat. 3009–703–704 (Sept. 30, 1996), authorizes establishment of a diversity visa application fee to recover the full costs of the visa lottery conducted pursuant to Sections 203 and 222 of the Immigration and Nationality Act ("INA"), 8 U.S.C. 1153, 1202. Nonimmigrant visa reciprocity fees are authorized and, in fact, generally required, pursuant to Section 281 of the INA, 8 U.S.C. 1351. Notwithstanding the general rule of reciprocity, however, a cost-based, nonimmigrant visa processing fee for the machine readable visa (MRV) and

for a combined border crossing and nonimmigrant visa card (BCC) (22 CFR 41.32) is authorized by Section 140(a) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, Public Law 103–236 (April 30, 1994). Certain persons are exempted by law or regulation from payment of specific fees. These exemptions are noted in the fee schedule and include the nonimmigrant visa fee exemptions set forth in 22 CFR 41.107 for certain individuals who engage in charitable activities or who qualify for diplomatic visas. In addition, aliens under age 15 are in certain circumstances entitled to a combined MRV/BCC for a statutorily established fee of $13, which is below the full cost of service, pursuant to Section 410 of Title III of the Commerce, Justice, State Appropriations Act enacted as part of the Omnibus FY 1999 Appropriations Act, Public Law 105–277 (Oct. 21, 1998). Various statutes also permit the Department to retain some of the consular fees it collects. These are, at present, the MRV and BCC fees, the passport expedite fee, the fingerprint fee, the J Visa Waiver fee, and the Diversity Visa Lottery fee. Authority to retain the Affidavit of Support fee has existed in the past and may be renewed.

With the exception of nonimmigrant visa reciprocity fees, which are established based on the practices of other countries, all consular fees are established on a basis of cost and in a manner consistent with general user charges principles, regardless of the specific statutory authority under which they are promulgated. As set forth in OMB Circular A–25, the general policy underlying user charges is that a reasonable charge should be made to each identifiable recipient for a measurable unit or amount of government service or property from which the user derives a special benefit. The OMB guidance covers all Federal Government activities that convey special benefits to recipients beyond those that accrue to the general public. The Department of State is required to review consular fees periodically to determine the appropriateness of each fee in light of applicable provisions of OMB Circular A–25. While services of direct benefit to individuals, organizations or groups should be paid for by the users rather than by taxpayers in general, the guidelines state that services performed for the primary benefit of the general public or the U.S. Government should be supported by tax revenues. The changes set forth in the proposed Schedule of Fees reflect these guidelines.

The last major revision of the Schedule of Fees was in 1998. Consistent with OMB Circular A–25, from September 1999 to October 2001, the Department conducted a cost-of-service study to determine the current direct and indirect costs associated with each consular service the Department provides, so that the Schedule could be updated. The study was supervised by the Bureau of Consular Affairs and performed with the assistance of an independent contractor. The contractor and Department staff surveyed and visited domestic and overseas consular sites handling a representative sample of all consular services worldwide in FY 2000. This review attempted to identify the fully allocated costs of consular services (direct and indirect). The results of the review indicated that a fee established on the basis of the average cost of a consular officer's time should be $235 per hour. This hourly rate is used in the proposed schedule to recover the cost of services that are infrequently provided and that may require very different expenditures of time depending on the unique circumstances of the service, such as providing a certificate of American ownership for a yacht, a service that directly benefits an individual. In situations where services are provided often enough to develop a reliable estimate of the average time involved, however, the schedule generally sets a flat service fee. In either case, the fee is designed to recover some or all—but not more than—actual fully allocated costs the Department expects to incur over the period that the Schedule will be in effect. When the fee is set below costs, the remaining cost is either recovered through allocation to related services for which are fees charged, or will be covered by taxpayers through appropriations. (Detailed information concerning the methodology of the study is available from the Bureau of Consular Affairs.) Based on this effort and subsequent analysis, the Department is now proposing adjustments to the Schedule of Fees. Major changes to the schedule are discussed below.

Passport Execution and Processing Fees (Effective August 15, 2002)

Passport fees for execution and application services ("execution" and "issuance" fees, under the current Schedule) have been raised. The proposed $30 (currently $15) execution fee for first-time applicants and others who must apply in person covers all costs associated with providing this service, both domestically and abroad. It is retained by non-Department acceptance agencies when such agencies are used. One passport application fee will be charged for each first-time and each renewal application: $55 for applicants age 16 or over and $40 for applicants under 16. Although the processing and issuance of a child's passport is more labor-intensive and therefore more costly, the shorter, five-year validity of a child's passport is the basis for charging the lower, $40 fee. A revision of 22 CFR 51.61 is included in this proposed rule to reflect the elimination of different passport application fees for first-time and renewal applications and the requirement that the execution fee be paid at the time of application rather than issuance.

The new passport fees will fully recover the cost of domestic and overseas passport application processing. In addition, consistent with long-standing Department practice, the fee will recover the cost of all emergency citizens services performed abroad, including assistance to U.S. citizens in cases of arrest, detention, death, serious illness or accident abroad. Also covered are the costs of certain non-emergency citizens services such as passport amendments and the voluntary registration of U.S. citizens at posts abroad.

Passport Expedite Fee (Effective August 15, 2002)

The proposed Schedule increases the passport expedite fee from $35 to $60. This fee pays for all of the additional costs associated with expediting the processing and issuance of an applicant's passport at a U.S. Passport Agency, so that the applicant can receive a passport in three days or less, instead of a domestic timeframe of approximately five weeks for mail-in applications that are not expedited. No overseas costs have been included in the fee for this service as the fee is not charged abroad, where the smaller volume of passport applications and other factors allow the Department's posts generally to act on all passport applications in three days or less, eliminating the need to differentiate between standards of service.

File Search and Verification of U.S. Citizenship (effective August 15, 2002)

The proposed $45 fee for this service has been held below cost because it is almost always associated with a passport application. Remaining costs have been allocated to the passport application, both adult and minor.

Adjudication of Citizenship for Undocumented Passport Applicants Born Abroad

This item has been eliminated from the proposed Schedule because the fee was reduced from $100 to 0, effective March 30, 2001, by Public Notice 3625, **Federal Register**, March 30, 2001 (66 FR 17360), for the reasons explained therein.

Report of Birth

The proposed Schedule increases the application fee for a Report of Birth of a U.S. Citizen Abroad from $40 to $65. The actual cost of performing the service is considerably higher, especially when the parents have lived abroad for long periods of time and their prior residency in the United States must be confirmed if their ability to transmit citizenship to their children is subject to a residency transmission requirement. It is in the U.S. Government's interest, however, to have U.S. citizens documented as early as possible. Keeping the fee below cost is intended to ensure that the fee itself does not serve as a disincentive to having young children documented as U.S. citizens. Remaining costs have been allocated to the passport application, both adult and minor. Fees for duplicate copies of Reports of Birth will be charged as presented in the Schedule under Documentary Services.

Overseas Citizens Services

The primary responsibility of U.S. consular officers abroad is the protection and welfare of U.S. citizens. No-fee services performed in instances of arrests, missing persons, child custody inquiries and destitution (requiring repatriation and/or emergency dietary assistance loans) are listed on the proposed Schedule for the information of the U.S. citizen traveler. As noted in the discussion of the passport fee, the costs for these services will continue to be allocated to the passport fee, consistent with long-standing Department practice. This ensures that any U.S. citizen traveling abroad may obtain emergency consular services without regard to ability to pay for the actual services rendered.

Death and Estate Services

No-fee services provided to the next-of-kin after the death of a U.S. citizen abroad have been consolidated under one item. The costs of these services are allocated to the passport fee.

The $235 hourly rate for consular time plus costs incurred will be charged for making arrangements for a deceased non-U.S. citizen family member. It replaces the current $700 flat fee for assistance in arranging transshipment of a foreign national's remains and in providing related documentary services. Assistance in the case of a non-U.S. citizen's death is provided only under special circumstances, e.g., when a U.S. citizen relative requires assistance or no representative of the deceased's country of nationality is present to render assistance. The proposed Schedule sets a $60 fee for the issuance of a Consular Mortuary Certificate on behalf of a non-U.S. citizen, based on the average time required to prepare the document.

The proposed Schedule combines all estate services for U.S. citizens under a single item. Consular officers have authority to take possession of and inventory estates and to oversee the final disposition of estates of U.S. citizens who die abroad. This authority is generally exercised, often on an interim basis, in the absence of a legal representative or in emergency situations. Expenses incurred in settling estates are generally paid from estate proceeds or must be paid by the estate representative. The costs of consular time and incidental expenses attributable to estate work are generally allocated to the passport fee because of the circumstances in which these services are provided and because the amount of consular time required usually is small. An additional reason for this approach is that most estates abroad are small and the net proceeds from disposition of the assets would not be sufficient to pay for even the minimal consular time usually involved. Thus, the Schedule proposes no separate fee for most estate work. In those few estate cases that do require significant consular time or expenditures, however, the Department has determined it is appropriate to charge for consular time and/or to require reimbursement of expenses. (In such cases, overseeing the sale and final disposition of the estate—disbursing funds and carrying out other legally related estate business—is often more appropriately handled by a private attorney or executor.)

Nonimmigrant Visa Services

The proposed Schedule raises to $65 the nonimmigrant Machine Readable Visa (MRV) application processing and Border Crossing Card fees. These fees pay for all costs associated with the processing and issuance of either an MRV or a machine-readable combined border crossing card and nonimmigrant visa (BCC). The five-year border crossing card fee for qualified Mexican children under the age of 15 remains $13, in accordance with Public Law 105–277 (see discussion under BACKGROUND above). Costs not recovered through the $13 fee have been reallocated to the fee for the 10-year MRV/BCC, as authorized by Public Law 105–277.

An exemption from the MRV fee has been added for U.S. government employees traveling on official business. A parallel exemption has been added under the nonimmigrant visa issuance fee, which is reciprocal, and varies according to the fees charged U.S. citizens by the applicant's country of origin. The U.S. government is deemed the primary beneficiary of this exemption because it applies to non-U.S. citizen U.S. government employees who travel to the United States on U.S. government orders to carry out their duties as employees.

Immigrant Visa Services

The proposed Schedule sets one immigrant visa application processing fee of $335 to replace the current Schedule's two separate fees for immigrant visa application processing ($260) and immigrant visa issuance ($65). The Department determined that charging one fee would simplify fee collection and enhance both administrative efficiency and convenience to the applicant. Some of the costs of related services (e.g., Affidavit of Support review, returning resident status determinations) have also been allocated to the immigrant visa application fee to keep the fees for those services at lower levels. Because a single processing fee will be charged, the Department has also reviewed and is proposing changes in its regulation regarding the circumstances in which a refund will be allowed (22 CFR 42.71). Since there will be no issuance fee, refunds will no longer be related to whether or not an immigrant visa is issued. Given that the actual work involved in processing an immigrant visa application has already commenced by the time the application fee is paid, the fee will be non-refundable unless the application is not or cannot be adjudicated as a result of action by the U.S. Government. The proposed revision is included in this proposed rule.

The current $75 Diversity Visa (DV) Lottery surcharge for the immigrant visa application will increase to $100. The Department has legal authority to establish the surcharge, which is paid only by persons who "win" the lottery and apply for a DV visa, at a level sufficient to cover the entire cost of running the lottery. The full exercise of this authority would lead to a much higher surcharge because the number of winning applicants (roughly 55,000) is much smaller than the total number of

lottery entrants (recently about 10 million). The surcharge has been kept below the legally authorized amount. The Department notes that DV applicants must also pay the immigrant visa application processing fee; that the $100 surcharge will represent an increase in this surcharge of 33 percent; and that the $100 surcharge will cover the Department's direct (but not indirect) costs of running the lottery. The Department believes that a $100 surcharge is therefore reasonable. Costs not recovered by the surcharge have been allocated to appropriations.

The proposed Schedule raises to $65 the Affidavit of Support Review Fee, currently $50. This fee is charged domestically for all Affidavits of Support reviewed at the National Visa Center to ensure that they are properly completed before they are forwarded to a consular post for adjudication. The fee has been held below the cost of service; costs not recovered through the fee have been allocated to the immigrant visa application.

Special Visa Services

While higher than current fees, the proposed fees for determining returning resident status ($360, currently $50), and for a transportation letter for legal permanent residents of the U.S. ($300, currently $100) will represent only approximately 50% of the Department's full costs of providing these services. Costs not covered by the fees for these special visa services have been allocated to the immigrant visa application-processing fee. This allocation allows the special visa service fees to be lower and is appropriate given that the users of the special visa services generally are persons who have previously been issued immigrant visas, and that someone issued an immigrant visa may reasonably expect to use such services at some point in the future in an unforeseen situation.

The proposed fee charged for a waiver of the two-year residency requirement for J-visa holders has increased to $230. This fee has been set to recover all of the costs associated with providing this service.

The current $25 fee for fingerprinting, when required in connection with a visa application, will increase to $85 to cover all costs incurred in providing this service abroad, including FBI costs billed to the Department of State for fingerprint processing.

Documentary Services

For documentary services, the proposed Schedule establishes a new fee structure that the Department expects will be easy to administer and that will lower the direct cost to customers. It establishes a consistent per-item fee for all documentary services. Customers requiring a service multiple times as part of a single transaction (e.g., notarization of a bill of sale and five copies, or notarization of three documents required for a single real estate transaction) will be charged one fee for the initial seal and a reduced fee for each subsequent seal. The current fees for documentary services are $55 for notarials, $20 for certifications, $10 for additional certified copies, and $32 for authentications. The proposed Schedule sets a fee of $30 for the first seal for a notarial, certified copy, copy or certified document from the Department's Vital Records Section, and $20 for each additional seal. A fee of $30 is proposed for each authentication of a U.S. or foreign official seal or signature. Costs not covered by the proposed fees will be offset by appropriations. The Department notes that there is a long-standing, statutory requirement that consular officers perform notarial services abroad. Such services are available for minimal fees in the United States, and public concern over the Department's notarial fees when they were set in 1998 to ensure that the actual users pay the full cost of service has demonstrated a widespread expectation that notarial and similar services will be available from the U.S. Government to overseas users for fees that are not significantly higher than domestic fees, even if the overseas fee is well below the actual cost of service. Thus, the Department has concluded that allocating part of the cost of notarials to the general taxpayer is appropriate.

Under the proposed Schedule, documentary fee exemptions for U.S. federal, state and local government agencies are combined under one item. One new exemption has been added: No fee will be charged for notarial services performed with respect to endorsing U.S. Savings Bonds Certificates. The U.S. Government is a beneficiary of the U.S. Savings Bond program, and imposing a fee on the individual bondholders for this service in the past has at times adversely affected persons of limited resources, thereby potentially discouraging use of this investment vehicle.

Judicial Assistance Services

The proposed Schedule separates judicial assistance services from documentary services. A fee of $650 is proposed for processing letters rogatory, judicial assistance cases under the Foreign Sovereign Immunities Act, and certificates for return of letters rogatory executed by foreign officials. The $650 fee covers the estimated costs incurred in a routine case. A flat rate of $475 is proposed for making arrangements for taking one or more depositions that will run continuously in a single location on a single day so that only one set of reservations for facilities, reporting, and other services need be made. This fee also reflects the estimated cost of a normal case. It will be charged again if a deposition for which the fee has been paid is cancelled and rescheduled. When a consular official must also attend or take the deposition or execute a commission to take testimony, the Department proposes to charge, in addition, the hourly rate for the time spent performing this service and for expenses actually incurred. A flat fee of $235 is proposed for swearing in witnesses for telephone depositions, reflecting that a consular officer will generally have to reserve an hour of time for this service. If the consular officer must remain on the line while the deposition proceeds, an hourly rate of $235 will be charged for each hour or part thereof over the first hour. The $60 fee proposed for providing seal and certification of depositions is based on an estimate of the average time needed to perform this service.

The proposed Schedule includes two exemptions from fees for judicial assistance services:

—The first applies to U.S. Federal, state, and local government agencies. The Department has determined that it is normally in the interest of the U.S. Government to perform services for other government agencies without assessing fees to those agencies. It streamlines administrative procedures for both agencies and facilitates performance of the task. In some cases, however, the effort required of the consular officer abroad can be extreme, in terms of time and cost. In those cases, the Department reserves the right to recover those costs by charging other agencies for consular time and expenses incurred. The cost of normal services for government agencies will otherwise be recovered through appropriations.

—Under the second exemption, no fee will be charged to execute commissions to take testimony in connection with foreign documents for use in criminal cases when the commission is accompanied by an order of federal court on behalf of an indigent party. The Department has determined that it is in the U.S. Government's interest to perform these services without assessing fees. It streamlines administrative

procedures, facilitates performance of the task without imposing bureaucratic obstacles, and is consistent with the government's broad interest in ensuring that criminal defendants get a fair trial.

Services Relating to Vessels and Seamen

The Schedule proposes to recover all costs associated with the processing and issuance of shipping and seamen services by charging the proposed $235 hourly rate for consular time plus any expenses incurred. These services include, but are not limited to, recording a bill of sale of a vessel purchased abroad, renewal of a marine radio license, and issuance of a certificate of American ownership. As these services are not performed on any routine basis, an average fee could not be determined. In paying the hourly rate for consular time, the beneficiary of the service will bear the full cost.

Administrative Services

The fee for setting up and maintaining a trust account increases from $25 to $30. It is Department policy to keep this fee below the cost of service because it is generally provided to individuals who have limited resources or who face unusual obstacles in transferring funds abroad. The remaining costs have been allocated to the passport application fee.

Consular time charges increase to $235 per hour and reflect the actual direct and indirect cost of service as determined by the Cost of Service Study conducted by the Bureau of Consular Affairs. The Department notes that this rate is high in part because maintaining consular officers and facilities abroad, including secure work and living environments, is costly.

Regulatory Findings

Administrative Procedure Act

The Department is publishing this rule as a proposed rule with a 30-day provision for public comments.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities as defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Order 12866

The Department of State does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order. In addition, OMB has been provided with an information copy of the proposed regulation.

Executive Order 13132

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

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements.

List of Subjects

22 CFR Part 22

Consular services, Fees, Schedule of fees for consular services, Passports and visas.

22 CFR Part 51

Fees, Passports and visas.

Accordingly, 22 CFR parts 22 and 51 are proposed to be amended as follows:

PART 22—[AMENDED]

1. The authority citation for part 22 continues to read as follows:

Authority: 8 U.S.C. 1153 note, 1351, 1351 note; 10 U.S.C. 2602(c); 22 U.S.C. 214, 2504(a), 4201, 4206, 4215, 4219; 31 U.S.C. 9701; Pub.L. 105–277, 112 Stat. 2681 et seq.; E.O. 10718, 22 FR 4632, 3 CFR, 1954–1958 Comp., p. 382; E.O. 11295, 31 FR 10603, 3 CFR, 1966–1970 Comp., p. 570.

2. Section 22.1 is revised to read as follows:

§ 22.1 Schedule of fees.

The following table sets forth the U.S. Department of State's schedule of fees for consular services:

SCHEDULE OF FEES FOR CONSULAR SERVICES

Item No.	Fee
Passport and Citizenship Services	
1. Passport Execution: Required for first-time applicants and others who must apply in person (effective 8/15/02) [01—PASSPORT EXECUTION].	$30.
2. Passport Application Services (effective 8/15/02) for:	
(a) Applicants age 16 or over (including renewals) [02—ADULT PASSPORT]	$55.
(b) Applicants under age 16 [03—MINOR PASSPORT]	$40.
(c) Passport amendments (extension of validity, name change, etc.) [04—AMENDMENT]	No fee.
3. Expedited service: Guaranteed 3-day processing and/or in-person service at a U.S. Passport Agency (effective 8/15/02; not applicable abroad) [EXPEDITED SERVICE].	$60.
4. Exemptions: The following applicants are exempted from passport fees:	

SCHEDULE OF FEES FOR CONSULAR SERVICES—Continued

Item No.	Fee
(a) Officers or employees of the United States and their immediate family members (22 U.S.C. 214) and Peace Corps Volunteers and Leaders (22 U.S.C. 2504(a)) proceeding abroad or returning to the United States in the discharge of their official duties [04—PASSPORT EXEMPT].	No fee.
(b) U.S. citizenseamen who require a passport in connection with their duties aboard an American flag vessel (22 U.S.C. 214) [04—PASSPORT EXEMPT].	No fee.
(c) Widows, children, parents, or siblings of deceased members of the Armed Forces proceeding abroad to visit the graves of such members (22 U.S.C. 214) [04—PASSPORT EXEMPT].	No fee.
(d) Employees of the American National Red Cross proceeding abroad as members of the Armed Forces of the United States (10 U.S.C. 2603) [04—PASSPORT EXEMPT].	No fee.
5. Travel Letter: Provided as an emergency accommodation to a U.S. citizen returning to the United States when the consular officer is unable to issue a passport book (consular time charges, item 75, may apply) [05—U.S.C. TRAVEL LETTER].	No fee.
6. File search and verification of U.S. citizenship (effective 8/15/02): When applicant has not presented evidence of citizenship and previous records must be searched (except for an applicant abroad whose passport was stolen or lost abroad or when one of the exemptions is applicable) [06—PPT FILE SEARCH].	$45.
7. Application for Report of Birth Abroad of a Citizen of the United States: [07—REPORT BIRTH ABROAD]	$65.
(Items nos. 8 through 10 vacant.)	
Overseas Citizens Services	
Arrests, Welfare and Whereabouts, and Related Services:	
11. Arrest and prison visits	No fee.
12. Assistance regarding the welfare and whereabouts of a U.S. Citizen, including child custody inquiries	No fee.
13. Loan processing	
(a) Repatriation loans	No fee.
(b) Emergency dietary assistance loans	No fee.
Death and Estate Services	
14. Assistance to next-of-kin:	
(a) After the death of a U.S. citizen abroad (providing assistance in disposition of remains, making arrangements for shipping remains, issuing Consular Mortuary Certificate, and providing up to 20 original Consular Reports of Death).	No fee.
(b) Making arrangements for a deceased non-U.S. citizen family member (providing assistance in shipping or other disposition of remains of a non-U.S. Citizen) [11—NON U.S.C. DEATH].	Consular time (item 75) plus expenses.
15. Issuance of Consular Mortuary Certificate on behalf of a non-U.S. Citizen [12—NON-U.S.C. MORT CERT]	$60.
16. Acting as a provisional conservator of estates of U.S. Citizens:	
(a) Taking possession of personal effects; making an inventory under an official seal (unless significant time and/or expenses incurred).	No fee.
(b) Overseeing the appraisal, sale, and final disposition of the estate, including disbursing funds, forwarding securities, etc. (unless significant time and/or expenses incurred).	No fee.
(c) For services listed in 16(a) or (b) when significant time and/or expenses are incurred [13—ESTATE COSTS]	Consular time (item 75) and/or expenses.
(Items nos. 17 through 20 vacant.)	
Nonimmigrant Visa Services	
21. Nonimmigrant visa application and border crossing card processing fees (per person):	
(a) Nonimmigrant visa [21—MRV PROCESSING]	$65.
(b) Border crossing card—10 year (age 15 and over) [22—BCC 10 YEAR]	$65.
(c) Border crossing card—5 year (under age 15)	
(d) For Mexican citizen if parent or guardian has or is applying for a border crossing card [23—BCC 5 YEAR]	$13.
22. EXEMPTIONS from nonimmigrant visa application processing fee:	
(a) Applicants for A, G, C—3, NATO and diplomatic visas as defined in 22 CFR 41.26 [24—MRV EXEMPT]	No fee.
(b) Applicants for J visas participating in official U.S. Government sponsored educational and cultural exchanges [24—MRV EXEMPT].	No fee.
(c) Replacement machine-readable visa when the original visa was not properly affixed or needs to be reissued through no fault of the applicant [24—MRV EXEMPT].	No fee.
(d) Applicants exempted by international agreement as determined by the Department, including members and staff of an observer mission to United Nations Headquarters recognized by the UN General Assembly, and their immediate families [24—MRV EXEMPT].	No fee.
(e) Applicants travelling to provide charitable services as determined by the Department [24—MRV EXEMPT]	No fee.
(f) U.S. Government employees travelling on official business [24—MRV EXEMPT]	No fee.
23. Nonimmigrant visa issuance fee, including border-crossing cards. [25—NIV ISSUANCE RECIPROCAL] RECIPROCAL	
24. EXEMPTIONS from nonimmigrant visa issuance fee:	
(a) An official representative of a foreign government or an international or regional organization of which the U.S. is a member; members and staff of an observer mission to United Nations Headquarters recognized by the UN General Assembly; and applicants for diplomatic visas as defined under item 22(a); and their immediate families [26—NIV ISSUANCE EXEMPT].	No fee.
(b) An applicant transiting to and from the United Nations Headquarters [26—NIV ISSUANCE EXEMPT]	No fee.
(c) An applicant participating in a U.S. Government sponsored program [26—NIV ISSUANCE EXEMPT]	No fee.
(d) An applicant travelling to provide charitable services as determined by the Department [26—NIV ISSUANCE EXEMPT].	No fee.
(Items Nos. 25 through 30 vacant.)	

SCHEDULE OF FEES FOR CONSULAR SERVICES—Continued

Item No.	Fee
Immigrant and Special Visa Services	
31. Filing immigrant visa petition (Collected for INS and subject to change):	
(a) Petition to classify status of alien relative for issuance of immigrant Visa [31—INS I—130 PETITION]	$130.
(b) Petition to classify orphan as an immediate relative [32—INS I–600 PETITION]	$460.
32. Immigrant visa application processing fee (per person) [33—IV APPLICATION]	$335.
33. Diversity Visa Lottery surcharge for immigrant visa application (per person applying as a result of the lottery program) [34—DV PROCESSING].	$100.
34. Affidavit of Support Review (only when AOS is reviewed domestically)	$65.
35. Special visa services:	
(a) Determining Returning Resident Status [35—RETURNING RESIDENT]	$360.
Transportation letter for Legal Permanent Residents of U.S. [36—LPR TRANSPORTATION LETTER]	$300.
(c) Waiver of 2 year residency requirement [27—J WAIVER]	$230.
(d) Waiver of immigrant visa ineligibility (collected for INS and subject to change) [37—IV WAIVER]	$195.
(e) Refugee or significant public benefit parole case processing [38—REFUGEE/PAROLE]	No fee.
(f) U.S. Visa fingerprinting [39—FINGERPRINTS]	$85.
(Item Nos. 36 through 40 vacant.)	
Documentary Services	
41. Providing notarial service:	
(a) First service (seal) [41—NOTARIAL]	$30.
(b) Each additional seal provided at the same time in connection with the same transaction [42—ADDITIONAL NOTAR].	$20.
42. Certification of a true copy or that no record of an official file can be located (by a post abroad):	
(a) First Copy [43—CERTIFIED COPY]	$30.
(b) Each additional copy provided at the same time [44—ADDITIONAL COPY]	$20.
43. Provision of documents, certified copies of documents, and other certifications by the Department of State (domestic):	
(a) Documents relating to births, marriages, and deaths of U.S. citizens abroad originally issued by a U.S. Embassy or Consulate.	$30.
(b) Issuance of Replacement Report of Birth Abroad	$30.
(c) Certified copies of documents relating to births and deaths within the former Canal Zone of Panama from records maintained by the Canal Zone Government from 1904 to September 30, 1979.	$30.
(d) Certifying a copy of a document or extract from an official passport record	$30.
(e) Certifying that no record of an official file can be located [45—BRTH/MAR/DEATH/NO RECORD]	$30.
(f) Each additional copy provided at same time [46—ADDITIONAL CERT]	$20.
44. Authentications (by posts abroad):	
(a) Authenticating a foreign notary or other foreign official seal or signature	$30.
(b) Authenticating a U.S. Federal, State, or territorial seal	$30.
(c) Certifying to the official status of an officer of the United States Department of State or of a foreign diplomatic or consular officer accredited to or recognized by the United States Government.	$30.
(d) Each authentication [47—AUTHENTICATION]	$30.
45. Exemptions: Notarial, certification, and authentication fees (items 35, 36, and 37) or passport file search fees (item 4) will not be charged when the service is performed:	
(a) At the direct request of any Federal Government agency, any State or local government, the District of Columbia, or any of the territories or possessions of the United States (unless significant costs would be incurred) [48—DOCUMENTS EXEMPT].	No fee.
(b) With respect to documents to be presented by claimants, beneficiaries, or their witnesses in connection with obtaining Federal, State, or municipal benefits [48—DOCUMENTS EXEMPT].	No fee.
(c) For U.S. citizens outside the United States preparing ballots for any public election in the United States or any of its territories [48—DOCUMENTS EXEMPT].	No fee.
(d) At the direct request of a foreign government or an international agency of which the United States is a member if the documents are for official noncommercial use [48—DOCUMENTS EXEMPT].	No fee.
(e) At the direct request of a foreign government official when appropriate or as a reciprocal courtesy [48—DOCUMENTS EXEMPT].	No fee.
(f) At the request of direct hire U.S. Government personnel, Peace Corps volunteers, or their dependents stationed or traveling officially in a foreign country [48—DOCUMENTS EXEMPT].	No fee.
(g) With respect to documents whose production is ordered by a court of competent jurisdiction [48—DOCUMENTS EXEMPT].	No fee.
(h) With respect to affidavits of support for immigrant visa applications [48—DOCUMENTS EXEMPT]	No fee.
(i) With respect to endorsing U.S. Savings Bonds Certificates [48—DOCUMENTS EXEMPT]	No fee.
(Item nos. 46 through 50 vacant.)	
Judicial Assistance Services	
51. Processing letters rogatory and Foreign Sovereign Immunities Act (FSIA) judicial assistance cases, including providing seal and certificate for return of letters rogatory executed by foreign officials:	
[51—LETTERS ROGATORY]	$650.
[52—FSIA]	$650.
52. Taking depositions or executing commissions to take testimony:	
(a) Scheduling/arranging appointments for depositions, including depositions by video teleconference (per daily appointment) [53—ARRANGE DEPO].	$475.
(b) Attending or taking depositions, or executing commissions to take testimony (per hour or part thereof) [54—DEPOSE/HOURLY].	$235 per hour plus expenses.

SCHEDULE OF FEES FOR CONSULAR SERVICES—Continued

Item No.	Fee
(c) Swearing in witnesses for telephone depositions [55—TELEPHONE OATH]	$235.00.
(d) Supervising telephone depositions (per hour or part thereof over the first hour) [56—SUPERVISE TEL DEPO]	$235 per hour plus expenses.
(e) Providing seal and certification of depositions [57—DEPOSITION CERT]	$60.00.
53. Exemptions: Deposition or executing commissions to take testimony. Fees (item 42) will not be charged when the service is performed:	
(a) At the direct request of any Federal Government agency, any State or local government, the District of Columbia, or any of the territories or possessions of the United States (unless significant time required and/or expenses would be incurred) [58—JUDICIAL EXEMPT].	No fee.
(b) Executing commissions to take testimony in connection with foreign documents for use in criminal cases when the commission is accompanied by an order of Federal court on behalf of an indigent party [59—INDIGENT TEST].	No fee.
(Items no. 54 through 60 vacant.)	
Services Relating to Vessels and Seamen	
61. Shipping and Seaman's services: Including but not limited to, recording a bill of sale of a vessel purchased abroad, renewal of a marine radio license, and issuance of certificate of American ownership:	
[61—SHIPPING BILL OF SALE]	Consular time (item 75) plus expenses.
[62—SHIPPING RADIO LISC]	Consular time (item 75) plus expenses.
[63—SHIPPING CERT AM OWN]	Consular time (item 75) plus expenses.
[64—SHIPPING MISC]	Consular time (item 75) plus expenses.
(Item nos. 62 through 70 vacant.)	
Administrative Services	
71. Non-emergency telephone calls.. [71—TOLL CALL COST] [72—TOLL COST SURCHARGE]	Long distance charge plus $10.
72. Setting up and maintaining a trust account: For 1 year or less to transfer funds to or for the benefit of a U.S. citizen in need in a foreign country [73—OCS TRUST].	$30.
73. Transportation charges incurred in the performance of fee and no-fee services when appropriate and necessary [74—TRANSPORTATION].	Expenses incurred.
74. Return check processing fee [75—RETURN CHECK]	$25.
75. Consular time charges: As required by this schedule and for fee services performed away from the office or during after-duty hours (per hour or part thereof/per consular employee) [76—CONSULAR TIME].	$235.
76. Photocopies (per page) [77—PHOTOCOPY]	$1.
(Items nos. 77 through 80 vacant.)	

PART 51—[AMENDED]

3. The authority citations for part 51 continues to read as follows:

Authority: 22 U.S.C. 211a; 213, 2651a; 2671(d)(3), 2714 and 3926; 31 U.S.C. 9701; E.O. 11295, 3 CFR, 1966–1970 Comp., p. 570; sec. 236, Pub. L. 106–113, 113 Stat. 1501A–430; 18 U.S.C.1621(a)(2).

4. Sec. 51.61 is revised to read as follows:

§ 51.61 Passport fees.

Fees, including execution fees, shall be collected for the following passport services in the amounts prescribed in the Schedule of Fees for Consular Services (22 CFR 22.1):

(a) A fee for each passport application filed, which fee shall vary depending on the age of the applicant. The passport application fee shall be paid by all applicants at the time of application, except as provided in § 51.62(a), and is not refundable, except as provided in § 51.63. A person who is denied a passport may request that the application be reconsidered without payment of an additional fee upon the submission, within 90 days after the date of the denial, of documentation not previously presented that is sufficient to establish citizenship or entitlement to a passport.

(b) A fee for execution of the passport application, except as provided in § 51.62 (b), when the applicant is required to execute the application in person before a person authorized to administer oaths for passport purposes. This fee shall be collected as part of the passport application fee at the time of application and is not refundable (see § 51.65). When execution services are provided by an official of a state or local government or of the United States Postal Service, the fee may be retained by that entity to cover the costs of service pursuant to an appropriate agreement with the Department of State.

(c) A fee for expedited services, if any, provided pursuant to § 51.66.

Dated: February 1, 2002.

Grant S. Green,

Under Secretary of State for Management, Department of State.

[FR Doc. 02–6863 Filed 3–27–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC85

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Fixed and Floating Platforms and Documents Incorporated by Reference

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Extension of comment period for proposed rule.

SUMMARY: This document extends to May 28, 2002, the previous deadline of

March 27, 2002, for submitting comments on the proposed rule published December 27, 2001 (66 FR 66851) that addresses fixed and floating offshore platforms and floating production systems (FPSs). It replaces the previous extension of the comment period to March 27, 2002, that was issued on February 12, 2002 (67 FR 6453).

DATES: We will consider all comments received by May 28, 2002, and we may not fully consider comments received after May 28, 2002.

ADDRESSES: Mail or hand-carry written comments (three copies) to the Department of the Interior; Minerals Management Service; 381 Elden Street; Mail Stop 4024; Herndon, Virginia 20170–4817; Attention: Rules Processing Team.

FOR FURTHER INFORMATION CONTACT: Carl Anderson, Engineering and Operations Division, at (703) 787–1608.

SUPPLEMENTARY INFORMATION: MMS was asked to extend the deadline for submitting comments on the proposed regulations revising 30 CFR 250, subparts A, I, and J to incorporate by reference new documents governing fixed and floating platforms and new riser, stationkeeping, and pipeline technology. The request was based on the considerations that FPSs previously have not been directly addressed in 30 CFR 250 and that issues related to increasing the use of FPSs on the Outer Continental Shelf are complex. MMS agrees that more time is appropriate to ensure that all of the issues in this area are fully addressed.

The FPSs are variously described as column-stabilized units (CSUs); floating production, storage and offloading facilities (referred to by industry as "FPSOs"); tension-leg platforms (TLPs); spars, etc. We are also incorporating into our regulations a body of industry standards pertaining to platforms and FPSs that will save the public the costs of developing separate and, in some cases, unnecessarily duplicative government standards.

Public Comments Procedures:

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: February 26, 2002.

Michael C. Hunt,

Acting Associate Director for, Offshore Minerals Management.

[FR Doc. 02–7588 Filed 3–26–02; 11:50 am]

BILLING CODE 4310–MR–W

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–02–11876]

Public Meeting on Motorcoach Safety Improvements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of public meeting; request for comments.

SUMMARY: This notice announces that NHTSA will be holding a public meeting regarding improvements in passenger crash protection regulations for motorcoaches. Because Canada shares a common interest in the safety of passengers that ride in motorcoaches, this meeting is being held jointly in cooperation with Transport Canada. This notice invites persons to make presentations and submit written comments on the same subject.

NHTSA and Transport Canada recognize that the occupant protection issues for motorcoaches differ significantly from those of passenger cars and trucks. Safety countermeasures that are cost effective for passenger vehicles may not necessarily be as effective in motorcoaches, particularity given travel comfort expectations associated with long distance travel by motorcoach. Therefore, it was decided to hold this public meeting to hear the views and comments from manufacturers, operators, users, and the public at large in order to be better informed of their specific needs, and to help us determine whether improvements in motorcoach passenger crash protection standards are warranted.

DATES: Public Meeting: NHTSA will hold a public meeting in Washington, DC on April 30, 2002, from 9:30 am until 5 pm at the below listed address.

Written Comments: Written requests to speak at the public meeting, comments to be submitted for the public record, and suggestions for items to be included in the meeting agenda, should be received at Docket Management at the below address no later than April 29, 2002.

ADDRESSES: Public Meeting: The public meeting will be held at the National Transportation Safety Board's meeting room at 429 L'Enfant Plaza, SW., Washington, DC.

Written Comments: Submit written comments to the DOT Docket Management System, U.S. Department of Transportation, PL 401, 400 Seventh Street, SW., Washington, DC 20590–0001.

Comments should refer to the Docket Number (NHTSA–02–11876) and two copies should be submitted. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard.

Comments may also be submitted to the docket electronically by logging onto the DOT Docket Management System Web site at *http://dms.dot.gov*. Click on "Help & Information" to obtain instructions for filing the comment electronically. In every case, the comment should refer to the Docket Number.

FOR FURTHER INFORMATION CONTACT: Charles Hott, Office of Crashworthiness Standards, NPS–12, NHTSA, 400 7th Street, SW., Washington, DC 20590 (telephone 202–366–0247, Fax: 202–493–2739).

Crash Statistics

Historically, motorcoaches (intercity buses) have been a relatively safe mode of transportation with about 10 fatalities per year (9 passengers and 1 driver). However, in severe crashes and rollovers, motorcoach passengers may have not been provided sufficient crash protection against ejection from the motorcoach. Data from the Fatality Analysis Reporting Systems supplemented by the National Transportation Safety Board (NTSB) was used to obtain the following information about motorcoach fatalities. As shown in Table 1, during the period of 1991 through 2000, there were 48 motorcoach crashes resulting in 101 motorcoach fatalities (16 drivers and 85 passengers). Of the 16 driver fatalities, 12 percent (2) were ejected from the bus and 88 percent (12) were not ejected. Of the 85 passenger fatalities, 55 percent (47) were ejected from the bus and 45 percent (37)

were not ejected, (one passenger had an unknown ejection status).

TABLE 1.—1991–2000 MOTORCOACH FATALITIES

48 Crashes	Total	Ejected	Not ejected	Unknown
Driver	16	2	14	
Passenger	85	47	37	1
Total	101	49	51	1

A large number of motorcoach fatalities occur in crashes involving motorcoach rollover. In fact, during the 19912000 period, the motorcoach rolled over in 18 of the 48 fatal crashes resulting in 37 fatalities (2 drivers and 35 passengers). Fatality data is shown in Table 2. Of the 35 passenger fatalities, 74 percent (26) were ejected from the bus and 26 percent (9) were not ejected. There were two driver fatalities, one ejected and one not ejected.

TABLE 2.—1990–1999 MOTORCOACH FATALITIES (ROLLOVER CRASHES)

18 Crashes	Total	Ejected	Not ejected
Driver	2	1	1
Passenger	35	26	9
Total	37	27	10

As shown in Table 3, there were 30 non-rollover crashes that produced 64 fatalities, 14 drivers and 50 passengers. Of the 50 passenger fatalities, 42 percent (21) were ejected from the bus and 58 percent (28) remained inside the bus. There were 14 driver fatalities. It should be noted that a single crash, where the bus did not rollover, produced 44 percent (22) of the passenger fatalities.

TABLE 3.—1990–1999 MOTORCOACH FATALITIES (NON-ROLLOVER CRASHES)

30 Crashes	Total	Ejected	Not ejected	Unknown
Driver	12	2	10	
Passenger	50	21	28	1
Total	64	23	38	1

National Transportation Safety Board Recommendations

In September 1999, the National Transportation Safety Board (NTSB) made several safety recommendations to the agency regarding regulations for improvement of passenger crash protection, roof crush, and advance glazing research in motorcoaches. The Safety Recommendations are as follows:

H–99–47—In 2 years, develop performance standards for motorcoach occupant protection systems that account for frontal impact collisions, side impact collisions, rear impact collisions, and rollovers.

H–99–48—Once pertinent standards have been developed for motorcoach occupant protection systems, require newly manufactured motorcoaches to have an occupant crash protection system that meets the newly developed performance standards and retains passengers, including those in child restraint systems, within the seating compartment throughout the accident sequence for all accident scenarios.

H–99–49—Expand your research on current advanced glazing to include its applicability to motorcoach occupant ejection prevention, and revise window glazing requirements for newly manufactured motorcoaches based on the results of this research.

H–99–50—In 2 years, develop performance standards for motorcoach roof strength that provide maximum survival space for all seating positions and that take into account current typical motorcoach window dimensions.

H–99–51—Once performance standards have been developed for motorcoach roof strength, require newly manufactured motorcoaches to meet those standards.

In a March 3, 2000 letter to NTSB, the agency responded to NTSB with the following:

In addressing this issue, NHTSA must also consider using its limited resources most efficiently. * * * The crashworthiness issues about motorcoaches the Safety Board raised deserve to be analyzed. Therefore, NHTSA will examine opportunities to share the cost of research with motorcoach manufacturers. The Safety Board's suggested time limitation of two years is not achievable given current resources. NHTSA asks that the Safety Board take under consideration that for many of the safety issues raised, appropriate industry standards are not in place on which to base regulations. Therefore, primary research needs to be performed prior to the issuance of any regulation.

The motorcoach manufacturers have now formed a bus manufacturer's council to address safety issues regarding motorcoaches.

Issues

This section discusses a range of issues and presents a series of questions for public comment to aid the agency in evaluating motorcoach safety protection and in determining potential improvements in motorcoach passenger crash protection standards.

(1) NHTSA and Transport Canada recognize that a two-tier approach is needed to improve occupant protection in motorcoaches. The first tier is the prevention of the crash or rollover event

from occurring. There are technologies that are currently being developed for use in passenger cars, such as (i) smart cruise control, (ii) stability control, and (iii) equipment that warns the driver of inadvertent lane changes. Are there technologies being developed, or that can be developed, that will reduce the likelihood of a crash or rollover for use in motorcoaches?

(2) The second tier is the mitigation of fatalities/injuries should a crash or rollover event occur. As stated earlier, passenger ejection appears to be a significant factor in severe motorcoach crashes and rollover events. Accident investigations reveal that large windows typically break away in a rollover, leaving large portals through which passengers can be ejected. We are interested in obtaining views on what structural changes in motorcoach design would be needed to mitigate ejection fatalities/injuries from motorcoach rollover events.

(3) Mitigation of ejection fatalities/injuries can be done by limiting the size of the glazing materials, and also by upgrading the standard for window retention and emergency exits in motorcoaches so that the windows do not come open or break during crashes or rollover events. Limiting the size of the glazing would offer smaller portals for ejection and reduces the likelihood of ejection during a rollover event. What changes to the existing regulation on window retention and emergency exits would be necessary to limit the size of the glazing and upgrade the standard to make it more applicable to the type of buses manufactured today? Should the agency change the window retention requirements to require that the windows be manufactured from materials that will not breakaway during impacts?

(4) Another possible improvement for motorcoaches may be to introduce a roof crush safety standard for motorcoaches. Such a standard could conceivably limit the size of the windows while providing additional structural support that could reduce intrusion into the passenger compartment during rollover events. What is the best approach to developing a roof crush standard that could conceivably maintain the size of the windows while providing additional structural support that could reduce intrusion into the passenger compartment during rollover events?

(5) We are aware that new technology of side curtain airbags is currently being offered in passenger cars. Passenger car side curtains may reduce the likelihood of ejection of unrestrained passengers. Some aspects of this technology may be adaptable for use in motor coaches. We are interested in any comments regarding the use of this or other technologies to reduce motorcoach ejections.

(6) Restraint systems are another possibility for mitigating ejection fatalities/injuries in motorcoach crashes. Technology was examined during NHTSA's school bus occupant protection research program to determine the feasibility for integrated lap/shoulder belts in school buses. What changes in the structure of the motorcoach would be necessary to ensure that the seats and seat belts have adequate strength to withstand impacts? What modifications to seat reclining features would be needed? What seat belt usage rates would be anticipated? What occupant size ranges would be necessary to accommodate for belt comfort and convenience?

(7) Another area of concern is occupant fatalities/injuries that are caused by head impact into interior components. Motorcoaches have features such as seat back lap trays and television monitors that are not normally found in general passenger vehicles. We are seeking comments on how to bring about occupant interior impact safety improvements, while recognizing that these features are for the comfort of passengers on long trips.

Procedural Matters

If you wish to make a presentation at the meeting, please contact Charles Hott at the above mailing address or telephone number by April 26, 2002. If your presentation will include slides, motion pictures, or other visual aids, please so indicate and NHTSA will make the proper equipment available. Presenters should bring at least one copy of their presentation to the meeting so that NHTSA can readily include the material in the public record. Those speaking at the public meeting should limit the length of their presentations to 20 minutes. Due to time imitations, NHTSA may have to limit the number of presenters per organization. NHTSA will provide auxiliary aids to participants as necessary. Any person desiring "auxiliary aids" (e.g., sign language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped texts, brailed materials, or large print materials and/or a magnifying device), please contact Charles Hott.

The agency intends to conduct the meeting informally to allow for maximum participation by all who attend. Interested persons may ask questions or provide comments during any period after a party has completed its presentation, on a time allowed basis as determined by the presiding official. If time permits, persons who have not requested time to speak, but would like to make a statement, will be afforded an opportunity to do so. The agency is interested in obtaining the views of its customers, both orally and in writing. An agenda for the meeting will be made based on the number of persons wishing to make oral presentations and will be available on the day of the meeting.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, Room 5219, at the street address given above, and copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR part 512).

All comments received before the close of business on the comment closing date indicated above will be considered. Comments will be available for inspection in the docket. After the closing date, NHTSA will continue to file relevant information in the docket as it becomes available. It is therefore recommended that interested persons continue to examine the docket for new material.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued: March 21, 2002.

Stephen R. Kratzke,

Associate Administrator, for Safety Performance Standards.

[FR Doc. 02–7366 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 67, No. 60
Thursday, March 28, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Request for Extension of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, 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 extension and reinstatement of the information collection currently approved for the Dairy Indemnity Payment Program.

DATES: Comments on this notice must be received on or before May 28, 2002 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Hill, USDA/Farm Service Agency, 1400 Independence Avenue, SW., STOP 0512; Washington, DC 20250–0512, telephone number (202) 720–9888. Comments may also be submitted by e-mail to: *Elizabeth_Hill@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Dairy Indemnity Payment Program.

OMB Control Number: 0560–0116.

Expiration Date of Approval: February 28, 2002.

Type of Request: Extension of a Currently Approved Information Collection.

Abstract: The Secretary of Agriculture is authorized to make Dairy Indemnity Payments to producers who have been directed to remove their raw milk from the commercial market because it has been contaminated by pesticides, nuclear radiation or fallout, or toxin substance and chemical residues other than pesticides.

Estimate of Burden: Public reporting burden for the collection of information is estimated to average 5 minutes per producer.

Respondents: Producers.

Estimated Number of Respondents: 80.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 126 hours.

Proposed topics for comment include: (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 and protect the interests of CCC and the producer; (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 collected; or (d) ways to minimize the burden of the collection of the information on those who respond, including the use of appropriated automated, electronic, mechanical, or 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 Elizabeth A. Hill, USDA/Farm Service Agency, 1400 Independence Avenue, SW., STOP 0512; Washington, DC 20250–0512, telephone number (202) 720–9888. 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.

Signed at Washington, DC, on March 8, 2002.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 02–7424 Filed 3–27–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

American Indian Livestock Feed Program

AGENCY: Commodity Credit Corporation.

ACTION: Notice.

SUMMARY: The Executive Vice President, Commodity Credit Corporation (CCC), is announcing the termination of the American Indian Livestock Feed Program (AILFP). Funds were discontinued after September 30, 2001.

FOR FURTHER INFORMATION CONTACT: Steven Peterson, Chief, Noninsured Assitance Programs Branch (NAPB), Production, Emergencies and Compliance Division (PECD), Farm Service Agency (FSA), United States Department of Agriculture (USDA), STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517, telephone (202) 720–5172; facsimile (202) 720-3646; e-mail *StevePeterson@wdc.fsa.usda.gov.*

EFFECTIVE DATE: This notice is effective on March 28, 2002.

SUPPLEMENTARY INFORMATION: The final rule for AILFP was published on June 8, 2000, with an initial budget of $12.5 million. This funding was nearly exhausted by January 2001. The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2001 (2001 Act) provided additional funding of $11.9 million to continue the AILFP.

The 2001 Act authorized AILFP funding only for those AILFP contracts and requests to extend feeding periods for existing AILFP contracts that were approved by the Deputy Administrator for Farm Programs (DAFP) no later than September 30, 2001. As a result of this statutory provision, AILFP funding is not available for any AILFP contract or request to extend a feeding period for an existing AILFP contract not submitted and approved by DAFP by September 30, 2001. The program is terminated.

Signed at Washington, DC, on March 28, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corportation.

[FR Doc. 02–7423 Filed 3–27–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 02–009N]

Codex Alimentarius Commission: 17th Session of the Codex Committee on General Principles

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting, request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, United States

Department of Agriculture (USDA), and the Food And Drug Administration (FDA), are sponsoring a public meeting on March 26, 2002, to provide information and receive public comments on agenda items that will be discussed at the Codex Committee on General Principles (CCGP), which will be held in Paris, France, on April 15–19, 2002. The Under Secretary and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the 17th Session of the General Principles Committee of the Codex Alimentarius Commission (Codex) and to address items on the Agenda for the 17th CCGP.

DATES: The public meeting is scheduled for Tuesday, March 26th, 2002, from 1:00 p.m. to 4:00 p.m.

ADDRESSES: The public meeting will be held in Room 107A, Jamie E. Whitten Building, 1400 Independence Ave, SW., Washington, DC. To receive copies of the documents referenced in the notice contact the FSIS Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. The documents are also accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/ccgp17/gp02_01e.htm*. If you have comments, please send an original and two copies to the FSIS Docket Room, Docket #02–009N. All comments submitted will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. F. Edward Scarbrough, U.S. Manager for Codex, U.S. Codex Office, FSIS, Room 4861, South Building, 1400 Independence Avenue SW., Washington, DC 20250, Phone: (202) 205–7760, Fax: (202) 720–3157. Persons requiring a sign language interpreter or other special accommodations should notify Dr. F. Edward Scarbrough at the above telephone number.

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO), and the World Health Organization (WHO). Codex is the major international organization for protecting the health and economic interests of consumers and encouraging fair international trade in food. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. In the United States, USDA, FDA, and EPA manage and carry out U.S. Codex activities.

The Codex Committee on General Principles deals with such procedural and general matters as are referred to it by the Codex Alimentarius Commission. Such matters have included the establishment of the General Principles that define the purpose and scope of the Codex Alimentarius; the nature of Codex standards and the forms of acceptance by countries of Codex standards; the development of Guidelines for Codex Committees; the development of a mechanism for examining any economic impact statements submitted by governments concerning possible implications for their economies of some of the individual standards or some of the provisions thereof; and the establishment of a Code of Ethics for the International Trade in Food. The Committee is chaired by France.

Issues To Be Discussed at the Public Meeting

The provisional agenda items will be discussed during the public meeting:

1. Adoption of the Agenda.
2. Matters referred by the Codex Alimentarius Commission and other Codex Committees, including Traceability.
3. Risk Analysis

(a) Proposed Draft Working Principles for Risk Analysis

(b) The Application of Risk Analysis in the Elaboration of Codex Standards (prepared by India)

(c) Consideration of the development of working principles for risk analysis to be applied by governments

4. Proposed Draft Revised Code of Ethics for International Trade in Foods
5. Guidelines for Cooperation with International Intergovernmental Organizations
6. Membership in the Codex Alimentarius Commission of Regional Economic Integration Organizations
7. Other Business, Future Work

Each issue listed will be fully described in documents distributed, or to be distributed, by the French Secretariat at the 17th Session of CCGP. Members of the public may access or request copies of these documents (see **ADDRESSES**).

Public Meeting

At the March 26th public meeting, the agenda items will be described, discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the FSIS Docket Room (see **ADDRESSES**). Written comments should state that they relate to activities of the 17th CCGP.

Additional Public Notification

Pursuant to Departmental Regulation 4300–4, "Civil Rights Impact Analysis," dated September 22, 1993, FSIS has considered the potential civil rights impact of this notice on minorities, women, and persons with disabilities. Therefore, to better ensure that these groups and others are made aware of this meeting, FSIS will announce it and provide copies of the **Federal Register** publication in the FSIS Constituent Update.

The Agency provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. 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 Agency 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 fax list 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 these various channels, the Agency is able to provide information with a much broader, more diverse audience.

For more information and to be added to the constituent fax list, fax your request to the Office of Congressional and Public Affairs, at (202) 720–5704.

Done at Washington, DC on: March 21, 2002.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 02–7469 Filed 3–27–02; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 02–004N]

Codex Alimentarius Commission: Twenty-fifth Session of the Codex Committee on Fish and Fishery Products

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), of the Department of Health and Human Services, are sponsoring a public meeting on May 8, 2002, to review technical content of the agenda item documents and to receive comments on all issues coming before the Twenty-fifth Session of the Codex Committee on Fish and Fishery Products (CCFFP), which will be held in Alesund, Norway, June 3–7, 2002.

DATES: The public meeting is scheduled for Wednesday, May 8, 2002, from 9:00 a.m. to 12:00 noon.

ADDRESSES: The public meeting will be held in the Harvey Wiley Federal Building, 5100 Paint Branch Parkway, College Park, Maryland 20740, Conference Room 4B 047.

To receive copies of the documents referenced in this notice, contact the Food Safety Inspection Service (FSIS) Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. The documents will also be accessible via the World Wide Web at the following address: *http://www.fao.org/waicent/faoinfo/economic/esn/codex*. Send comments, in triplicate, to the FSIS Docket Room and reference Docket #02–004N. All comments submitted in response to this notice will be available for public inspection in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Syed Amjad Ali, International Issues Analyst, U.S. Codex Office, FSIS, Room 4861, South Agriculture Building, 1400 Independence Avenue SW., Washington, DC 20250–3700, Telephone (202) 205–7760; Fax (202) 720–3157. Persons requiring a sign language interpreter or other special accommodations should notify Ms. Janet Walraven, Consumer Safety Officer, Office of Seafood, FDA, at telephone (301) 436–1404; Fax (301) 436–2601.

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission (Codex), was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled.

The Codex Committee on Fish and Fishery Products was established to elaborate codes and standards for fish and fishery products. The Government of Norway hosts this Committee and will chair the Committee meeting.

Issues To Be Discussed at the Public Meeting

The following specific issues will be discussed during the public meeting:

1. Matters Referred by the Codex Alimentarius Commission and other Codex committees.
2. Review Proposed Draft Standard for Dried Salted Anchovies.
3. Proposed Draft for Salted Atlantic Herring and Sprats for Histamine levels,
4. Proposed Draft Code of Practice for Fish and Fishery Products (sections 1, 2.1, 2.2, 2.9, 3 to 6 and 13).
5. Proposed Draft Code of Practice for Fish and Fishery Products: sections other than those listed in Item 3; Coated Fish; Retail; Surimi; Cephalopods; Transportation; Smoked; Salted; Molluscan Shellfish.
6. Proposed Draft Standard for Live, Quick Frozen and Canned bivalve Molluscs.
7. Proposed Draft Model Certificate for Fish and Fishery Products,
8. Proposed Draft Standard for Smoked Fish.
9. Proposed Draft Amendment to the Standard for Quick Frozen Lobsters.
10. Proposed Draft Standard for Scallops.
11. Discussion Paper—Inclusion of additional species and on labelling requirements related to the "name of the product" in Codex Standards (Proposed Draft Amendment to the Canned Sardines Standard).
12. Discussion paper on fish content in fish sticks.

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 provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via fax to over 300 organizations and individuals. 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 fax list 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 these various channels, FSIS is able to provide information to a much broader, more diverse audience.

For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC on: March 21, 2002.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 02–7470 Filed 3–27–02; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Madera County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Resource Advisory Committee Meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Public Law 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Sierra National Forest's Resource Advisory Committee for Madera County will meet on Monday, April 15, 2002. The Madera Resource Advisory Committee will meet at the U.S.D.A. Forest Service Office in North Fork, CA. The purpose of the meeting is to review the RAC application process, review the draft evaluation sheet, and review current applications.

DATES: The Madera Resource Advisory Committee meeting will be held Monday, April 15, 2002. The meeting will be held from 7 p.m. to 9 p.m.

ADDRESSES: The Madera County RAC meeting will be held at the USDA Forest Service Office, 57003 Road 225, North Fork, CA.

FOR FURTHER INFORMATION CONTACT: Dave Martin, USDA Sierra National Forest, 57003 Road 225, North Fork, CA 93643 (559) 877–2218 ext. 3100; e-mail: *dmartin05@fs.fed.us*.

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Review the application process; (2) review draft evaluation sheet; (3) review current project applications; (4) public comments. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: March 22, 2002.

David W. Martin,

District Ranger.

[FR Doc. 02–7430 Filed 3–27–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Fresno County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Resource Advisory meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Public Law 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Sierra and Sequoia National Forests' Resource Advisory Committee (RAC) for Fresno County will meet on April 9, 2000, 6:30–9:15 p.m. The Fresno County Resource Advisory Committee will meet at the Forest Supervisor's office Clovis, CA. The purpose of the meeting is for the Resource Advisory Committee to receive project proposals for recommendations to the Forest Supervisor for expenditure of Fresno County Title II funds.

DATES: The Fresno RAC meeting will be held on April 9, 2002. The meeting will be held from 6:30 p.m. to 9:15 p.m.

ADDRESSES: The Fresno County RAC meeting will be held at the Sierra National Forest Supervisor's office, 1600 Tollhouse Road, Clovis, CA.

FOR FURTHER INFORMATION CONTACT: Sue Exline, USDA, Sierra National Forest, 1600 Tollhouse Road, Clovis, CA 93611, (559) 297–0706 ext. 4804; e-mail *skexline@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Review and approve the March 19, 2002 meeting notes; (2) Consideration of Title II Project proposals from the public; (3) Consideration of Title II Project proposals from the RAC members; (4) Determine the date and location of the next meeting; (5) Public comment. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: March 19, 2002.

Ray Porter,

District Ranger.

[FR Doc. 02–7407 Filed 3–27–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Library

Notice of Intent To Seek Approval To Collect Information

AGENCY: National Agricultural Library, USDA, Agricultural Research Service.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Library's intent to request approval for a new information collection from the Food Safety Training and Education Alliance (FSTEA). This voluntary question form would allow FSTEA's external customers, who are primarily food safety trainers and educators, to ask questions and get answers regarding food safety training and education in the retail or foodservice sector. This form will assist FSTEA in providing a valuable service to its customers.

DATES: Comments on this notice must be received by June 3, 2002 to be assured of consideration.

ADDRESSES: Address all comments and questions concerning this notice to: Jimmy C. Liu, Food Safety Information Specialist, National Agricultural Library, 10301 Baltimore Avenue, Room 105, Beltsville, MD 20705–2351, 301–504–5840 301–504–6409. Submit electronic comments to *jliu@nal.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Ask An Expert (Food Safety Training and Education Alliance).

OMB Number: Not yet assigned.

Expiration Date: N/A.

Type of Request: Approval for new data collection from food safety educators and trainers.

Abstract: The collection of information using a voluntary question form will provide the Food Safety Training and Education Alliance (FSTEA) customers an opportunity to ask questions pertaining to food safety training and education in the retail or foodservice sector. Knowledgeable experts in the field will then answer the questions. The contribution form consists of one document comprised of 12 inquiry components. Some of these components include standard contact information, subject, and a field for the question itself.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.05 hours per response.

Respondents: Respondents will be food safety educators or trainers, primarily those working in the retail or foodservice sector.

Estimated Number of Respondents: 40 per year.

Estimated Total Annual Burden on Respondents: 2.0 hours.

Comments

Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the 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 respond, including the use of appropriate automated, electronic, mechanical, or other technology. Comments should be sent to the address in the preamble. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

Dated: March 8, 2002.

Caird E. Rexroad,

Associate Deputy Administrator.

[FR Doc. 02–7468 Filed 3–27–02; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Maximum Portion of Guarantee Authority Available for Fiscal Year 2002

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: As set forth in 7 CFR part 4279, subpart B, each fiscal year the Agency shall establish a limit on the maximum portion of guarantee authority available for that fiscal year

that may be used to guarantee loans with a guarantee fee of 1 percent or guaranteed loans with a guarantee percentage exceeding 80 percent.

Allowing the guarantee fee to be reduced to 1 percent or exceeding the 80 percent guarantee on certain guaranteed loans that meet the conditions set forth in 7 CFR 4279.107 and 4279.119 will increase the Agency's ability to focus guarantee assistance on projects which the Agency has found particularly meritorious, such as projects in rural communities that remain persistently poor, experience long-term population decline and job deterioration, are experiencing trauma as a result of natural disaster or are experiencing fundamental structural changes in the economic base.

Not more than 12 percent of the Agency quarterly apportioned guarantee authority will be reserved for loan requests with a guarantee fee of 1 percent, and not more than 15 percent of the Agency quarterly apportioned guarantee authority will be reserved for guaranteed loan requests with a guaranteed percentage exceeding 80 percent. Once the above quarterly limits have been reached, all additional loans guaranteed during the remainder of that quarter will require a 2 percent guarantee fee and not exceed an 80 percent guarantee limit. As an exception to this paragraph and for the purposes of this notice, loans developed by the North American Development Bank (NADBANK) Community Adjustment and Investment Program (CAIP) will not count against the 15 percent limit. CAIP loans are subject to a 50 percent limit of the overall CAIP loan program.

Written requests by the Rural Development State Office for approval of a guaranteed loan with a 1 percent guarantee fee or a guaranteed loan exceeding 80 percent must be forwarded to the National Office, Attn: Director, Business and Industry Division, for review and consideration prior to obligation of the guaranteed loan. The Administrator will provide a written response to the State Office confirming approval or disapproval of the request.

EFFECTIVE DATE: March 28, 2002.

FOR FURTHER INFORMATION CONTACT: Fred Kieferle, Processing Branch Chief, Business and Industry Division, Rural Business-Cooperative Service, USDA, Stop 3224, 1400 Independence Avenue, SW., Washington, DC 20250–3224, telephone (202) 720–7818.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866.

Dated: March 7, 2002.

John Rosso,

Administrator.

[FR Doc. 02–7500 Filed 3–27–02; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA).

ACTION: To give all interested parties an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD FEBRUARY 19, 2002–MARCH 19, 2002

Firm name	Address	Date petition accepted	Product
Supreme Tool & Die Co., Inc..	1536 Fenpark Drive, Fenton, MO 63026.	02/21/02	Metal industrial tooling and die fabrication.
M. W. Technologies, Inc.	71 Midland Avenue, Elmwood Park, NJ 07407.	02/22/02	Industrial process control instruments and apparatus for the pharmaceutical and food processing industries.
Border Foods, Inc.	4065 J Street, S.E., Deming, NM 88030.	02/25/02	Processed green chile.
Airpax, L.L.C.	807 Woods Road, Cambridge, MD 21613.	02/27/02	Magnetic circuit breakers.
Eminence Speaker, L.L.C. ..	838 Mulberry, Eminence, KY40019.	02/28/02	Loudspeakers for the music and entertainment industries.
Quad Tool & Design, Inc. ...	8565 Highway 45, Kewaskum, WI 53040.	02/27/02	Tooling for the molding of plastic articles, machined of metal.
Southwest Specialty Heat Treat, Inc..	225 East Marshall Wytheville, VA 24382.	03/04/02	Heat treatment of metal fasteners.
Randolph Dimension Corp.	216 Main Street, Jamestown, NY 14272.	03/04/02	Hardwood furniture products such as rails, arms and backs, and cabinets and other wood products.
S.O.S. From Texas	Route 4, Box 49, Shamrock, TX 79070.	03/04/02	Unisex tee shirts.
Larand Corporation	2450 West 3rd Court, Miami, FL 33010.	03/05/02	Metal stock shapes of brass, carbon steel, stainless steel and aluminum alloy for the recreational marine industry.
Rezolex Limited Company ..	2240 Pepper Road, Las Cruces, NM 88005.	03/05/02	Paprika-based oleo resin.
Rowe Foundry & Machine Co. dba Rowe Foundry Inc..	147 West Cumberland St., Martinsville, Il 62442.	03/06/02	Counterweights for backhoes.
Paul Villwock Farms	600 Perrydale Road, Dallas, Oregon 97338.	03/18/02	Plums.
Henry County Plywood Corporation.	1580 Phospho Springs Road, Ridgeway, Virginia 24148.	03/19/02	Hardwood plywood for the furniture industry.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm

contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

(The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.)

Dated: March 20, 2002.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 02–7433 Filed 3–27–02; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 001206342–2025–02; I.D. 020502B]

RIN 0348–ZB00

NOAA Restoration Center; Request for National and Regional Habitat Restoration Partners

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

ACTION: Notice of request for partnership proposals.

SUMMARY: The purpose of this document is to invite the public to submit multi-year proposals for establishing innovative partnerships with the NOAA Restoration Center (RC) at a national or regional level to further habitat restoration that will benefit living marine resources including anadromous fish. NOAA envisions working jointly on such partnerships, through its Community-Based Restoration Program (CRP), to select, competitively fund, and administer projects with substantial community involvement that restore NOAA trust resource habitats.

This document describes the types of habitat restoration partnerships that the RC envisions establishing, and describes criteria under which applications will be evaluated for funding consideration. Partnerships selected through this notice will be implemented through a grant or cooperative agreement mechanism and will involve joint selection and co-funding of multiple community-based habitat restoration projects. Funding for establishing new partnerships in FY 02 is limited and the selection process is anticipated to be highly competitive. This is not a request for individual community-based habitat restoration project proposals.

DATES: This is an open notice for applications that runs through August 1, 2002. Applications will be evaluated and partners selected monthly after date of publication in the **Federal Register** until the close of this solicitation. Applications that are not selected in a previous month will be considered in subsequent months to compete on a rolling basis. Applications received later than 5 days following the closing date will not be accepted or returned. No facsimile or electronic mail applications will be accepted.

ADDRESSES: Send applications to Christopher D. Doley, Director, NOAA Restoration Center, National Marine Fisheries Service, 1315 East West Highway (F/HC3), Silver Spring, MD 20910–3282; ATTN: CRP Partnership Applications.

See **SUPPLEMENTARY INFORMATION** section under Electronic Access for additional information on the CRP and for application form information.

FOR FURTHER INFORMATION CONTACT: Robin J. Bruckner or Alison Ward, (301) 713–0174, or by e-mail at *Robin.Bruckner@noaa.gov* or *Alison.Ward@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Program Description

The CRP, a financial and technical Federal assistance program, promotes strong partnerships at the national, regional and local levels to fund grass-roots, community-based activities that restore living marine resources and their habitats and promote stewardship and a conservation ethic for NOAA trust resources. NOAA trust resources are living marine resources that include commercial and recreational fishery resources (marine fish and shellfish and their habitats); anadromous species (fish, such as salmon and striped bass, that spawn in freshwater and then migrate to the sea); endangered and threatened marine species and their habitats; marine mammals, turtles, and their habitats; marshes, mangroves, seagrass beds, coral reefs, and other coastal habitats; and resources associated with National Marine Sanctuaries and National Estuarine Research Reserves. Priorities for habitat restoration partnership activities include: areas identified by NOAA Fisheries as essential fish habitat (EFH) and areas within EFH identified as Habitat Areas of Particular Concern; areas identified as critical habitat for federally or state listed marine and anadromous species; areas identified as important habitat for marine mammals and turtles; watersheds or such other areas under conservation management as special management areas under state coastal management programs; and other important commercial or recreational marine fish habitat, including degraded areas that historically were important habitat for living marine resources.

The CRP's objective is to bring together citizen groups, public and nonprofit organizations, watershed groups, industry, corporations and businesses, youth conservation corps, students, landowners, and local government, state, and Federal agencies to implement habitat restoration projects to benefit NOAA trust resources. Partnerships developed at national, regional and local levels contribute funding, land, technical assistance, workforce support or other in-kind services to promote citizen participation in the improvement of locally-important living marine resources and develop local stewardship and monitoring activities to sustain and evaluate the success of the restoration.

The CRP recognizes the significant role that partnerships can play in making habitat restoration happen within communities, and acknowledges that habitat restoration is often best implemented through technical and monetary support provided at a community level. Community-based restoration projects supported by the CRP are successful because they have significant local backing, depend upon citizens' hands-on involvement, and typically involve NOAA technical assistance or oversight. The role of NOAA in the CRP is to help identify potential restoration projects, strengthen the development and implementation of sound restoration projects within communities, and develop long-term, ongoing national and regional partnerships to support community-based restoration efforts of living marine resource habitats across a wide geographic area. For more information on the CRP, see Electronic Access.

II. Restoration Partnership Goals

NOAA is interested in developing national and regional partnerships that will lead to the accomplishment of on-the-ground, community-based

restoration of marine, coastal and freshwater habitats to benefit living marine resources, including anadromous fish species. The primary goals of NOAA in establishing these partnerships are to restore living marine resource habitats; to involve community member volunteers in restoration activities to increase public awareness of the ecological value of fisheries habitat and foster a sense of community stewardship and pride for local restoration efforts; to develop and maintain long-term, ongoing, working relationships of mutual benefit by partnering on activities where the priorities and goals of partners overlap; to combine resources with national and regional partners to increase the geographic scope and rate at which habitat restoration can be conducted; and to collaborate on project identification, development, and selection for funding with partners that are able to coordinate and manage most or all aspects of restoration activities.

The RC envisions four primary means of working collaboratively to implement fisheries habitat restoration through partnerships: (1) Through sharing of restoration priorities, project ideas and techniques among interested organizations; (2) through the investment of technical assistance and oversight on particular restoration projects of mutual interest; (3) through collaborative identification of quality habitat restoration projects, and independent investment of technical assistance and cash and in-kind project contributions; and (4) through cooperative agreements, where potential national and regional partners apply for funds to work with the RC on a multi-year basis to identify, develop, implement and monitor community-based habitat restoration projects to benefit NOAA trust resources. Establishing partnerships through a cooperative agreement mechanism will involve joint selection and co-funding of numerous community-based habitat restoration projects, and is the primary focus of this **Federal Register** document.

III. National and Regional Restoration Partnerships

NOAA invites the submission of multi-year proposals of up to 3 years for establishing innovative partnerships with the RC at a national or regional level to further coastal habitat restoration. Successful applicants will be those whose partnership proposals are broad-reaching and demonstrate the potential for significant benefits to living marine resources across a large geographic area, and those whose restoration projects will actively engage community participation. Applicants seeking to establish partnerships must demonstrate that restoration activities will be consistent with NOAA Fisheries goals outlined in this notice.

Proposals for both national and regional partnerships are encouraged. However, because regional partnerships are more focused in geographic scope, these applicants will be expected to demonstrate coordinated efforts among multiple groups such as universities, science centers, state and municipal agencies, watershed groups, local schools, civic groups and non-governmental organizations. Applications for regional partnerships should involve a coalition that will develop joint goals and objectives to accomplish habitat restoration, and whose activities are expected to take place across a substantial and defined geographic region, such as the Chesapeake Bay watershed, or the states that border the Gulf of Maine or the Gulf of Mexico, for example.

The CRP has worked with a variety of partners on community-based fishery habitat restoration. Successful partnerships resulted where joint goals and priorities were most effectively accomplished through collaborative activities, including the pooling of financial and technical resources. The following narrative highlights the qualitites the CRP desires in working with national and regional community-based restoration partners. The example illustrates aspects that will be considered in the evaluation of applications, but it is not intended to limit the scope of partnership proposals.

The CRP seeks partnerships to match NOAA cash contributions at a minimum of a 1:1 level, enabling a greater number of jointly evaluated and selected community-based habitat restoration projects to be implemented. The combined partnership investments are to be subsequently leveraged between 1 and 5 times once cash and in-kind contributions from local partners and volunteers are included. Ideally, NOAA's contribution under a partnership is used to co-fund competitive habitat restoration projects that benefit a wide range of NOAA trust resources over a substantial geographic area. NOAA and its partner(s) will jointly solicit for local, citizen-driven habitat restoration proposals, and identify, evaluate and prioritize individual projects for funding. Partners will be expected to play a primary role in project development, the competitive solicitation of proposals, the coordination of joint reviews and evaluations of proposals, the award and administration of sub-grants, and the direct administrative oversight and routine review of funded projects. Partners will be expected to ensure that all work on individual projects will meet Federal, state and local environmental permitting requirements and that projects will be monitored to evaluate their success. Partners also will be expected to conduct all financial, administrative and contractual aspects of subsequent awards, consistent with all applicable Federal regulations and U.S. Department of Commerce/NOAA procedures and policies. NOAA's role in most partnerships would be to provide technical assistance in project development, conduct requisite field visits, assist in the review and evaluation of proposals, and provide funding and technical guidance during project implementation and monitoring of project success.

Projects funded under a partnership will be expected to have strong on-the-ground habitat restoration components that provide educational and social benefits for people and their communities in addition to long-term ecological habitat improvements for NOAA trust resources. NOAA recognizes that accomplishing restoration is a multi-faceted effort involving project design, engineering services, permitting, construction, oversight and monitoring. Therefore, to allow maximum flexibility under a partnership, applicants should avoid unduly restricting proposed activities to specific restoration phases.

Restoration is defined here as activities that contribute to the return of degraded or altered marine, estuarine, coastal and freshwater anadromous fish habitats to a close approximation of their condition prior to disturbance. Restoration may include, but is not limited to, improvement of coastal wetland tidal exchange or reestablishment of historic hydrology; dam or berm removal; improvement or reestablishment of fish passageway; natural or artificial reef/substrate/habitat creation; establishment of riparian buffer zones and improvement of freshwater habitat features that support anadromous fish; planting of native coastal wetland and submerged aquatic vegetation; and enhancement of feeding, spawning and nursery areas essential to marine or anadromous fish.

A partnership application may target the restoration of specific habitats, or restrict work to certain geographic locations or the use of certain restoration techniques, if the restoration of these habitats or work in designated locations or with particular techniques has been documented under a regional planning effort to be a priority that is

also consistent with the priorities of NOAA Fisheries. An example of suitable documentation includes proposed restoration activities resulting from a regional planning or other process where multiple stakeholders have reached consensus. Proposals for partnerships with a narrow restoration focus that will benefit limited resources or few user groups, or that request funding solely to support or increase general organizational activities, are not considered ideal for the partnership development goals of the NOAA Restoration Center, and will be less likely to be selected for partnership agreements with the RC.

IV. Authority

The Secretary of Commerce is authorized under the Fish and Wildlife Coordination Act, 16 U.S.C. 661–666, to provide grants or cooperative agreements for fisheries habitat restoration.

V. Catalogue of Federal Domestic Assistance

The CRP is described in the "Catalogue of Federal Domestic Assistance," under program number 11.463, Habitat Conservation.

VI. Eligible Applicants

Eligible applicants are institutions of higher education, hospitals, other non-profits, commercial organizations, organizations under the jurisdiction of foreign governments, international organizations, state, local and Indian tribal governments, and Federal agencies. Although Federal agencies are eligible to apply, they are strongly encouraged to work with states, non-governmental organizations, national service clubs or youth corps organizations and others that are eligible to apply as potential NOAA habitat restoration partners, rather than seeking partnerships directly with NOAA. Proposals selected for funding from non-Federal applicants will be funded through a project grant or cooperative agreement under the terms of this document. Proposals selected for funding from a non-NOAA Federal agency will be funded through an interagency transfer.

The Department of Commerce National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in, and benefit from, Federal financial assistance programs. DOC/NOAA encourages proposals for innovative national and regional partnerships involving MSIs according to the criteria in this document, to strengthen the capacity of MSIs to foster student careers, research and workforce competitiveness in fisheries habitat restoration through identification, development, implementation and monitoring of on-the-ground community-based restoration projects on a national or regional scale.

VII. Anticipated Funding Levels for Partnership Activities

This solicitation invites multi-year partnerships of up to 3 years with the NOAA Restoration Center, in the form of cooperative agreements of up to $3,000,000 (combined NOAA and partner funds, maximum Federal funds $1,500,000) for the formation of national and regional habitat restoration partnerships in FY 2002, with allowances for higher amounts if the applicants can produce a cash match in excess of 1:1. Combined funds for partnerships may be scaled up from FY 2002 levels to $4,000,000 in FY 2003, and to $6,000,000 in FY 2004 dependent upon future budget increases. In accordance with NOAA Community-Based Restoration Program Guidelines (65 FR 16890, March 30, 2000), the Restoration Center Director (Director) will determine the proportion of funds available to the CRP on an annual basis that will be obligated to national and regional partnerships each year, including the proportion to be used for interagency partnerships, and the proportion to be used for direct solicitations for restoration projects through the CRP. The number of partnership awards to be made as a result of this solicitation will depend on the number of eligible applications received, the amount of funds requested for initiating partnerships by the applicants, the merit and rating of the proposals, and the amount of funds made available to the CRP by Congress. There is no guarantee that sufficient funds will be available to initiate partnerships where funding has been recommended, and the number of national and regional partnerships will be up to the discretion of the Director. Regional partnerships generally will have preference over national partnerships if available funds are limited. The exact amount of funds that may be awarded to work within a habitat restoration partnership will be determined in pre-award negotiations between the applicant and NOAA representatives. Publication of this document does not obligate NOAA to establish any specific partnership proposed or to obligate all or any parts of the available funds for partnership activities.

For partnerships where funding is recommended, funds awarded cannot necessarily pay for all the costs that the recipient might incur in the course of carrying out the partnership role. Generally, costs that are allowable include salaries, equipment, supplies, and training, as long as these are "necessary and reasonable." Allowable costs are determined by reference to the OMB Circulars A–122, "Cost Principles for Non-profit Organizations"; A–21, "Cost Principles for Education Institutions"; A–87, "Cost Principles for State, Local and Indian Tribal Governments"; and Federal Acquisition Regulation, codified at 48 Code of Federal Regulations, subpart 31.2 "Contracts with Commercial Organizations."

VIII. Matching Requirements

The overall focus of the CRP is to provide seed money to individual projects that leverage funds and other contributions from a broad public and private sector to implement locally important habitat restoration to benefit living marine resources. To this end, applicants seeking national and regional partnerships with the RC are encouraged to demonstrate a minimum 1:1 non-Federal match. While this is not a requirement, the RC strongly advises applicants to leverage as much investment as possible. Applicants with less than 1:1 match will not be disqualified, however applicants should note that cost sharing is an element considered in evaluation criteria (5) Cost-effectiveness and Budget Justification. The match can come from a variety of public and private sources and can include in-kind goods and services. Federal funds may not be considered matching funds. Applicants are permitted to combine non-Federal contributions from additional partners in order to meet the 1:1 match expected to establish a partnership, as long as the matching funds are not already being used to match other funding sources. Applicants whose proposals are selected for habitat restoration partnership funding will be bound by the percentage of cost sharing reflected in the award document signed by the NOAA Grants Officer.

IX. Type of Funding Instrument

Partnership proposals selected through this notice will be implemented through a cooperative agreement or interagency transfer. A cooperative agreement is a legal instrument reflecting a relationship between NOAA and a recipient whenever (1) the principal purpose of the relationship is to provide financial assistance to the recipient and (2) substantial involvement in the project by NOAA is anticipated during performance of the contemplated activity. NOAA may play a substantial role in any or all of the following: (1) Developing national and regional partnerships to promote locally driven habitat restoration activities; (2) conducting cooperative activities with recipients in project identification and ranking; (3) evaluating the performance of restoration projects; and (4) supporting project partners to enhance their effectiveness in meeting stated restoration goals for improving fisheries habitat.

X. Award Period and Partnership Duration

Applications for national and regional partnerships should cover a project period between 1 and 3 years. Multi-year project period requests may be funded incrementally on an annual basis, but once awarded, multi-year partnerships will not need to compete for funding in subsequent years. If an application is selected and approved for funding under a partnership, NOAA has no obligation to provide additional funding in connection with this partnership in subsequent years. However, the intention of the CRP is to attract and maintain partnerships that will be ongoing and long-lasting. Established partnerships are expected to continue through the duration of the project period. Future opportunities for submitting proposals to the competitive process for developing multi-year, national and regional habitat restoration partnerships are anticipated, but will be dependent on CRP funding levels and on the performance of existing partners to successfully maintain existing partnership activities to identify, develop, evaluate, implement and monitor community-based fisheries habitat restoration projects. A recommendation to the NOAA Grants Management Division (GMD) to continue an award for a partnership in subsequent years, or to extend the period of performance, is at the total discretion of the Director.

XI. Electronic Access

Information on the CRP, including examples of national partnerships and community-based habitat restoration projects that have been funded to date, can be found on the world wide web at *http://www.nmfs.noaa.gov/habitat/restoration/community/index.html*. The standard NOAA grants application forms and instructions for applicants are accessible through this web site, or they can be obtained from the NOAA Restoration Center (see **ADDRESSES**). Potential applicants are encouraged to contact the NOAA Restoration Center to discuss partnership ideas and request an application package that contains instructions for submitting NOAA grants applications and supplementary instructions specific to the NOAA Community-Based Restoration Program.

XII. Application Process

To submit a proposal, a complete NOAA grants application package should be filed in accordance with the guidelines in this document. Each application should include all specified sections as follows: cover sheet (an applicant must use OMB Standard Form 424 as the cover sheet for each project); budget detail (SF 424A and budget justification narrative); grant assurances (SF424B); certifications (CD–511); and SF-LLL and CD–346 if applicable; and narrative project description (statement of work). Budgets should include a detailed breakdown by category of cost estimates as they relate to specific aspects of the partnership, with appropriate justification for both the Federal and non-Federal shares.

The narrative project description should be no more than 15 double-spaced pages long, in 12 point font, and should give a clear presentation of the proposed partnership. It should identify the problems the partnership will address and the geographic area over which the partnership will operate. The narrative should describe short- and long-term objectives and goals, methods for identifying potential projects, the criteria that will be used for selecting restoration proposals and determining the success of projects implemented at a community level under the partnership, and the relevance of the proposed partnership to enhancing habitat to benefit living marine resources. The narrative also should address a mechanism that partners will use to ensure that all necessary environmental permits and consultations will be secured prior to the use of Federal funds. Additionally, the narrative should identify the anticipated partnership duration, amount and timing of funds requested, potential sources of match, and any restrictions the partner may impose on the further use of Federal funds. For example, if the partner anticipates limiting competition by restricting the level of funding per project, restricting funding to specific project phases, cost categories or to specific recipients, restricting habitat types, organization types or geographic locations from consideration, these restrictions should be clearly detailed in the narrative. It is NOAA's intention to maintain maximum competition and flexibility in the use of Federal restoration funds.

Anticipated project partners other than the applicant should be identified; this is particularly important for those applying to establish regional partnerships. The project narrative should describe the organizational structure of the applicant group(s), detail their qualifications and identify proposed partnership staff. In general, applications should clearly demonstrate the broad-based benefits expected to habitats, and how these benefits will be achieved through partnership activities with the RC. Partnerships that emphasize a single restoration component, such as only outreach, monitoring, or program coordination are discouraged, as are applications that propose partnerships to expand an organization's day-to-day activities that have limited NOAA involvement, or primarily support administration, salaries, overhead and travel.

Applications should not be bound or stapled and should be printed on one side only. Incomplete applications will be returned to the applicant. Three copies (including one signed original) of each application are required and must be submitted to the NOAA Restoration Center (see **ADDRESSES**). Applicants may opt to submit additional copies (seven are needed for reviewing purposes) if it does not cause a financial hardship.

XIII. Indirect Costs

The budget may include an amount for indirect costs if the applicant has an established indirect cost rate with the Federal government. Indirect costs are essentially overhead costs for basic operational functions (e.g. lights, rent, water, insurance) that are incurred for common or joint objectives and therefore cannot be identified specifically within a particular partnership. For this solicitation, the Federal share of the indirect costs must not exceed the lesser of either the indirect costs the applicant would be entitled to if the negotiated Federal indirect cost rate were used or 25 percent of the direct costs proposed. For

those situations in which the use of the applicant's indirect cost rate would result in indirect costs greater than 25 percent of the Federal direct costs, the difference may be counted as part of the non-Federal share. A copy of the current, approved negotiated indirect cost agreement with the Federal Government should be included with the application. If the applicant does not have a current negotiated rate and plans to seek reimbursement for indirect costs, documentation necessary to establish a rate must be submitted within 90 days of receiving an award.

XIV. Partnership Selection Process

Applications will be screened by CRP staff to determine if they are eligible, complete and in accordance with instructions detailed in the standard NOAA Grants Application Package. Eligible restoration partnership proposals will undergo a technical review, rating, and selection process. Proposals will be reviewed by NOAA regional and headquarters staff to determine how well applications meet the stated aims of the CRP, and how well the proposal meets the goals of the NOAA RC for establishing partnerships. As appropriate during this process, the NOAA Restoration Center will solicit individual technical evaluations of each partnership proposed and may request evaluations from other NOAA offices, the GMD, the U.S. Department of Commerce, the Regional Fishery Management Councils, other Federal and state agencies, such as state coastal management agencies and state fish and wildlife agencies, and private and public sector restoration experts who have knowledge of a specific applicant, program or its subject matter.

Applications for proposed partnerships will be evaluated by individual technical reviewers, including those mentioned in the above paragraph, according to the criteria and weights described in this solicitation. The proposals will be rated, and reviewer comments and scores will be presented to the Director. Applications that were not selected in a previous month will be considered in subsequent months, but will only be evaluated and scored once. The Director, in consultation with CRP staff, may take into account the following program policy factors: (a) Diversity of geographic location and habitat types to be restored; (b) diversity of applicants; (c) degree of duplication of proposed partnership activities with other partnerships that are currently in effect or approved for funding by NOAA and other Federal agencies; (d) factors that may not be known by technical reviewers that would affect achievement of the CRP's objectives as described in this announcement and the Program Guidelines (65 FR 16890, March 30, 2000); and (e) the availability of funds. Hence, partnership awards may not necessarily be extended to all applicants that score well. The Director, in consultation with CRP staff, will select the partnerships to be recommended to the GMD for funding and determine the amount of funds available for each approved partnership. Unsuccessful applicants will be notified in writing that their proposal was not among those selected for funding, and unsuccessful applications will be kept on file until the close of the current fiscal year then destroyed.

Successful applicants may be asked to modify objectives, work plans, or budgets prior to final approval of an award. The exact amount of funds to be awarded, the final scope of activities, the partnership duration, and specific NOAA cooperative involvement with the activities proposed under selected partnerships will be determined in pre-award negotiations among the applicant, the GMD, and CRP staff. Partnership activities should not be initiated in expectation of Federal funding until a notice of award document is received from the GMD.

Successful applicants will be selected to establish habitat restoration partnerships with the RC monthly until the close of this solicitation. Notification of approved partnership status will take place approximately 60 days after the cooperative agreement application is forwarded to the GMD, when all NOAA/applicant negotiations of cooperative activities have been completed. Applicants should consider this selection and processing time in developing requested start dates for proposed partnership activities.

XV. Evaluation Criteria

Reviewers will assign scores to proposals ranging from 0 (unacceptable) to 100 (excellent) points based on the following five evaluation criteria and respective weights:

(1) *Potential of the Partnership to Benefit Living Marine Resources* (20 percent)

Proposals will be evaluated on (a) the national or regional extent of proposed habitat restoration activities and (b) the types of habitats that will be restored under the partnership. In particular, NOAA will evaluate partnership proposals based on the potential of the applicant and proposed magnitude of the partnership to restore, protect, conserve, and enhance habitats and ecosystems vital to self-sustaining populations of living marine resources under NOAA Fisheries stewardship.

(2) *Partner Strengths and Experience* (20 percent)

The applicant should demonstrate its abilities to effectively and efficiently manage a significant number of projects simultaneously. Applicants will be evaluated on the qualifications, past experience, and potential of the project partners to effectively identify, develop, select, manage and oversee all project phases, particularly financial and administrative management of sub-awards, and the ability to ensure scientifically-based monitoring is implemented on individual projects funded through sub-awards.

(3) *Adequacy of Partnership Plan* (20 percent)

The partnership plan will be evaluated on: (a) the adequacy of proposed strategies for coordination with NOAA in all phases of project selection, design, implementation and monitoring; (b) the degree to which the selection process is competitive, and ensures that sub-awards are made according to technical evaluations and identified weighting factors consistent with NOAA priorities; (c) the ability of the partner to foster restoration activities under the partnership that will be consistent with regional or community planning processes, or other stakeholder mechanisms used to prioritize projects; (d) the degree to which projects selected for sub-awards are expected to have long-lasting results that will be sustained into the future through conservation easements or similar protection; (e) the ability to advance the partnership and increase awareness of the importance of habitat restoration; and (f) the ability to provide assurance that projects implemented through sub-awards will meet all Federal and state environmental laws and obtain applicable permits and consultations.

(4) *Ability to Engage Communities in Habitat Restoration* (20 percent)

Proposals will be evaluated on the suitability of proposed actions to involve citizens and broaden their participation in habitat restoration projects. Proposals must include information on how the selection of projects under the partnership with NOAA will promote significant community involvement in fisheries habitat restoration and stewardship. Community participation may include: (a) hands-on training and restoration activities undertaken by volunteers; (b) sponsorship from local entities, either through in-kind goods and services (earth moving, technical expertise, conservation easements) or cash

contributions; (c) public education and outreach; (d) support from state and local governments; and (e) ability to achieve long-term stewardship for restored resources and to generate a community conservation ethic.

(5) *Cost-effectiveness and Budget Justification* (20 percent)

Proposals will be evaluated on: (a) the percentage of funds that will be dedicated to all phases of restoration project implementation including physical, on-the-ground restoration compared to the percentage that is for administration and overhead to be used by the partner; (b) the overall leverage of NOAA funds anticipated, including the amount of cash match; (c) the ability to which the partnership and projects selected are likely to catalyze future restoration and protection of living marine resources; and (d) the ability of the applicant organization to demonstrate that a significant benefit will be generated for a reasonable cost. NOAA desires cost sharing to leverage funding and to further encourage partnerships among government, industry, and academia. In order to encourage on-the-ground restoration, if funding for salaries is requested, it must be used to support staff directly involved in overseeing the accomplishment of the restoration work that will take place under the partnership.

XVI. Other Requirements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the Federal Register notice of October 1, 2001 (66 FR 49917), will be applicable to this solicitation. However, please note that the Department of Commerce will not implement the requirements of Executive Order 13202 (66 FR 49921), pursuant to guidance issued by the Office of Management and Budget in light of a court opinion which found that the Executive Order was not legally authorized. See Building and Construction Trades Department v. Allbaugh, 172 F. Supp. 2d 138 (D.D.C. 2001). This decision is currently on appeal. When the case has been finally resolved, the Department will provide further information on implementation of Executive Order 13202.

Applications under this program are subject to the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs."

Classification

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or by any other law for this document concerning grants, benefits, and contracts. Accordingly, a regulatory flexibility analysis is not required by the Regulatory Flexibility Act.

The CRP will determine National Environmental Policy Act compliance on a project by project basis under each funded partnership.

This action has been determined to be not significant for purposes of Executive Order 12866.

The use of the standard NOAA grants application package referred to in this notice involves collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, SF–LLL, and CD–346 have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

Dated: March 22, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 02–7511 Filed 3–27–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032502C]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a meeting of its Bottomfish Plan Team (BPT) in Honolulu, HI.

DATES: The meeting of the BPT will be held on April 10 and 11, 2002, from 8:30 a.m. to 5 p.m. each day.

ADDRESSES: The BPT will be held at the Council Office Conference Room, Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813; telephone: 808–522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The BPT will meet on April 10 and 11, 2002, at the Council Conference Room to discuss the following agenda items:

Wednesday, April 10, 2002, 8:30 a.m.

(1) Introduction

(2) Annual Report review

a. Review Status of 2000 Annual Report Recommendations

b. Identify problems and possible solutions for uncompleted recommendations

c. Review 2001 Annual Report modules and recommendations

American Samoa

Guam

Hawaii

Northern Mariana Island

d. 2000 Annual Report region-wide recommendations

(3) Research priorities for Western Pacific Region bottomfish fisheries

a. Bottomfish research needs

i. American Samoa

ii. Guam

iii. Hawaii

iv. CNMI

b. Prioritize research needs and recommendations

Thursday, April 11, 2002, 8:30 a.m.

(4) Guam offshore bottomfishery development

a. Report on the fishery

b. Management considerations

(5) Northwestern Hawaiian Islands (NWHI) Issues

a. Management under the Clinton Executive Orders that establish the NWHI Coral Reef Reserve

b. Sanctuary Designation Process

c. Pending management actions under the Magnuson-Stevens Act

i. New entry criteria for Mau Zone

ii. Modification to permit renewal and lease charter provisions

(6) Status of Draft Environmental Impact Statement, Biological Opinion, and Marine Mammal Protection Act requirements

(7) Monk Seals

a. Recommendations from the Hawaiian Monk Seal Recovery Team

b. Review and classification of past monk seal hookings

(8) Observer and Monitoring Program

a. NMFS plan for observer coverage

b. New technology options to monitor bottomfish vessels

c. Vessel Monitoring System and depth sensor technology; and

(9) Other Business.

The order in which the agenda items are addressed may change. The BPT will meet as late as necessary to complete scheduled business. Although non-

emergency issues not contained in this agenda may come before the BPT for discussion, those issues may not be the subject of formal action during these meetings. Plan Team action will be restricted to those issues specifically listed in this document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to the meeting date.

Dated: March 25, 2002.

Matteo Milazzo,

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

[FR Doc. 02–7513 Filed 3–27–02; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Wednesday, April 3, 2002, 2:00 p.m.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public—Pursuant to 5 U.S.C. 552b(f)(1) and 16 CFR 1013.4(b) (3), (7), (9), and (10) and submitted to the **Federal Register** pursuant to 5 U.S.C. 552b(e)(3).

MATTER TO BE CONSIDERED: Compliance Status Report. The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: March 25, 2002.

Todd A. Stevenson,

Secretary.

[FR Doc. 02–7722 Filed 3–26–02; 3:08 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by April 29, 2002.

Title, Form, and OMB Number: Commissary Evaluation and Utility Surveys—Generic; OMB Number 0704–0407.

Type of Request: Revision.

Number of Respondents: 50,000.

Responses Per Respondent: 1.

Annual Responses: 50,000.

Average Burden Per Response: 6 minutes.

Annual Burden Hours: 5,000.

Needs and Uses: The Defense Commissary Agency will conduct a variety of surveys to include, but not limited to customer satisfaction, transaction based comment cards, transaction based telephone interviews, commissary sizing, and patron migration. The information collection will provide customer perceptions, demographics, and will identify agency operations that need quality improvement, provide early detection of process or system problems, and focus attention on areas where customer service and functional training, new construction/renovations, and changes in existing operations that will improve service delivery.

Affected Public: Individuals or Households; Business or Other For-Profit.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jackie Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: March 22, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–7391 Filed 3–27–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary; Preparation of a Supplemental Environmental Impact Statement for the Airborne Laser Program

AGENCY: Missile Defense Agency (MDA), Department of Defense.

ACTION: Notice of intent.

SUMMARY: The Missile Defense Agency is preparing a Supplement to the Final Environmental Impact Statement (FEIS) for the Program Definition and Risk Reduction (PDRR) Phase of the Airborne Laser (ABL) Program (April 1997) and Record of Decision (September 1997). This Supplemental Environmental Impact Statement (SEIS) will analyze proposed ABL Program test activities at Kirtland Air Force Base (KAFB), Holloman Air Force Base (HAFB), and White Sands Missile Range (WSMR), New Mexico; and Edwards Air Force Base (EAFB), Vandenberg Air Force Base (VAFB), and the Adjacent Point Mugu Naval Air Warfare Center (PMNAWC) Sea Range, California. The SEIS will be prepared in accordance with the National Environmental Policy Act, as amended (42 U.S.C. 4321, *et seq.*), and the Council on Environmental Quality Regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508). The ABL is a laser weapon system installed on a Boeing 747–400F aircraft capable of operating for extended periods of time. Up to two such aircraft would be developed. The ABL weapon system is proposed to include four lasers:

- Active Ranging System (ARS) Laser (a small carbon dioxide laser used to begin tracking a target),
- Track Illuminator Laser (TILL), (a solid state laser used to provide detailed tracking of a target),
- Beacon Illuminator Laser (BILL), (a solid state laser used to measure atmospheric distortion), and
- High-Energy Laser (HEL), (i.e., Chemical Oxygen-Iodine Laser (COIL)—a chemical laser used to destroy a target).

An additional laser, a surrogate for the High-Energy Laser (SHEL), will be used during testing in place of the HEL. The SHEL is a low-power solid-state laser that would be used in both ground- and flight-testing. The ABL also would

include an Infrared Search and Track sensor (IRST) (a passive infrared device used to identify heat sources). The 1997 PDRR ABL FEIS analyzed use of a COIL HEL on board an aircraft to destroy ballistic missiles in the boost phase. The Record of Decision (ROD) on the FEIS documented the Air Force's decision to proceed with PDRR phase ABL home base activities at EAFB, diagnostic test activities over WSMR, and expanded area test activities at VAFB and the PMNAWC Sea Range. Since completion of the FEIS, specific proposed test activities have been identified and additional information made available about the proposed testing that warrant preparation of an SEIS.

FOR FURTHER INFORMATION CONTACT: Ms. Pamelia Bain, Director, External Affairs, Missile Defense Agency, 7100 Defense Pentagon, Washington, DC 20301–7100.

SUPPLEMENTARY INFORMATION: The MDA is developing an ABL element of the Ballistic Missile Defense System (BMDS). The BMDS being developed is intended to provide an effective defense for the United States, its deployed forces, and its friends and allies from limited missile attack, during all segments of an attacking missile's flight. The BMDS includes separate elements to provide a defense during each of the three segments of missile flight. These segments are boost, midcourse, and terminal. While multiple elements could be used to defend against an attack, if necessary, during each of the threat's flight segments, each BMDS element is designed to work separately to provide a militarily significant defense, even if no other BMDS element exists. The ABL element of 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 Air Force began development of the ABL program aircraft in November 1996. In October 2001, ABL was transferred from the Air Force to the Ballistic Missile Defense Organization, which was renamed in January 2002 as the Missile Defense Agency.

Alternatives

Test activities and proposed alternative test locations to be addressed in the SEIS include:

- Ground tests of the ARS, TILL, BILL, and SHEL at KAFB, WSMR/Holloman AFB.
- Flight tests of the ARS, TILL, BILL, SHEL and HEL (i.e., COIL) at WSMR;
- Flight tests of the ARS, TILL, BILL, and HEL at VAFB and the PMNAWC Sea Range; and
- Ground and flight tests of the ARS, TILL, BILL, SHEL, and HEL at EAFB.

As proposed, the ABL aircraft would be housed in an existing hanger at EAFB. EAFB is also where the laser device would be integrated into the aircraft, where ground and flight tests would occur, and where initial flight tests of the aircraft would be performed. The ABL aircraft also would be flown to KAFB to conduct ground testing and would use existing runways at both bases. Additional flight tests would take place at WSMR. Both ground and flight tests would take place at VAFB and the PMNAWC Sea Range. Flight tests that include ABL destruction of a missile are proposed at WSMR and/or VAFB and the PMNAWC Sea Range.

PDRR ABL ground tests[1] are proposed to include tests of individual components, integration of the components on the ABL, and ground test of the integrated ABL. Flight tests are proposed to test each stage of the target acquisition and destruction process. Early flight tests will test the ARS, TILL, and BILL ability to provide accurate tracking and targeting. The flight tests will progress to use of SHEL, and will culminate with tests of the entire ABL element's ability to destroy a representative threat missile using the COIL HEL. Targets for flight tests are proposed to include target boards attached to balloons (MARTI[2]) and to piloted aircraft (Proteus[3]), sounding rockets, Lance, Black Brant, Aries missiles, and a limited number of representative threat missiles.

Although the FEIS (1997) analyzed both ground and flight tests involving the COIL HEL, the majority of these tests have not yet been performed. All tests proposed for the ABL PDRR phase are summarized in the following table. The table includes the tests analyzed in the FEIS which have not yet been performed, as well as additional ground and flight tests required for testing the ARS, TILL, BILL, SHEL, and HEL.

Proposed test location	Type of test	Type of flight engagement for each aircraft		
		MARTI Drop	Proteus aircraft	Missile launch
VAFB	Flight Tests	0	0	25
WSMR/Holloman	Ground/Flight Tests	50	50	35
EAFB	Ground/Flight Tests	50	50	0
KAFB	Ground Tests	0	0	0

Scoping Process

This SEIS will assess environmental issues associated with the proposed action; reasonable alternatives including the no-action alternative; and foreseeable future actions and cumulative effects. Under the No Action alternative, there would be no change to ABL test activities from those documented in the PDRR ABL ROD signed in September 1997. Scoping will be conducted to identify environmental, safety and occupational health issues to be addressed in the SEIS. Public scoping meetings will be held as part of the SEIS preparation process, as described below. Public comments will be solicited to assist in scoping related environmental issues for analysis in the SEIS. Alternatives to the proposed actions may be identified verbally and in writing during the public scoping process.

Location	Date	Place	Time (p.m.)
Lancaster, CA	4/1/02	Antelope Valley Inn 44055 North Sierra Highway	7:00

[1] Ground tests include rotoplane, billboard, and range simulator targets. The billboard target is a piece of material such as Plexiglas or stainless steel that contains sensors. A rotoplane target is a spinning ground target designed to simulate a missile in flight.

[2] Missile Alternative Range Target Instrument (MARTI) Drop is a balloon with a target board attached used during flight tests.

[3] Proteus Aircraft is a manned aircraft with a target board attached that is used during flight tests.

Location	Date	Place	Time (p.m.)
Lompoc, CA	4/3/02	Lompoc City Council Chambers 100 Civic Center Plaza	7:00
Albuquerque, NM	4/15/02	Albuquerque Marriott 2101 Louisiana Boulevard, NE	7:00
Las Cruces, NM	4/17/02	Holiday Inn de Las Cruces 201 E. University Avenue	7:00

Dated: March 25, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liason Officer, Department of Defense.

[FR Doc. 02–7628 Filed 3–26–02; 1:49 pm]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Office of the Secretary; Preparation of the Ground-Based Midcourse Defense Extended Test Range Environmental Impact Statement

ACTION: Notice of Intent.

SUMMARY: In order to meet the requirement to increase the realism of GMD integrated flight testing, MDA proposes to enhance the current test capability that includes the missile launch sites and array of sensors and other test equipment associated with the Ronald Reagan Ballistic Missile Test Site (RTS) at Kwajalein Atoll, the Pacific Missile Range Facility (PMRF) in Hawaii and Vandenberg Air Force Base (AFB) in California. The Department of Defense is publishing this notice to announce the initiation and preparation of the Ground-Based Midcourse Defense (GMD) Extended Test Range (ETR) Environmental Impact Statement (EIS) per Council of Environmental Quality regulations.

Background

The Ground-Based Midcourse Defense (GMD) Joint Program Office of the Missile Defense Agency (MDA) has been directed to conduct more operationally realistic testing of the GMD element of the Ballistic Missile Defense System (BMDS). The BMDS being developed is intended to provide an effective defense to the United States, its deployed forces, and its friends and allies from limited missile attack, during all segments of an attacking missile's flight. The GMD element of BMDS is being developed to protect the entire United States against limited ballistic missile threats during the midcourse segment of an attacking missile's flight. The extension of the GMD test range would increase the realism of GMD testing by using multiple engagement scenarios, trajectories, geometry, distances, speeds of targets and interceptors that closely resemble those in which an operational system would be required to provide an effective defense. The extension of the GMD test range is a separate effort, independent of the test bed that MDA proposes to develop in order to validate the operational concept of GMD. Both the validation of the GMD operational concept test bed and the extension of the GMD test range are intended to be interoperable parts of the multi-parted BMDS test bed, if MDA proceeds with both efforts.

Alternatives

Potential alternatives to be analyzed in the EIS, that may meet some of the enhanced test objectives, may include launching target and/or interceptor missiles from Kodiak Launch Complex (KLC) on Kodiak Island, Alaska, adding interceptor launches from Vandenberg AFB and launching target missiles from aircraft over the broad ocean area. Enhanced GMD testing may also include use of existing ship-borne radars, new land-based radars in southern Alaska and an early-warning radar at Beale AFB. The early-warning radar at Beale AFB may already have been upgraded to support the separate, validation of the GMD operational concept part of the BMDS test bed. If the early-warning radar at Beale AFB has not already been upgraded, new software and hardware will be installed that will enhance the radar's detection and discrimination capabilities as part of the extension of the GMD integrated flight test range. The target and interceptors may be launched in sets of two under some testing scenarios from either KLC or VAFB. Existing launch sites and test resources would continue to be used in enhanced test scenarios. Other reasonable alternatives identified during the scoping process would also be evaluated in the EIS. In addition, the EIS will analyze the No-Action Alternative, which would be a MDA decision not to enhance the capabilities of the existing test range but to continue testing within the existing range constraints to develop and improve the GMD system.

As with current testing, all missile intercepts from test activities would occur over the broad ocean area. The environmental impacts associated with these intercepts have been analyzed in previous NEPA documents. To the extent that enhanced testing would involve similar effects over the broad ocean area, those analyses will be incorporated by reference in the EIS.

The action alternatives could include construction of two interceptor launchers, one additional target launch pad and construction/alteration of launch support facilities at the KLC, construction of In-Flight Interceptor Communication System (IFICS) Data Terminals (IDT), military and commercial satellite communications (MIL/COMSATCOM) in the mid-Pacific and at KLC or VAFB, added range instrumentation (tracking and range safety radars) in the vicinity of sites, and use of either existing Battle Management Command and Control (BMC2) Facilities at RTS, or new BMC2 Facilities that may be developed at Fort Greely, AK and/or Shriever AFB or Cheyenne Mountain Complex, CO in the validation of the GMD operational concept part of the BMDS test bed.

The MDA will analyze the environmental issues associated with licenses or permits required to implement the proposed action at each of the potential extended test range sites. The Federal Aviation Administration (FAA) Office of Commercial Space Transportation (AST) will be a cooperating agency in this Environmental Impact Analysis Process because of their regulatory authority in licensing the Kodiak Launch Complex. The term of the current Launch Operator License (LOL) held by the Alaska Aerospace Development Corporation will expire in September 2003. Renewal or modification of the KLC LOL is considered a major federal action and will require environmental review of the proposed activities. The range of alternatives that the FAA may consider in its licensing decision may include but are not limited to (1) renewing the license in current status; (2) licensing with the addition of MDA's proposed activities in whole or part and (3) the No Action Alternative, not renewing the license. As a Cooperating Agency, the FAA may use the analysis contained in the Extended Test Range (ETR) EIS to support its licensing decision.

Scoping Process

This EIS will assess environmental issues associated with the proposed action; reasonable alternatives including the no-action alternative; foreseeable future actions; and cumulative effects.

Scoping will be conducted to identify environmental, safety and occupational health issues to be addressed in the EIS. Public scoping meetings will be held as a part of the process. The scoping meetings will be held in Kodiak and Anchorage, Alaska and Lompoc, CA. Exact dates, locations and times of the scoping meetings will be advertised at a later date.

Public input and comments are solicited concerning the environmental safety and occupational health issues related to the proposed action. To ensure the program office will have sufficient time to fully consider public input on issues, written comments should be mailed to ensure receipt no later than thirty days after public release.

As a part of the decision-making process, the U.S. Army Space and Missile Defense Command (USASMDC) is managing the preparation of the EIS for flight-testing of GMD on behalf of the MDA. Comments concerning the public scoping process or the EIS process should be addressed to: U.S. Army Space and Missile Defense Command, ATTN: SMDC–EN–V (Mrs. Julia Hudson-Elliott), 106 Wynn Drive. Huntsville, AL 35805, or by e-mail at *gmdetreis@smdc.army.mil.*

Dated: March 26, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–7629 Filed 3–26–02; 1:49 pm]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Office of the Secretary; Conference Meeting of the United States Strategic Command, Strategic Advisory Group

AGENCY: Department of Defense.

ACTION: Notice of closed meeting.

SUMMARY: The United States Strategic Command (USSTRATCOM) Strategic Advisory Group (SAG) will meet in closed session on April 18 and 19, 2002.

The mission of the SAG is to provide timely advice on scientific, technical, intelligence, and policy-related issues to the Commander-in-Chief, U.S. Strategic Command. The purpose of this meeting it to discuss strategic issues that relate to the development of the Single Integrated Operational Plan.

The meeting will involve classified information and access must be strictly limited to personnel having requisite clearances and specific need-to-know. In accordance with section 10(d) of the Federal Advisory Committee Act (5 USC, App. 2), the meeting will be closed to the public.

DATES: April 18 and 19, 2002.

ADDRESSES: U.S. Strategic Command, 901 SAC Boulevard, Suite 1F7, Offutt Air Force Base, NE 68113–6030.

FOR FURTHER INFORMATION CONTACT: Ms. Connie Druskis, USSTRATCOM SAG, (402) 294–4102.

Dated: March 22, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–7390 Filed 3–27–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Exclusive, Partially Exclusive, or Non-Exclusive Licensing of U.S. Patent Concerning Noise Abatement Technology

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive licenses relative to a noise abatement technology as described in U.S. Patent No. 4,928,573, Fansler, et al., May 29, 1990, entitled "Silencer for saboted projectiles." Licenses shall comply with 35 U.S.C. 209 and 37 CFR 404.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL–DP–T/Bldg. 459, Aberdeen Proving Ground, Maryland 21005–5425, Telephone: (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–7521 Filed 3–27–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent to Prepare a Draft Environmental Impact Statement for the Proposed University of California at Merced and Associated Infrastructure Projects, Corps Permit Application Numbers 199900203 and 200100570

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The University of California and County of Merced propose to construct a major university campus and associated infrastructure in Merced County, California. The project as proposed would impact over 92 acres of waters of the United States, including vernal pools and other associated wetlands.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by Ms. Nancy Haley, (916) 557–7772, *ucmerced@spk.usace.army.mil*, 1325 J Street, Room 1480, Sacramento, CA 95814–2922.

SUPPLEMENTARY INFORMATION: The applicants have applied for Department of the Army permits under Section 404 of the Clean Water Act to construct a tenth University of California campus to support 25,000 full-time equivalent students and associated infrastructure. The proposed campus would be 2,000 acres in size, and comprised of a Main Campus (910 acres), Merced Irrigation District canals and easements (70 acres), a Campus Land Reserve (340 acres), and a Campus Natural Reserve (750 acres).

The Main Campus would consist of an academic core, student support services, student and faculty housing, campus support, on-campus research facilities, athletic and recreation facilities, and parking. The Campus Land Reserve is proposed for future growth of the University facility. The Campus Natural Reserve would be preserved and managed to maintain and enhance its natural environmental functions and values. Over 86 acres of waters of the United States would be directly impacted by this project. Additional indirect impacts to waters would likely occur; however those impacts have not yet been quantified.

Construction of the first phase of the UC Merced Campus is proposed to begin in 2002, on about 110 acres of the existing Merced Hills Golf Course located at the southern end of the proposed Main Campus. The applicant has stated that construction of the first phase will not involve any placement of dredged or fill material into any waters of the United States, including wetlands.

The proposed project is located east of Lake Road, and Yosemite Lake, approximately two miles northeast of the City of Merced, Merced County, California.

Alternatives to be examined for the campus include: Bellevue Ranch site, Castle Airport site, City of Merced in-fill sites, and various configurations on, and/or adjacent to, the proposed project site.

The Infrastructure project would include construction of a major north-south arterial north of Yosemite Road, portions of two additional minor arterial roadways and collector streets, and utility lines (storm drainage, sewer, potable water, fire and irrigation water, telecommunications, electric and gas) within the rights-of-way secured for those roadways. A storm water collection system would be constructed parallel to the major arterial roadway.

Although this infrastructure is needed for the campus, it is proposed to be located and configured in such a manner as to allow the development of a campus community adjacent to the campus.

The infrastructure would directly impact over 6 acres of waters of the United States. Indirect impacts have not yet been quantified. This project is located north of Yosemite Road, and parallel to Lake Road, northeast of the City of Merced, Merced County, California.

No alternatives to the infrastructure have been identified to date. However, the proposed infrastructure, alternatives to its proposed size, design and location will be considered in the Section 404(b)(1) analysis that will be prepared for this application.

The Corps' public involvement program includes several opportunities to provide oral and written comments. Affected Federal, state, local agencies, Indian tribes and other interested private organizations and parties are invited to participate. Significant issues to be analyzed in depth in the DEIS include, loss of waters of the United States, including vernal pools and other wetlands; cultural resources; threatened and endangered species; surface water and groundwater; water quality; socio-economic effects; aesthetics. The DEIS for both the Infrastructure and the UC Merced projects will be combined into one document to facilitate public review and analysis.

The Corps has initiated formal consultation with the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act for eight, Federally threatened and endangered species and one species proposed for listing that may be affected by this project. In addition, the Corps will be consulting with the State Historic Preservation Officer under Section 106 of the National Historic Preservation Act regarding potential impacts to sites listed, or eligible for listing, on the National Register of Historic Places.

Two scoping meetings will be held on April 18, 2002, at the Merced Civic Center. The first meeting will be held from 3:00p.m. to 5:00p.m., with the second from 7:00p.m. to 9:00p.m.

The estimated date when the DEIS will be made available to the public is Fall 2002.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–7523 Filed 3–27–02; 8:45 am]

BILLING CODE 3710–EH–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Chief of Engineers Environmental Advisory Board; Meeting

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the forthcoming meeting. The meeting is open to the public.

Name of Committee: Chief of Engineers Environmental Advisory Board (EAB).

Date: April 11, 2002.

Location: Florence Room at the Four Points by Sheraton Hotel, 1 Plaza Square, Rock Island, IL.

Time: 8:00 AM to 3:30 PM. Central Daylight Savings Time.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Cummings, Headquarters, U.S. Army Corps of Engineers, Washington, DC 20314–1000; Ph: 202–761–4558.

SUPPLEMENTARY INFORMATION: The Board advises the Chief of Engineers on environmental policy, identification and resolution of environmental issues and missions, and addressing challenges, problems and opportunities in an environmentally sustainable manner. The theme of this meeting is environmental sustainability within the Corps of Engineers Military and Civil Works functions. It will include a discussion of the Corps of Engineers Operating Principles and draft guidance on the incorporation of sustainability into Corps projects, such as the current study of navigation on the Upper Mississippi River and Illinois Waterways System. Time will be provided for public comment. Each speaker will be limited to no more than three minutes in order to accommodate as many people as possible within the limited time available. However, this is not a public meeting on the Upper Mississippi River—Illinois Waterway System Navigation Study, per se. If you wish to receive electronic notice of future meetings you may subscribe to a list server at: *http://www.usace.army.mil/inet/functions/cw/hot_topics/eab.htm.*

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–7522 Filed 3–27–02; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement for Stabilization of In-Water Facilities at the Fox Island Laboratory, Tacoma, WA and Public Scoping Meeting

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the potential environmental consequences of the stabilization of in-water facilities at the Naval Surface Warfare Center Carderock Division (NSWCCD) Fox Island Laboratory (FIL) near Tacoma, WA.

DATES AND ADDRESSES: A public scoping meeting will be held to receive oral and/or written comments on environmental concerns that should be addressed in the EIS. The public scoping meeting will be held on Wednesday, April 17, 2002, from 6:00 p.m. to 9:00 p.m. at the Nichol's Community Center, 690 9th Ave, Fox Island, WA. All written comments must be postmarked by May 17, 2002, and be mailed to: Commander, Engineering Field Activity, Northwest, Naval Facilities Engineering Command, 19917 7th Ave NE, Poulsbo, WA 98370, Attn: Code 05EC3.KK (Mrs. Kimberly Kler), telephone (360) 396–0927, fax (360) 396–0854, E-Mail *klerkh@efanw.navfac.navy.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. William Baxley, (Code 0670), Naval Surface Warfare Center Carderock Division, 8010 North Ocean Drive, Dania, FL 33004; telephone (954) 926–4015, fax (954) 926–4031, E-Mail *baxleywe@nswccd.navy.mil.*

SUPPLEMENTARY INFORMATION: The NSWCCD FIL needs to provide stable and safe in-water facilities, in order to meet its mission requirements. The facility, consisting of four barges, a pier, and associated mooring components has sustained substantial weather-related

damage and portions of the facility have reached a point of questionable structural integrity. The Navy proposes to either replace the barges with a more stable platform or repair the mooring structures. This project is required in order to continue the FIL mission in support of Navy programs, prevent additional damage to existing facilities, and improve personnel safety.

NSWCCD is currently evaluating several alternative methods of stabilizing the Fox Island Laboratory in-water assets. The NSWCCD preferred alternative is to replace mooring components and improve access to the in-water operational facilities through the installation of a 240-ft floating concrete pontoon platform further off-shore. Other alternatives include: installation of a 360-ft concrete pontoon platform, installation of a pile-supported pier, replacement of the mooring system while maintaining the current configuration, and the No Action alternative of maintaining the current mooring system and barge configuration.

The EIS will address the potential environmental impacts, as well as the potential effects on neighboring properties that may result from stabilization activities. These include, but are not limited to, adjacent shoreline post-project configurations, endangered and threatened species (salmon and trout), marine mammals, benthic communities (sea grasses), water quality, water views, and coastal zone management issues.

NSWCCD is initiating a scoping process to identify community concerns and local issues that will be addressed in the EIS. Federal, state, local agencies, and interested persons are encouraged to provide oral and/or written comments to NSWCCD to identify environmental concerns that they believe should be addressed in the EIS. NSWCCD will consider these comments in determining the scope of the EIS.

Dated: March 21, 2002.

T.J. Welsh,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–7475 Filed 3–27–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 29, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address Lauren_Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 22, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Extension of a currently approved collection.

Title: Application Demonstration Projects for Faculty Training in Disability Issues (1890–0001).

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 75.

Burden Hours: 2250.

Abstract: Demonstration Projects to Ensure Students with Disabilities Receive a Quality Higher Education Program: Collect program and budget information to make grants to institutions of higher education. This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting "Browse Pending Collections" and clicking on link number 1981. 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 Kathy Axt at 540–776–7742. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–7427 Filed 3–27–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; List of Correspondence

AGENCY: Department of Education.

ACTION: List of correspondence from October 1, 2001 through December 31, 2001.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(d) of the Individuals with Disabilities Education Act (IDEA). Under section 607(d) of IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the

Department of Education of IDEA or the regulations that implement IDEA.

FOR FURTHER INFORMATION CONTACT: Melisande Lee or JoLeta Reynolds. Telephone: (202) 205–5507.

If you use a telecommunications device for the deaf (TDD) you may call (202) 205–5637 or the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of this notice in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director of the Alternate Formats Center. Telephone: (202) 205–8113.

SUPPLEMENTARY INFORMATION:

The following list identifies correspondence from the Department issued from October 1, 2001 through December 31, 2001.

Included on the list are those letters that contain interpretations of the requirements of IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date and topic addressed by a letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been deleted, as appropriate.

Part B; Assistance for Education of All Children with Disabilities

Section 611—Authorization; Allotment; Use of Funds; Authorization of Appropriations

Section 619—Preschool Grants

Topic Addressed: Allocation of Grants

- Letter dated December 18, 2001 to U.S. Congressman Charles F. Bass, regarding implementation of the Preschool Grants and Assistance to States formulas and the options available for distribution of funds under sections 611 and 619.

Section 612—State Eligibility.

Topic Addressed: Confidentiality of Education Records

- Letter dated December 4, 2001 to U.S. Congressman Roscoe E. Bartlett from Family Policy Compliance Office Director LeRoy Rooker, regarding the circumstances under which an educational agency can permit the disclosure of education records without prior written parental consent.

Topic Addressed: Children In Private Schools

- Letter dated October 4, 2001 to individual, (personally identifiable information redacted), clarifying that there is no inconsistency between the statute and the regulations implementing IDEA regarding the extent of rights available to parentally-placed private school children with disabilities and their parents.

Topic Addressed: State Educational Agency General Supervisory Authority

- Letter dated November 6, 2001 to Ohio Department of Education Interim Director of the Office for Exceptional Children Ed Kapel, regarding a State's obligation to resolve complaints in accordance with the complaint requirements in Part B within the required timeline.

Topic Addressed: Assessments

- Letter dated October 10, 2001 to U.S. Congressman Curt Weldon, regarding the Federal requirements for including children with disabilities in assessments and the implementation of the IDEA provisions related to alternate assessments.

Section 614—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements.

Topic Addressed: Evaluations and Reevaluations

- Letter dated November 5, 2001 to New Jersey Department of Education Commissioner Vito A. Gagliardi, Sr., regarding the IDEA Part B requirement that parental consent must be obtained before the initial evaluation, the reevaluation, and the provision of special education and related services and the fact that Part B does not permit public agencies to override a parent's refusal of consent for initial services or to initiate a due process hearing if a parent refuses consent to the initial provision of special education and related services.

Topic Addressed: Educational Placements

- Letter dated November 26, 2001 to Attorney Paul Veazey regarding the role of the placement team, including the child's parents, in the placement decision for a child with a disability and the authority of a public agency to make an administrative determination of the educational placement of a child with a disability consistent with the placement team's decision.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–800–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities.)

Dated: March 22, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–7473 Filed 3–27–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Notice of subsequent arrangement.

SUMMARY: This notice is being issued under the authority of section 131, of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160). The Department is providing notice of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of the Republic of Korea Concerning Civil Uses of Atomic Energy and the Agreement for Cooperation Concerning Civil Uses of Atomic Energy between the United States and Canada.

This subsequent arrangement concerns the retransfer of DUPIC fuel elements, containing 5,085 g uranium enriched to 1.08 per cent uranium-235 and 40 g plutonium from the Korea Atomic Energy Research Institute (KAERI) to the Chalk River Laboratories, Chalk River, Ontario, Canada. The DUPIC fuel elements, currently located at KAERI's Taejon, Korea facility, were manufactured using spent PWR fuel at KAERI. KAERI intends to use the fuel elements for irradiation tests in the NRU

research reactor operated by Chalk River Laboratories.

In accordance with section 131, of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the publication of this notice.

Dated: March 22, 2002.

For the Department of Energy.

Trisha Dedik,

Director, Office of Nonproliferation Policy.

[FR Doc. 02–7439 Filed 3–27–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–211–A]

Application to Export Electric Energy; DTE Energy Trading, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Application.

SUMMARY: DTE Energy Trading, Inc. (DTE) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before April 12, 2002.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On June 24, 1999 the Office of Fossil Energy (FE) of the Department of Energy (DOE) issued Order No. EA–211 authorizing DTE to transmit electric energy from the United States to Canada as a power marketer using the international electric transmission facilities owned and operated by Basin Electric Power Cooperative, Bonneville Power Administration, Citizen Utilities, Eastern Maine Electric Cooperative, International Transmission Company (formally The Detroit Edison Company), Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. That two-year authorization expired on June 24, 2001.

On March 5, 2002, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from DTE to transmit electric energy from the United States to Canada. Further, DTE requests that an electricity export authorization be issued for a 5-year term and that consideration of the application be expedited so that it may participate in the new competitive marketplace scheduled to begin in Ontario, Canada, on May 1, 2002.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the DTE application to export electric energy to Canada should be clearly marked with Docket EA–211–A. Additional copies are to be filed directly with Raymond O. Sturdy, Jr., DTE Energy Company, 2000 Second Avenue, 688 WCB, Detroit, MI 48226 *and* Sandra C. Steffen, DTE Energy Trading, Inc., 200 Ashley Mews, 414 South Main Street, Ann Arbor, MI 48104.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order No. EA–211. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–211 proceeding.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.de.gov*. Upon reaching the Fossil Energy Home page, select "Electricity Regulation" and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on March 22, 2002.

Ellen Russell,

Acting Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 02–7441 Filed 3–27–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 02–07; Atmospheric Radiation Measurement Program—Extension of Due Date

AGENCY: Department of Energy (DOE).

ACTION: Extension of due date for notice inviting grant applications. The Office of Biological and Environmental Research (OBER), Office of Science (SC), U.S. Department of Energy (DOE), hereby extends the due date for this notice.

Published in 67 FR 1204–1206, January 9, 2002.

The deadline for formal applications has been extended to April 18, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Wanda Ferrell, Office of Biological and Environmental Research, Environmental Sciences Division, SC–74, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–0043, fax (301) 903–8519, Internet e-mail address: *wanda.ferrell@science.doe.gov*.

Issued in Washington, DC on March 20, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–7440 Filed 3–27–02; 8:45 am]

BILLING CODE 6450–02–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board Chairs Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB) Chairs Meeting. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: April 12–13, 2002.

ADDRESSES: The Westin in Cincinnati. 21 East Fifth Street, Cincinnati, OH 45202, Phone: 513–621–7700.

FOR FURTHER INFORMATION CONTACT: Patti Kidd, The Perspectives Group, 6186 Old Franconia Road, Alexandria, VA, 22310; Phone: (703) 837–9269; e-mail: *pkidd@theperspectivesgroup.com.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Friday, April 12, 2002

8–8:30 a.m., Registration
8:30–8:45 a.m., Welcome and Logistics, Jim Bierer, Fernald Chair.
8:45—9:30 a.m., Round Robin (5 minutes per site).
—Top Three Issues per Site
—Potential Afternoon Breakout Sessions
9:30—12 p.m., Top to Bottom Review and 2003 Budget
—Overview and Latest Developments
—Administration of $800 Million Fund
DOE Plans for Public Participation and SSABs
Chairs Discussion
12–1 p.m., Lunch
1–2 p.m., Discussion with Jessie Roberson
2–3 p.m., Status and Implications of Long Term Stewardship
—Strategic Plan (Dave Geiser)
3–3:30 p.m., Chairs Discussion on Long Term Stewardship Issues
3:30–4 p.m., Public Comment
4 p.m., Adjourn

Saturday, April 13, 2002

8–8:30 a.m., Registration
8:30–9 a.m., Discussion and Signing of Ground Water Workshop Statements
9–11 a.m., Chairs Discussion
—Response to Top to Bottom Review and the Future of the SSABs
11–11:30 a.m., Chairs Discussion
—Future Workshops and Chairs Meetings
11:30–12 p.m., Public Comment
12–12:30 p.m., Wrap Up
12:30 p.m., Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Patti Kidd at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make a public comment will be provided a maximum of five minutes to present their comments at the end of the meeting. This notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved.

Minutes: Minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday—Friday except Federal holidays. Minutes will also be available by writing or calling Patti Kidd at the address or telephone number listed above.

Issued at Washington, DC on March 25, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–7438 Filed 3–27–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Worker Advocacy Advisory Committee Meeting

AGENCY: Department of Energy.

ACTION: Notice of cancellation of open meeting.

This notice announces the cancellation of the April 4–5, 2002, meeting of the Worker Advocacy Advisory Committee published in the **Federal Register** on March 20, 2002 (67 FR 12980). A meeting will be scheduled after the Physician Panel Rule is published.

Issued in Washington, DC on March 25, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–7437 Filed 3–27–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–204–000]

Central New York Oil And Gas Company, LLC; Notice of Tariff Filing

March 22, 2002.

Take notice that on March 19, 2002, Central New York Oil And Gas Company, LLC (CNYOG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets to be effective April 18, 2002:

First Revised Sheet No. 0
First Revised Sheet No. 25
First Revised Sheet No. 80
First Revised Sheet No. 104

CNYOG states that the purpose of its filing is to revise the name of CNYOG's Internet Web site, to change e-mail and telephone contact information, to revise its tariff to conform to its soon to be filed statement on standards of conduct and to correct a typographic error.

CNYOG further states that it has served copies of this filing upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7461 Filed 3–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–862–000]

Entergy Power Ventures, L.P.; Notice of Issuance of Order

March 22, 2002.

Entergy Power Ventures, L.P. (Entergy Ventures) submitted for filing a rate schedule under which Entergy Ventures will engage in the sales of capacity, energy and ancillary services at market-based rates, and for the reassignment of transmission capacity. Entergy Ventures also requested waiver of various Commission regulations. In particular, Entergy Ventures requested that the Commission grant blanket approval

under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Entergy Ventures.

On March 19, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-Central, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Entergy Ventures should file a motion to intervene or protest 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).

Absent a request to be heard in opposition within this period, Entergy Ventures is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Entergy Ventures, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Entergy Ventures' issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 18, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). 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.fed.us/efi/doorbell.htm*.

Magalie R. Salas,

Secretary.

[FR Doc. 02–7447 Filed 3–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–118–001]

High Island Offshore System, L.L.C.; Notice of Compliance Filing

March 22, 2002.

Take notice that on March 19, 2002, High Island Offshore System, L.L.C. (HIOS), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Fifth Revised Sheet No. 171 and Substitute Third Revised Sheet No. 172. HIOS requests that these sheets be made effective January 4, 2002.

HIOS states that the referenced sheets are being filed in compliance with the Commission's March 4, 2002 Order in the referenced proceeding, which relates to HIOS'' authority to negotiate rates with its customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7459 Filed 3–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–900–000]

Mirant Sugar Creek, L.L.C.; Notice of Issuance of Order

March 22, 2002.

Mirant Sugar Creek, L.L.C. (Mirant Sugar Creek) submitted for filing a rate schedule under which Mirant Sugar Creek will engage in the sales of capacity, energy and ancillary services at market-based rates, and for the reassignment of transmission capacity. Mirant Sugar Creek also requested waiver of various Commission regulations. In particular, Mirant Sugar Creek requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Mirant Sugar Creek.

On March 19, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-Central, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Mirant Sugar Creek should file a motion to intervene or protest 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).

Absent a request to be heard in opposition within this period, Mirant Sugar Creek is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Mirant Sugar Creek, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Mirant Sugar Creek's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 18, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE.,

Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). 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.fed.us/efi/doorbell.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. 02–7448 Filed 3–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–115–000]

Mississippi River Transmission Corporation; Notice of Application for Construction Authorization

March 22, 2002.

On March 15, 2002, Mississippi River Transmission Corporation (MRT), 1111 Louisiana Street, Houston, Texas 77002, filed an application in Docket No. CP02–115–000 pursuant to Section 7(c) of the Natural Gas Act (NGA) and part 157 of the Federal Energy Regulatory Commission's (Commission) Regulations thereunder, an application for any and all construction authority required by MRT to drill, own and operate two vertical storage wells, located in the State of Louisiana. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call (202)208–2222 for assistance).

Any questions regarding this application should be directed to Cyril J. Zebot, Vice President, Financial Analysis/Market Development Analysis, Mississippi River Transmission Corporation, P. O. Box 4455, Houston, Texas 77210, at (713) 207–5163 or Lawrence O. Thomas, Director-Rates & Regulatory, at (713) 429–2804.

Specifically, MRT proposes to construct two vertical storage wells in its East Unionville Storage Field located in Lincoln Parish, Louisiana for the purpose of maintaining and restoring late season deliverability for MRT's customers.[1] MRT states that this application is submitted pursuant to the terms of the Uncontested Stipulation and Agreement (Agreement) in Docket No. RP01–292–000, et. al., and TM00–1–25–000, et. al., approved by the Commission on January 16, 2002. MRT states that in accordance with the terms of the Agreement, MRT does not request rolled-in rate treatment for the costs associated with the construction of the proposed facilities, which will be recorded and maintained in a separate account to be excluded from future rate base treatment. MRT states that granting this certificate application will not impact the transportation/storage rates of MRT's customers. Total construction costs are estimated to be approximately $2.3 million.

There are two ways to become involved in the Commission's review of this abandonment. First, any person wishing to obtain legal status by becoming a party to the proceedings for this abandonment should, on or before April 12, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this abandonment. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the abandonment provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this abandonment should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

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.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying abandonment will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7446 Filed 3–27–02; 8:45 am]

BILLING CODE 6717–01–P

[1] In addition, MRT plans to construct two 6-inch gas storage field flow lines approximately 2,200 feet each in length to connect the proposed wells to an existing central meter facility in the East Unionville Storage Field. MRT states that the flow lines will be constructed and connected pursuant to MRT's blanket certificate authorized pursuant to Docket No. CP82–389 (20 FERC ¶ 62,579).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–206–000]

Tenaska Marketing Ventures, Complainant, v. Northern Border Pipeline Company, Respondent; Notice of Complaint

March 22, 2002.

Take notice that on March 20, 2002, Tenaska Marketing Ventures (TMV) submitted a complaint against Northern Border Pipeline Company (Northern Border).

TMV alleges that Northern Border is refusing to enforce its FERC Gas Tariff and contracts by not terminating its service agreements with affiliate Enron North America (ENA). TMV alleges that if Northern Border had properly terminated ENA's service agreements, it could no longer bill for and collect transportation charges from temporary capacity release replacement shippers (such as TMV) that have acquired ENA capacity because once Northern Border terminates the underlying service agreements, all subordinate capacity releases also terminate unless the pipeline makes alternative arrangements with the replacement shippers in a manner consistent with Northern Border's tariff.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest 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). All such motions or protests must be filed on or before April 9, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before April 9, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7462 Filed 3–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP01–76–006, RP01–382–010, RP01–396–004, RP00–404–004 (Not Consolidated)]

Northern Natural Gas Company; Notice of Compliance Filing

March 22, 2002.

Take notice that on March 14, 2002, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet proposed to be in effect January 1, 2002:

Second Substitute 27 Revised Sheet No. 52

Northern states that it is refiling Tariff Sheet No. 52 to reflect the correct Market Area Winter TI Rate as an erroneous rate was filed on March 1.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7458 Filed 3–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–408–002]

Ozark Gas Transmission, L.L.C.; Notice of Compliance Filing

March 22, 2002.

Take notice that on March 18, 2002, Ozark Gas Transmission, L.L.C. (Ozark) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the revised tariff sheets listed in Appendix A attached to the filing, to be effective March 1, 2002.

Ozark states that the purpose of its filing is to comply with the Commission's order issued March 1, 2002, in Docket No. RP00–408–001 regarding Ozark's compliance with Order No. 637 (Ozark Gas Transmission, 98 FERC ¶ 61,230 (2001)). In that order, the Commission directed Ozark to file certain tariff revisions regarding receipt and delivery point flexibility and discount retention to comply with the requirements of Order No. 637.

Ozark states that it is also filing revisions to its tariff required to reconcile changes conditionally accepted by the Commission's order in this proceeding with changes to Ozark's tariff accepted by the Commission's February 28, 2002 Letter Order in Docket Nos. RP02–155–000 and CP01–407–001.

Ozark further states that it has served copies of this filing upon the company's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7457 Filed 3–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–397–002, and RP01–33–004]

Questar Pipeline Company; Notice of Compliance Filing

March 22, 2002.

Take notice that on March 18, 2002, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, with an effective date of April 19, 2002.

Questar states that the filing is being made in compliance with the Commission's Order on Compliance with Order Nos. 637, 587–G and 587–L issued on February 14, 2002, (the February 14th order) in Docket Nos. RP00–397–000, RP01–33–000, –001 and –002.

The February 14th order approved, in part, Questar's pro forma tariff sheets filed July 17, 2000, and directed Questar to make further modifications. Questar tendered for filing, proposed actual tariff sheets that include the language approved in Questar's July 17, 2000, pro forma compliance filing as well as language that comports with the Commission's directives. These modifications are included in First Revised Volume No. 1 of Questar's FERC Gas Tariff to be effective April 19, 2002.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 \ for assistance). 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7456 Filed 3–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–145–001]

Williston Basin Interstate Pipeline Company; Notice of Refund Report

March 22, 2002.

Take notice that on March 15, 2002, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing with the Commission its Refund Report made pursuant to the Commission's Letter Order issued February 14, 2002 in Docket No. RP02–145–000.

Williston Basin states that on March 11, 2002, refunds associated with the final reconciliation of the gas supply realignment (GSR) amortization account as of January 31, 2002, were sent to applicable Rate Schedule FT–1 shippers. These refunds included interest through March 11, 2002, in accordance with Section 154.501 of the Commission's Regulations.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 29, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7460 Filed 3–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–1028–000]

Wrightsville Power Facility, L.L.C.; Notice of Issuance of Order

March 22, 2002.

Wrightsville Power Facility, LLC (Wrightsville Power) submitted for filing a rate schedule under which Wrightsville Power will engage in the sales of capacity, energy and ancillary services at market-based rates, and for the reassignment of transmission capacity. Wrightsville Power also requested waiver of various Commission regulations. In particular, Wrightsville Power requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Wrightsville Power.

On March 20, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-Central, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Wrightsville Power should file a motion to intervene or protest 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).

Absent a request to be heard in opposition within this period, Wrightsville Power is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Wrightsville Power, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Wrightsville Power's

issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 19, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). 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.fed.us/efi/doorbell.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. 02–7449 Filed 3–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1261–004, et al.]

EE South Glens Falls, et al.; Electric Rate and Corporate Regulation Filings

March 22, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. EE South Glens Falls

[Docket No. ER99–1261–004]

Take notice that on March 15, 2002, South Glens Falls Energy, LLC (South Glens Falls Energy) tendered a letter correcting its name as it appears in its March 11, 2002 triennial market power review. *Comment Date*: April 5, 2002.

2. Duke Energy Washington, LLC

[Docket No. ER02–795–001]

Take notice that on March 15, 2002, Duke Energy Washington, LLC filed a notice of status change with the Federal Energy Regulatory Commission (Commission) in connection with the Commission's Order authorizing a change in upstream control of Engage Energy America LLC and Frederickson Power L.P. resulting from a transaction involving Duke Energy Corporation and Westcoast Energy Inc. (Engage Energy America, LLC, Frederickson Power L.P., Duke Energy Corp., 98 FERC ¶ 61,207 (2002)).

Copies of the filing were served upon all parties on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding. *Comment Date*: April 5, 2002.

3. AES Ironwood, L.L.C.

[Docket Nos. ER02–872–001]

Take notice that on March 15, 2002, AES Ironwood, L.L.C (AES Ironwood) resubmitted its long-term power sales agreement between AES Ironwood and Williams Energy Marketing & Trading Company (the Agreement) to fully comply with Order 614, 90 FERC ¶ 61,352. Confidential treatment of the Agreement, pursuant to 18 CFR 385.112 (2000), has been requested.

Comment Date: April 5, 2002.

4. Vandolah Power Company, L.L.C.

[Docket No. ER02–1336–000]

Take notice that on March 19, 2002, Vandolah Power Company, L.L.C. (Vandolah Power), filed with the Federal Energy Regulatory Commission (Commission) an application for approval of its initial tariff (FERC Electric Tariff Original Volume No. 1), and for blanket approval for market-based rates pursuant to part 35 of the Commission's regulations.

Vandolah Power is a limited liability corporation formed under the laws of Delaware. Vandolah Power owns a 630-MW generating plant that is under construction in Hardee County, Florida.

Comment Date: April 9, 2002.

5. PJM Interconnection, L.L.C.

[Docket No. ER02–1341–000]

Take notice that on March 20, 2002, PJM Interconnection, L.L.C. (PJM), tendered for filing with the Federal Energy Regulatory Commission (Commission) the following executed agreements: (I) an umbrella agreement for short-term firm point-to-point service with Dominion Energy Marketing, Inc. (Dominion); (ii) an umbrella agreement for non-firm point-to-point transmission service with Dominion; (iii) an umbrella agreement for short-term firm point-to-point transmissions service with RWE Trading Americas, Inc. (RWE Trading); (iv) an umbrella agreement for non-firm point-to-point transmission service with RWE Trading.

PJM requested a waiver of the Commission's notice regulations to permit effective date of February 22, 2002 for the agreements. Copies of this filing were served upon Dominion and RWE Trading, as well as the state utility regulatory commissions within the PJM control area.

Comment Date: April 10, 2002.

6. State Line Energy, L.L.C. and Dominion State Line, Inc.

[Docket Nos. ER02–1342–000 and ER96–2869–003]

Take notice that on March 20, 2002, State Line Energy, L.L.C. (State Line Energy) filed with the Federal Energy Regulatory Commission (Commission) its Joint Application to Renew Market-Based Rate Authorization and Filing of Notice of Change in Status, First Revised Volume No. 1 and Service Agreement No. 1 of its Market-Based Rate Tariff pursuant to Section 205 of the Federal Power Act, to address a proposed upstream change in ownership.

State Line Energy owns and operates the approximately 515 MW, coal-fired State Line power generation facility in Hammond, Indiana. This filing is made necessary to reflect the proposed sale, by Mirant Americas Generation, LLC, an indirect subsidiary of Mirant Corporation, of one hundred percent (100%) of the issued and outstanding capital stock of Mirant State Line Ventures, Inc., which holds, through its direct and indirect subsidiaries, one hundred percent (100%) of the ownership interests in State Line Energy to Dominion State Line, Inc., an indirect subsidiary of Dominion Resources, Inc. *Comment Date*: April 10, 2002.

7. Michigan Electric Transmission Company and Consumers Energy Company

[Docket No. ER02–1343–000]

Take notice that on March 19, 2002, Consumers Energy Company (Consumers) and Michigan Electric Transmission Company (METC) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Third Supplemental Notice of Succession and a Rate Schedule Filing for METC related to the transfer of transmission assets from Consumers to Michigan Transco. If acted on by the Commission as requested, the Third Supplemental Notice of Succession and related METC Rate Schedule would be effective April 1, 2001.

A full copy of the filing was served upon the Michigan Public Service Commission and The Detroit Edison Company, which is a party to each of the agreements here at issue.

Comment Date: April 9, 2002.

8. Public Service Company of New Mexico

[Docket No. ER02–1344–000]

Take notice that on March 18, 2002, Public Service Company of New Mexico (PNM) submitted for filing with the

Federal Energy Regulatory Commission (Commission) an Interim Invoicing Agreement with respect to invoicing for coal deliveries from San Juan Coal Company among PNM, Tucson Electric Power Company (TEP), and the other owners of interests in the San Juan Generating Station covering the period from January 1, 2002 through December 31, 2002. The Interim Invoicing Agreement is an appendix to the San Juan Project Participation Agreement (PPA), and effectively modifies the PPA for that same period. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

PNM requests waiver of the Commission's notice requirements in order to allow the Interim Invoicing Agreement to be effective as of January 1, 2002. Copies of the filing have been sent to the New Mexico Public Regulation Commission, TEP, and each of the owners of an interest in the San Juan Generating Station.

Comment Date: April 8, 2002.

9. American Transmission Systems, Inc.

[Docket No. ER02–1345–000]

Take notice that on March 20, 2002, American Transmission Systems, Inc., filed a Service Agreement to provide Firm Point-to-Point Transmission Service for Dominion Energy Marketing, Inc., the Transmission Customer. Services are being provided under the American Transmission Systems, Inc., Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission (Commission) in Docket No. ER99–2647–000.

The proposed effective date under the Service Agreement is March 18, 2002 for the above mentioned Service Agreement in this filing.

Comment Date: April 10, 2002.

10. Metropolitan Edison Company

[Docket No. ER02–1347–000]

Take notice that on March 20, 2002, Metropolitan Edison Company (MetEd) submitted for filing a Borderline Service Agreement between MetEd and PPL Electric Utilities Corporation (PPL). Under the Agreement, MetEd will supply electric service to two PPL customers—Randy Stoudt and the Red Suspenders Gun Club—located near MetEd facilities but inside the PPL service territory in Pine Grove, Pennsylvania.

Comment Date: April 10, 2002.

11. UBS AG

[Docket No. ER02–1348–000]

Take notice that on March 20, 2002, UBS AG (UBS) tendered for filing with the Federal Energy Regulatory Commission (Commission) correspondence approving its membership to the Western Systems Power Pool (WSPP). UBS requests that the Commission allow its membership in the WSPP to become effective on March 20, 2002.

UBS states that a copy of this filing has been provided to the WSPP Executive Committee and to Michael E. Small, Esq.

Comment Date: April 10, 2002.

12. Tucson Electric Power Company

[Docket No. ER02–1349–000]

Take notice that on March 20, 2002, Tucson Electric Power Company tendered for filing an Amended Service Agreement for Network Integration Transmission Service.

Comment Date: April 10, 2002.

13. SIGCORP Energy Services LLC

[Docket No.ER02–1350–000]

Take notice that on March 20, 2002, SIGCORP Energy Services, LLC (SIGCORP Energy), filed with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation, effective March 20, 2002, of SIGCORP Energy Rate Schedule FERC No. 1.

IGCORP Energy provides that it is canceling its Rate Schedule FERC No. 1 because it has never sold electric power pursuant to that Rate Schedule and does not contemplate doing so in the future. SIGCORP Energy states that there is no need for SIGCORP Energy to maintain its Rate Schedule FERC No. 1.

Comment Date: April 10, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest 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). All such motions or protests should be filed on or before the comment date. 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. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–7445 Filed 3–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–56–000, et al.]

Mirant Americas Generation LLC, et al.; Electric Rate and Corporate Regulation Filings

March 21, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Mirant Americas Generation LLC, Dominion State Line, Inc.

[Docket No. EC02–56–000]

Take notice that on March 15, 2002, Mirant Americas Generation, LLC, and Dominion State Line, Inc. (collectively, the Applicants) filed with the Federal Energy Regulatory Commission (Commission) a joint application (Application) pursuant to Section 203 of the Federal Power Act for authorization of the sale by Mirant Americas Generation, LLC, an indirect subsidiary of Mirant Corporation, to Dominion State Line, Inc., an indirect subsidiary of Dominion Resources, Inc, of one hundred percent (100%) of the issued and outstanding capital stock of Mirant State Line Ventures, Inc., which holds, through its direct and indirect subsidiaries, one hundred percent (100%) of the ownership interests in State Line Energy, L.L.C. State Line Energy, L.L.C. owns and operates the approximately 515 MW, coal-fired State Line power generation facility in Hammond, Indiana.

Comment Date: May 14, 2002.

2. Mirant Oregon, L.L.C.

[Docket No. ER02–1331–000]

Take notice that on March 18, 2002, Mirant Oregon, L.L.C. (Mirant Oregon) tendered for filing with the Federal Energy Regulatory Commission (Commission), an application for an order accepting its FERC Electric Tariff No. 1, granting certain blanket approvals, including the authority to sell electricity at market-base rates, and

waiving certain regulations of the Commission.

Mirant Oregon requested that its Rate Schedule No. 1 become effective upon the earlier of the date the Commission authorizes market-based rate authority, or May 1, 2002. Mirant Oregon also filed its FERC Electric Tariff No. 1.

Comment Date: April 8, 2002.

3. Progress Energy, Inc. on behalf of Carolina Power & Light Company, Progress Ventures, Inc., Monroe Power Company, Effingham County Power LLC, Rowan County Power, LLC and MPC Generating LLC

[Docket No. ER02–1334–000]

Take notice that on March 15, 2002, Progress Energy, Inc. on behalf of Carolina Power & Light Company, Progress Ventures, Inc., Monroe Power Company, Effingham County Power LLC, Rowan County Power, LLC and MPC Generating LLC (collectively the Applicants), tendered for filing with the Federal Energy Regulatory Commission (Commission) an Assignment and Assumption Agreement among Monroe Power, MPC Generating, and Georgia Power Company.

Comment Date: April 5, 2002.

4. BP West Coast Products LLC

[Docket No. ER02–1335–000]

Take notice that on March 19, 2002, BP West Coast Products LLC (BP West Coast Products) tendered for filing with the Federal Energy Regulatory Commission (Commission), pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d (2000), and part 35 of the Commission's regulations, 18 CFR part 35, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Tariff No. 1 authorizing BP West Coast Products to make sales at market-based rates.

BP West Coast Products intends to sell electric power at wholesale. In transactions where BP West Coast Products sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. BP West Coast Products' Tariff provides for the sale of energy and capacity at agreed prices.

Comment Date: April 9, 2002.

5. Virginia Electric and Power Company

[Docket No. ER02–1337–000]

Take notice that on March 19, 2002, Virginia Electric and Power Company (Dominion Virginia Power or the Company) tendered for filing with the Federal Energy Regulatory Commission (Commission), a Service Agreement by Virginia Electric and Power Company to Dominion Retail, Inc. Designated as Service Agreement No. 2 under the Company's Wholesale Cost-Based Rate Tariff, FERC Electric Tariff, Original Volume No. 7, effective on January 16, 2002.

The Company requests an effective date of March 1, 2002, as requested by the customer.

Copies of the filing were served upon Dominion Retail, Inc., the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment Date: April 9, 2002.

6. Puget Sound Energy, Inc.

[Docket No. ER02–1338–000]

Take notice that on March 19, 2002, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service and a Service Agreement for Non-Firm Point-To-Point Transmission Service with Sempra Energy Trading Corp. (Sempra), as Transmission Customer.

A copy of the filing was served upon Sempra.

Comment Date: April 9, 2002.

7. Pacific Gas and Electric Company

[Docket No. ER02–1339–000]

Take notice that on March 19, 2002, Pacific Gas and Electric Company (PG&E) tendered for filing proposed changes in rates for Sacramento Municipal Utility District (SMUD), to be effective July 1, 2001, developed using a rate adjustment mechanism previously agreed by PG&E and SMUD for First Revised PG&E Rate Schedule FERC Nos. 88, 91, and 136.

Copies of this filing have been served upon SMUD, the California Independent System Operator Corporation, and the California Public Utilities Commission.

Comment Date: April 9, 2002.

8. PJM Interconnection, L.L.C.

[Docket No. ER02–1340–000]

Take notice that on March 18, 2002, PJM Interconnection, L.L.C. (PJM), filed a Notice of Cancellation notifying the Commission that effective September 22, 2001, FPL Energy Services, Inc. (FPLES) has withdrawn from PJM membership, and that the following service agreements with FPLES have been cancelled: (1) umbrella agreement for non-firm point-to-point transmission service (PJM FERC Electric Tariff Third Revised Volume No. 1—Service Agreement No. 303); (2) umbrella agreement for network integration transmission service under state required retail access programs (PJM FERC Electric Tariff Third Revised Volume No. 1—Service Agreement No. 263); and (3) umbrella agreement for short-term firm point-to-point transmission service (PJM FERC Electric Tariff Third Revised Volume No. 1—Service Agreement No. 287).

Copies of this filing were served upon all PJM members, FPLES, and each state electric utility regulatory commission in the PJM region.

PJM requests an effective date of September 22, 2001 for FPLES's withdrawal from membership in PJM. and the cancellation of the service agreements.

Comment Date: April 8, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest 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). All such motions or protests should be filed on or before the comment date. 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. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–7444 Filed 3–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Projects Nos. 10461–002 and 10462–002 New York]

Erie Boulevard Hydropower L.P.; Notice of Availability of Draft Environmental Assessment

March 22, 2002.

In accordance with the National Environmental Policy Act of 1969 and

the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the applications for original licenses for Erie Boulevard Hydropower L.P.'s Parishville Hydroelectric Project and Allens Falls Hydroelectric Project, both located on the West Branch St. Regis River in St. Lawrence County, New York, and has prepared a Draft Environmental Assessment (DEA) for the projects. Neither project occupies any lands of the United States.

The DEA contains the Commission staff's analysis of the potential future environmental impacts of the project and has concluded that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the DEA is on file with the Commission and is available for public inspection. The DEA may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

Any comments should be filed within 30 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please affix Project No. 10461–002 and Project No. 10462–002 to all comments. Comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.For further information, contact Peter Leitzke at (202) 219–2803.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7453 Filed 3–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

March 22, 2002.

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*: 2210–075.

c. *Date Filed*: March 6, 2002.

d. *Applicant*: Appalachian Power Company (APC).

e. *Name of Project*: Smith Mountain.

f. *Location*: The project is located on the Roanoke River, in Bedford, Pittsylvania, Franklin, and Roanoke Counties, Virginia.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact*: Frank M. Simms, Fossil and Hydro Operations, American Electric Power, 1 Riverside Plaza, Columbus, Ohio 43215, (614) 223–2918.

i. *FERC Contact*: Any questions on this notice should be addressed to Mrs. Heather Campbell at (202) 219–3097, or e-mail address: *heather.campbell@ferc.gov*.

j. *Deadline for filing comments and or motions*: April 22, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2210–075) on any comments or motions filed.

k. *Description of Request*: APC is requesting Commission approval to permit Bernard's Landing-CPOA (permittee) to install and operate within the project boundaries: (a) seven (7) stationary docks providing a total of fifty-six covered stationary boat slips at four different sites located within the Bernard's Landing area of Smith Mountain Lake.

l. *Location of the Application*: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7450 Filed 3–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Soliciting Scoping Comments

March 22, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Minor License.

b. *Project No.:* 2782–006.

c. *Date filed:* October 30, 2001.

d. *Applicant:* Parowan City.

e. *Name of Project:* Red Creek Hydroelectric Project.

f. *Location:* On Red Creek, near the City of Paragonah, in Iron County, Utah. The project is partially on United States lands administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Alden C. Robinson, Sunrise Engineering, Inc., 25 E. 500 N., Fillmore, Utah 84631–3513; (435) 743–1143.

i. *FERC Contact:* Steve Hocking at *steve.hocking@ferc.gov* or (202) 219–2656.

j. *Deadline for filing scoping comments:* May 6, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice 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. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site, *http://www.ferc.gov*, under the "e-Filing" link.

k. This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The existing project consists of: (1) The Red Creek diversion dam which is a concrete structure 8 feet high and 48 feet long; an intake with a radial gate and trash rack connected to a 16,098-foot-long, 16 to 18-inch diameter steel penstock, (2) the South Fork diversion dam which is a concrete structure 8 feet high and 29 feet long; an intake with a radial gate and trash rack connected to a 4,263-foot-long, 10-inch-diameter steel penstock, (3) a pump station at the junction of the South Fork and Red Creek penstocks housing a 15 horsepower and a 20 horsepower pump with control equipment, (4) a 27-foot by 32-foot concrete block powerhouse with a single 500-kilowatt (kW) generator; (5) two 270-foot-long transmission lines, and (6) appurtenant facilities.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. *Scoping Process:*

The Commission intends to prepare an Environmental Assessment (EA) for the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Commission staff do not propose to conduct any on-site scoping meetings at this time. Instead, we will solicit comments, recommendations, information, and alternatives by issuing Scoping Document 1 (SD1).

Copies of SD1 outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list. Copies of SD1 may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7451 Filed 3–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and Soliciting Comments, Motions To Intervene and Protests

March 22, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a: *Application Type:* Extension of Temporary Amendment of License.

b: *Project No.:* 2899–105.

c: *Date Filed:* March 18, 2002.

d: *Applicant:* Idaho Power Company.

e: *Name of Project:* Milner Hydroelectric Project.

f: *Location:* The Milner hydroelectric project is located on the Snake River in TwinFalls and Cassia Counties, Idaho. The project includes 109 acres of land administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r)

h: *Applicant Contact:* Mr. Nathan F. Gardiner, Idaho Power Company, 1221 West Idaho Street, P.O. Box 70, Boise, Idaho 83707; (208) 388–2676.

i. *FERC Contact:* Questions about this notice can be answered by Kenneth Hogan at (202) 208–0434 or e-mail address: *Kenneth.Hogan@ferc.gov.* The Commission cannot accept comments, recommendations, motions to intervene or protests sent by e-mail; these documents must be filed as described below.

j. *Deadline for filing comments, terms and conditions, motions to intervene, and protests:* 30 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

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 whose name appears 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.

Comments, recommendations, terms and conditions, 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: *www.ferc.gov.*

k. Idaho Power Company (IPC) filed an application for an extension of the temporary amendment authorized by the Commission's order dated May 8, 2001, which temporarily waived the minimum flow requirement set forth in Article 407, and approved the dewatering of the Milner bypass reach between May 8, 2001, and March 31, 2002. Article 407 reads as follows:

The licensee shall discharge from Milner Dam a target flow of 200 cubic feet per second as measured at the Milner gage located in the bypass reach. The licensee shall release water from the Idaho Water Bank and/or make releases from upstream storage controlled by the licensee to provide the necessary flow to achieve the 200-cfs target. The main powerhouse shall not operate during any time the target flow is not met. The target flow may be temporarily reduced if required by operating emergencies beyond the control of the licensee or for short periods upon mutual agreement between the licensee and Idaho Department of Fish and Game.

Idaho Power requests that the May 8, 2001 order, superceding Article 407, be extended to the end of the irrigation season, October, 2002.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371.

The application may be viewed on the Web at *http://www.ferc.gov*. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

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.

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.

Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7452 Filed 3–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

March 22, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. Copies of this filing are on file with the Commission and are available for public inspection. The documents may be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link—select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

EXEMPT

Docket no.	Date filed	Presenter or requester
1. CP01–176–000, et al. CP01–179–000.	03–20–02	Laura Turner.
2. CP01–176–000, et al. CP01–179–000.	03–20–02	Laura Turner.
3. Project No. 1354–000.	03–21–02	Jeanni Darnell.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–7454 Filed 3–27–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM01–12–000, RT01–2–000, RT01–10–000, RT01–15–000, ER02–323–000, RT01–34–000, RT01–35–000, RT01–67–000, RT01–74–000, RT01–75–000, RT01–77–000, RT01–85–000, RT01–86–000, RT01–87–000, RT01–88–000, RT01–94–000, RT01–95–000, RT01–98–000, RT01–99–000, RT01–100–000, RT01–101–000, EC01–146–000, ER01–3000–000, RT02–1–000, EL02–9000, EC01–156–000, ER01–3154–000, and EL01–80–000]

Electricity Market Design and Structure (RTO Cost Benefit Analysis Report); Notice of Additional Material Relating to Economic Assessment of RTO Policy Report

March 22, 2002.

During the regional teleconferences held on March 13 through March 19, 2002 to discuss the "Economic Assessment of RTO Policy" Report, released on February 27, 2002, participants requested additional factual information relating to the report. The following additional information in response to these requests is being provided: the Request for Proposal (RFP) issued for the project; additional details about the Northeast region; and a detailed discussion of the assumptions in the report.

This additional information is available on the FERC Web site, *http://www.ferc.gov*. It also will be placed in each of the dockets listed in the caption, and is available through the FERC Records and Information Management System.

For further information, please contact either:
William Meroney, 202–208–1069, *William.meroney@ferc.gov*.
Charles Whitmore, 202–208–1256, *Charles.whitmore@ferc.gov*.
Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–7455 Filed 3–27–02; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7164–2]

Recent Posting to the Applicability Determination Index (ADI) Database System of Agency Applicability Determinations, Alternative Monitoring Decisions, and Regulatory Interpretations Pertaining to Standards of Performance for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of applicability determinations, alternative monitoring decisions, and regulatory interpretations that EPA has made under the New Source Performance Standards (NSPS) (40 CFR part 60), and the National Emission Standards for Hazardous Air Pollutants (NESHAP) (40 CFR parts 61 and 63).

FOR FURTHER INFORMATION CONTACT: An electronic copy of each complete document posted on the Applicability Determination Index (ADI) database system is available on the Internet through the ADI at: *http://cfpub.epa.gov/adi*. The document may be located by date, author, subpart, or subject search. For questions about the ADI or this notice, contact Maria Malave at EPA by phone at: (202) 564–7027, or by email at: *malave.maria@epa.gov*. For technical questions about the individual applicability determinations or monitoring decisions, refer to the contact person identified in the individual documents, or in the absence of a contact person, refer to the author of the document.

SUPPLEMENTARY INFORMATION:

Background

The General Provisions to the NSPS in 40 CFR part 60 and the NESHAP in 40 CFR part 61 provide that a source owner or operator may request a determination of whether certain intended actions constitute the commencement of construction, reconstruction, or modification. EPA's written responses to these inquiries are broadly termed applicability determinations. See 40 CFR 60.5 and 61.06. The NSPS and NESHAP also allow sources to seek permission to use monitoring or recordkeeping which are different from the promulgated requirements. See 40 CFR 60.13(i), 61.14(g), 63.8(b)(1), 63.8(f), and 63.10(f). EPA's written responses to these inquiries are broadly termed alternative monitoring decisions. Further, EPA responds to written inquiries about the broad range of NSPS and NESHAP regulatory requirements as they pertain to a whole source category. These inquiries may pertain, for example, to the type of sources to which the regulation applies, or to the testing, monitoring, recordkeeping or reporting requirements contained in the regulation.

EPA currently compiles EPA-issued NSPS and NESHAP applicability determinations, alternative monitoring decisions, and regulatory interpretations, and posts them on the Applicability Determination Index (ADI) on a quarterly basis. The ADI is an electronic index on the Internet with over one thousand EPA letters and memoranda pertaining to the applicability, monitoring, recordkeeping, and reporting requirements of the NSPS and NESHAP. The letters and memoranda may be searched by date, office of issuance, subpart, citation, control number or by string word searches.

Today's notice comprises a summary of 30 of such documents added to the ADI on January 22, 2002. The subject, author, recipient, and date (header) of each letter and memorandum is listed in this notice, as well as a brief abstract of the letter or memorandum. Complete copies of these documents may be obtained from the ADI at: *http://cfpub.epa.gov/adi*.

Summary of Headers and Abstracts

The following table identifies the database control number for each document posted on the ADI database system on January 22, 2002; the applicable category; the subpart(s) of 40 CFR parts 60, 61, or 63 (as applicable) covered by the document; and the title of the document which provides a brief description of the subject matter. We have also included an abstract of each document identified with its control number after the table. These abstracts are provided solely to alert the public to possible items of interest and are not intended as substitutes for the full text of the documents.

ADI Determinations Uploaded on Date

Control No.	Category	Subpart(s)	Title
M020001	MACT	M	Dry Cleaner Major Source Threshold

ADI DETERMINATIONS UPLOADED ON DATE—Continued

Control No.	Category	Subpart(s)	Title
M020002	MACT	R	Monitoring Operating Parameter for John Zink Enclosed Flares.
0100077	NSPS	Dc	Alternative Fuel Usage Recordkeeping Frequency.
0100078	NSPS	VV	Alternative Monitoring Proposal for Ethylene Glycol Vapor.
0100079	NSPS	OOO	Applicability to Blast Furnace Slag Crushing and Grinding.
0100080	NSPS	Db, Dc	Boiler Derate.
0100081	NSPS	VV, NNN	Design Capacity Exemption.
0100082	NSPS	Dc	Boiler Derate.
0100083	NSPS	NNN, RRR	Biological Processes for Ethanol Manufacturing.
0100084	NSPS	A, NNN, RRR	Review of Alternative Monitoring/Testing Requirements.
0100085	NSPS	GG	Custom Fuel Monitoring & Alternate Test Method.
0100086	NSPS	GG	Waiver for Reference Method 20 Oxygen Tracers.
0100087	NSPS	GG	Alternate Performance Test Method.
0100088	NSPS	GG	Custom Fuel Monitoring & Nitrogen Waiver.
0100089	NSPS	GG	Custom Fuel Monitoring & Nitrogen Waiver.
0100090	NSPS	GG	Custom Fuel Monitoring Schedule.
0100091	NSPS	GG	Custom Fuel Monitoring & Alternate Test Method.
0100092	NSPS	GG	Modification to Test Method 20.
0100093	NSPS	GG	Custom Fuel Monitoring & Alternate Test Method.
0100094	NSPS	GG	Custom Fuel Monitoring Schedule.
0100095	NSPS	GG	Custom Fuel Monitoring Schedule.
0100096	NSPS	GG	Alternate Test Performance Procedure.
0100097	NSPS	GG	Custom Fuel Monitoring & Alternate Test Method.
0100098	NSPS	GG	Custom Fuel Monitoring.
0100099	NSPS	GG	Custom Fuel Monitoring.
0100100	NSPS	GG	Custom Fuel Monitoring.
0100101	NSPS	GG	Custom Fuel Monitoring & Alternate Test Method.
0100102	NSPS	GG	Custom Fuel Monitoring & Alternate Test Method.
0100103	NSPS	GG	Custom Fuel Monitoring.
0100104	NSPS	Y	Applicability to Screening Operations.

Abstracts

Abstract for [M020001]

Q1: Will EPA consider a facility that does not have a permit limiting its potential to emit below the major source threshold before the first compliance date of the dry cleaner MACT, Subpart M, an area source if the facility can demonstrate that it maintained its consumption of perc below the major source threshold in the dry cleaner MACT?

A1: Yes. EPA intended that the dry cleaner MACT provide the method for identifying major sources under both the MACT program and Title V. However, the facility must reconcile reported VOC emissions that indicate perc consumption almost double the threshold.

Q2: For a new facility subject to the MACT, Subpart M, does the one-time initial fill count in determining whether the facility is a major source?

A2: No. The initial fill does not indicate perc emissions, since perc has been neither consumed nor emitted.

Abstract for [M020002]

Q. Under MACT standard, Subpart R, what is the required monitored operating parameter for the John Zink enclosed flares?

A: The MACT standard, Subpart R, requires that thermal oxidation systems (e.g., John Zink enclosed flares) monitor temperature for continuous compliance monitoring.

Abstract for [0100077]

Q: A company with a natural gas-fired boiler proposes to record and maintain weekly records of fuel usage, instead of daily records as required by NSPS Subpart Dc, at 40 CFR 60.48c(g). Is this acceptable?

A: Yes. If only natural gas or low sulfur fuel oils are used, compliance with NSPS Subpart Dc, can be adequately verified by keeping fuel usage records less frequently. Based on past determinations, records of fuel usage may be kept on a weekly basis, as proposed, or on a monthly basis as has been approved for other natural gas-fired facilities.

Abstract for [0100078]

Q: A company subject to NSPS Subpart VV, has proposed to conduct quarterly visual inspections of equipment in ethylene glycol vapor service, instead of using Method 21. Since ethylene glycol has a boiling point of approximately 197 degrees centigrade, any vapor escaping from process equipment would quickly condense and form a liquid, making detection by Method 21 less accurate and reliable. Is the use of visual inspections acceptable?

A: Yes. The proposed alternative monitoring is acceptable as a substitute for Method 21.

Abstract for [0100079]

Q: Is a blast furnace slag crushing/grinding operation subject to NSPS Subpart OOO?

A: No. Because slag is not a nonmetallic mineral, the crushing and grinding of slag is not regulated by NSPS Subpart OOO.

Abstract for [0100080]

Q: A boiler derate is proposed for a unit subject to NSPS Subpart Db which will include the replacement of an existing burner with a new burner rated at 95 mm btu/hr. Is the proposed derate acceptable?

A: Yes. The proposed derate is consistent with criteria used in past boiler derates.

Abstract for [0100081]

Q: Does the design capacity exemption provided in NSPS Subparts VV and NNN apply to a process unit at a plant which will produce a product which will contain 50 percent hydrogen cyanide and 50 percent methanol? Hydrogen cyanide will be produced at the facility, but methanol will not be produced. The design capacity for hydrogen cyanide is less than one gigagram per year.

A: Yes. The design capacity for the process unit will be less than the threshold of one gigagram per year. The applicable recordkeeping and reporting requirements of NSPS Subparts VV and NNN will need to be met.

Abstract for [0100082]

Q: A derate method is proposed which will limit the capacity of a boiler by reducing the air volume into the boiler. Will the proposed method be acceptable to comply with NSPS Subpart Dc?

A: Yes. The proposed derate is consistent with criteria used in past boiler derates.

Abstract for [0100083]

Q: Are ethanol manufacturing facilities exempt from the requirements of NSPS Subparts RRR and NNN?

A: EPA has previously determined that ethanol manufacturing facilities may be exempted from NSPS Subparts RRR and NNN on a case-by-case basis. The ethanol facility in question here uses a biological process to ferment the converted starches in corn into ethanol. These Subparts did not envision unit operations for biological processes.

Abstract for [0100084]

Q: Will EPA approve alternative monitoring and waive the requirement for performance testing for boilers and process heaters that are fired with fuel gas containing a vent stream from a facility subject to NSPS Subpart NNN?

A: Yes. EPA will approve the provisions of NSPS Subpart RRR as alternative monitoring to the provisions of NSPS Subpart NNN and waive the requirement for performance testing for boilers and process heaters that are fired with fuel gas containing a vent stream from a facility subject to NSPS Subpart NNN.

Abstract for [0100085]

Q1: Will EPA exempt a new stationary gas turbine facility subject to NSPS Subpart GG from daily nitrogen testing?

A1: Yes. Nitrogen monitoring shall be waived for pipeline quality natural gas, as there is no fuel-bound nitrogen and the free nitrogen does not contribute appreciably to NO_X emissions.

Q2: Will EPA approve a custom fuel monitoring schedule for a facility subject to NSPS Subpart GG?

A2: Yes. EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA Regional offices to approve NSPS Subpart GG custom fuel monitoring schedules on a case-by-case basis.

Q3: Will EPA approve an alternative test method under NSPS Subpart GG?

A3: Yes. In accordance with an April 26, 1999, memorandum from EPA's Office of Air Quality Planning and Standards, "length of stain" detector tubes will be allowed in cases where fuel gas sulfur content is well below the standard level.

Abstract for [0100086]

Q: Will EPA grant a source subject to NSPS Subpart GG, a waiver to Reference Method 20 to allow use of a single multi-hole probe in lieu of oxygen traverses prior to initiating performance tests?

A: Yes. EPA grants the waiver on the basis that information provided indicates that the oxygen concentrations have been uniform within a variation of less than five percent across the two turbine stacks. Also, verbal information indicated that the multi-hole probe flow rate test showed that the sample flow rate through each hole is within plus or minus ten percent of the average through the eight holes at the design flow rate for the probe.

Abstract for [0100087]

Q: Under NSPS Subpart GG, will EPA approve an alternative test method for two gas turbines whose stacks have four sampling ports on one side only?

A: Yes. EPA approves the use of a nine-hole probe in the existing four ports to accomplish a four by nine sample point matrix instead of the required six by six matrix to determine the one of four ports with the lowest oxygen. EPA will also allow the use of a single multi-hole sample probe installed through the port which exhibits the lowest average diluent (oxygen) concentration for the oxygen traverse and the performance tests.

Abstract for [0100088]

Q: Will EPA approve a custom fuel monitoring schedule for a facility subject to NSPS Subpart GG?

A: Yes. EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA Regional offices to approve Subpart GG custom fuel monitoring schedules on a case-by-case basis.

Abstract for [0100089]

Q: Will EPA approve a custom fuel monitoring schedule for a facility subject to NSPS Subpart GG?

A: Yes. EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA Regional offices to approve NSPS Subpart GG custom fuel monitoring schedules on a case-by-case basis.

Abstract for [0100090]

Q: Will EPA approve a custom fuel monitoring schedule for a facility subject to NSPS Subpart GG?

A: Yes. EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA Regional offices to approve NSPS Subpart GG custom fuel monitoring schedules on a case-by-case basis.

Abstract for [0100091]

Q: Will EPA approve a custom fuel monitoring schedule for a facility subject to NSPS Subpart GG?

A: Yes. EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA Regional offices to approve NSPS Subpart GG custom fuel monitoring schedules on a case-by-case basis.

Abstract for [0100092]

Q: Will EPA approve a request for use of a multi-hole probe as a modification to Reference Method 20 under NSPS Subpart GG?

A: Yes. EPA will approve the request because it believes that the modified method could generate acceptably accurate data as long as the multi-hole probe is designed and conforms to the tests specified in EPA Guideline Document GD–031.

Abstract for [0100093]

Q1: Will EPA approve a custom fuel monitoring schedule for a facility subject to NSPS Subpart GG?

A1: Yes. EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA Regional offices to approve NSPS Subpart GG custom fuel monitoring schedules on a case-by-case basis.

Q2: Will EPA exempt a new stationary gas turbine facility from daily nitrogen testing under NSPS Subpart GG?

A2: Yes. Nitrogen monitoring shall be waived for pipeline quality natural gas, as there is no fuel-bound nitrogen and the free nitrogen does not contribute appreciably to NO_X emissions.

Q3: Will EPA approve an alternative test method under NSPS Subpart GG?

A3: Yes. In accordance with an April 26, 1991, memorandum from EPA's Office of Air Quality Planning and Standards, "length of stain" detector tubes will be allowed in cases where fuel gas sulfur content is well below the standard level.

Abstract for [0100094]

Q: Will EPA approve a custom fuel monitoring schedule for a facility subject to NSPS Subpart GG?

A: Yes. EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA Regional offices to approve Subpart GG custom fuel monitoring schedules on a case-by-case basis.

Abstract for [0100095]

Q: Will EPA approve a custom fuel monitoring schedule for a facility subject to NSPS Subpart GG?

A: Yes. EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA Regional offices to approve NSPS Subpart GG custom fuel monitoring schedules on a case-by-case basis.

Abstract for [0100096]

Q: Will EPA approve an alternate test performance procedure for stacks whose sampling ports are located 39 inches rather 60 inches from the top of the stacks?

A: Yes. EPA will approve sampling at 39 inches from the top of the stacks as long as the facility can demonstrate in accordance with Method 1 that there is a consistent stack flow and there is no cyclonic flow.

Abstract for [0100097]

Q1: Will EPA approve a custom fuel monitoring schedule for a facility subject to NSPS Subpart GG?

A1: Yes. EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA Regional offices to approve Subpart GG custom fuel monitoring schedules on a case-by-case basis.

Q2: Will EPA exempt a new stationary gas turbine facility from daily nitrogen testing under NSPS Subpart GG?

A2: Yes. Nitrogen monitoring shall be waived for pipeline quality natural gas, as there is no fuel-bound nitrogen and the free nitrogen does not contribute appreciably to NO_x emissions.

Q3: Under NSPS Subpart GG, will EPA approve an alternate load test procedure for a facility whose permit does not allow operation of turbines below 75% load rate?

A3: Yes. EPA approves testing at four points in the normal operating range between 75% and 100% of peak load.

Abstract for [0100098]

Q: Will EPA approve a custom fuel monitoring schedule for a facility subject to Subpart GG?

A: Yes. EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA Regional offices to approve NSPS Subpart GG custom fuel monitoring schedules on a case-by-case basis.

Abstract for [0100099]

Q: Under NSPS Subpart GG, will EPA approve a request to eliminate submission of sulfur monitoring data and allow monitoring of sulfur level on a semi-annual basis?

A: Yes. EPA will approve the request. Based on sulfur analyses submitted it appears that the gas used consistently meets the regulatory definition for natural gas. Although it does not appear to be pipeline natural gas, it is very low in sulfur and much cleaner than the sulfur standard of 0.8 percent by weight. The semi-annual monitoring results must be retained by the facility's owner.

Abstract for [0100100]

Q: Will EPA approve a custom fuel monitoring schedule for a facility subject to NSPS Subpart GG?

A: Yes. EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA Regional offices to approve NSPS Subpart GG custom fuel monitoring schedules on a case-by-case basis.

Abstract for [0100101]

Q1: Under NSPS Subpart GG, will EPA approve a request to waive the requirement to monitor nitrogen content and sulfur content of natural gas on a semi-annual basis?

A1: Yes. EPA will waive nitrogen monitoring for pipeline quality natural gas, as there is no fuel-bound nitrogen and the free nitrogen does not contribute appreciably to NO_X emissions. A record shall be maintained documenting a constant supplier or source of fuel. If there is a change in either, the facility must notify EPA.

Q2: Under NSPS Subpart GG, will EPA approve a request to test for fuel sulfur content using the method specified in 40 CFR part 75, appendix D, section 2.3?

A2: Yes. EPA approves the request to use the monitoring requirements for sulfur in 40 CFR part 75. This alternative monitoring method may only be used when pipeline natural gas is the only fuel being burned.

Q3: Under NSPS Subpart GG, will EPA approve a request to determine fuel consumption at full load only as an alternative to testing at four loads where the turbines are not expected to operate below 90%?

A3: Yes. EPA approves the request to use a single load test at full load. However, should the operation fall below 90% of maximum load, then testing at four loads would be required within 60 days of the new operating level.

Abstract for [0100102]

Q: Under NSPS Subpart GG, will EPA grant a waiver of nitrogen content testing and approval of both an alternate monitoring plan and an alternate test method for a turbine that was inadvertently left off an October 1996 request?

A: Yes. EPA will grant the waiver and approvals on the terms of its determination letter of May 1, 1997.

Abstract for [0100103]

Q: Will EPA approve a custom fuel monitoring schedule for a facility subject to NSPS Subpart GG?

A: Yes. EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA Regional offices to approve Subpart GG custom fuel monitoring schedules on a case-by-case basis.

Abstract for [0100104]

Q: Does NSPS Subpart Y apply to a bulk coal handling operation that operates an ancillary coal screening process to separate coarse coal from fine coal?

A: Yes. NSPS Subpart Y applies to the screening process, the equipment used to transfer coal to and from the screening process, and any equipment used to transfer and load coal for shipment at the source.

Dated: March 22, 2002.

Michael M. Stahl,

Director, Office of Compliance.

[FR Doc. 02–7491 Filed 3–27–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00332; FRL–6828–6]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: A meeting of the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) will be held on April 9–11, 2002, in

Washington, DC. At this meeting, the NAC/AEGL Committee will address, as time permits, the various aspects of the acute toxicity and the development of proposed Acute Exposure Guideline Levels (AEGLs) for various chemicals and to discuss comments on these chemicals.

DATES: A meeting of the NAC/AEGL Committee will be held from 10 a.m. to 5 p.m. on April 9, 2002; from 8:30 a.m. to 5 p.m. on April 10, 2002; and from 8:30 a.m. to noon on April 11, 2002.

ADDRESSES: The meeting will be held at the U. S. Department of Transportation, DOT Headquarters, Nassif Bldg., Rooms 6200–6204, 400 7th St., SW., Washington, DC. (L'Enfant Plaza Metro stop). Visitors should bring a photo identification for entry into the building and should contact the Designated Federal Officer under **FOR FURTHER INFORMATION CONTACT** to have their names added to a security entry list. Visitors must enter the building at the Southwest Entrance/Visitor's Entrance, 7th & E Sts. Quadrant.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Paul S. Tobin, Designated Federal Officer (DFO), Office of Prevention, Pesticides and Toxic Substances (7406M), 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8557; e-mail address: tobin.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may be of particular interest to anyone who may be affected if the AEGL values are adopted by government agencies for emergency planning, prevention, or response programs, such as EPA's Risk Management Program under the Clean Air Act and Amendments Section 112r. It is possible that other Federal agencies besides EPA, as well as State agencies and private organizations, may adopt the AEGL values for their programs. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–00332. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

II. Agenda

At this meeting, the NAC/AEGL Committee will address, as time permits:

1. The various aspects of the acute toxicity and the development of AEGL values for acrylic acid, allyl alcohol, ethyleneneimine, furan, methyl mercaptan, phosphorus trichloride, piperidine, propyleneimine, toluene, and trichloroethylene.

2. The proposed 10 minute AEGL values for ammonia, chloroform, fluorine, nitric acid, nitric oxide, and nitrogen dioxide.

3. The comments from the National Academy of Sciences Subcommittee for AEGLs for allyl alcohol, allyl amine, crotonladehyde, cyclohexylamine, diborane, ethylenediamine, ethyleneimine, furan, G-Agents, hydrogen sulfide, iron pentacarbonyl, nickel carbonyl, perchloromethyl mercaptan, phosgene, propyleneimine, and VX.

4. The comments from the notice published in the **Federal Register** of February 15, 2002 (67 FR 7164–7176) and the decision to raise to interim status the AEGL values for boron trifluoride dimethyl ether, carbon tetrachloride, chlorine, chlorine dioxide, methyl nonafluorobutyl ether (HFE-7100 component), methyl nonafluoroisobutyl ether (HFE-7100 component), propylene oxide, and uranium hexafluoride.

5. The overview for benzene, methylene chloride, and phenol.

III. Meeting Procedures

For additional information on the scheduled meeting, the agenda of the NAC/AEGL Committee, or the submission of information on chemicals to be discussed at the meeting, contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

The meeting of the NAC/AEGL Committee will be open to the public. Oral presentations or statements by interested parties will be limited to 10 minutes. Interested parties are encouraged to contact the DFO to schedule presentations before the NAC/AEGL Committee. Since seating for outside observers may be limited, those wishing to attend the meeting as observers are also encouraged to contact the DFO at the earliest possible date to ensure adequate seating arrangements. Inquiries regarding oral presentations and the submission of written statements or chemicalspecific information should be directed to the DFO.

IV. Future Meetings

Another meeting of the NAC/AEGL Committee is tentatively scheduled for June 17–19, 2002.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Health.

Dated: March 18, 2002.

William H. Sanders, III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 02–7499 Filed 3–27–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP– 00745; FRL–6809 –9]

Pesticides; Draft Guidance for Pesticide Registrants on False or Misleading Pesticide Product Brand Names

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Agency is announcing the availability of and seeking public comment on a draft Pesticide Registration (PR) Notice entitled "False or Misleading Pesticide Product Brand Names." PR Notices are issued by the Office of Pesticide Programs (OPP) to inform pesticide registrants and other interested persons about important policies, procedures, and registration related decisions, and serve to provide guidance to pesticide registrants and OPP personnel. This particular draft PR Notice provides guidance to registrants, applicants and the public as to what product brand names may be false or misleading, either by themselves or in association with company names or trademarks.

DATES: Comments, identified by docket control number OPP–00745, must be received on or before May 28, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit V.A. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00745 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Jeff Kempter, Antimicrobial Division, (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5448; fax number: (703) 308–6467; e-mail address: kempter.carlton@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who are required to register pesticides. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. What Guidance Does this PR Notice Provide?

This draft PR Notice provides guidance to registrants and distributors concerning pesticide product brand names that may be false or misleading, either by themselves or in association with particular company names or trademarks. Occasionally, some registrants and distributors have considered or adopted product brand names (or placed company names or trademarks within or in close proximity to product brand names) that conflict with current Agency regulations concerning false or misleading claims [40 CFR 156.10(a)(5) and (b)(2)] and with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) sections 12(a)(1)(e) and 2(q)(1)(A). Under these regulations, products with brand names (or any other statements) that state or imply safety, efficacy, or comparative claims, or are false or misleading in any particular. are considered to be misbranded. To address this problem as it specifically relates to pesticide product brand names, the Agency is proposing to clarify the applicability of its regulations as follows:

- These regulations (40 CFR 156.10(a)(5) and 156.10(b)(2)) require that a pesticide product brand name, either by itself or containing or located in close proximity to a company name or trademark, not be false or misleading. Examples of potentially false or misleading product brand names are provided in Table 1 in the draft PR Notice. In addition, the guidance provided by Section III.4. of PR Notice 93–6 (pertaining to the use of "Brand" to qualify superlative terms) would be superseded by this notice.
- When the draft PR Notice is formally issued, following this notice and comment, the Agency would be applying these regulations as clarified in the notice when evaluating applications for new products or brand names, or notifications for alternate or changed brand names, for registration or reregistration. Registrants would review their product names in light of the notice, and, if warranted, take corrective action before October 1, 2003. It is proposed that as of that date, EPA would use this guidance when determining whether a product is misbranded under FIFRA section 12.

Because of the growing potential for product brand names (either by themselves or in association with company names or trademarks) that appear not to comply with FIFRA and the regulations, the Agency believes that additional guidance is needed so that registrants can better understand the circumstances under which product brand names are potentially false or misleading and what kinds of corrective actions are needed for registered products already bearing such brand names.

The Agency's policy as set forth in the draft PR Notice concludes that a pesticide product brand name, either by itself or in connection with a company name or trademark must not be false or misleading in any particular. EPA's regulations (40 CFR 156.10(a)(5) and (b)(2)) and FIFRA give the regulatory foundation for this position.

The draft PR notice is intended to aid registrants in bringing their product brand names into compliance with those regulatory requirements. Specifically, that draft document provides clarifying guidance to help registrants determine whether their product brand names, alone or through association with their company names or trademarks, comply with the regulations cited above. To ensure that a product's name is consistent with those regulations, a registrant would review the brand names of its products in light of the regulations and guidance in this notice and take corrective action, if warranted. Examples of words, terms, or phrases that might cause product brand names to be false or misleading are listed in the draft PR Notice. By examining these examples as well as other terms listed in the regulations cited above. registrants could determine whether they need to take corrective steps.

If a Federal registrant or distributor of a product were to have a product bearing a false or misleading product brand name, then the draft PR Notice would provide two basic options for bringing that product label into compliance, depending on the specific circumstances:

(1) Change or delete words, phrases, company names or trademarks in the product brand name, and/or

(2) use an appropriate qualifier or disclaimer.

The draft PR notice proposes implementation steps for assuring that all products are brought into compliance with the applicable regulations. When the PR Notice is signed and formally issued, EPA would review all applications for new pesticide product registrations, for amendments to registered products, and for reregistration of registered products using this guidance. It is proposed that as of October 1, 2003, the Agency would monitor registered products using this guidance to determine whether their

labeling is consistent with (40 CFR 156.10(a)(5) and 156.10(b)(2)) and FIFRA. Pesticide products that are released for shipment by registrants or distributors on or after that date and that bear product brand names or trademarks that EPA determines are false or misleading would risk being considered in violation of FIFRA.

To give sufficient time for pesticide products in the channels of trade to be distributed or sold to users or otherwise disposed of, the Agency would provide a period of time for companies to comply with those labeling elements that have been clarified by this notice. Therefore, pesticide products released for shipment prior to October 1, 2003, would be considered existing stocks in the channels of trade that may be sold, used or otherwise disposed of until exhausted. Registrants and distributors would need to take corrective measures as soon as possible to assure that their product brand names are in compliance with FIFRA and its implementing regulations. Registrants who would want to modify their product labels to ensure compliance with FIFRA would submit revised labeling using the notification or amendment application process, as applicable.

The Agency is aware of certain Constitutional considerations that are applicable to commercial speech such as use of a corporate or product name or other statements in connection with a product's features or claims. It is the Agency's intent to address such considerations in this proposed PR Notice so as to promote the exercise of commercial speech in a way that does not run afoul of statutory and regulatory prohibitions against false or misleading statements in connection with sale or distribution of pesticide products. This proposed PR Notice deals with inherently false or misleading statements or claims and potentially false or misleading statements or claims--in particular, those that occur in names that appear on products. Rather than attempting to prohibit product names or claims where they may seemingly be false or misleading, the PR Notice incorporates an approach where the remedy is tailored to the situation. As such, the Agency recognizes that there may be instances where full prohibition may not be warranted and that some remedy short of prohibition might be employed such as the use of qualifiers or different placement of the statement or name on the product label. This proposed PR Notice seeks to employ such an approach.

III. Do PR Notices Contain Binding Requirements?

The PR Notice discussed in this notice is intended to provide guidance to EPA personnel and decision-makers and to pesticide registrants. While the requirements in the statutes and Agency regulations described here are binding on EPA and the applicants, this PR Notice itself is not binding on either EPA or pesticide registrants, and EPA may depart from the guidance where circumstances warrant and without prior notice. Likewise, pesticide registrants may assert that the guidance is not appropriate generally or not applicable to a specific pesticide or situation.

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

1. *Electronically.* You may obtain an electronic copy of this **Federal Register** document using the date of publication from the listing of EPA **Federal Register** documents at http://www.epa.govlfedrgstr/. You may obtain an electronic copy of this PR-Notice, as well as other PR-Notices, both final and draft, at http://www.epa.gov/PR_Notices/.

2. *Fax-on-demand.* You may request a faxed copy of the draft Pesticide Registration (PR) Notice entitled "False or Misleading Pesticide Product Brand Names," by using a faxphone to call (202) 401–0527 and selecting item 6146. You may also follow the automated menu.

3. *In person.* The Agency has established an official record for this action under docket control number OPP–00745. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

V. How Do I Submit Comments?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00745 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00745. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record.

Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. Issues for Comment

Following are several key issues that you may wish to comment on. While the Agency has identified these three issues, it does not intend to limit the issues upon which you may provide comments should you believe the Agency needs to consider other issues.

1. Does the draft PR Notice provide a reasonable approach to qualifying or disclaiming product names that might otherwise appear to conflict with EPA's regulations concerning false or misleading claims?
2. Could some claims in product names be so egregious that they could not be adequately qualified or disclaimed (e.g., "Safe As Water Insecticide")?
3. Does the Agency's proposed approach adequately balance commercial speech considerations and protection of the public against false or misleading claims in connection with the sale or distribution of pesticide products?

List of Subjects

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

Dated: March 14, 2002.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc 02–7495 Filed 3–27–02; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30524; FRL–6827–7]

Pesticide Product; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket control number OPP–30524, must be received on or before April 29, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30524 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By Mail: Andrew Bryceland, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6928 and e-mail address: bryceland.andrew@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

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

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

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–30524. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m.,

Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30524 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), OPP, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–30524. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Application

EPA received an application as follows to register a pesticide product containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of this application does not imply a decision by the Agency on the application.

Product Containing Active Ingredients not Included in any Previously Registered Products

File Symbol: 70051–TA. *Applicant*: Thermo Trilogy Corporation, 9145 Guilford Road, Suite 175, Columbia, MD, 21046. *Product name*: Olive Fly Attract and Kill (A and K) Target Device. *Type of product*: Pheromone/attractant. *Active ingredients*: Ammonium bicarbonate at 12.8% and 1,7-dioxaspiro-(5,5)-undecane (Spiroketal) at 0.2%. *Proposed classification/Use*: An attractant that is used in an attract and kill device that is used to attract and kill the Olive Fruit Fly in olive orchards.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: March 14, 2002.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 02–7496 Filed 3–27–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–1077; FRL–6829–1]

Notice of Filing Pesticide Petitions to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the amendment of a pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–1077, must be received on or before April 29, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1077 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shaja Brothers, Registration Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number (703) 308–3194; and e-mail address: brothers.shaja@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311	Crop production Animal production Food manufacturing

Categories	NAICS codes	Examples of potentially affected entities
	32532	Pesticide manufacturing

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

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

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–1077. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1077 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–1077. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received an amended pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 15, 2002.

Richard P. Keigwin, Jr.,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioner and represent the views of the petitioner. The petition summary announces the availability of

a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number 4 (IR-4)

PP 2E6355, 2E6367, 2E6368

EPA has received pesticide petitions (2E6355, 2E6367, 2E6368) from the Interregional Research Project Number 4 (IR-4), 681 US Highway #1 South, North Brunswick, NJ 08902-3390 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR 180.371 by establishing tolerances for combined residues of thiophanate-methyl, (dimethyl [(1,2-phenylene)-bis(iminocarbonothioyl)] bis[carbamate]), its oxygen analogue dimethyl-4,4-o-phenylenebis(allophonate), and its benzimidazole-containing metabolites (calculated as thiophanate-methyl) in or on the following raw agricultural commodities:

1. Pesticide Petition (PP) 2E6355 proposes a tolerance for pistachio at 0.2 parts per million (ppm).

2. PP 2E6367 proposes a tolerance for potato at 0.05 ppm.

3. PP 2E6368 proposes a tolerance for canola at 0.1 ppm.

This notice includes a summary of the petition prepared by Cerexagri, Inc., 2000 Market Street, Philadelphia, PA 19103. EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of thiophanate-methyl in plants is well understood.

2. *Analytical method.* An adequate method for purposes of enforcement of the proposed thiophanate-methyl tolerances is available. The method uses a HPLC system employing column-switching capabilities. It consists of reverse phase HPLC with UV detection, and is capable of analyzing for residues of thiophanate-methyl and its metabolite, MBC.

3. *Magnitude of residues.* The magnitude of residues for pistachio, potato, and canola are adequately understood for the proposed tolerances.

B. Toxicological Profile

1. *Acute toxicity.* Technical thiophanate-methyl is practically non-toxic (Toxicity Category III) after administration by the oral, dermal and respiratory routes. Thiophanate-methyl is a skin sensitizer.

2. *Genotoxicity.* Thiophanate-methyl has been tested in the Salmonella typhimurium reverse mutation assay with and without activation, the Chinese hamster V79 gene mutation assay with and without activation, the Chinese hamster ovary cell chromosomal aberration assay with and without activation, a primary rat hepatocyte unscheduled DNA synthesis assay, and a mouse dominant lethal assay. All these tests were negative. Thiophanate-methyl is not genotoxic.

3. *Reproductive and developmental toxicity.* At non-maternally toxic doses, thiophanate-methyl induced no teratogenic or fetotoxic effects in rats or rabbits. Even at doses well above maternally toxic levels, thiophanate-methyl caused only minor reversible effects in fetuses and even these effects may not have been compound related. In addition, thiophanate-methyl showed no developmental effects. In rat developmental studies, no abnormalities were observed at gavage doses up to 1,000 mg/kg/day or in a dietary study of doses up to 163 mg/kg/day. Furthermore, increased offspring sensitivity was not observed in the reproductive toxicity studies at doses up to 172 mg/kg/day.

4. *Subchronic toxicity.* Thiophanate-methyl was administered dermally to male and female New Zealand white rabbits 6/hours/day, 5 days/week for 21 days at 100, 300, and 1,000 mg/kg/day. Slight dermal irritation was noted in all the treatment groups during the second week of the study. Decreased food consumption was observed in males at 1,000 mg/kg/day. A systemic NOAEL of 100 mg/kg/day was established. A systemic LOAEL of 300 mg/kg/day was established based on significant decreases in food consumption in female rabbits.

Thiophanate-methyl was evaluated in a 90 day rat feeding study. The effects of treatment were anemia, follicular hyperplasia and hypertrophy of the thyroid, hepatocellular swelling and lipofuscin, fatty degeneration of the adrenal cortex and glomerulonephrosis. The LOAEL was 2,200 ppm (155 mg/kg/day). Based on these results, a NOAEL of 200 ppm (15.7 mg/kg/day) was established for both males and females.

Dogs were fed thiophanate-methyl for 90 days. Based on the occurrence of follicular hypertrophy of the thyroid gland in both sexes and decreased serum glutamic pyruvic transaminase (SGPT) activity in females the LOAEL was determined to be 50 mg/kg/day. No NOAEL was established. (The NOAEL for the one year chronic study was 8 mg/kg/day.)

5. *Chronic toxicity.* Thiophanate-methyl was administered by capsule to beagle dogs for 1 year. Based on the decreased body weight gain in both sexes, decreased T4 levels in males and increased thyroid-to-body weight ratio and hypertrophic histologic changes in the thyroid gland in both sexes, the LOAEL for thiophanate-methyl is 40 mg/kg/day and the NOAEL is 8 mg/kg/day.

A combined chronic/carcinogenicity feeding study was performed in rats at dosages of 0, 75, 200, 1,200 and 6,000 ppm thiophanate-methyl for two years. No clinical signs attributable to thiophanate-methyl were noted in the first 52 weeks. It was concluded that the effects of the treatment with thiophanate-methyl included growth depression, anemia, morphological and functional changes in the thyroid and pituitary, hepatocellular hypertrophy with lipofuscin, accelerated nephropathy and lipidosis of the adrenal cortex. The maximally tolerated dose (MTD) was determined to be 1,200 ppm for both males and females. At 6,000 ppm, approximately five times the MTD, an increase in thyroid follicular cell adenomas was observed in males. Thyroid hyperplasia and hypertrophy were observed only at or above the MTD. These effects are considered to be related to the treatment related changes in hormonal homeostasis of the pituitary-thyroid axis. The NOAEL is 200 ppm (8.8 mg/kg/day in males and 10.2 mg/kg/day in females) when fed for 104 weeks.

In a 2–year feeding study in F344 rats, females receiving up to 334.7 mg/kg/day thiophanate-methyl showed no increase in carcinomas but did show a slight increase in benign adenomas at the highest dose. Male rats showed a dose related increase in benign adenomas and three animals at the highest dose (281 mg/kg/day) had carcinomas. However, the MTD was exceeded for both male and female rats at the highest dose tested. In males, the MTD was exceeded, as demonstrated by the severity of toxicity seen in various organs and excessive mortality (2/55 survivors at study end vs. 37/50 controls). In the highest dose females, net body weight gain was only 69% ($p < 0.001$) of the control value at the end of the study.

In an 18-month feeding study in CD-1 mice, males receiving 3,000 ppm (468

mg/kg/day) showed an increased incidence of hepatocellular hypertrophy and a small, but statistically significant, decrease in body weight (<8%). Transient increases in serum thyroid stimulating hormone (TSH) and in absolute and relative thyroid weights were also observed in males. At the highest dose tested (7,000 ppm) both males and females showed increased mortality and increased liver weight at both weeks 39 and 78. Females at 7,000 ppm (1329 mg/kg/day) showed a statistically significant decrease in body weight (<8%), decreased serum thyroxine (T4) at week 39, and increased heart weight at weeks 39 and 78. A dose-related statistically significant increase in the incidence of hepatocellular adenomas was observed in both sexes at 3,000 and 7,000 ppm. Two hepatocarcinomas and one hepatoblastoma were found. The systemic NOAEL is 150 ppm (23.7 mg/kg/day in males and 28.7 mg/kg/day in females). The LOAEL is 640 ppm based on an increased incidence of hepatocellular hypertrophy in females.

6. *Animal metabolism.* The metabolism of thiophanate-methyl in animals is well understood.

7. *Metabolite toxicology.* There are two primary metabolites of thiophanate-methyl: MBC and 2-AB. The metabolite that has been extensively evaluated for toxicity is MBC. The toxicity of MBC is well understood and documented in the report of the International Programme on Chemical Safety (Environmental Health Criteria 149).

8. *Endocrine disruption.* No effects were observed that would indicate that the endocrine system is disrupted with regard to the reproductive system (i.e., is anti-estrogenic, estrogenic, androgenic, or anti-androgenic). Thiophanate-methyl does alter thyroid function through the thyroid stimulating hormone.

C. Aggregate Exposure

1. *Dietary exposure.* Dietary exposure is the primary route of exposure to thiophanate-methyl. Tolerances have been established for the residues of thiophanate-methyl in or on a variety of raw agricultural commodities.

i. *Food.* For the purposes of assessing the potential dietary exposure for these existing and pending tolerances, Cerexagri, Inc. conducted exposure estimates using the Lifeline software version 1.1 from The Lifeline Group, results from field trials and processing studies, monitoring data, consumption data from the 1994-1996, 1998 USDA Continuing Surveys of Food Intakes by Individuals (CSFII), and information on the percentages of the crops treated (where available) with thiophanate-methyl were utilized.

ii. *Drinking water.* Thiophanate-methyl is not expected to be found in water. The half-life of thiophanate-methyl is very short in soil and water. When metabolized or chemically converted to MBC, none is expected to leave the soil. In dissipation studies neither thiophanate-methyl nor MBC was found below the top layer of the soil (0-8 cm or 0-6 inches). Little to no thiophanate-methyl exposure is expected in drinking water.

2. *Non-dietary exposure.* Thiophanate-methyl has turf use patterns. The primary use is commercial (golf course, turf sale). Based on the limited use of the product on golf courses, and the low dermal toxicity, little to no contribution to the thiophanate-methyl risk cup is expected through non-occupational exposure.

D. Cumulative Effects

Benomyl (marketed until recently), MBC, thiabendazole, and thiophanate-methyl have been evaluated for similar toxicity patterns because of the potential structure-activity relationship. Thiophanate-methyl, although displaying some similarities to each of the other benzimidazoles, is also very different. These benzimidazoles do not share a toxicity profile that would indicate there is common mode of action. The difference in toxicity patterns is apparent in the recent HED Revised Preliminary Risk Assessment for thiophanate-methyl. In this assessment, none of the NOAELs for thiophanate-methyl are based on liver effects, while both subchronic and chronic NOAELs for MBC are based on liver effects. In acute studies, MBC has testicular effects, while thiophanate-methyl induce tremors at high doses. The main overlap in toxicity profiles between thiophanate-methyl and MBC are non-specific effects such as reduced food consumption and body weights in dietary studies.

In addition, for subchronic and chronic exposures, thiophanate-methyl toxicity primarily involves the thyroid. In contrast, no disruption of the thyroid-pituitary-liver axis is documented in either the carbendazim or the benomyl studies. Secondary effects on the liver could be seen in common, but these too are very different. If driven by MBC alone, thiophanate-methyl should have a dose effect much higher than MBC. In fact, it is two to three times higher. Reproductive, developmental and genetic toxicity are also different between thiophanate-methyl and MBC. Likewise, thiabendazole is different than thiophanate-methyl. It does not metabolize to MBC and shows significant differences from thiophanate-methyl in the type of toxicities observed. Therefore, there is no scientific basis for aggregating this class of fungicides, due to a lack of common mechanisms of toxicity.

E. Safety Determination

1. *U.S. population.* For both the general population and all specific subpopulations, there is a reasonable certainty of no harm associated with all exposure assessments. Non-cancer and cancer risks are lower than have been previously calculated by EPA because: (i) PDP data were used where appropriate rather than field trial data, (ii) updated usage data lowered the estimates of the percent of crop treated for some key commodities, such as stone fruit, and (iii) a consumer washing factor of 0.07 was used for smooth skinned fruits (apples, blueberries, and strawberries). Note that two separate Lifeline analyses were conducted and submitted to EPA, one on October 3, 2001, and a second on October 19, 2001. The second analysis used actual MBC residues to calculate MBC and 2-AB residues, rather than estimating them based on thiophanate-methyl residues. The use of actual MBC data provided a more accurate assessment of exposure.

2. *Infants and children.* The rabbit study indicated that even at twice the maternal LOAEL, thiophanate-methyl induced only two effects of questionable significance, increase in supernumerary ribs (a reversible condition) and a reduction in fetal weight that was not statistically significant and was likely related to maternal toxicity. The rat developmental study showed no teratogenic or fetotoxic effects at any dose tested.

The thiophanate-methyl 2-generation reproduction study showed thyroid and liver effects in both the parental and first generation pups. The effects were greater in the parental animals than in subsequent generations. This would indicate that there is no greater sensitivity for infants and children to thiophanate-methyl than the general population.

F. International Tolerances

There are no Codex Alimentarius Commission tolerances for canola, pistachios, or potatoes. The European Union tolerances for each of the three commodities is 0.1 ppm (lower limit of analytical determination).

[FR Doc 02–7497 Filed 3–27–02; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–1078; FRL–6828–9]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–1078, must be received on or before April 29, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1078 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Linda Hollis, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8263; e-mail address: hollis.linda@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

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

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

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–1078. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1078 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–1078. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Co. sider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 19, 2002.

Kathleen D. Knox,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Valent BioSciences Corporation

PP 2G6378

EPA has received a pesticide petition (2G6378) from Valent BioSciences Corporation, 870 Technology Way, Suite 100, Libertyville, IL 60048, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180, to expand an existing tolerance exemption for the biochemical pesticide 6–benzyladenine in or on agricultural commodities apples and pistachios.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Valent BioSciences Corporation has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Valent BioSciences Corporation and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

6–Benzyladenine is a naturally occurring plant growth regulator used on certain fruit trees and certain ornamental lily tubers. In January 1990, the Agency classified 6–benzyladenine as a biochemical pesticide because it resembles natural plant regulators and it displays a nontoxic mode of action. The new use being proposed for 6–benzyladenine (6–BA) is as an effective stand-alone fruitlet thinner when applied to apples in the post-bloom period at an application rate not to exceed 182 grams active ingredient/acre/season (g/ai/acre/season). 6–Benzyladenine has also been shown to directly increase cell division of treated fruit, resulting in improvements in fruit size over what would be expected from the normal thinning effect. The frequency and timing of application will vary according to the specific growing conditions being treated.

The second proposed new use is to reduce alternate bearing in pistachio and thus increase cumulative yield. The proposed maximum application rate for pistachio is 60 g/ai/acre/season.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* 6–Benzyladenine *N*-(phenylmethyl)-1H-purin-6-amine has been tested and residue data generated have been provided to EPA by Valent BioSciences Corporation.

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* Trials conducted in various states (MI, NY, OR, PA, VA, and WA) and on various apple cultivars, support the proposed temporary exemption from the requirement of a tolerance. Residue levels following the maximum number (four) of applications on apple were very close to the limit of quantitation (LOQ) of 5 parts per billion (ppb) at normal harvest, which averaged 80 days after the last application. Trials indicate rapid degradation of 6–BA residues among all the apple varieties and geographies evaluated.

The analytical methods for detection of 6–BA in apple raw agricultural and processed commodities are comprised of extraction, cleanup on a strong cation exchange (SCX) solid-phase extraction cartridge, derivitization and quantitation by gas chromatography (GC). These were developed by Valent BioSciences Corporation, constituting a practical analytical method for detecting and measuring levels of 6–BA in or on commodities with a limit of quantitation (LOQ) of 0.005 ppm that allows for monitoring of food, with the residues at or above the LOQ which has been submitted to EPA.

Residue data on 6–BA use on pistachio have been provided to EPA by Valent BioSciences Corporation. Trials were conducted in locations representing the major pistachio production area in the United States. No residues were detected following the maximum number (two) of applications at normal harvest, which averaged 60 days after the last application.

An analytical method based on extraction, clean up and derivitization of 6–BA followed by quantitation by GC was submitted to EPA for residue determination on pistachio. This GC method is adequate for determining residues in or on pistachios with a LOQ of 0.05 ppm.

3. *Analytical method.* Usually, a request for an exemption from the requirement of a tolerance is not accompanied by residue data and an analytical method. Valent BioSciences Corporation has provided this information to the Agency in this case. The information demonstrates that any residue is detected at levels very close to the LOQ. Although a numeric tolerance could be established, it would be very difficult to enforce, as demonstrated by the risk characterization. Valent BioSciences Corporation proposes that the submitted residue data and analytical method support their conclusion that there is a

reasonable certainty that no harm to humans or the environment will result from the experimental use of 6–BA on apples and pistachios.

C. Mammalian Toxicological Profile

1. *Acute toxicity.* The oral LD_{50} of 6–benzyladenine is estimated by probit analysis at 1.3 grams/kilogram (g/kg) in the rat. The dermal LD_{50} in the rabbit is >5.0 g/kg. The acute inhalation LC_{50} in the rat is 5.2 milligrams/Liter/hour (mg/L/hour). A primary eye irritation study in the rabbit showed moderate conjunctival effects which cleared within 7 days. A dermal irritation study in the rabbit showed slight dermal irritation, which lasted for 5 days. Sensitization potential has been examined, and 6–benzyladenine (99% pure) was demonstrated not to be a dermal sensitizer in guinea pigs under conditions of the study.

2. *Genotoxicity.* Mutagenicity studies including Ames test, mouse micronucleus assay, and unscheduled DNA synthesis (UDS) assay in rat were negative for mutagenic effects.

3. *Developmental toxicity.* Developmental toxicity in rats fed 6–benzyladenine (99% pure) was manifested as significantly decreased fetal body weight (bwt), increased incidence of hydrocephaly and unossified sternbrae, incompletely ossified phalanges, and malaligned sternbrae at 175 milligrams/kilogram body weight/day (mg/kg bwt/day). Maternal toxicity was also observed at 175 mg/kg bwt/day, which was manifested as significantly decreased body weight, weight gain, and food consumption. Thus the no observed adverse effect level (NOAEL) and lowest observed adverse effect level (LOAEL) for maternal and developmental toxicity were 50 and 175 mg/kg bwt/day, respectively.

4. *Subchronic toxicity.* 6–Benzyladenine (99% pure) fed to rats for 13 weeks produced decreased weight gain at 1,500 and 5,000 ppm (121 and 322 mg/kg bwt/day) in females and 5,000 ppm (295 mg/kg bwt/day) in males. This decreased weight gain appeared to be related to decreased food consumption. Serum alkaline phosphatase activity and blood urea nitrogen levels were increased in both sexes receiving 5,000 ppm; thus, the NOAEL was 1,500 ppm (approximately 111 mg/kg bwt/day in both sexes combined) and the LOAEL was 5,000 ppm (approximately 304 mg/kg bwt/day in both sexes), based on the decreased body weight gain, food consumption, increased blood urea nitrogen, and minimal histological changes in the kidneys.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* In conducting this exposure assessment, Valent BioSciences Corporation used very conservative assumptions; 100% of all commodities were assumed to be treated, and those residues would be at twice the LOQ -- which result in a large overestimate of human exposure. The analysis assumes that all residues have the same magnitude, and the treated commodity is 100% of a daily diet. Thus, in making a safety determination for these temporary tolerance exemptions, Valent BioSciences Corporation took into account this very conservative exposure assessment. The last application precedes harvest by approximately 2.5 months in apples; therefore, the potential for dietary exposure is considered negligible by Valent BioSciences Corporation. Application precedes harvest by approximately 2 months in pistachios. Also pistachios have their hulls, which cover the shell, removed at harvest; therefore, the potential for dietary exposure is considered negligible by Valent BioSciences Corporation. Residues are below the LOQ (0.05 ppm) in pistachio.

ii. *Drinking water.* The proposed uses on apples and pistachios are not expected to add potential exposure to drinking water. Soil leaching studies have suggested that 6–BA is relatively immobile, absorbing to sediment. Residues reaching surface waters from field runoff should quickly absorb to sediment particles and be partitioned from the water column. 6–Benzyladenine also has low solubility in water, 0.061 mg/mL, and detections in ground water are not expected. Valent BioSciences Corporation concludes that together these data indicate that residues are not expected in drinking water.

2. *Non-dietary exposure.* The proposed uses involve application of 6–BA to crops grown in an agriculture environment. The only non-dietary exposure expected is that to applicators. However, the protective measures prescribed by the product's label are expected to be adequate to minimize exposure and protect applicators of the chemical.

E. Cumulative Exposure

No cumulative adverse effects are expected from long-term exposure to this chemical. There is no reliable information to indicate that toxic effects produced by 6–BA would be cumulative with those of any other pesticide chemical.

F. Safety Determination

1. *U.S. population.* Chronic dietary exposure estimates were conducted for the overall U.S. population and 25 population subgroups, including infants and children. These estimated daily intakes were compared against a chronic population adjusted dose (cPAD) based on a NOAEL of 50 mg/kg bwt/day from a developmental study in rats. To account for intraspecies and interspecies variation and the use of an acute toxicological endpoint for a chronic assessment, an uncertainty factor (UF) of 1,000 was applied to the acute NOAEL. This resulted in a cPAD of 0.05 mg/kg bwt/day. Daily exposure for the overall U.S. population was estimated by Valent BioSciences Corporation to be 0.000014 mg/kg bwt/day, representing less than 0.1% of the estimated cPAD.

2. *Infants and children.* Estimated daily exposures from tolerance level residues on 100% of the apple and pistachio commodities for the most highly exposed population subgroup, non-nursing infants, was estimated to be 0.000085 mg/kg bwt/day, or 0.2% of the estimated cPAD.

G. Effects on the Immune and Endocrine Systems

6–Benzyladenine is a naturally occurring cytokinin which has plant growth regulator properties. There is no indication that this plant growth regulator belongs to a class of chemicals known or suspected of having adverse effects on the immune and endocrine systems. It can be concluded that based upon the existing toxicology there would be no adverse effects on the immune or endocrine systems from the use of 6–benzyladenine. Last, there is no evidence that 6–benzyladenine bioaccumulates in the environment.

H. Existing Tolerances

The plant growth regulator 6–benzyladenine is exempt from the requirement of a tolerance when used as a fruit-thinning agent at an application rate not to exceed 30 grams of active ingredient per acre in or on apples.

I. International Tolerances

There are no Codex, Canadian, or Mexican maximum residue limits for use of 6–benzyladenine on apples or pistachio.

[FR Doc. 02–7498 Filed 3–27–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7164–3]

Arsenic Treatment Demonstrations

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (U.S. EPA) plans to conduct a demonstration program on the treatment (reduction and/or removal) of arsenic in drinking water. The U.S. EPA recently promulgated a standard that limits arsenic concentrations in drinking water to 10 ug/l. Through this demonstration program the U.S. EPA intends to identify and evaluate the ability of commercially available technologies and engineering or other approaches to cost effectively meet the new standard in small water systems (<10,000 customers). Through this notice, the U.S. EPA is inviting the public at large, governmental and regulatory agencies, public health agencies, and drinking water utilities to identify small water utilities that may be interested in hosting a demonstration at their facility. Such utilities should be those which will require treatment to comply with the new arsenic standard. This notice does not constitute a procurement.

DATES: Please submit the requested information by June 28, 2002.

ADDRESSES: Details on participation in this study can be found at *http://www.epa.gov/ORD/NRMRL/arsenic/*.

FOR FURTHER INFORMATION CONTACT: Robert Thurnau, National Risk Management Research Laboratory, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, Ohio, 45268, telephone (513) 569–7504.

Dated: February 15, 2002.

E. Timothy Oppelt,

Director, National Risk Management Research Laboratory.

[FR Doc. 02–7493 Filed 3–27–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Reports and Guidance Documents

AGENCY: Federal Accounting Standards Advisory Board

ACTION: Notice of New Exposure Drafts *Target Audience and Qualitative Characteristics for the Consolidated Financial Report of the United States Government*, and *Selected Standards for the Consolidated Financial Report of the United States Government.*

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October, 1999, notice is hereby given that the Federal Accounting Standards Advisory Board has published two new exposure drafts, Target Audience and Qualitative Characteristics for the Consolidated Financial Report of the United States Government, and Selected Standards for the Consolidated Financial Report of the United States Government.

A summary of the proposed Statement follows: On March 19, 2002, the Federal Accounting Standards Advisory Board (FASAB) released for public comment an exposure draft (ED), Target Audience and Qualitative Characteristics for the Consolidated Financial Report of the United States Government, that proposes the concept that the primary target audience of the CFR is external users represented by citizens and their intermediaries. The second exposure draft (ED), Selected Standards for the Consolidated Financial Report of the United States Government, proposes standards on applying FASAB standards to the CFR, exempting the CFR from the requirement for the Statement of Budgetary Resources and the Statement of Financing, and requiring two new statements for the CFR.

The exposure drafts will soon be mailed to FASAB's mailing list of subscribers. Additionally, it is available on FASAB's home page *http://www.fasab.gov*. Copies can be obtained by contacting FASAB at (202) 512–7350, or *lomaxm@fasab.gov* or *fontenroser@fasab.gov*. Respondents are encouraged to comment on any part of the exposure draft. Written comments are requested by June 30, 2002, and should be sent to: Wendy M. Comes, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street, NW., Suite 6814, Mail Stop 6K17V, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Wendy M. Comes, Executive Director, 441 G Street, NW., Suite 6814, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463.

Dated: March 25, 2002.

Wendy M. Comes,

Executive Director.

[FR Doc. 02–7434 Filed 3–27–02; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Report and Guidance Documents

AGENCY: Federal Accounting Standards Advisory Board

ACTION: Notice of New Exposure Draft *Eliminating the Category National Defense Property, Plant, and Equipment.*

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in October, 1999, notice is hereby given that the Federal Accounting Standards Advisory Board has published a new exposure draft, Eliminating the Category National Defense Property, Plant, and Equipment.

A summary of the proposed Statement follows: On March 25, 2002, the Federal Accounting Standards Advisory Board (FASAB) released for public comment an exposure draft (ED) to amend Statement of Federal Financial Accounting Standards (SFFAS) 8, Supplementary Stewardship Reporting, and Statement of Federal Financial Accounting Standards (SFFAS) 6, Accounting for Property, Plant and Equipment. The amendment proposed in the ED would make the following changes. The term "ND PP&E" would be rescinded. All items previously considered ND PP&E would be classified as general PP&E. Accordingly, these items would be capitalized and, with the exception of land and land improvements that produce permanent benefits, depreciated. This ED also notes that all entities are permitted to use the composite or group depreciation methodology to calculate depreciation. The amendments proposed in this ED would take effect for accounting periods beginning after September 2002.

The exposure draft will soon be mailed to FASAB's mailing list of subscribers. Additionally, it is available on FASAB's home page *http://www.fasab.gov/*. Copies can be obtained by contacting FASAB at (202) 512–7350, or *wascakr@fasab.gov*. Respondents are encouraged to comment on any part of the exposure draft.

Written comments are requested by May 20, 2002, and should be sent to: Wendy M. Comes, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street, NW., Suite 6814, Mail Stop 6K17V, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., NW., 6814, Washington, D.C. 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463.

Dated: March 25, 2002.

Wendy M. Comes,

Executive Director.

[FR Doc. 02–7435 Filed 3–27–02; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

March 21, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 28, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley Herman or Leslie Smith, Federal Communications Commission, Room 1–C804 or Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *jbherman@fcc.gov* or *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley Herman at 202–418–0214 or via the Internet at *jbherman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0174.

Title: Section 73.1212, Sponsorship identification; list retention; related requirements.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, state, and not-for-profit institutions.

Number of Respondents: 15,122.

Estimated Time Per Response: Recordkeeping requirement—0.1 hours/broadcast; sponsorship identification—4 seconds/broadcast.

Frequency of Response: Recordkeeping requirement; and third party disclosure requirement.

Total Annual Burden: 91,231 hours.

Total Annual Cost: N/A.

Needs and Uses: Section 73.1212 requires a broadcast station to identify the sponsor of any matter for which consideration is provided. For matter advertising commercial products or services, generally the mention of the name of the product or service constitutes sponsorship identification. In the case of television political advertisements concerning candidates for pubic office, the sponsor shall be identified with letters equal to or greater than four percent of the vertical height of the television screen. In addition, when an entity rather than an individual sponsors the broadcast of matter that is of a political or controversial nature, the licensee is required to retain a list of the executive officers, or board of directors, or executive committee, etc., of the organization paying for such matter. Sponsorship announcements are waived with respect to broadcast of "want ads" sponsored by an individual but the licensee shall maintain a list showing the name, address and telephone number of each such advertiser. These lists shall be made available for public inspection. The data is used by the public so that they may know by whom they are being persuaded.

OMB Control No.: 3060–XXXX.

Title: Data Quality Comment Form.

Form No.: FCC Form 115.

Type of Review: New collection.

Respondents: Individuals or households, business or other for-profit, not-for profit institutions, and state, local or tribal government.

Number of Respondents: 25.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 25 hours.

Total Annual Cost: N/A.

Needs and Uses: FCC Form 115 is required by Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 105–554). Section 515 directs federal agencies to implement guidelines that include administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with OMB guidelines. The Commission has developed FCC Form 115 to obtain the necessary data from the public and to use it as a tracking mechanism for these types of comments.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–7405 Filed 3–27–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

March 20, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a 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 May 28, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley Herman, Federal Communications Commission, 445 12th Street, SW, Room 1–C804, Washington, DC 20554 or via the internet to *jbherman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley Herman at 202–418–0214 or via the internet at *jbherman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1005.

Title: Numbering Resource Optimization—Phase 3.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit, state, local, or tribal government.

Number of Respondents: 53.

Estimated Time Per Response: 63.77 hours (average hours per response).

Total Annual Burden: 3,380 hours.

Annual Reporting and Recordkeeping Cost Burden: $12,000.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Needs and Uses: In the Third Report and Order and Second Order on Reconsideration in CC Docket No. 99–200, the Commission continued its efforts to maximize the efficiency with which numbering resources in the North American Number Plan (NANP) are utilized. In order for price cap LECs to qualify for exogenous adjustment to access charges established under the federal cost recovery mechanism, they must demonstrate that pooling results in a net cost increase rather than a cost reduction. Applications to state commissions from carriers must demonstrate that certain requirements are met before states may grant use of the safety valve mechanism. State commissions seeking to implement service-specific and/or technology-specific area code overlays, must request delegated authority to do so.

The Commission received emergency (6 month) approval under the emergency processing procedure on 3/12/02. This notice is being published in the **Federal Register** to start a 60-day comment period under the Paperwork Reduction Act in order to obtain a full three-year approval.

OMB Control No.: 3060–0084.

Title: Ownership Report for Noncommercial Educational Broadcast Station.

Form No.: FCC Form 323–E.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions.

Number of Respondents: 2,636.

Estimated Time Per Response: 1–3 hours.

Total Annual Burden: 2,636 hours.

Annual Reporting and Recordkeeping Cost Burden: $1,054,400.

Frequency of Response: On occasion, biennial and other reporting requirements.

Needs and Uses: FCC Form 323–E is filed by licensees/permittees of noncommercial FM and TV broadcast stations when the original construction permit is granted, on the date it applies for a station license, in conjunction with the station's renewal application and every two years thereafter. The data are used by FCC staff to determine if licensees/permittees are in compliance with Sections 308 and 310 of the Communications Act, as amended, and the Commission's ownership disclosure requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–7406 Filed 3–27–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–18–02]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404)498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: National Telephone Survey of Urban Mosquito Control Programs—New—National Center for Infectious Disease (NCID), Centers for Disease Control and Prevention (CDC). West Nile virus is a mosquito-borne virus that is native to the eastern hemisphere, where it recently caused large epidemics of human disease in eastern Europe, Russia, and the Middle East. In 1999, West Nile virus first appeared in the United States when it caused an epidemic of mosquito-borne encephalitis and meningitis in the greater New York City metropolitan area. During 1999–2000, 83 persons (mostly senior citizens) with West Nile viral disease and 9 fatalities were reported in New York, New Jersey, and Connecticut. The apparent primary vector to humans was the house mosquito, *Culex pipiens*, which occurs in virtually all urban areas of the United States. This species is also one of the principal vectors of St. Louis encephalitis virus, historically the most important cause of epidemic viral encephalitis in the United States, and a close relative of West Nile virus. Based on the detection of West Nile virus in birds and mosquitoes, this virus has now spread to a 12-state region of the eastern United States, extending from New Hampshire to North Carolina, and from the Atlantic coast to western Pennsylvania. It is likely that West Nile virus will continue to expand its geographic range within the United States, mainly through distribution by infected birds. Thus, many cities in the United States are at risk for West Nile virus epidemics, especially those without mosquito control programs that target Culex mosquitoes. No systematically collected information on such programs is currently available. Currently in the United States, mosquito control is largely a local issue funded by state and local tax dollars. In the proposed survey, mosquito control program managers will be identified and interviewed by telephone to estimate the number of U. S. cities of at least 100,000 population that have functional programs for controlling urban *Culex* mosquitoes, by geographic region. The survey will be conducted twice, once at baseline and again two years later, to assess national and regional trends in establishing such control programs. This information will serve as a resource for the Centers for Disease Control and Prevention, state and local health departments, policymakers, and funding agencies. The estimated annualized burden is 48 hours.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/response (in hours)
Initial Telephone interview	143	1	10/60
Follow-up Telephone Interview with Initial Respondents	143	1	10/60

Dated: March 19, 2002.

Nancy Cheal,

Acting Associate Director for, Policy, Planning and Evaluation, Centers for Disease Control, and Prevention.

[FR Doc. 02–7408 Filed 3–27–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 66 FR 56562–63, dated November 8, 2001) is amended to revise the mission statement for the Office of the Director, Division of Adult and Community Health, and establish the Emerging Investigations and Analytic Methods Branch, Division of Adult and Community Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete the mission statement for the *Office of the Director (CL31), Division of Adult and Community Health (CL3),* and insert the following:

(1) Manages, coordinates, and evaluates the activities and programs of the Division; (2) ensures that Division activities are coordinated with other components of CDC both within and outside the Center, with Federal, State, and local health agencies, and with voluntary and professional health agencies; (3) provides leadership and coordinates Division responses to requests for research, consultation, training, collaboration, and technical assistance or information on managed care, health promotion, behavioral surveys, cardiovascular health, aging, epilepsy, and arthritis; (4) provides administrative, logistical, and management support for Division field staff; (5) provides administrative and management support for the Division including guidance on the organization of personnel and the use of financial resources, and oversight of grants, cooperative agreements, contracts, and reimbursable agreements.

After the functional statement for the *Cardiovascular Health Branch (CL33),* insert the following:

Emerging Investigations and Analytic Methods Branch (CL34). (1) Conducts epidemiologic research and investigations of cross-cutting emerging scientific issues for NCCDPHP; (2) uses geographic information systems (GIS) to provide spatial and temporal relationships among data; (3) conducts operational research to evaluate the cost-effectiveness or cost-benefit of chronic disease prevention and control technologies and develops and recommends national policy to address issues related to the economics of health care; (4) performs research on racism and its social determinants on health, adverse childhood events, mental health, gene environment interactions, and alcohol; (5) coordinates and provides guidance in the evaluation of community and state-based intervention programs; (6) designs and produces a wide range of visual materials (*e.g.,* slides, overheads, exhibits) for presentations and instructional activities; (7) coordinates Branch activities through the Division with other components of CDC, other Federal, State, and local Government agencies, and other private, public, nonprofit, and international organizations as appropriate.

Dated: March 19, 2002.

Jeffrey P. Koplan,

Director.

[FR Doc. 02–7385 Filed 3–27–02; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel.

Date: April 17–18, 2002.

Time: 8:00 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: Marriott Suites, 6711 Democracy Blvd., Bethesda, MD 20814.

Contact Person: Martin H. Goldrosen, BS, Chief, Office of Scientific Review, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd, Ste. 106, Bethesda, MD 20892–5475, (301) 451–6331, *goldrosm@mail.nih.gov.*

Dated: March 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7394 Filed 3–27–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: April 18, 2002.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: The Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Jerry Roberts, PhD., Scientific Review Administrator, Office of Scientific Review, National Institutes of Health, Building 38A, Bethesda, MD 20892, 301–402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: March 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7398 Filed 3–27–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby give of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel.

Date: March 21, 2002.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, Building 31, Room B2B32, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rudy O. Pozzatti, PHD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: March 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7399 Filed 3–27–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 26, 2002.

Time: 10:30 AM to 12:30 PM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Martha Ann Carey, PHD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606, *mcarey@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 28, 2002.

Time: 10:30 AM to 12:30 PM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Martha Ann Carey, PHD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606, *mcarey@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 28, 2002.

Time: 12:00 PM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Martha Ann Carey, PHD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606, *mcarey@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 29, 2002.

Time: 10:30 AM to 12:30 PM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Martha Ann Carey, PHD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606, *mcarey@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7397 Filed 3–27–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, February 20, 2002, 2:00 PM to February 20, 2002, 3:30 PM, Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC, 20007 which was published in the **Federal Register** on February 7, 2002, 67 FR 5841–5842.

The meeting has been changed to a telephone conference call to be held March 27, 2002, from 3:00 PM to 4:00 PM. The meeting is closed to the public.

Dated: March 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7395 Filed 3–27–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 26, 2002.

Time: 11:00 AM to 12:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, *levinv@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 1, 2002.

Time: 3:45 PM to 5:15 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Administrator, Genetic Sciences IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 10, 2002.

Time: 9:45 AM to 11:45 AM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gloria B. Levin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–1017, *leving@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 98.893, National Institutes of Health, HHS)

Dated: March 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7396 Filed 3–27–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Laboratory Animal Welfare: Proposed Change in PHS Policy on Humane Care and Use of Laboratory Animals

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The NIH is proposing to change the PHS Policy on Humane Care and Use of Laboratory Animals (PHS Policy) to permit institutions with PHS Animal Welfare Assurances to submit verification of Institutional Animal Care and Use Committee (IACUC) approval for competing applications subsequent to peer review but prior to award. Current PHS Policy, applicable to all PHS-conducted or supported activities involving live, vertebrate animals, provides institutions with a PHS approval Animal Welfare Assurance the option of submitting IACUC approval for competing application subsequent to the submission of the application of proposal, but within 60 days from the receipt date. NIH grants policy mandates that applications lacking IACUC approval are considered incomplete; thus IACUC approval is presently required prior to initial NIH peer review.

DATES: Comments must be submitted on or before May 28, 2002.

ADDRESSES: Comments may be submitted to Anthony Demsey, Ph.D., Senior Advisor for Policy, Office of Extramural Research, National Institutes of Health, Building 1, Room 154, Bethesda, Maryland 20892. All comments received will be available for inspection weekdays (Federal holidays excepted) between the hours of 9:00 a.m. and 4:30 p.m. at this address.

SUPPLEMENTARY INFORMATION: The NIH is proposing to revise the requirement that IACUC verification be submitted prior to NIH peer review. This revision would permit Assured institutions to submit IACUC verification for competing application subsequent to peer review but prior to award. This concept is often referred to as "just-in-time." The proposed change would enhance the flexibility of institutions and reduce the burden on applicants and IACUCs, allowing resources to be focused on substantive review of proposals likely to be funded.

On May 1, 2000, the NIH announced that IRB approval would no longer be required prior to NIH peer review of an application that involves human subjects. Because of the different bases for these policies, the NIH did not extend this permission to IACUC approval at that time. However, the NIH is now inviting comments from the community on proceeding with a revision of the Humane Care and Use of Laboratory Animals to permit IACUC approval for competing applications to be submitted subsequent to peer review but prior to award. If such a change were adopted it would be optional (*i.e.*, as a matter of institutional policy institutions could require IACUC review and approval prior to submission of applications or prior to NIH peer

review). The current requirement that modifications required by the IACUC must be submitted to NIH with the verification of IACUC approval would remain in effect.

Public comment on this proposed revision is encouraged.

Dated: March 19, 2002.

Ruth Kirschstein,

Acting Director, National Institutes of Health.

[FR Doc. 02–7400 Filed 3–27–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; Call for Public Comments on One Additional Substance Proposed for Listing in the Report on Carcinogens, Eleventh Edition

Additional Nomination Under Consideration

The National Toxicology Program (NTP) announces its intent to review one additional substance, 2-Amino-3,8-dimethylimidazo[4,5-f]quinoxaline (MeIQx), (Chemical Abstract Services Registry Number 77500–04–0) for possible listing in the Report on Carcinogens (RoC), Eleventh Edition that is scheduled for publication in 2004. This substance is added to the list of nominations under consideration for the Report on Carcinogens (RoC), Eleventh Edition that was announced previously in the **Federal Register** (July 24, 2001: Volume 66, Number 142, pages 38430–38432). Background information about the RoC, including the criteria for listing, is provided in that notice. A detailed description of the review procedures, including the steps in the formal review process, is available at *http://ntp-server.niehs.nih.gov* (see Report on Carcinogens) or can be obtained by contacting Dr. C. W. Jameson, Head of the Report on Carcinogens, at the address below.

MeIQx is a heterocyclic amine that is formed during heating or cooking of meat and fish. It was nominated by the National Institute of Environmental Health Sciences (NIEHS) based on the International Agency for Research on Cancer (IARC) finding of sufficient evidence of carcinogenicity of MeIQx in experimental animals (Vol. 56; 1993).

Public Comment Requested

The NTP invites public comment on this additional nomination, and asks for relevant information concerning carcinogenicity, as well as human exposure. The NTP also invites interested parties to identify any scientific issues related to the listing of this nomination in the RoC that they feel should be addressed during the reviews. Comments concerning this nomination for listing in the Eleventh RoC will be accepted through May 28, 2002. Individuals submitting public comments are asked to include relevant contact information [name, affiliation (if any), address, telephone, fax, and email]. Comments or questions should be directed to Dr. C.W. Jameson, National Toxicology Program, Report on Carcinogens, 79 Alexander Drive, Building 4401, Room 3118, PO Box 12233, Research Triangle Park, NC 27709; phone: (919) 541–4096, fax: (919) 541–0144, e-mail: *jameson@niehs.nih.gov.*

Dated: March 1, 2002.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 02–7401 Filed 3–27–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4558–N–09]

Mortgagee Review Board; Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In compliance with section 202(c) of the National Housing Act, notice is given of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

FOR FURTHER INFORMATION CONTACT: D. Jackson Kinkaid, Secretary to the Mortgagee Review Board, 451 Seventh Street, SW., Washington, DC 20410, telephone: (202) 708–3041 extension 3574 (this is not a toll-free number). A Telecommunications Device for Hearing and Speech-Impaired Individuals is available at 1 (800) 877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (added by section 142 of the Department of Housing and Urban Development Reform Act of 1989, Public Law 101–235, approved December 15, 1989), requires that HUD "publish a description of and the cause for administrative action against a HUD-approved mortgagee" by the Department's Mortgagee Review Board. In compliance with the requirements of section 202(c)(5), notice is given of administrative actions that have been taken by the Mortgagee Review Board from October 1, 2001 through December 31, 2001.

1. Ambassador Mortgage Corporation, Turnersville, NJ

[Docket No. 99–985–MR]

Action: In a letter dated December 10, 2001, the Board proposed the withdrawal of Ambassador Mortgage Corporation's ("AMC") HUD/FHA approval for three years.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: AMC employed loan officers who were not exclusive employees; AMC failed to provide complete loan origination files for review; and AMC failed to implement and maintain a Quality Control Plan.

2. Capital Mortgage Services/Siwell, Inc., Lubbock, TX

[Docket No. 01–1540–MR]

Action: Settlement Agreement signed December 4, 2001. Without admitting fault or liability, Capital Mortgage Services/Siwell, Inc. ("CMS") agreed to a payment of $1,000.

Cause: HUD received a complaint from an FHA mortgagor which revealed the following violations of HUD/FHA requirements: CMS failed to comply with HUD/FHA's Loss Mitigation policies and failed to provide appropriate loan servicing using required loss mitigation tools; and CMS terminated FHA Mortgage Insurance without the mortgagor's approval.

3. CBSK Financial Group, Inc., Santa Ana, CA

[Docket No. 01–1488–MR]

Action: Settlement Agreement signed November 6, 2001. Without admitting fault or liability, CBSK Financial Group, Inc. ("CBSK") agreed to a payment of $500,000. In addition, CBSK refunded unallowable fees to 18 mortgagors.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: CBSK operated branch offices in Oklahoma and Utah under prohibited branch arrangements; CBSK failed to implement adequate branch office quality control procedures; CBSK failed to ensure unallowable fees were not charged to mortgagors; and CBSK failed to retain complete loan origination files.

4. Chase Mortgage Company—West, f/k/a Mellon Mortgage Company, Houston, TX

[Docket No. 01–1433–MR]

Action: Settlement Agreement signed October 16, 2001. Without admitting fault or liability, Chase Mortgage Company—West, f/k/a Mellon Mortgage Company, ("CMCW") agreed to a payment of $236,500. CMCW also agreed to indemnify HUD for any losses incurred on 35 loans.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: Mellon Mortgage Company ("MMC") failed to comply with HUD's Loss Mitigation policies and procedures; MMC failed to maintain a current and accurate Quality Control Plan and to properly implement the plan; and MMC failed to properly report under HUD's Single Family Default Monitoring System (SFDMS).

5. Continental Capital Corporation, Huntington Station, NY

[Docket No. 01–1588–MR]

Action: By memorandum dated November 8, 2001, the Board referred for Administrative Offset losses that HUD incurred on a loan originated by Continental Capital Corporation ("CCC") that was subject to a 1997 settlement agreement for indemnification.

Cause: CCC failed to comply with the terms of an Indemnification Agreement with the Mortgagee Review Board.

6. Foundation Funding Group, Inc., d/b/a Greatstone Mortgage, Tampa, FL

[Docket No. 01–1583–MR]

Action: In a letter dated November 28, 2001, the Board permanently withdrew Foundation Funding Group, Inc.'s (d/b/a Greatstone Mortgage, "FFGI") HUD/FHA approval.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: FFGI allowed improper charges to be financed into new mortgages; FFGI improperly allowed co-borrowers to be removed from the mortgage note; FFGI refinanced fixed rate mortgages into adjustable rate mortgages in a manner that violated HUD/FHA requirements; FFGI provided improper cash-out on streamline refinanced loans; and FFGI failed to have a Quality Control Plan that complied with HUD/FHA requirements.

7. GHI Corporation, d/b/a U.S. Capital Mortgage, Miami, FL

[Docket No. 00–1360–MR]

Action: Settlement Agreement signed December 18, 2001. Without admitting fault or liability, GHI Corporation, d/b/a U.S. Capital Mortgage ("GHI") agreed to a civil money penalty of $7,000.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: GHI failed to file an annual loan origination report for 1998, which supplements the requirements of the Home Mortgage Disclosure Act; GHI failed to establish, maintain, and implement a Quality Control Plan in compliance with HUD/FHA requirements; GHI allowed interested third parties to participate in the origination of two HUD/FHA insured loans; and GHI failed to maintain complete loan origination files for three loans.

8. Heartland Mortgage, Inc., Tucson, AZ

[Docket No. 00–1105–MR]

Action: Settlement Agreement signed December 18, 2001. Without admitting fault or liability, Heartland Mortgage, Inc. ("HMI") agreed to a civil money penalty of $5,000. [This settlement agreement resolves the civil money penalty matter previously voted on by the Board. It does not change HUD's withdrawal of Heartland's HUD/FHA approval for three years, as noted in 66 FR at 38305 (July 23, 2001).]

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: HMI failed to implement a Quality Control Plan; HMI failed to file annual loan origination reports for 1997 and 1998 which supplements the requirements of the Home Mortgage Disclosure Act; HMI employed two loan officers who were also real estate agents/brokers; HMI failed to properly document gift letters in two loans; HMI failed to properly document liabilities in one loan; and HMI failed to maintain complete loan origination files in 7 loans.

9. Legacy Mortgage, Provo, Utah

[Docket No. 01–1469–MR]

Action: In a letter dated December 5, 2001, the Board proposed the withdrawal of Legacy Mortgage's ("Legacy") HUD/FHA approval for three years. In addition, the Board voted to impose a civil money penalty of $55,000.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: Legacy failed to remit Up-Front Mortgage Insurance Premiums to HUD/FHA within 15 days of closing for 173 loans and failed to segregate escrow funds from operational funds; Legacy failed to submit loans for endorsement within 60 days after loan closing for 146 loans; Legacy failed to properly verify the source and adequacy of funds for the downpayment and/or closing costs for five loans; Legacy failed to properly verify and analyze income in two loans; Legacy failed to ensure property eligibility for HUD/FHA mortgage insurance in four loans; Legacy failed to properly qualify the mortgagors in three loans; and Legacy failed to recognize and adjust for "inducements to purchase" in two loans.

10. Litton Loan Servicing, LP, Houston, TX

[Docket No. 01–1490–MR]

Action: Settlement Agreement signed December 4, 2001. Without admitting fault or liability, Litton Loan Servicing, LP, ("LLSI") agreed to a payment of $35,000.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: LLSI failed to perform or to document appropriate loan servicing activities; and LLSI failed to consider loss mitigation alternatives when loans were in default or prior to initiating foreclosure.

11. McSwain Mortgage Company, f/k/a HomeLink Mortgage Company, LLC, Memphis, TN

[Docket No. 01–1422–MR]

Action: In a letter dated November 28, 2001, the Board proposed the withdrawal of McSwain Mortgage Company's (f/k/a HomeLink Mortgage Company, "HLM") HUD/FHA approval for three years. In addition, the Board voted to impose a civil money penalty of $36,000.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: HLM violated the Department's conflict of interest prohibited payments provisions; HLM failed to establish, maintain and implement a Quality Control Plan for the origination of FHA insured mortgages; and HLM failed to be clearly identified to the general public.

12. Northstar Mortgage Corporation, Dallas, TX

[Docket No. 00–1346–MR]

Action: Settlement Agreement signed December 12, 2001. Without admitting fault or liability, Northstar Mortgage Corporation, ("NSMC") agreed to a civil

money penalty of $13,000. NSMC also agreed to indemnify HUD for any losses incurred on two loans.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: NSMC approved loan applications originated and processed by personnel not employed by NSCM or Capitol State Mortgage Corporation, its loan correspondent; NSMC failed to accurately calculate the mortgagor's income and to justify the income used on one loan; NSMC failed to verify or adequately document the source of funds required for closing on two loans.

13. Platinum Capital Group, Inc., Manhattan Beach, CA

[Docket No. 00–1352–MR]

Action: Settlement Agreement signed December 28, 2001. Without admitting fault or liability, Platinum Capital Group, Inc., ("PCG") agreed to a civil money penalty of $21,500. PCG also agreed to indemnify HUD for any losses incurred on two loans.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: PCG failed to maintain and implement a quality control plan in compliance with HUD requirements; PCG failed to engage in business practices that conform to generally accepted practices of prudent mortgagees; PCG employed loan officers that were not exclusive employees of PCG; PCG failed to ensure that gift letters contained all required information; and PCG failed to ensure compliance with HUD/FHA's ban on loans to private investors.

14. Traditional Bankers Mortgage Corporation, Ponce, PR

[Docket No. 00–1321–MR]

Action: Settlement Agreement signed December 28, 2001. Without admitting fault or liability, Traditional Bankers Mortgage Corporation, ("TBMC") agreed to a civil money penalty of $40,000. TBMC also agreed to indemnify HUD for any losses incurred on nine loans.

Cause: HUD's Quality Assurance Division made the following findings of violations of HUD/FHA requirements: TBMC allowed lenders not approved by HUD/FHA to participate in the origination and processing of loans insured by the Department; TBMC allowed non-employees to participate in the origination of loans insured by HUD/FHA; TBMC failed to resolve conflicting information regarding a borrower's employment; TBMC failed to properly verify the borrower's source of funds for down payment and/or closing costs; TBMC failed to properly verify the borrowers' effective income; TBMC failed to properly address conflicting and/or derogatory credit information; TBMC failed to resolve inconsistencies on the property appraisal reports; TBMC submitted an unacceptable loan for FHA insurance; TBMC failed to be clearly identified to the general public; and TBMC failed to establish, maintain, and implement a Quality Control Plan for the origination of HUD/FHA insured mortgages.

Dated: March 20, 2002.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner, Chairman, Mortgagee Review Board.

[FR Doc. 02–7389 Filed 3–27–02; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Marine Mammal Protection Act; Stock Assessment Reports

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of draft revised marine mammal stock assessment reports for Pacific walrus, polar bear, and sea otter in Alaska; request for comments.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), the Fish and Wildlife Service (FWS) has developed draft revised marine mammal stock assessment reports for Pacific walrus, polar bear, and sea otter in Alaska which are available for public review and comment.

DATES: Comments must be received by June 26, 2002.

ADDRESSES: Copies of the draft revised stock assessment reports are available from the Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, AK 99503, (800) 362–5148. They can also be viewed in Adobe Acrobat format at *http://www.r7.fws.gov/mmm/SAR.*

Comments on the draft revised stock assessment reports should be sent to: Supervisor, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, AK 99503 by conventional mail, or *mmm.sar@fws.gov* by electronic mail.

SUPPLEMENTARY INFORMATION: Section 117 of the MMPA (16 U.S.C. 1361–1407) requires the FWS and the National Marine Fisheries Service (NMFS) to prepare stock assessment reports for each marine mammal stock that occurs in waters under the jurisdiction of the United States. Section 117 of the MMPA also requires the FWS and the NMFS to review and revise the stock assessment reports (a) at least annually for stocks which are specified as strategic stocks; (b) at least annually for stocks for which significant new information is available; and (c) at least once every three years for all other stocks. Stock assessment reports for Pacific walrus, polar bar, and sea otters in Alaska were last published in 1998.

Previous stock assessments covered a single stock of Pacific walrus, two stocks of polar bears (Bering/Chukchi seas and southern Beaufort sea), and a single stock of sea otters in Alaska. There are no changes in stock identification for Pacific walrus and polar bear, however three stocks of sea otters (southwest Alaska, southcentral Alaska, and southeast Alaska) have been identified.

A strategic stock is defined in the MMPA as a marine mammal stock (A) for which the level of direct human-caused mortality exceeds the potential biological removal level; (B) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973 within the foreseeable future; or (C) which is listed as a threatened or endangered species under the Endangered Species Act of 1973, or is designated as depleted under the MMPA.

With the exception of the southwest Alaska stock of sea otters, all stocks remain classified as non-strategic in these draft reports. Based on the best available scientific information, sea otter numbers across southwest Alaska are declining. In April 2000, an aerial survey of sea otters in the Aleutian Islands indicated the population had declined by 70% during the period from 19922000. In August 2000 FWS designated the northern sea otter in the Aleutian Islands as a candidate species under the Endangered Species Act. Additional surveys in 2000 and 2001 along the Alaska Peninsula and Kodiak archipelago also showed population declines in these areas. As a result, the southwest Alaska stock is classified as strategic in the draft report and is under review for possible listing under the Endangered Species Act.

A summary of the draft revised stock assessment reports is presented in Table 1. The table lists each marine mammal stock, estimated abundance (N_{EST}), minimum abundance estimate (N_{MIN}), maximum theoretical growth rate (R_{MAX}), recovery factor (F_R), Potential Biological Removal (PBR), annual

estimated average human-caused mortality, and the status of each stock. In accordance with the MMPA, a list of the sources of information or public reports upon which the assessment is based is included in this notice.

TABLE 1.—SUMMARY OF DRAFT STOCK ASSESSMENT REPORT FOR PACIFIC WALRUS POLAR BEAR, AND SEA OTTER IN ALASKA

Species	Stock	N_{EST}	N_{MIN}	R_{MAX}	F_R	PBR	Mortality causes (5 yr. average)			Stock/Status
							Subsistence	Fishery	Other	
Pacific Walrus.	Alaska	.....	.....	0.08	.....	.....	5,789	2	4	Non-strategic.
Polar Bear	Alaska ..... Chukchi/Bering Seas	.....	.....	0.06	0.5	.....	45 (Alaska) – (Russia)	0	0 (Alaska) – (Russia)	Non-strategic.
Polar Bear	Alaska Southern. Beaufort Sea	2,272	1,971	0.06	1.0	88	34 (Alaska) 20 (Canada)	0	<1 (Alaska) 0 (Canada)	Non-strategic.
Sea Otter ..	Southeast Alaska.	8,807	8,709	0.20	1.0	871	301	0	0	Non-strategic.
Sea Otter ..	Southcentral Alaska.	21,749	19,508	0.20	1.0	1,951	297	0	0	Non-strategic.
Sea Otter ..	Southwest Alaska.	23,967	21,518	0.20	0.5	1,076	97	<1	0	Strategic.

Dash (–) indicates unknown value.

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Dated: January 29, 2002.

David B. Allen,

Regional Director.

[Marine Mammal Protection Act; Stock Assessment Reports]

[FR Doc. 02–7436 Filed 3–27–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection (OMB Control Number 1010–0079).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR 250, subpart G, Abandonment of Wells.

DATES: Submit written comments by May 28, 2002.

ADDRESSES: Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy at no cost of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR part 250, Subpart G, Abandonment of Wells.

OMB Control Number: 1010–0079.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), gives the Secretary of the Interior (Secretary) the responsibility to preserve, protect, and develop oil and gas resources in the OCS in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resource development with protection of human, marine, and coastal environments; ensure the public a fair and equitable return on offshore resources in the OCS; and preserve and maintain free enterprise competition. The OCS Lands Act Amendment of 1978 amended section 3(6) to state that "operations in the outer Continental Shelf should be conducted * * * using technology, precautions, and techniques sufficient to prevent or minimize * * * physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health." To carry out these responsibilities, the Secretary has authorized MMS to issue orders and regulations governing offshore oil and gas lease operations.

This notice concerns the reporting and recordkeeping elements of 30 CFR part 250, subpart G, Abandonment of Wells, and related Notices to Lessees and Operators that clarify and provide additional guidance on some aspects of the regulations. Responses are mandatory. No questions of a "sensitive" nature are asked. MMS will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2), 30 CFR 250.196 (Data and information to be made available to the public) and 30 CFR part 252 (OCS Oil and Gas Information Program). For MMS to determine the necessity to allow a well to be temporarily abandoned, the lessee/operator must demonstrate that there is a reason to not permanently abandon the well, and the temporary abandonment will not constitute a significant threat to fishing, navigation, or other uses of the seabed. We use the information and documentation to verify that the lessee is diligently pursing final disposition of the well, and the lessee has performed the temporary plugging of the wellbore.

It should be noted that MMS is in the process of issuing a final rulemaking that will establish a new 30 CFR 250, subpart Q, on decommissioning activities. When these regulations take effect, they will consolidate all of the OCS decommissioning activities, including well abandonment requirements, and 30 CFR 250, subpart G, will be removed from 30 CFR part 250. Should the new final subpart Q regulations take effect before expiration of the current OMB approval of the subpart G information collection requirements, we would take no further action to renew OMB approval of the subpart G information collection requirements.

Frequency: The frequency of reporting is on occasion or annual.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas or sulphur lessees.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: The currently approved "hour" burden for this information collection is a total of 650 hours. The following chart details the individual reporting components and respective hour burden estimates of this ICR. There are no recordkeeping requirements under 30 CFR 250, subpart G. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

BURDEN BREAKDOWN

Citation 30 CFR 250 Subpart G	Reporting requirement	Burden per requirement
701; 702(i); 703(b)	Submit form MMS–124 to request approval of well abandonment operations—burden included with 1010–0045.	
703(c)	Submit annual report on plans for reentry to complete or permanently abandon the well	2 hours.
704(a)	Request approval of site clearance method	4 hours.
704(b)	Submit form MMS–124 to certify location cleared of obstructions—burden included with 1010–0045.	
700–704	General departure and alternative compliance requests not specifically covered elsewhere in subpart M regulations.	2 hours.

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no paperwork "non-hour cost" burdens for this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *". Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the "non-hour cost" burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: February 15, 2002.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 02–7380 Filed 3–27–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0057).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR 250, subpart C, Pollution Prevention Control.

DATES: Submit written comments by May 28, 2002.

ADDRESSES: Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy at no cost of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR part 250, subpart C, Pollution Prevention and Control.

OMB Control Number: 1010–0057.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner which is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Section 1332(6) states that "operations in the [O]uter Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health." Section 1334(a)(8) requires that regulations include provisions "for compliance with the national ambient air quality standards pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*), to the extent that activities authorized under this Act significantly affect the air quality of any State." Section 1843(b) calls for "regulations requiring all materials, equipment, tools, containers, and all other items used on the Outer Continental Shelf to be properly color coded, stamped, or labeled, wherever practicable, with the owner's identification prior to actual use."

This notice concerns the reporting and recordkeeping elements of 30 CFR 250, subpart C, Pollution Prevention and Control, and related Notices to Lessees and Operators that clarify and provide additional guidance on some aspects of the regulations. Responses are mandatory. No questions of a "sensitive" nature are asked. MMS will protect proprietary information according to 30 CFR 250.196 (Data and

information to be made available to the public), 30 CFR part 252 (OCS Oil and Gas Information Program), and the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2).

MMS OCS Regions collect information required under subpart C to ensure that there is no threat of serious, irreparable, or immediate damage to the marine environment, and to identify potential hazards to commercial fishing caused by OCS activities. We also use the information collected to ensure that operations are conducted according to all applicable regulations and permit conditions/requirements, comply with the approved emission levels to minimize air pollution of the OCS and adjacent onshore areas, and are conducted in a safe and workmanlike manner. In addition, we require daily inspection of facilities to prevent pollution and to ensure that problems observed have been corrected.

In the Gulf of Mexico OCS Region (GOMR), we require lessees/operators to periodically monitor and collect air emissions and meteorological data to satisfy Environmental Protection Agency and Clean Air Act requirements. The states and regional air quality groups use the information to perform regional air quality modeling in support of State Implementation Plans (SIPs). The GOMR plans regional modeling for emissions data in the year 2005. In preparation, affected respondents will be required to collect and report air pollutant emissions data for OCS activities in the GOMR for the year 2005. The year 2005 corresponds to a Clean Air Act requirement for states with non-attainment areas to prepare and/or update air pollutant emission inventories suitable for air quality modeling in support of the development of SIPs. Thus the year 2005 OCS emissions inventory will be contemporary with the emissions inventory the states are required to prepare. The onshore and OCS 2005 data will be used in regional air quality modeling and emissions control decision-making. Respondents will gather OCS 2005 data during the calendar year 2005 and report in 2006.

Frequency: On occasion, monthly, or annually; and daily for inspection recordkeeping.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas or sulphur lessees and 17 states.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: The currently approved total "hour" burden for this information collection is 194,311 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 subpart C	Reporting and recordkeeping requirement	Burden per requirement
	Reporting Requirements	
300(b)(1), (2)	Obtain approval to add petroleum-based substance to drilling mud system or approval for method of disposal of drill cuttings, sand, and other well solids.	3 hours.
300(c)	Mark items that could snag or damage fishing devices	½ hour.
300(d)	Report items lost overboard	1 hour.
303(a), (b), (c), (d), (i), (j); 304(a), (f).	Submit Exploration Plans and Development and Production Plans—burden covered in 1010–0049.	
303(k); 304(g)	If requested, submit additional or follow-up monitoring information for year 2000 study of selected sites in the Breton National Wildlife Area, GOMR.	8 hours.
303(k); 304(a), (g)	If requested, submit additional or follow-up monitoring information for year 2000 study of selected sites in the western/central GOMR on ozone and regional haze air.	4 hours.
303(k); 304(a), (g)	Monitor air quality emissions and submit data to MMS or to a State (new 1-year study of sites in the western/central GOMR on ozone and regional haze air quality—data collection in 2005; report submitted in 2006).	2 hours per month × 12 months = 24 hours.
303(l); 304(h)	Collect and submit meteorological data—not routinely collected; none planned for the next 3 years.	
304(a), (f)	Affected State may submit request to MMS for basic emission data from existing facilities to update State's emission inventory.	4 hours.
304(e)(2)	Submit compliance schedule for application of best available control technology	40 hours.
304(e)(2)	Apply for suspension of operations—burden covered in 1010–0114.	
304(f)	Submit information to demonstrate that exempt facility is not significantly affecting air quality of onshore area of a State.	8 hours.
300–304	General departure and alternative compliance requests not specifically covered elsewhere in subpart C regulations.	2 hours.
	Recordkeeping Requirements	
300(d)	Record items lost overboard	1 hour/year.
301(a)	Inspect drilling/production facilities daily for pollution; maintain inspection/repair records 2 years.	¼ hour/day.

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: We anticipate no non-hour cost burdens during the next 3 years.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *". Agencies must specifically solicit comments to: (a) Evaluate whether the

proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the "non-hour cost" burdens to respondents or recordkeepers resulting from the collection of information. We have identified none for the next 3 years. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by the law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: February 28, 2002.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 02–7381 Filed 3–27–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection (OMB Control Number 1010–0059).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR part 250, subpart H, Oil and Gas Production Safety Systems.

DATES: Submit written comments by May 28, 2002.

ADDRESSES: Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy at no cost of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart H, Oil and Gas Production Safety Systems.

OMB Control Number: 1010–0059.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), gives the Secretary of the Interior the responsibility to preserve, protect, and develop oil and gas resources in the OCS. This must be done in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resource development with protection of the human, marine, and coastal environments; ensure the public a fair and equitable return on the resources of the OCS; and preserve and maintain free enterprise competition. The OCS Lands Act at 43 U.S.C. 1332(6) states that "operations in the [O]uter Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health."

This notice concerns the reporting and recordkeeping elements of 30 CFR 250, subpart H, Oil and Gas Production Safety Systems, and related Notices to Lessees and Operators that clarify and provide additional guidance on some aspects of the regulations. Responses are mandatory. No questions of a "sensitive" nature are asked. MMS will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2), 30 CFR 250.196 (Data and information to be made available to the public) and 30 CFR part 252 (OCS Oil and Gas Information Program).

MMS OCS Regions use the information submitted under subpart H to evaluate equipment and/or procedures that lessees propose to use during production operations, including evaluation of requests for departures or use of alternative procedures. Information submitted is also used to verify the no-flow condition of wells to continue the waiver of requirements to install valves capable of preventing backflow. MMS inspectors review the records maintained to verify compliance with testing and minimum safety requirements.

The Gulf of Mexico OCS Region (GOMR) has recently re-evaluated its policy, and issued guidance, regarding approval of "new" requests to use a chemical-only fire prevention and control system in lieu of a water system. With respect to "currently-approved" departures, MMS may require additional information be submitted to maintain approval of the departure. They use the information to determine if the chemical-only system provides the equivalent protection of a water system for the egress of personnel should a fire occur.

In the Pacific OCS Region, MMS reviews copies of the Emergency Action

Plans (EAP) that lessees and operators submit to their local air quality agencies to ensure that abatement procedures do not jeopardize safe platform operations.

Frequency: The frequency of reporting is on occasion or annual.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas or sulphur lessees.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: The currently approved "hour" burden for this information collection is a total of 5,204 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

BURDEN BREAKDOWN

Citation 30 CFR 250 subpart H	Reporting and recordkeeping requirement	Burden per requirement (hour(s))
	Reporting Requirements	
800; 801; 802; 803; related NTLs	Submit application and request approval for design, installation, and operation of subsurface safety devices and surface production-safety systems; including related requests for departures or use of alternative procedures (i.e., firefighting systems, supervisory control and data acquisition systems, valve closure times, time delay circuitry, etc.)	4
801(g)	Submit annual verification of no-flow condition of well	2
801(h)(1)	Form MMS–124, Sundry Notices and Reports on Wells—burden covered under 1010–0045	
801(h)(2); 803(c)	Identify well with sign on wellhead that subsurface safety device is removed; flag safety devices that are out of service—usual/customary safety procedures for removing or identifying out-of-service safety devices.	
802(e)(5)	Submit statement verifying final surface production safety system installed conforms to approved design.	3
803(b)(8); related NTLs	Submit information to maintain current firefighting system departure approval (GOMR)	4
803(b)(8)(iv)	Post diagram of firefighting system	2
804(a)(11); 800	Notify MMS prior to production and request MMS conduct pre-production test and inspection	.5
804; related NTLs	Request departure from testing schedule requirements	1
804; related NTL	Submit copy of state-required EAP containing test abatement plans (Pacific OCS Region)	1
806(c)	Request evaluation and approval of other quality assurance programs covering manufacture of SPPE.	2
800–807	General departure and alternative compliance requests not specifically covered elsewhere in subpart H regulations.	2
	Recordkeeping Requirements	
801(h)(2); 802(e); 804(b)	Maintain records on subsurface and surface safety devices to include approved design & installation features, testing, repair, removal, departure approvals, etc.	12
803(b)(1)(iii), (2)(i)	Maintain pressure-recorder charts	10
803(b)(4)(iii)	Maintain schematic of the emergency shutdown which indicates the control functions of all safety devices.	4
803(b)(11)	Maintain records of wells which have erosion-control programs and results	2.8

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no paperwork "non-hour cost" burdens associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *". Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the "non-hour cost" burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a

result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: February 13, 2002.

William S. Hauser,

Acting Chief, Engineering and Operations Division.

[FR Doc. 02–7382 Filed 3–27–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection (OMB Control Number 1010–0068).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR part 250. subpart M, Unitization.

DATES: Submit written comments by May 28, 2002.

ADDRESSES: Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy at no cost of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart M, Unitization.

OMB Control Number: 1010–0068.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), gives the Secretary of the Interior (Secretary) the responsibility to preserve, protect, and develop oil and gas resources in the OCS in a manner consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resource development with protection of human, marine, and coastal environments; ensure the public a fair and equitable return on the resources of the OCS; and preserve and maintain free enterprise competition. Section 1334(a) of the OCS Lands Act specifies that the Secretary prescribe rules and regulations "to provide for the prevention of waste and conservation of the natural resources of the [O]uter Continental Shelf, and the protection of correlative rights therein" and include provisions "for unitization, pooling, and drilling agreements." To carry out these responsibilities, the Secretary has authorized MMS to issue orders and regulations governing offshore oil and gas lease operations.

This notice concerns the reporting and recordkeeping elements of 30 CFR part 250, subpart M, Unitization, and related Notices to Lessees and Operators that clarify and provide additional guidance on some aspects of the regulations. Responses are mandatory or are required to obtain or retain a benefit. No questions of a "sensitive" nature are asked. MMS will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2), 30 CFR 250.196 (Data and information to be made available to the public) and 30 CFR part 252 (OCS Oil and Gas Information Program). MMS OCS Regions use the information to determine whether to approve a proposal to enter into an agreement to unitize operations under two or more leases or to approve modifications when circumstances change. The information is necessary to ensure that operations will result in preventing waste, conserving natural resources, and protecting correlative rights, including the Government's interests. We also use information submitted to determine competitiveness of a reservoir or to decide that compelling unitization will achieve these results.

Frequency: The frequency of reporting is on occasion.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas or sulphur lessees.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: The currently approved "hour" burden for this information collection is a total of 2,742 hours. The following chart details the individual reporting components and respective hour burden estimates of this ICR. There are no recordkeeping requirements under 30 CFR 250, subpart M. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

BURDEN BREAKDOWN

Citation 30 CFR 250 subpart M	Reporting requirement	Burden per requirement (hours)
1301	General description of requirements—burden included in following sections.	
1301(f)(3), (g)(1)	Request suspension of production or operations—burden covered under 1010–0114.	
1302(b)	Request preliminary determination on competitive reservoir	24
1302(b)	Submit concurrence or objection on competitiveness with supporting evidence	24
1302(c), (d)	Submit joint plan of operations or separate plan if agreement cannot be reached	24
1303	Apply for voluntary unitization, including submitting unit agreement, unit operating agreement, joint plan of operation, and supporting data; request for variance from model agreement.	144

BURDEN BREAKDOWN—Continued

Citation 30 CFR 250 subpart M	Reporting requirement	Burden per requirement (hours)
1304(b)	Request compulsory unitization, including submitting unit agreement, unit operating agreement, initial plan of operation, and supporting data; serving nonconsenting lessees with documents.	144
1304(d)	Request hearing on required unitization	1
1304(e)	Submit statement at hearing on compulsory unitization	4
130(e)	Submit three copies of verbatim transcript of hearing	1
1304(f)	Appeal final order of compulsory unitization—burden covered under 1010–0121.	
1300–1304	General departure and alternative compliance requests not specifically covered elsewhere in subpart M regulations.	2

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: Section 250.1304(d) provides an opportunity for parties notified of compulsory unitization to request a hearing. Section 250.1304(e) requires the party seeking the compulsory unitization to pay for the court reporter and three copies of the verbatim transcript of the hearing. It should be noted there have been no such hearings in the recent past, and none are expected in the near future. We estimate that the burden would be less than $100 to reproduce the copies.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency " * * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *". Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the "non-hour cost" burdens to respondents or recordkeepers resulting from the collection of information. Except as noted above for costs associated with § 250.1304(d), we have identified no other non-hour cost burdens. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: February 12, 2002.

William S. Hauser,

Acting Chief, Engineering and Operations Division.

[FR Doc. 02–7383 Filed 3–27–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of information collection.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are submitting to OMB for review and approval an information collection request (ICR) for a new "Form MMS–144, Rig Movement Notification Report" for reporting rig movement information. We are also soliciting comments from the public on this ICR.

DATES: Submit written comments by April 29, 2002.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–XXXX), 725 17th Street, NW., Washington, DC 20503. Mail or hand carry a copy of your comments to the Department of the Interior, Minerals Management Service, Attention: Rules Processing Team, Mail Stop 4024, 381 Elden Street; Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also

contact Alexis London to obtain a copy at no cost of the form MMS–144.

SUPPLEMENTARY INFORMATION:

Title: Form MMS–144, Rig Movement Notification Report.

OMB Control Number: 1010–XXXX.

Abstract: The Outer Continental Shelf (OCS) Lands Act (Act), as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner which is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. Section 1332(6) of the Act requires that "operations in the [O]uter Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health."

This ICR concerns regulations in 30 CFR 250 subparts D, E, and F, and specifically in §§ 401(g), 502, and 602, on the movement of drilling, completion, and workover rigs and related equipment on and off an offshore platform or from well to well on the same offshore platform. Although the requirement for operators to notify MMS of rig movements is not specifically stated in the referenced sections, since MMS is mandated to perform timely inspections on rigs and platforms, we must have accurate information with regard to their location on the OCS. We use this information in scheduling inspections with regard to priority and cost effectiveness.

Operators have filed rig movement reports for many years. Presently, the MMS Gulf of Mexico OCS Region (GOMR) requires an operator to inform us of rig arrival and departure times as conditions of approval for Applications for Permit to Drill (drilling) and Sundry Notices (completion, workover, and abandonment). In reporting a rig movement, respondents will generally fax the information or leave a telephone message. The current regulations do not specifically state what information MMS needs, and MMS has not issued standard instructions on what to report. Therefore, in many cases, the respondents have not provided sufficient information for MMS to identify data with regard to location, rig type, and well operation. This then requires follow-up telephone calls or messages to the respondent to obtain the needed information. The proposed form MMS–144 will give MMS the proper information.

Each MMS District Office conducts inspections and uses helicopters to transport inspectors from rig to rig. As the major duty of approximately one-half of the personnel in those offices is to perform inspections on the OCS, and with helicopter usage being a major cost item ($450 to $520 per hour) in their budget, proper scheduling is an extremely important issue. In many cases, due to inaccurate information, the current non-standard format for rig movement reporting has resulted in unnecessary increased inspection flight time (and higher costs) and loss of inspector man-hours.

Because of the volume of activity in the GOMR, to avoid these recurring problems, that Region has developed a new form MMS–144, "Rig Movement Notification Report." The MMS District Offices will use the information reported to accurately ascertain the arrival and departure of all rigs in OCS waters and to verify compliance with approved permits. It is reiterated that only the form is new, not the reporting requirement.

The OMB has approved the rig movement notice with the other information collection requirements of the 30 CFR 250, subparts D, E, and F regulations (1010–0053, 1010–0067, and 1010–0043). Also, OMB approved this reporting notification in the pending revised subpart D proposed (§ 250.404) regulations (1010–0141). Responses are mandatory. No questions of a "sensitive" nature are asked, and no proprietary information is involved.

Frequency: The frequency is "on occasion."

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas lessees.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: We estimate the average hour burden is 6 minutes to complete form MMS–144. MMS receives approximately 1,800 notices each year, for an estimated 180 annual burden hours.

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no "non-hour cost" burden associated with form MMS–144.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. * * *" Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on March 1, 2001, we published a **Federal Register** notice (66 FR 12955) announcing that we would submit the ICR to OMB for approval. The notice provided the required 60-day comment period. We received three requests for copies of the new form, but only one follow-up comment/request for clarification. The commenter asked if the form addressed the needs of the U.S. Coast Guard (USCG) and Defense Mapping Agency and whether the form would be used to report a rig skid to a new well on the same platform in lieu of the informal telephone notification. In response, the GOMR explained that the form would replace the current informal telephone notification to MMS, not duplicate it.

As a result of comments and discussions with representatives of the Offshore Operators Committee (an industry consortium) on the proposed form, we have included certain "optional" data elements. These were added so that respondents will have the option of also sending the MMS form to the USCG. If notification of a particular rig movement only needs to be reported to MMS, these optional data elements need not be completed by the lessee/operator.

If you wish to comment in response to this notice, send your comments directly to the offices listed under the **ADDRESSES** section of this notice. The

OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by April 29, 2002.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by the law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: March 5, 2002.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 02–7384 Filed 3–27–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Finding of No Significant Impact (FONSI) for Environmental Assessment on the Mount Vernon Trail Bridge #12 Safety Realignment

AGENCY: National Park Service, Interior.

ACTION: Availability of the FONSI and decision record for the proposed safety improvements to Bridge #12 located approximately ¼ mile north of the southbound Fort Hunt exit of the George Washington Memorial Parkway along the Mount Vernon Trail.

SUMMARY: Pursuant to Council on Environmental Quality regulations and National Park Service policy, the National Park Service announces the availability of the FONSI and decision record for the proposed safety improvements on and around Mount Vernon Trail Bridge #12 within the George Washington Memorial Parkway. The FONSI and decision record identifies Alternative 2 as the preferred Alternative in the "Environmental Assessment for the Mount Vernon Trail Bridge #12 Safety Realignment." Under this alternative, trail realignment and bridge construction will correct the steep and sharp-curved approaches to the bridge, provide a more sustainable bridge structure, provide for safety on the bridge, and continue to protect natural and cultural resources in and around the bridge. All environmental measures will be taken to minimize impacts to resources during old bridge demolition and new bridge construction.

DATES: The Environmental Assessment, upon which the FONSI determination was made, was available for public comment from May 31–June 29, 2001 and one written comment was received in support of the project.

ADDRESSES: The FONSI and decision record will be available for public inspection Monday through Friday, 8:00 a.m. through 4:00 p.m. at George Washington Memorial Parkway Headquarters, Turkey Run Park, McLean, VA.

SUPPLEMENTARY INFORMATION: The FONSI and decision record completes the Environmental Assessment process.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Brazinski (703) 289–2541.

Rich Foster,

Acting Superintendent, George Washington Memorial Parkway.

[FR Doc. 02–7379 Filed 3–27–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Finding of No Significant Impact (FONSI) for the Environmental Assessment for the Glen Echo Park North Arcade Rehabilitation

AGENCY: National Park Service, Interior.

ACTION: Availability of the FONSI and decision record for the proposal to replace the existing deteriorated North Arcade structure and damaged portions of the adjacent arcade structure with a new North Arcade structure in Glen Echo Park.

SUMMARY: Pursuant to Council on Environmental Quality regulations and National Park Service policy, the and National Park Service (NPS) announces the availability of the FONSI and decision record for the proposed replacement of the existing deteriorated North Arcade structure and damaged portions of the adjacent arcade structure with a new North Arcade structure in Glen Echo Park, a unit of the George Washington Memorial Parkway. The FONSI and decision record identifies Alternative B as the preferred Alternative in the "Environmental Assessment for the Glen Echo Park North Arcade Rehabilitation." Under this alternative, the existing North Arcade structure located in Glen Echo Park, Glen Echo, Maryland, would be demolished and a new structure built in the same location. Although the NPS determined that this undertaking will have an "Adverse Effect" upon the North Arcade structure itself, the action overall will have "No Adverse Effect" on the qualities that qualify the Glen Echo Park Historic District for listing on the National Register of Historic Places. In accordance to the Memorandum of Agreement with the Maryland State Historic Preservation Officer signed July 17, 2001, the NPS will mitigate the demolition of historic structures and will design the new structures in a manner complementing the original and respecting the surrounding Historic District.

DATES: The Environmental Assessment, upon which the FONSI was made, was available for public comment from July 2–31, 2001 and no comments were received.

ADDRESSES: The FONSI and decision record will be available for public inspection Monday through Friday, 8:00 a.m. through 4:00 p.m. at George Washington Memorial Parkway Headquarters, Turkey Run Park, McLean, VA.

SUPPLEMENTARY INFORMATION: The FONSI and decision record completes the Environmental Assessment process.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Brazinski (703) 289–2541.

Rich Foster,

Acting Superintendent, George Washington Memorial Parkway.

[FR Doc. 02–7378 Filed 3–27–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare a Draft Environmental Impact Statement for the General Management Plan for Fort Matanzas National Monument, St. Augustine, FL

SUMMARY: The National Park Service will prepare an Environmental Impact Statement on the General Management Plan for Fort Matanzas National Monument. The statement will assess potential environmental impacts associated with various types and levels

of visitor use and resources management within the National Monument. This General Management Plan and Environmental Impact Statement are being prepared in response to the requirements of the National Parks and Recreation Act of 1978, Public Law 95–625, and in accord with Director's Order Number 2, the planning guidance for National Park Service units that became effective May 27, 1998. The National Park Service will conduct public scoping meetings in the local area to receive input from interested parties on issues, concerns, and suggestions pertinent to the management of Fort Matanzas. Suggestions and ideas for managing the cultural and natural resources and visitor experiences at Fort Matanzas are encouraged. The comment period for each of these meetings will be announced at the meetings and will be published on the Fort Matanzas General Management Plan Web site at *http://www.nps.gov/foma.*

DATES: Locations, dates and times of public scoping meetings will be published in local newspapers and may also be obtained by contacting the National Park Service Southeast Regional Office, Division of Planning and Compliance. This information will also be published on the General Management Plan web site for Fort Matanzas.

ADDRESSES: Scoping suggestions should be submitted to the following address to ensure adequate consideration by the Service: Superintendent, Castillo de San Marcos National Monument, 1 South Castillo Drive, St. Augustine, Florida, 32084. Telephone 904–829–6506, ext. 221.

FOR FURTHER INFORMATION CONTACT: Superintendent, Castillo de San Marcos National Monument, 1 South Castillo Drive, St. Augustine, Florida, 32084. Telephone 904–829–6506, ext. 221.

SUPPLEMENTARY INFORMATION: The Draft and Final General Management Plan Amendment and Environmental Impact Statement will be made available to all known interested parties and appropriate agencies. Full public participation by federal, state, and local agencies as well as other concerned organizations and private citizens is invited throughout the preparation process of this document.

Due to public disclosure requirements, the National Park Service, if requested, is required to make the names and addresses of those who submit written comments public. Anonymous comments will not be considered. However, individual respondents may request that we withhold their names and addresses from the public record. If you wish to withhold your name and/or address, you must state that request prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The responsible official for the Environmental Impact Statement is Jerry Belson, Regional Director, Southeast Region, National Park Service, 100 Alabama Street SW, 1924 Building, Atlanta, Georgia 30303.

Dated: August 6, 2001.

W. Thomas Brown,

Regional Director, Southeast Region.

Editorial note: This document was received at the Office of the Federal Register, March 22, 2002.

[FR Doc. 02–7377 Filed 3–27–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed authority for three collections of information: 30 CFR 872, Abandoned mine reclamation funds; 30 CFR 955 and the Form OSM–74, Certification of Blasters in Federal program States and on Indian lands; and 30 CFR 705 and the Form OSM–23, Restriction on financial interests of State employees.

DATES: Comments on the proposed information collection must be received by May 28, 2002, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 210—SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtreleas@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requests, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies information collections that OSM will be submitting to OMB for approval. These collections are contained in (1) 30 CFR part 872, Abandoned mine reclamation funds; (2) Form OSM–74 which incorporates the requirements of 30 CFR part 955, Certification of Blasters in Federal program States and on Indian lands; and (3) 30 CFR part 705 and the Form OSM–23, Restriction on financial interests of State employees. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: Abandoned mine reclamation funds, 30 CFR part 872.

OMB Control Number: 1029–0054.

Summary: 30 CFR part 872 establishes a procedure whereby States and Indian tribes submit written statements announcing the State/Tribe's decision not to submit reclamation plans, and therefore, will not be granted AML funds.

Bureau Form Number: None.

Fequency of Collection: Once.

Description of Respondents: State and Tribal abandoned mine land reclamation agencies.

Total Annual Responses: 1.

Total Annual Burden Hours: 1.

Title: Certification of blasters in Federal program States and on Indian lands, 30 part CFR 955.

OMB Control Number: 1029–0083.

Summary: This information is being collected to ensure that the applicants for blaster certification are qualified. This information, with blasting tests, will be used to determine the eligibility of the applicant.

Bureau Form Number: OSM–74.

Frequency of Collection: On occasion.

Description of Respondents: Individuals intent of being certified as blasters in Federal program States and on Indian lands.

Total Annual Responses: 33.

Total Annual Burden Hours: 57.

Title: Restrictions on financial interests of State employees, 30 CFR 705.

OMB Control Number: 1029–0067.

Summary: Respondents supply information on employment and financial interests. The purpose of the collection is to ensure compliance with section 517(g) of the Surface Mining Control and Reclamation Act of 1977, which places an absolute prohibition on having a direct or indirect financial interest in underground or surface coal mining operations.

Bureau Form Number: OSM–23.

Frequency of Collection: Entrance on duty and annually.

Description of Respondents: Any State regulatory authority employee or member of advisory boards or commissions established in accordance with State law or regulation to represent multiple interests who performs any function or duty under the Surface Mining Control and Reclamation Act.

Total Annual Responses: 2,909.

Total Annual Burden Hours: 974.

Dated: March 5, 2002.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 02–7387 Filed 3–27–02; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–443]

In the Matter of Certain Flooring Products; Notice of Final Determination of No Violation of Section 337

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the above-referenced investigation.

FOR FURTHER INFORMATION CONTACT: David I. Wilson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone (202) 708–2310. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server, *http://www.usitc.gov.*

Copies of the public version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202–205–2000.

SUPPLEMENTARY INFORMATION: The Commission ordered the institution of this investigation on December 27, 2000, based on a complaint filed on behalf of Alloc, Inc., Racine, Wisconsin; Berry Finance N.V., Oostrozebeke, Belgium; and Välinge Aluminum AB, Viken, Sweden (collectively "complainants"), 66 FR 1155 (2001). The notice of investigation was published in the **Federal Register** on January 5, 2001, Id. The complaint, as supplemented, alleged violations of section 337 in the importation, the sale for importation, and the sale within the United States after importation of certain flooring products by reason of infringement of claims 1–3, 5–6, 8–12, 14–15, 17–36, and 38–41 of U.S. Letters Patent 5,860,267 ("the '267 patent") and claims 1–14 of U.S. Letters Patent 6,023,907 ("the '907 patent"), *Id.* The Commission named seven respondents: Unilin Decor N.V., Wielsbeke, Belgium; BHK of America, Inc., Central Valley, NY; Meister-Leisten Schulte GmbH, Rüthen, Germany (collectively, Unilin); Pergo, Inc., Raleigh, NC ("Pergo"); Akzenta Paneele + Profile GmbH, Kaisersesch, Germany ("Akzenta"); Tarkett, Inc., Whitehall, PA; and Roysol, Saint-Florentin, France ("Roysol").

On March 5, 2001, the ALJ issued an ID (ALJ Order No. 8) granting complainants' motion to amend the complaint and notice of investigation to add allegations of infringement of claims 1, 8, 13–14, 21, 26–27, 34, 39–41, and 48 of U.S. Letters Patent 6,182,410 ("the '410 patent"). On July 10, 2001, the ALJ issued an ID (ALJ Order No. 26) granting complainants' motion for summary determination on the economic prong of the domestic industry requirement. Those IDs were not reviewed by the Commission. An evidentiary hearing was held from July 26, 2001, through August 1, 2001. The ALJ heard closing arguments on October 16, 2001. On October 19, 2001, the ALJ issued an ID (ALJ Order No. 30) granting complainants' unopposed motion to terminate the investigation with respect to claims 1–3, 5–6, 8–12, 14–15, 17–18, 20–22, 24–36, 38, and 40–41 of the '267 patent; claims 4–14 of the '907 patent; and claims 8, 13–14, 21, 27, 34, and 40 of the '410 patent. On October 25, 2001, the ALJ issued an ID (ALJ Order No. 31) terminating the investigation as to respondent Tarkett, Inc. Those IDs were not reviewed by the Commission. The only asserted claims remaining in the investigation are claims 19, 23, and 39 of the '267 patent, claims 1–3 of the '907 patent, and claims 1, 26, 39, 41, and 48 of the '410 patent.

The ALJ issued his final ID on November 2, 2001, concluding that there was no violation of section 337, based on the following findings: (a) Complainants have not established that any of the asserted claims are infringed by any of the respondents; (b) respondents have failed to establish that the asserted claims of each of the '267, '907, and '410 patents are not valid; (c) no domestic industry exists that exploits any of the '267, '907, and '410 patents; and (d) it has not been established that complainants misused any of the patents in issue. The ALJ also made recommendations regarding remedy and bonding in the event the Commission concludes there is a violation of section 337. On November 15, 2001, complainants and the Commission investigative attorney ("IA") petitioned for review of the ID. On November 23, 2001, respondents Unilin, Pergo, Roysol, and Akzenta, and complainants filed responses to the petitions for review. On December 20, 2001, the Commission determined to review: (1) The ID's construction of the asserted claims of the '410 patent; (2) the ID's construction of the asserted claims of the '267 and '907 patents, except not to review the ID's construction of those claims apart from 35 U.S.C. 112, ¶ 6; (3) the ID's infringement conclusions with respect to the '410, '267, and '907 patents, except not to review the ID's conclusions that (a) the asserted claims of the '267 and '907 patents are not infringed when those claims are construed apart from 35 U.S.C. 112, ¶ 6 and (b) complainants have not established that there are no substantial noninfringing uses for the accused

products and hence there is no contributory infringement; (4) the ID's validity conclusions with respect to the '267, '410, and '907 patents, except not to review the ID's validity conclusions when the asserted claims of the '267 and '907 patents are construed apart from 35 U.S.C. 112, ¶ 6; and (5) the ID's conclusions with respect to the technical prong of the domestic industry requirement with respect to the '410, '267, and '907 patents, except not to review the ID's conclusions that complainants have failed to establish the technical prong of the domestic industry requirement when the asserted claims of the '267 and '907 patents are construed apart from 35 U.S.C. 112, ¶ 6.

The Commission also determined to review the procedural question of whether complainants waived the issue of whether the accused products infringe the asserted claims of the patents in controversy to the extent that the asserted claims are construed under 35 U.S.C. 112, ¶ 6 to cover equivalents of the structure disclosed in the specification, viz., equivalents of a mechanical joint with play, by failing to raise the issue before the ALJ. The Commission determined not to review the remainder of the ID. The Commission also determined to extend the target data for completion of the investigation to March 7, 2002. The Commission subsequently determined to further extend the target date to March 21, 2002. In accordance with the Commission's directions, the parties filed main briefs on January 10, 2002, and reply briefs on January 17, 2002. Having examined the record in this investigation, including the briefs and the responses thereto, the Commission determined that there is no violation of section 337. More specifically, the Commission found that there is no infringement of any claims at issue of the '410, '267, and '907 patents; no domestic industry exists with respect to the '410, '267, and '907 patents; and that the '410, '267, and '907 patents are not invalid. The Commission also determined that the complainants waived the issue of whether the accused products infringe the asserted claims of the '410, '267, and '907 patents to the extent that the asserted claims are construed under 35 U.S.C. 112, ¶ 6 to cover equivalents of the structure disclosed in the specification. Nonetheless, the Commission examined the issue and determined that, even if the argument had been timely raised, it would not have led to a different result. The Commission determined that complainants waived the issue of whether the accused products infringe the asserted claims of the '410, '267 and '907 patents under the doctrine of equivalents. This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and sections 210.45–210.51 of the Commission's Rules of Practice and Procedure, 19 CFR 210.45–210.51.

By order of the Commission.

Issued: March 22, 2002.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–7402 Filed 3–28–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–114, Exclusion Order Modification Proceeding]

In the Matter of Certain Miniature Plug-In Blade Fuses; Notice of Exclusion Order Modification

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that changed conditions have caused the U.S. International Trade Commission to modify the trade dress provision of the general exclusion order issued on January 13, 1983, in the above-captioned investigation. In light of certain judicial decisions, the Commission modified that provision by removing a reference to "product configuration" from the description of "trade dress." As a result, the modified provision requires the exclusion of imported miniature plug-in blade fuses having a trade dress, *i.e.*, a packaging, simulating that of Littelfuse, Inc.

FOR FURTHER INFORMATION CONTACT: P. N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3061. General information concerning the Commission, the above-captioned investigation, and the exclusion order modification proceeding also may be obtained by accessing its Internet server, *http://www.usitc.gov*.

Hearing-impaired individuals can obtain information concerning this matter by contacting the Commission's TDD terminal at 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the subject investigation in 1982 to determine whether there was a violation of section 337 of the Tariff Act of 1930 (19 USC 1337 (1978 and 1981 Supp.)) in the importation or sale of certain miniature plug-in blade fuses that allegedly misrepresented their place of geographic origin, infringed the complainant's patents and/or trademarks, misappropriated the complainant's trade dress, were passed off as merchandise of the complainant, or were the subject of false advertising. The complainant was the patent and trademark owner, Littelfuse, Inc., of Des Plaines, Illinois, a firm that manufactures and markets electronic devices, including the subject fuses.[1] The Commission named nine firms in Taiwan and three domestic firms as respondents in the investigation, 47 FR 1448, Jan. 13, 1982.

The investigation resulted in the issuance of a general exclusion order in 1983, requiring, among other things, the exclusion of imported miniature plug-in blade fuses having a trade dress, *i.e.*, a product configuration and/or packaging, simulating that of complainant Littelfuse. *Certain Miniature Plug-In Blade Fuses*, Inv. No. 337–TA–114, USITC Publication 1337 (Jan. 1983), Commission Action and Order at page 2, paragraph 2 (Jan. 13, 1983).

As the result of a Commission-initiated modification proceeding under 19 CFR 210.76 (*see* 66 FR 9359, Feb. 7, 2001, and Commission Order (Feb. 1, 2001)), the Commission concluded that conditions which led to the inclusion of product configuration in the trade dress provision of the exclusion order no longer exist. In particular, the product configuration protected by that provision was, by Littelfuse's admission, substantially the same configuration that the U.S. District Court for the Northern District of Georgia, Atlanta Division, found to be functional and not entitled to trademark protection. See the unpublished Judgment and the unpublished Order issued on January 7, 1998 in Civil Action No. 1:95–CV–2445–JTC, *Wilhelm Pudenz Gmbh [and] Wickmann USA, Inc.* v. *Littelfuse, Inc.* (The U.S. Court of Appeals for the Eleventh Circuit affirmed the District Court's decision. *Wilhelm Pudenz GmbH* v. *Littlefuse [sic], Inc.*, 177 F.3d 1204, 51 U.S.P.Q.2d 1045 (11th Cir. 1999).)

The Commission accordingly has modified the trade dress provision of its section 337 exclusion order by deleting the reference to product configuration. The modified provision thus requires the exclusion of imported miniature plug-in blade fuses having a trade dress, *i.e.*, a packaging, simulating that of Littelfuse.

[1] Miniature plug-in blade fuses are installed in automobiles as original equipment. They also are sold in the automotive aftermarket, as replacement parts for original equipment.

Upon request, all nonconfidential documents filed or issued in the investigation or the exclusion order modification proceeding will be made available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Commission's Office of the Secretary, Dockets Branch, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–1802.

In addition, the Final Determination and Commission Order effecting the modification and all nonconfidential documents filed or issued in the modification proceeding are available for inspection on the Commission's Web site. To access them, go to the "*ITC RESOURCE PAGE*," and then click on "EDIS On-Line for Public File Room."

By order of the Commission.

Issued: March 20, 2002.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–7404 Filed 3–27–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–457]

In the Matter of Certain Polyethylene Terephthalate Yarn and Products Containing Same; Notice of Commission Determination To Review in Part an Order Granting-in-Part and Denying-in-Part a Motion for Summary Determination of Invalidity and Non-Infringement of the Only Patent at Issue in the Investigation; Determination To Grant Two Motions To Strike Exhibits

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part an order (Order No. 61) issued on February 4, 2002, by the presiding administrative law judge (ALJ) in the above-captioned investigation granting-in-part and denying-in-part a motion for summary determination of invalidity and non-infringement of the only patent at issue in the investigation. The Commission has determined to review only the issue of indefiniteness under 35 U.S.C. 112, second paragraph. The Commission has also determined to grant two motions to strike certain exhibits attached to pleadings filed in connection with Order No. 61.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3104. Copies of the public version of Order No. 61 and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TTD terminal on 202–205–1810. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public*. General information concerning the Commission may also be obtained by accessing its Internet server, *http://www.usitc.gov*.

SUPPLEMENTARY INFORMATION: The Commission instituted this patent-based investigation, which concerns allegations of unfair acts in violation of section 337 of the Tariff Act of 1930 in the importation and sale of certain polyethylene terephthalate yarn and products containing same, on May 17, 2001. 66 FR 27586. The complainant, Honeywell International Inc. of Morris town, New Jersey named Hyosung Corp. of Seoul, Korea as the only respondent. On September 21, 2001, the Commission determined not to review an ID adding Hyosung America, Inc., a wholly-owned U.S. subsidiary of Hyosung Corp., as a respondent.

On December 13, 2001, respondent Hyosung moved for summary determination of patent invalidity and non-infringement. The motion was opposed by Honeywell and supported by the Commission investigative attorney. On February 4, 2002, the ALJ issued an order, Order No. 61, which granted Hyosung's motion for summary determination of non-infringement, but denied the motion as to patent invalidity. Honeywell filed a petition for review of the initial determination portion of the order on February 19, 2002. Hyosung and the Commission investigative attorney (IA) filed appeals of the portion of the order denying summary determination on the same date. Each of these parties filed responses to the February 19, 2002, filings on February 26, 2002.

Although the Commission has determined to review the issue of definiteness under 35 U.S.C. 112, second paragraph, it does not wish to receive any further written submissions.

On February 25, 2002, Hyosung moved to strike certain documents that were attached to Honeywell's response to the appeals of the order on the ground that the documents were not before the ALJ when he decided the motion for summary determination. On March 1, 2002, Honeywell opposed the motion. On February 28, 2002, Hyosung moved to strike a document that was attached to Honeywell's response to Hyosung's and the IA's petitions for review on the ground that the document was not of record. This motion was opposed by Honeywell on March 7, 2002. Both motions to strike were supported by the IA on March 7, 2002.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 190, as amended, 19 U.S.C. 1337, and in sections 210.24 and 210.42(h) of the Commission's Rules of Practice and Procedure, 19 CFR 210.24, 210.42(h).

By order of the Commission.

Issued: March 21, 2002.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–7403 Filed 3–27–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy and 42 U.S.C. 9622(d)(2), notice is hereby given that on March 13, 2002, a proposed consent decree in a case captioned *United States* v. *A.O. Smith Corp., et al.*, Civil Action No. 1:02–CV–0168 (W.D. Mich.) was lodged with the United States District Court for the Western District of Michigan. The proposed consent decree relates to the Ionia City Landfill Superfund Site ("Site") in the City of Ionia, Ionia County, Michigan.

In a compliant that was filed simultaneously with the Consent Decree, the United States sought recovery of response costs and performance of response actions at the Site pursuant to Sections 106(a) and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9606(a), 9607(a), against A.O. Smith Corp., the City of Ionia, Consumers Energy Co., Federal-Mogul Corp., General Motors Corp., Kmart Corp., the Michigan Department of Corrections, and Premiere Agri Technologies, Inc. (the "Defendants").

Under the proposed consent decree, the Defendants will perform the remedy selected in a Record of Decision that EPA issued for the Site on September 28, 2000. The remedy includes restricting access to and development of certain portions of the Site; maintaining the existing groundwater treatment system; maintaining institutional controls; and monitoring the natural attenuation that is taking place. Defendant A.O. Smith also agrees to pay all future response costs at the Site. Under a prior Consent Decree, the Defendants already had paid all past response costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resource Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *A.O. Smith Corp., et al.,* Civil Action No. 1:02–CV–0168 (W.D. Mich.) and DOJ Reference No. 90–11–2–476/1.

The proposed consent decree may be examined at: (1) the Office of the United States Attorney for the Western District of Michigan, 330 Ionia Ave., NW., Grand Rapids, MI 49503; and (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. Copies of the proposed consent decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting copies from the Consent Decree Library, please refer to the above-referenced case and DOJ Reference Number 90–11–2–476/1 and enclose a check for $81.00 (324 pages at 25 cents per page reproduction cost) made payable to the Consent Decree Library.

William D. Brighton,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–7418 Filed 3–27–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA")

Consistent with Departmental policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that a proposed consent decree in *United States* v. *Jane Doe, as Executrix of the Estate of Edmund Barbera, et al.*, 96 Civ. 8563 (BSJ), was lodged on February 20, 2002, with the United States District Court for the Southern District of New York. The Consent Decree addresses the hazardous waste contamination at the Port Refinery Superfund Site (the "Site"), located in the Village of Rye Brook, Westchester County, New York. the Consent Decree requires four generators of hazardous substances transported to the Site to pay to the United States a total of $415,500.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publicaiton, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Evnrionment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Jane Doe, as Executrix of the Estate of Edmund Barbera, et al.*, DOJ Ref. #90–11–3–1142A.

The proposed consent decree may be examined at the office of the United States Attorney for the Southern District of New York, 33 Whitehall Street, New York, New York (contact Assistant United States Attorney Kathy S. Marks); and the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, New York, 10007–1866 (contact Assistant Regional Counsel Michael Mintzer). A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611. In requesting a copy please refer to the referenced case and enclose a check in the amount of $12.00 (25 cents per page reproduction costs) for the Consent Decree, payable to the Cnsent Decree Library.

Ronald G. Gluck,

Assistant Section Chief. Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–7419 Filed 3–27–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree: Natural Resource Damages Under the Oil Pollution Act of 1990

Notice is hereby given that on March 18, 2002, a proposed Consent Decree: Natural Resource Damages ("Decree") in *United States and State of Alaska* v. *Kuroshima Shipping, S.A. and Unique Trading Co., Ltd,* Civil Action No. A02–0057 (JWS) was lodged with the United States District Court for the District of Alaska.

In this action brought pursuant to section 1002(b)(2)(A) of the Oil Pollution Act of 1990, 33 U.S.C. 2702(b)(2)(A), the United States and that State of Alaska sought natural resource damages, including and subsequent discharge of oil from the M/V Kuroshima in the area of Summer Bay, Unalaska Island, Alaska ("the Kuroshima Spill"). The defendants are the owner and operator of the vessel at the time of the incident. The federal and state natural trustees in consultation with Qawalangin Tribe of Unalaska conducted an assessment of damage to natural resources and loss of use of natural resources occasioned by the Kuroshima Spill and have proposed a plan for restoring these natural resources and the loss of their use by the public. That plan appears as Appendix A to the Decree. The proposed Decree provides that defendants shall pay $644,017 to the natural resource trustees for their conduct of the restoration plan and place another $9,000 in the registry of the Court until the natural resource trustees determine whether the amount is necessary for the field component of the restoration plan aimed at restoring vegetation. The proposed Decree requires that the defendants reimburse the natural resources trustees $66,158.09 for damage assessment costs. In exchange for these payments, the United States and the State of Alaska covenant not to sue the defendants for natural resource damages arising from the Kuroshima Spill.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice and sent to 801 B Street, Suite 504, Anchorage, Alaska 99501–3657. Comments should refer to *United States* v. *Kuroshima Shipping, S.A. et al,* D.J. Ref. #90–5–1–1–06147.

The Decree may be examined at the above address by contacting Lorraine Carter (907–271–5452). A copy of the Decree (minus Appendix A) may be obtained by contacting Ms. Carter in writing at the address above. In requesting a copy, please enclose a check in the amount of $5.50 (25 cents per page reproduction cost) payable to the U.S. Treasury. A copy of Appendix A may be obtained during the comment period from the National Oceanic and Atmospheric Administration by contacting Doug Helton at 206–526–4563 or at *Doug.Helton@noaaw.gov.*

Alternately, Appendix A may be viewed at *www.darenw.noaa.gov/kuro.htm.*

Walter B. Smith,

Principal Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–7420 Filed 3–27–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Laurel Creek Co., Inc.

[Docket No. M–2002–014–C]

Laurel Creek Co., Inc., P.O. Box 57, Dingess, West Virginia 25671 has filed a petition to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (Plug and receptacle-type connectors) to its Mine No. 4 (I.D. No. 46–08902) located in Mingo County, West Virginia. For mobile battery-powered machines used inby the last open crosscut, the petitioner proposes to use a spring-loaded device on battery plug connectors in lieu of a padlock. This is intended to prevent the plug connector from accidentally disengaging while under load. The petitioner states that a warning tag that states "Do Not Disengage Under Load," will be installed on all battery plug connectors and that instructions on the safe practices and provisions for complying with its proposed alternative method will be provided to all persons who operate or maintain the battery-powered machines. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Peabody Coal Company

[Docket No. M–2002–015–C]

Peabody Coal Company, 1970 Barrett Court, P.O. Box 1990, Henderson, Kentucky 42419–1990 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (Weekly examination) to its Camp #11 Mine (I.D. No. 15–08357) located in Union County, Kentucky. Due to hazardous roof conditions and roof falls blocking the air course entries, the petitioner proposes to continuously monitor methane and oxygen concentrations at evaluation points closest to the mine fan and XC–91. The petitioner proposes to use a Conspec Mine Monitoring System that would be manned around the clock and set up to alarm at oxygen levels less than 19.5% and methane levels greater than 1.0%. The petitioner states that weekly examinations would be conducted and evaluation points would be checked by a certified person to determine the methane and oxygen concentrations, and the volume of air. The results of the examinations would be recorded in a book and maintained on the surface of the mine. The petitioner asserts that application of the standard would result in diminution of safety to the miner and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Blue Diamond Coal Company

[Docket No. M–2002–016–C]

Blue Diamond Coal Company, P.O. Box 47, Slemp, Kentucky 41763–0047 has filed a petition to modify the application of 30 CFR 77.214 (Refuse piles; general) to its #76 Preparation Plant (I.D. No. 15–16520) located in Perry County, Kentucky. The petitioner requests a modification of the existing standard to allow Coarse Refuse Fill #1 to be placed over abandoned mine openings located in the Leatherwood (5A) seam using specific procedures outlined in this petition. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. Knox Creek Coal Corporation

[Docket No. M–2002–017–C]

Knox Coal Corporation, P.O. Box 519, Raven, Virginia 24639 has filed a petition to modify the application of 30 CFR 75.350 (Air course and belt haulage entries) to its Tiller No. 1 Mine (I.D. No. 44–06804) located in Tazewell County, Virginia. The petitioner requests a modification of the existing standard to allow the use of belt air to ventilate active working places. The petitioner proposes to install a low-level carbon monoxide detection system as an early warning fire detection system in all belt entries used as intake spacing between air courses. The distance between sensors will not exceed 1,000 feet along each conveyor belt entry. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

5. Paramont Coal Corporation

[Docket No. M–2002–018–C]

Paramont Coal Corporation, P.O. Box 7, Dante, Virginia 24237 has filed a petition to modify the application of 30 CFR 75.350 (Air course and belt haulage entries) to its Virginia Commonwealth #5 Mine (I.D. No. 44–06929) located in Wise County, Virginia. The petitioner requests a modification of the existing standard to allow the use of belt air to ventilate active working places. The petitioner proposes to install a low-level carbon monoxide detection system as an early warning fire detection system in all belt entries used as intake air course. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

6. White County Coal, LLC

[Docket No. M–2002–019–C]

White County Coal, LLC, 1525 County Road 1300 N., P.O. Box 457, Carmi, Illinois 62821 has filed a petition to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) to its Pattiki II Mine (I.D. No. 11–03058) located in White County, Illinois. The petitioner proposes to use a round, eye-bolt snap device to secure screw caps in place on battery plugs of battery operated scoops and tractors. This is in lieu of using its presently approved bolt and nut padlock. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

7. Alfred Brown Coal Company

[Docket No. M–2002–020–C]

Alfred Brown Coal Company, 71 Hill Road, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1400 (Hoisting equipment; general) to its 7 Ft Slope Mine (I.D. No. 36–08893) located in Schuylkill County, Pennsylvania. The petitioner proposes to use a slope conveyance (gunboat) in transporting persons without installing safety catches or other no less effective devices. The petitioner would instead use increased rope strength and secondary safety rope connections in place of such devices. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

8. Alfred Brown Coal Company

[Docket No. M–2002–021–C]

Alfred Brown Coal Company, 71 Hill Road, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.335

(Construction of seals) to its 7 Ft Slope Mine (I.D. No. 36–08893) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the existing standard to permit an alternative method of seal construction. The petitioner proposes to use wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

9. Alfred Brown Coal Company

[Docket No. M–2002–022–C]

Alfred Brown Coal Company, 71 Hill Road, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1202 and 75.1202–1(a) (Temporary notations, revisions, and supplements) to its 7 Ft Slope Mine (I.D. No. 36–08893) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps annually instead of every 6 months as required, and to update maps daily by hand notations. The petitioner also proposes to conduct surveys prior to commencing retreat mining and whenever either a drilling program under 30 CFR 75.388 or plan for mining into inaccessible areas under 30 CFR 75.389 is required. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

10. Alfred Brown Coal Company

[Docket No. M–2001–023–C]

Alfred Brown Coal Company, 71 Hill Road, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.360 (Pre-shift examination at fixed intervals) to its 7 Ft Slope Mine (I.D. No. 36–08893) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the existing standard to permit an alternative method of examination and evaluation of seals. The alternative method would include a visual examination of each seal for physical damage from the slope gunboat during the pre-shift examination after an air quantity reading is taken just inby the intake portal. The petitioner proposes to instruct the examiner to take an additional reading and gas test for methane, carbon dioxide, and oxygen deficiency at intake air split locations just off the slope in the gangway portion of the working section. A record of all readings, gas test results, and his/her initials, date, and time and location of examinations will be available to anyone prior to entering the mine. The petitioner states that regardless of the conditions at the section evaluation point, the entire length of the slope would be traveled and physically examined on a monthly basis. A record of the dates, time, and the initials of the person conducting the examinations will be made available on the surface. The petitioner also states that any hazards would be corrected prior to transporting personnel in the slope. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

11. Alfred Brown Coal Company

[Docket No. M–2001–024–C]

Alfred Brown Coal Company, 71 Hill Road, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1200(d) & (i) (Mine map) to its 7 Ft Slope Mine (I.D. No. 36–08893) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 foot intervals of advance from the intake slope; and to limit the required mapping of the mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnels. The petitioner asserts that due to the steep pitch encountered in mining anthracite coal veins, contours provide no useful information and their presence would make portions of the map illegible. The petitioner further asserts that use of cross-sections in lieu of contour lines has been practiced since the late 1800's thereby providing critical information relative to the spacing between veins and proximity to other mine workings which fluctuate considerably. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

12. Rosebud Mining Company

[Docket No. M–2002–025–C]

Rosebud Mining Company, R.D. 9, Box 379A, Kittanning, Pennsylvania 16201 has filed a petition to modify the application of 30 CFR 75.1100–2(e)(2) (Quantity and location of firefighting equipment) to its Logansport Mine (I.D. No. 36–08841) located in Armstrong County, Pennsylvania. The petitioner requests a modification of the existing standard to permit the use of an alternative method of compliance for firefighting equipment required at temporary electrical installations. The petitioner proposes to use two (2) fire extinguishers or one fire extinguisher of twice the required capacity at all temporary electrical installations in lieu of using 240 pounds of rock dust. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard and would not result in a diminution of safety to the miners.

13. Peabody Coal Company

[Docket No. M–2002–026–C]

Peabody Coal Company, 1970 Barrett Court, P.O. Box 1990, Henderson, Kentucky 42419–1990 has filed a petition to modify the application of 30 CFR 75.1101–1(b) (Type and quality of firefighting equipment) to its Camp #11 Mine (I.D. No. 15–08357) located in Union County, Kentucky. The petitioner requests a modification of the existing standard to permit an alternative method for conducting functional tests of its complete deluge-type water system. The petitioner proposes to conduct these tests on a weekly basis instead of annually. The petitioner states that the existing standard will not allow the system to be functionally tested weekly because the dust covers could be blown off and to return the water spray system safely for compliance with the existing standard, the belt would have to be de-energized, locked and tagged, and the dust cover would have to be replaced, which would take approximately 30 minutes per belt drive. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard since any restrictions to the spray system otherwise prevented by the blow-off dust covers would be recognized during the weekly functional test and promptly corrected.

14. Dakota Mining, Inc.

[Docket No. M–2002–027–C]

Dakota Mining, Inc., 430 Harper Park Drive, Beckley, West Virginia 25801 has filed a petition to modify the application of 30 CFR 75.1002 (Location of trolley wires, trolley feeder wires, high-voltage cables, and transformers) to its #2 Mine (I.D. No. 46–08589) located in Boone County, West Virginia. The petitioner proposes to replace a low-voltage continuous miner with a 2,400-

volt Joy 12CM27 machine. The petitioner states that mining at the #2 Mine is approaching an area of the reserve where the seam height thickens and is concerned that the current equipment will not be capable of reaching the roof without blocking and ramping the continuous miner. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to "comments@msha.gov," or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 29, 2002. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 22nd day of March 2002.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 02–7466 Filed 3–27–02; 8:45 am]

BILLING CODE 4510–43–U

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2002–19; Exemption Application Number D–11041]

Notice of Grant of Individual Exemption To Modify Prohibited Transaction Exemption 90–23 (PTE 90–23); Prohibited Transaction Exemption 90–31 (PTE 90–31) and Prohibited Transaction Exemption 90–33 (PTE 90–33) Involving J.P. Morgan Chase & Company and Its Affiliates (the Applicants) Located in New York, NY

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor (the Department).

ACTION: Notice of grant of individual exemption to modify PTE 90–23; PTE 90–31; and PTE 90–33 (collectively, the Exemptions).

SUMMARY: This document contains a notice of grant of a proposed individual administrative exemption which amends: PTE 90–23 (55 FR 20545, May 17, 1990), an exemption which was granted to J.P. Morgan Securities, Inc.; PTE 90–31 (55 FR 23144, June 6, 1990), an exemption which was granted to Chase Manhattan Bank; and PTE 90–33 (55 FR 23151, June 6, 1990), an exemption which was granted to Chemical Banking Corporation.[1] The Exemptions provide relief for the operation of certain asset pool investment trusts and the acquisition, holding and disposition by employee benefit plans (the Plans) of certificates or debt instruments that are issued by such trusts with respect to which one of the Applicants is the lead underwriter or a co-managing underwriter. This amendment permits the trustee of the trust to be an affiliate of the underwriter. The amendment affects the participants and beneficiaries of the Plans participating in such transactions and the fiduciaries with respect to such Plans.

FOR FURTHER INFORMATION CONTACT: Mr. Gary H. Lefkowitz, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 693–8546. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On January 18, 2002, notice was published in the **Federal Register** (67 FR 2699) of the pendency before the Department of a proposed exemption to amend the Exemptions. The amendment, as proposed, would modify the Exemptions, each as subsequently amended by PTE 97–34 (62 FR 39021, July 21, 1997) and PTE 2000–58 (65 FR 67765, November 13, 2000) as set forth below:

The first sentence of section II.A.(4) of the Exemptions is amended to read: "The trustee is not an Affiliate of any member of the Restricted Group, other than an Underwriter."

The only written comment received by the Department on the proposed amendment was submitted by the Applicants, who requested that the Department clarify and restate the Exemptions as a single exemption. In response to that comment, the Department has determined to publish the final exemption as requested, which includes all of the amendments made by PTEs 97–34 and 2000–58.

The Department also received an e-mail message regarding the proposed amendment from an interested person who suggested that the same amendment be made to other exemptions previously granted by the Department for transactions involving asset-backed securities relating to credit card receivables [e.g., PTE 98–13, 63 FR 17020 (April 7, 1998) regarding MBNA America Bank, N.N.; and PTE 98–14, 63 FR 17027 (April 7, 1998) regarding Citibank (South Dakota), N.A., and Affiliates]. The Department has determined to separately consider a similar amendment to its prior individual exemptions for credit card securitizations in a separate proposal at a later date.

Finally, the Department contacted The Bond Market Association (TBMA) to discuss extending similar relief to all of the prior individual exemptions granted for mortgage-backed and other asset-backed securities (commonly known as the "Underwriter Exemptions"). In this regard, the Department notes that all of the Underwriter Exemptions are essentially identical to the original three Underwriter Exemptions [i.e., PTE 89–88, 54 FR 42582 (October 17, 1989), regarding Goldman, Sachs & Co., et al.; PTE 89–89, 54 FR 42569 (October 17, 1989), regarding Salomon Brothers, Inc.; and PTE 89–90, 54 FR 42597 (October 17, 1989), regarding First Boston Corp.]. In addition, each of the Underwriter Exemptions was also subsequently amended by PTEs 97–34 and 2000–58.[2] In this regard, the Department anticipates a similar amendment to the remaining Underwriter Exemptions.

Exemption

Under section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, subpart B (55 FR 32836, August 10, 1990), the Department amends the following individual exemption for J.P. Morgan Chase & Company and its Affiliates and restates the following individual Prohibited Transaction Exemptions (PTEs) as a single exemption: PTE 90–23 (55 FR 20545, May 17, 1990), an exemption which was granted to J.P. Morgan Securities, Inc.; PTE 90–31 (55 FR 23144, June 6, 1990), an exemption which was granted to Chase Manhattan Bank; and PTE 90–33 (55 FR 23151, June 6, 1990), an exemption which was granted to Chemical Banking Corporation.

I. Transactions

A. The restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section

[1] The notice of proposed exemption for PTE 90–23 was published on February 20, 1990 at 55 FR 5906; the notice of proposed exemption for PTE 90–31 was published on February 21, 1990 at 55 FR 6074; and the notice of proposed exemption for PTE 90–33 was published on February 21, 1990 at 55 FR 6082.

[2] For a listing of such exemptions, see PTE 2000–58, footnote 1, 65 FR at 67765 (November 13, 2000).

4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving Issuers and Securities evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the Sponsor or Underwriter and an employee benefit plan when the Sponsor, Servicer, Trustee or Insurer of an Issuer, the Underwriter of the Securities representing an interest in the Issuer, or an Obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of Securities by a plan in the secondary market for such Securities; and

(3) The continued holding of Securities acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for the acquisition or holding of a Security on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[3]

B. The restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the Sponsor or Underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the Securities is (a) an Obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the Issuer, or (b) an Affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of Securities in connection with the initial issuance of the Securities, at least 50 percent of each class of Securities in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the Issuer is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of Securities does not exceed 25 percent of all of the Securities of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the Securities, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in Securities representing an interest in an Issuer containing assets sold or serviced by the same entity.[4] For purposes of this paragraph (iv) only, an entity will not be considered to service assets contained in a Issuer if it is merely a Subservicer of that Issuer;

(2) The direct or indirect acquisition or disposition of Securities by a plan in the secondary market for such Securities, provided that the conditions set forth in paragraphs (i), (iii) and (iv) of subsection I.B.(1) are met; and

(3) The continued holding of Securities acquired by a plan pursuant to subsection I.B.(1) or (2).

C. The restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of an Issuer, including the use of any Eligible Swap transaction; or, effective January 1, 1999, the defeasance of a mortgage obligation held as an asset of the Issuer through the substitution of a new mortgage obligation in a commercial mortgage-backed Designated Transaction, provided:

(1) Such transactions are carried out in accordance with the terms of a binding Pooling and Servicing Agreement;

(2) The Pooling and Servicing Agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase Securities issued by the Issuer;[5] and

(3) The defeasance of a mortgage obligation and the substitution of a new mortgage obligation in a commercial mortgage-backed Designated Transaction meet the terms and conditions for such defeasance and substitution as are described in the prospectus or private placement memorandum for such Securities, which terms and conditions have been approved by a Rating Agency and does not result in the Securities receiving a lower credit rating from the Rating Agency than the current rating of the Securities.

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a Servicer of the Issuer from a person other than the Trustee or Sponsor, unless such fee constitutes a Qualified Administrative Fee.

D. The restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of Securities.

II. General Conditions

A. The relief provided under section I. is available only if the following conditions are met:

(1) The acquisition of Securities by a plan is on terms (including the Security price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the Securities are not subordinated to the rights and interests evidenced by other Securities of the same Issuer, unless the Securities are issued in a Designated Transaction;

(3) The Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the three (or in the case of Designated Transactions, four) highest generic rating categories;

(4) The Trustee is not an Affiliate of any member of the Restricted Group,

[3] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) of the Act, and regulation 29 CFR 2510.3–21(c).

[4] For purposes of this Underwriter Exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[5] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed on a prospectus if the offering of the securities were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions. For purposes of this exemption, references to "prospectus" include any related prospectus supplement thereto, pursuant to which Securities are offered to investors.

other than an Underwriter. For purposes of this requirement:

(a) The Trustee shall not be considered to be an Affiliate of a Servicer solely because the Trustee has succeeded to the rights and responsibilities of the Servicer pursuant to the terms of a Pooling and Servicing Agreement providing for such succession upon the occurrence of one or more events of default by the Servicer; and

(b) Effective for transactions occurring on or after January 1, 1998, subsection II.A.(4) will be deemed satisfied notwithstanding a Servicer becoming an Affiliate of the Trustee as the result of a merger or acquisition involving the Trustee, such Servicer and/or their Affiliates which occurs after the initial issuance of the Securities, provided that:

(i) such Servicer ceases to be an Affiliate of the Trustee no later than six months after the later of August 23, 2000 or the date such Servicer became an Affiliate of the Trustee; and

(ii) such Servicer did not breach any of its obligations under the Pooling and Servicing Agreement, unless such breach was immaterial and timely cured in accordance with the terms of such agreement, during the period from the closing date of such merger or acquisition transaction through the date the Servicer ceased to be an Affiliate of the Trustee;

(5) The sum of all payments made to and retained by the Underwriters in connection with the distribution or placement of Securities represents not more than Reasonable Compensation for underwriting or placing the Securities; the sum of all payments made to and retained by the Sponsor pursuant to the assignment of obligations (or interests therein) to the Issuer represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the Servicer represents not more than Reasonable Compensation for the Servicer's services under the Pooling and Servicing Agreement and reimbursement of the Servicer's reasonable expenses in connection therewith;

(6) The plan investing in such Securities is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933; and

(7) In the event that the obligations used to fund an Issuer have not all been transferred to the Issuer on the Closing Date, additional obligations of the types specified in subsection III.B.(1) may be transferred to the Issuer during the Pre-Funding Period in exchange for amounts credited to the Pre-Funding Account, provided that:

(a) The Pre-Funding Limit is not exceeded;

(b) All such additional obligations meet the same terms and conditions for determining the eligibility of the original obligations used to create the Issuer (as described in the prospectus or private placement memorandum and/or Pooling and Servicing Agreement for such Securities), which terms and conditions have been approved by a Rating Agency. Notwithstanding the foregoing, the terms and conditions for determining the eligibility of an obligation may be changed if such changes receive prior approval either by a majority vote of the outstanding securityholders or by a Rating Agency;

(c) The transfer of such additional obligations to the Issuer during the Pre-Funding Period does not result in the Securities receiving a lower credit rating from a Rating Agency upon termination of the Pre-Funding Period than the rating that was obtained at the time of the initial issuance of the Securities by the Issuer;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations held by the Issuer at the end of the Pre-Funding Period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the Issuer on the Closing Date;

(e) In order to ensure that the characteristics of the receivables actually acquired during the Pre-Funding Period are substantially similar to those which were acquired as of the Closing Date, the characteristics of the additional obligations will either be monitored by a credit support provider or other insurance provider which is independent of the Sponsor or an independent accountant retained by the Sponsor will provide the Sponsor with a letter (with copies provided to the Rating Agency, the Underwriter and the Trustee) stating whether or not the characteristics of the additional obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or Pooling and Servicing Agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the Closing Date;

(f) The Pre-Funding Period shall be described in the prospectus or private placement memorandum provided to investing plans; and

(g) The Trustee of the Trust (or any agent with which the Trustee contracts to provide Trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities and liabilities as a fiduciary under the Act. The Trustee, as the legal owner of the obligations in the Trust or the holder of a security interest in the obligations held by the Issuer, will enforce all the rights created in favor of securityholders of the Issuer, including employee benefit plans subject to the Act;

(8) In order to insure that the assets of the Issuer may not be reached by creditors of the Sponsor in the event of bankruptcy or other insolvency of the Sponsor:

(a) The legal documents establishing the Issuer will contain:

(i) Restrictions on the Issuer's ability to borrow money or issue debt other than in connection with the securitization;

(ii) Restrictions on the Issuer merging with another entity, reorganizing, liquidating or selling assets (other than in connection with the securitization);

(iii) Restrictions limiting the authorized activities of the Issuer to activities relating to the securitization;

(iv) If the Issuer is not a Trust, provisions for the election of at least one independent director/partner/member whose affirmative consent is required before a voluntary bankruptcy petition can be filed by the Issuer; and

(v) If the Issuer is not a Trust, requirements that each independent director/partner/member must be an individual that does not have a significant interest in, or other relationships with, the Sponsor or any of its Affiliates; and

(b) The Pooling and Servicing Agreement and/or other agreements establishing the contractual relationships between the parties to the securitization transaction will contain covenants prohibiting all parties thereto from filing an involuntary bankruptcy petition against the Issuer or initiating any other form of insolvency proceeding until after the Securities have been paid; and

(c) Prior to the issuance by the Issuer of any Securities, a legal opinion is received which states that either:

(i) A "true sale" of the assets being transferred to the Issuer by the Sponsor has occurred and that such transfer is not being made pursuant to a financing of the assets by the Sponsor; or

(ii) In the event of insolvency or receivership of the Sponsor, the assets transferred to the Issuer will not be part of the estate of the Sponsor;

(9) If a particular class of Securities held by any plan involves a Ratings Dependent or Non-Ratings Dependent Swap entered into by the Issuer, then each particular swap transaction relating to such Securities:

(a) Shall be an Eligible Swap;

(b) Shall be with an Eligible Swap Counterparty;

(c) In the case of a Ratings Dependent Swap, shall provide that if the credit rating of the counterparty is withdrawn or reduced by any Rating Agency below a level specified by the Rating Agency, the Servicer (as agent for the Trustee) shall, within the period specified under the Pooling and Servicing Agreement:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty which is acceptable to the Rating Agency and the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to establish any collateralization or other arrangement satisfactory to the Rating Agency such that the then current rating by the Rating Agency of the particular class of Securities will not be withdrawn or reduced.

In the event that the Servicer fails to meet its obligations under this subsection II.A.(9)(c), plan securityholders will be notified in the immediately following Trustee's periodic report which is provided to securityholders, and sixty days after the receipt of such report, the exemptive relief provided under section I.C. will prospectively cease to be applicable to any class of Securities held by a plan which involves such Ratings Dependent Swap; provided that in no event will such plan securityholders be notified any later than the end of the second month that begins after the date on which such failure occurs.

(d) In the case of a Non-Ratings Dependent Swap, shall provide that, if the credit rating of the counterparty is withdrawn or reduced below the lowest level specified in section III.GG., the Servicer (as agent for the Trustee) shall within a specified period after such rating withdrawal or reduction:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to post collateral with the Trustee in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or

(iii) Terminate the swap agreement in accordance with its terms; and

(e) Shall not require the Issuer to make any termination payments to the counterparty (other than a currently scheduled payment under the swap agreement) except from Excess Spread or other amounts that would otherwise be payable to the Servicer or the Sponsor;

(10) Any class of Securities, to which one or more swap agreements entered into by the Issuer applies, may be acquired or held in reliance upon this Underwriter Exemption only by Qualified Plan Investors; and

(11) Prior to the issuance of any debt securities, a legal opinion is received which states that the debt holders have a perfected security interest in the Issuer's assets.

B. Neither any Underwriter, Sponsor, Trustee, Servicer, Insurer or any Obligor, unless it or any of its Affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire Securities, shall be denied the relief provided under section I., if the provision of subsection II.A.(6) is not satisfied with respect to acquisition or holding by a plan of such Securities, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of Securities, the Trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's Securities) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6).

III. Definitions

For purposes of this exemption:

A. *Security* means:

(1) A pass-through certificate or trust certificate that represents a beneficial ownership interest in the assets of an Issuer which is a Trust and which entitles the holder to payments of principal, interest and/or other payments made with respect to the assets of such Trust; or

(2) A security which is denominated as a debt instrument that is issued by, and is an obligation of, an Issuer; with respect to which the Underwriter is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

B. *Issuer* means an investment pool, the corpus or assets of which are held in trust (including a grantor or owner Trust) or whose assets are held by a partnership, special purpose corporation or limited liability company (which Issuer may be a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of section 860D(a) or section 860L, respectively, of the Code); and the corpus or assets of which consist solely of:

(1) (a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association); and/or

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, Qualified Equipment Notes Secured by Leases); and/or

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and/or commercial real property (including obligations secured by leasehold interests on residential or commercial real property); and/or

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or Qualified Motor Vehicle Leases; and/or

(e) Guaranteed governmental mortgage pool certificates, as defined in 29 CFR 2510.3–101(i)(2)[6]; and/or

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this subsection B.(1).[7]

Notwithstanding the foregoing, residential and home equity loan

[6] In Advisory Opinion 99–05A (Feb. 22, 1999), the Department expressed its view that mortgage pool certificates guaranteed and issued by the Federal Agricultural Mortgage Corporation ("Farmer Mac") meet the definition of a guaranteed governmental mortgage pool certificate as defined in 29 CFR 2510.3–101(i)(2).

[7] The Department wishes to take the opportunity to clarify its view that the definition of Issuer contained in subsection III.B. includes a two-tier structure under which Securities issued by the first Issuer, which contains a pool of receivables described above, are transferred to a second Issuer which issues Securities that are sold to plans. However, the Department is of the further view that, since the Underwriter Exemption generally provides relief only for the direct or indirect acquisition or disposition of Securities that are not subordinated, no relief would be available if the Securities held by the second Issuer were subordinated to the rights and interests evidenced by other Securities issued by the first Issuer, unless such Securities were issued in a Designated Transaction.

receivables issued in Designated Transactions may be less than fully secured, provided that: (i) the rights and interests evidenced by the Securities issued in such Designated Transactions (as defined in section III.DD.) are not subordinated to the rights and interests evidenced by Securities of the same Issuer; (ii) such Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the two highest generic rating categories; and (iii) any obligation included in the corpus or assets of the Issuer must be secured by collateral whose fair market value on the Closing Date of the Designated Transaction is at least equal to 80% of the sum of: (I) the outstanding principal balance due under the obligation which is held by the Issuer and (II) the outstanding principal balance(s) of any other obligation(s) of higher priority (whether or not held by the Issuer) which are secured by the same collateral.

(2) Property which had secured any of the obligations described in subsection III.B.(1);

(3) (a) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are made to securityholders; and/or

(b) Cash or investments made therewith which are credited to an account to provide payments to securityholders pursuant to any Eligible Swap Agreement meeting the conditions of subsection II.A.(9) or pursuant to any Eligible Yield Supplement Agreement; and/or

(c) Cash transferred to the Issuer on the Closing Date and permitted investments made therewith which:

(i) Are credited to a Pre-Funding Account established to purchase additional obligations with respect to which the conditions set forth in paragraphs (a)–(g) of subsection II.A.(7) are met; and/or

(ii) Are credited to a Capitalized Interest Account; and

(iii) Are held by the Issuer for a period ending no later than the first distribution date to securityholders occurring after the end of the Pre-Funding Period.

For purposes of this paragraph (c) of subsection III.B.(3), the term "permitted investments" means investments which: (i) are either: (x) direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (y) have been rated (or the Obligor has been rated) in one of the three highest generic rating categories by a Rating Agency; (ii) are described in the Pooling and Servicing Agreement; and (iii) are permitted by the Rating Agency.

(4) Rights of the Trustee under the Pooling and Servicing Agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, Eligible Yield Supplement Agreements, Eligible Swap Agreements meeting the conditions of subsection II.A.(9) or other credit support arrangements with respect to any obligations described in subsection III.B.(1).

Notwithstanding the foregoing, the term "Issuer" does not include any investment pool unless: (i) the assets of the type described in paragraphs (a)–(f) of subsection III.B.(1) which are contained in the investment pool have been included in other investment pools, (ii) Securities evidencing interests in such other investment pools have been rated in one of the three (or in the case of Designated Transactions, four) highest generic rating categories by a Rating Agency for at least one year prior to the plan's acquisition of Securities pursuant to this Underwriter Exemption, and (iii) Securities evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of Securities pursuant to this Underwriter Exemption.

C. *Underwriter* means:

(1) J.P. Morgan Chase & Company (the Applicant);

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with the Applicant; or

(3) Any member of an underwriting syndicate or selling group of which a person described in subsections III.C.(1) or (2) is a manager or co-manager with respect to the Securities.

D. *Sponsor* means the entity that organizes an Issuer by depositing obligations therein in exchange for Securities.

E. *Master Servicer* means the entity that is a party to the Pooling and Servicing Agreement relating to assets of the Issuer and is fully responsible for servicing, directly or through Subservicers, the assets of the Issuer.

F. *Subservicer* means an entity which, under the supervision of and on behalf of the Master Servicer, services loans contained in the Issuer, but is not a party to the Pooling and Servicing Agreement.

G. "Servicer" means any entity which services loans contained in the Issuer, including the Master Servicer and any Subservicer.

H. *Trust* means an Issuer which is a trust (including an owner trust, grantor trust or a REMIC or FASIT which is organized as a Trust).

I. *Trustee* means the Trustee of any Trust which issues Securities and also includes an Indenture Trustee. "Indenture Trustee" means the Trustee appointed under the indenture pursuant to which the subject Securities are issued, the rights of holders of the Securities are set forth and a security interest in the Trust assets in favor of the holders of the Securities is created. The Trustee or the Indenture Trustee is also a party to or beneficiary of all the documents and instruments transferred to the Issuer, and as such, has both the authority to, and the responsibility for, enforcing all the rights created thereby in favor of holders of the Securities, including those rights arising in the event of default by the servicer.

J. *Insurer* means the insurer or guarantor of, or provider of other credit support for, an Issuer. Notwithstanding the foregoing, a person is not an insurer solely because it holds Securities representing an interest in an Issuer which are of a class subordinated to Securities representing an interest in the same Issuer.

K. *Obligor* means any person, other than the Insurer, that is obligated to make payments with respect to any obligation or receivable included in the Issuer. Where an Issuer contains Qualified Motor Vehicle Leases or Qualified Equipment Notes Secured by Leases, "Obligor" shall also include any owner of property subject to any lease included in the Issuer, or subject to any lease securing an obligation included in the Issuer.

L. *Excluded Plan* means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

M. *Restricted Group* with respect to a class of Securities means:

(1) Each Underwriter;

(2) Each Insurer;

(3) The Sponsor;

(4) The Trustee;

(5) Each Servicer;

(6) Any Obligor with respect to obligations or receivables included in the Issuer constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the Issuer, determined on the date of the initial issuance of Securities by the Issuer;

(7) Each counterparty in an Eligible Swap Agreement; or

(8) Any Affiliate of a person described in subsections III.M.(1)–(7).

N. *Affiliate* of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

O. *Control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

P. A person will be "independent" of another person only if:

(1) Such person is not an Affiliate of that other person; and

(2) The other person, or an Affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

Q. *Sale* includes the entrance into a Forward Delivery Commitment, provided:

(1) The terms of the Forward Delivery Commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the Forward Delivery Commitment; and

(3) At the time of the delivery, all conditions of this Underwriter Exemption applicable to sales are met.

R. *Forward Delivery Commitment* means a contract for the purchase or sale of one or more Securities to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the Securities) and optional contracts (which give one party the right but not the obligation to deliver Securities to, or demand delivery of Securities from, the other party).

S. *Reasonable Compensation* has the same meaning as that term is defined in 29 CFR 2550.408c–2.

T. *Qualified Administrative Fee* means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the Obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The Servicer may not charge the fee absent the act or failure to act referred to in subsection III.T.(1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the Pooling and Servicing Agreement; and

(4) The amount paid to investors in the Issuer will not be reduced by the amount of any such fee waived by the Servicer.

U. *Qualified Equipment Note Secured By A Lease* means an equipment note:

(1) Which is secured by equipment which is leased;

(2) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) With respect to which the Issuer's security interest in the equipment is at least as protective of the rights of the Issuer as the Issuer would have if the equipment note were secured only by the equipment and not the lease.

V. *Qualified Motor Vehicle Lease* means a lease of a motor vehicle where:

(1) The Issuer owns or holds a security interest in the lease;

(2) The Issuer owns or holds a security interest in the leased motor vehicle; and

(3) The Issuer's security interest in the leased motor vehicle is at least as protective of the Issuer's rights as the Issuer would receive under a motor vehicle installment loan contract.

W. *Pooling and Servicing Agreement* means the agreement or agreements among a Sponsor, a Servicer and the Trustee establishing a Trust. "Pooling and Servicing Agreement" also includes the indenture entered into by the Issuer and the Indenture Trustee.

X. *Rating Agency* means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies Inc., Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., Fitch ICBA, Inc. or any successors thereto.

Y. *Capitalized Interest Account* means an Issuer account: (i) Which is established to compensate securityholders for shortfalls, if any, between investment earnings on the Pre-Funding Account and the interest rate payable under the Securities; and (ii) which meets the requirements of paragraph (c) of subsection III.B.(3).

Z. *Closing Date* means the date the Issuer is formed, the Securities are first issued and the Issuer's assets (other than those additional obligations which are to be funded from the Pre-Funding Account pursuant to subsection II.A.(7)) are transferred to the Issuer.

AA. *Pre-Funding Account* means an Issuer account: (i) Which is established to purchase additional obligations, which obligations meet the conditions set forth in paragraph (a)-(g) of subsection II.A.(7); and (ii) which meets the requirements of paragraph (c) of subsection III.B.(3).

BB. *Pre-Funding Limit* means a percentage or ratio of the amount allocated to the Pre-Funding Account, as compared to the total principal amount of the Securities being offered, which is less than or equal to: (i) 40 percent, effective for transactions occurring on or after January 1, 1992, but prior to May 23, 1997; and (ii) 25 percent, for transactions occurring on or after May 23, 1997.

CC. *Pre-Funding Period* means the period commencing on the Closing Date and ending no later than the earliest to occur of: (i) The date the amount on deposit in the Pre-Funding Account is less than the minimum dollar amount specified in the Pooling and Servicing Agreement; (ii) the date on which an event of default occurs under the Pooling and Servicing Agreement or (iii) the date which is the later of three months or ninety days after the Closing Date.

DD. *Designated Transaction* means a securitization transaction in which the assets of the Issuer consist of secured consumer receivables, secured credit instruments or secured obligations that bear interest or are purchased at a discount and are: (i) Motor vehicle, home equity and/or manufactured housing consumer receivables; and/or (ii) motor vehicle credit instruments in transactions by or between business entities; and/or (iii) single-family residential, multi-family residential, home equity, manufactured housing and/or commercial mortgage obligations that are secured by single-family residential, multi-family residential, commercial real property or leasehold interests therein. For purposes of this section III.DD., the collateral securing motor vehicle consumer receivables or motor vehicle credit instruments may include motor vehicles and/or Qualified Motor Vehicle Leases.

EE. *Ratings Dependent Swap* means an interest rate swap, or (if purchased by or on behalf of the Issuer) an interest rate cap contract, that is part of the structure of a class of Securities where the rating assigned by the Rating Agency to any class of Securities held by any plan is dependent on the terms and conditions of the swap and the rating of the counterparty, and if such Security rating is not dependent on the existence of the swap and rating of the counterparty, such swap or cap shall be referred to as a "Non-Ratings Dependent Swap". With respect to a Non-Ratings Dependent Swap, each Rating Agency

rating the Securities must confirm, as of the date of issuance of the Securities by the Issuer, that entering into an Eligible Swap with such counterparty will not affect the rating of the Securities.

FF. *Eligible Swap* means a Ratings Dependent or Non-Ratings Dependent Swap:

(1) Which is denominated in U.S. dollars;

(2) Pursuant to which the Issuer pays or receives, on or immediately prior to the respective payment or distribution date for the class of Securities to which the swap relates, a fixed rate of interest, or a floating rate of interest based on a publicly available index (e.g., LIBOR or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the Issuer receiving such payments on at least a quarterly basis and obligated to make separate payments no more frequently than the counterparty, with all simultaneous payments being netted;

(3) Which has a notional amount that does not exceed either: (i) The principal balance of the class of Securities to which the swap relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3);

(4) Which is not leveraged (*i.e.*, payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in subsection III.FF.(2), and the difference between the products thereof, calculated on a one to one ratio and not on a multiplier of such difference);

(5) Which has a final termination date that is either the earlier of the date on which the Issuer terminates or the related class of securities is fully repaid; and

(6) Which does not incorporate any provision which could cause a unilateral alteration in any provision described in subsections III.FF.(1) through (4) without the consent of the Trustee.

GG. *Eligible Swap Counterparty* means a bank or other financial institution which has a rating, at the date of issuance of the Securities by the Issuer, which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the Securities; provided that, if a swap counterparty is relying on its short-term rating to establish eligibility under the Underwriter Exemption, such swap counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency, and provided further that if the class of Securities with which the swap is associated has a final maturity date of more than one year from the date of issuance of the Securities, and such swap is a Ratings Dependent Swap, the swap counterparty is required by the terms of the swap agreement to establish any collateralization or other arrangement satisfactory to the Rating Agencies in the event of a ratings downgrade of the swap counterparty.

HH. *Qualified Plan Investor* means a plan investor or group of plan investors on whose behalf the decision to purchase Securities is made by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction used by the Issuer and the effect such swap would have upon the credit ratings of the Securities. For purposes of the Underwriter Exemption, such a fiduciary is either:

(1) A *qualified professional asset manager* (QPAM),[8] as defined under Part V(a) of PTE 84–14, 49 FR 9494, 9506 (March 13, 1984);

(2) An *in-house asset manager* (INHAM),[9] as defined under Part IV(a) of PTE 96–23, 61 FR 15975, 15982 (April 10, 1996); or

(3) A plan fiduciary with total assets under management of at least $100 million at the time of the acquisition of such Securities.

II. *Excess Spread* means, as of any day funds are distributed from the Issuer, the amount by which the interest allocated to Securities exceeds the amount necessary to pay interest to securityholders, servicing fees and expenses.

JJ. *Eligible Yield Supplement Agreement* means any yield supplement agreement, similar yield maintenance arrangement or, if purchased by or on behalf of the Issuer, an interest rate cap contract to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1). Effective for transactions occurring on or after April 7, 1998, such an agreement or arrangement may involve a notional principal contract provided that:

(1) It is denominated in U.S. dollars;

(2) The Issuer receives on, or immediately prior to the respective payment date for the Securities covered by such agreement or arrangement, a fixed rate of interest or a floating rate of interest based on a publicly available index (e.g., LIBOR or COFI), with the Issuer receiving such payments on at least a quarterly basis;

(3) It is not "leveraged" as described in subsection III.FF.(4);

(4) It does not incorporate any provision which would cause a unilateral alteration in any provision described in subsections III.JJ.(1)-(3) without the consent of the Trustee;

(5) It is entered into by the Issuer with an Eligible Swap Counterparty; and

(6) It has a notional amount that does not exceed either: (i) The principal balance of the class of Securities to which such agreement or arrangement relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3).

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the application change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant this individual exemption to modify the Exemptions, refer to the notice of proposed individual exemption to modify the Exemptions that was published on January 18, 2002 at 67 FR 2699.

EFFECTIVE DATE: This exemption is effective as of March 13, 2002.

Signed at Washington, DC, this 25th day of March, 2002.

Ivan L. Strasfeld,

Director of Exemption, Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

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[8] PTE 84–14 provides a class exemption for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including either a single customer or pooled separate account) in which the plan has an interest, and which is managed by a QPAM, provided certain conditions are met. QPAMs (e.g., banks, insurance companies, registered investment advisers with total client assets under management in excess of $50 million) are considered to be experienced investment managers for plan investors that are aware of their fiduciary duties under ERISA.

[9] PTE 96–23 permits various transactions involving employee benefit plans whose assets are managed by an INHAM, an entity which is generally a subsidiary of an employer sponsoring the plan which is a registered investment adviser with management and control of total assets attributable to plans maintained by the employer and its affiliates which are in excess of $50 million.

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2002–17; Application No. D–10961]

Grant of Individual Exemption for State Farm Mutual Automobile Insurance Company and State Farm VP Management Corp.

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor (the Department).

ACTION: Notice of technical correction.

On March 22, 2002, the Department published, in the **Federal Register** (67 FR 13366), a notice of individual exemption for State Farm Mutual Automobile Insurance Company (State Farm) and for State Farm VP Management Corp. (SFVPMC) which permits the purchase or redemption of an institutional class of shares of State Farm mutual funds, as defined in the exemption, by certain pension plans, which are established by:

(a) Independent contractor agents (the Agents) of State Farm or its affiliates, who are also registered representatives of SFVPMC, for themselves and their employees, and

(b) The family members of such Agents, as defined in the exemption, provided that certain conditions are satisfied.

The Department wishes to correct certain typographical errors that appeared in the exemption. In this regard, in Section I captioned, "Transactions," the citation, "406(a)(1)(A) through (d)," on page 13366, column 2, line 2 should be replaced by the citation, "406(a)(1)(A) through (D)," and, the citation, "4974 of the Code," on page 13366, column 2, line 4 should be amended to read, "4975 of the Code." In Section II captioned, "Conditions," the following amendments should be made:

(1) in section II(g) the word, "prevention," on page 13366, column 3, line 3 should be replaced by the word, "provision';

(2) in section II(j)(1)(D), the word, "member," on page 13367, column 1, line 2 should be capitalized;

(3) in section II(j)(2), the word, "asset," on page 13367, column 1, line 6 should be plural; and

(4) in section II(o), the word, "plan," on page 13368, column 1, line 1 should be capitalized.

Accordingly, the Department hereby corrects the typographical errors set forth above.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department at (202) 693–8551. (This is not a toll-free number.)

Signed at Washington, DC, this 25th day of March, 2002.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 02–7517 Filed 3–27–02; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Exemption Application No. D–10976]

Prohibited Transaction Exemption 2002–20; Grant of Individual Exemptions; Union Bank of California (UBOC)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This document contains an exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Union Bank of California (UBOC), Located in San Francisco, California

[Prohibited Transaction Exemption 2002–20; Application No. D–10976]

Exemption

Section I—Retroactive and Prospective Exemption for In-Kind Redemption of Assets

The restrictions of section 406(a) and 406(b) of ERISA and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply, as of June 15, 2001, to certain in-kind redemptions (the Redemptions) by the Union Bank of California Retirement Plan or any other employee benefit plan sponsored by UBOC or an affiliate of UBOC (an In-house Plan) of shares (the Shares) of proprietary mutual funds (the Portfolios) offered by the HighMark Funds or other investment companies (the Funds) for which HighMark Capital Management, Inc. or an affiliate thereof (the Adviser) provides investment advisory and other services, provided that the following conditions are met:

(A) The In-house Plan pays no sales commissions, redemption fees, or other similar fees in connection with the Redemptions (other than customary transfer charges paid to parties other than UBOC and affiliates of UBOC (UBOC Affiliates));

(B) The assets transferred to the In-house Plan pursuant to the Redemptions consist entirely of cash and Transferable Securities. Notwithstanding the foregoing, Transferable Securities which are odd lot securities, fractional shares and accruals on such securities may be distributed in cash;

(C) With certain exceptions defined below, the In-house Plan receives a pro rata portion of the securities of the

Portfolio upon a Redemption that is equal in value to the number of Shares redeemed for such securities, as determined in a single valuation performed in the same manner and as of the close of business on the same day in accordance with the procedures established by the Funds pursuant to Rule 2a–4 under the Investment Company Act of 1940, as amended from time to time (the 1940 Act), (using sources independent of UBOC and UBOC Affiliates);

(D) UBOC, the Adviser, or any affiliate thereof, does not receive any fees, including any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with any redemption of the Shares;

(E) Prior to a Redemption, UBOC provides in writing to an independent fiduciary, as such term is defined in Section II (an Independent Fiduciary), a full and detailed written disclosure of information regarding the Redemption;

(F) Prior to a Redemption, the Independent Fiduciary provides written approval for such Redemption to UBOC, such approval being terminable at any time prior to the date of the Redemption without penalty to the In-house Plan, and such termination being effectuated by the close of business following the date of receipt by UBOC of written or electronic notice regarding such termination (unless circumstances beyond the control of UBOC delay termination for no more than one additional business day);

(G) Before approving a Redemption, based on the disclosures provided by the Portfolios to the Independent Fiduciary and discussions with appropriate operational personnel of the In-house Plan, UBOC, and the Adviser as necessary to form a basis for making the following determinations, the Independent Fiduciary determines that the terms of the Redemption are fair to the participants of the In-house Plan and comparable to and no less favorable than terms obtainable at arms-length between unaffiliated parties;

(H) Not later than thirty (30) business days after the completion of a Redemption, UBOC or the relevant Fund provides to the Independent Fiduciary a written confirmation regarding such Redemption containing:

(i) the number of Shares held by the In-house Plan immediately before the Redemption (and the related per Share net asset value and the total dollar value of the Shares held),

(ii) the identity (and related aggregate dollar value) of each security provided to the In-house Plan pursuant to the Redemption, including any security valued in accordance with the Funds' procedures for obtaining current prices from independent market-makers,

(iii) the current market price of each security received by the In-house Plan pursuant to the Redemption, and

(iv) the identity of each pricing service or market-maker consulted in determining the value of such securities;

(I) The value of the securities received by the In-house Plan for each redeemed Share equals the net asset value of such Share at the time of the transaction, and such value equals the value that would have been received by any other investor for shares of the same class of the Portfolio at that time;

(J) Subsequent to a Redemption, the Independent Fiduciary performs a post-transaction review which will include, among other things, testing a sampling of material aspects of the Redemption deemed in its judgment to be representative, including pricing. For Redemptions occurring on June 15, 2001, the Independent Fiduciary's review included testing a limited sampling of certain material aspects of the Redemption deemed in its judgment to be representative;[1]

(K) Each of the In-house Plan's dealings with: the Funds, the Adviser, the principal underwriter for the Funds, or any affiliated person thereof, are on a basis no less favorable to the In-house Plan than dealings between the Funds and other shareholders holding shares of the same class as the Shares;

(L) UBOC maintains, or causes to be maintained, for a period of six years from the date of any covered transaction such records as are necessary to enable the persons described in paragraph (M) below to determine whether the conditions of this exemption have been met, except that (i) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of UBOC, the records are lost or destroyed prior to the end of the six-year period, (ii) no party in interest with respect to the In-house Plan other than UBOC shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if such records are not maintained or are not available for examination as required by paragraph (M) below.

(M)(1) Except as provided in subparagraph (2) of this paragraph (M), and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (L) above are unconditionally available at their customary locations for examination during normal business hours by (i) any duly authorized employee or representative of the Department of Labor, the Internal Revenue Service, or the Securities and Exchange Commission, (ii) any fiduciary of the In-house Plan or any duly authorized representative of such fiduciary, (iii) any participant or beneficiary of the In-house Plan or duly authorized representative of such participant or beneficiary, (iv) any employer with respect to the In-house Plan, and (v) any employee organization whose members are covered by such In-house Plan.

(2) None of the persons described in paragraphs (M)(1)(ii) through (v) shall be authorized to examine trade secrets of UBOC, the Funds, or the Adviser, or commercial or financial information which is privileged or confidential.

(3) Should UBOC, the Funds, or the Adviser refuse to disclose information on the basis that such information is exempt from disclosure pursuant to paragraph (M)(2) above, UBOC, the Funds, or the Adviser shall, by the close of the 30th day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section II—Definitions

For purposes of this proposed exemption,

(A) The term "affiliate" means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(B) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(C) The term "net asset value" means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the Portfolio's prospectus and statement of additional information, and other assets belonging to the Portfolio, less the liabilities charged to each such Portfolio, by the number of outstanding shares.

(D) The term "Independent Fiduciary" means a fiduciary who is: (i) Independent of and unrelated to UBOC

[1] The reason for this difference is to conform to the language used in the initial independent fiduciary agreement that U.S. Trust and UBOC entered into with respect to the June 15, 2001 transactions.

and its affiliates, and (ii) appointed to act on behalf of the In-house Plan with respect to the in-kind transfer of assets from one or more Portfolios to or for the benefit of the In-house Plan. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to UBOC if: (i) Such fiduciary directly or indirectly controls, is controlled by or is under common control with UBOC; (ii) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption; (except that an Independent Fiduciary may receive compensation from UBOC in connection with the transactions contemplated herein if the amount or payment of such compensation is not contingent upon or in any way affected by the Independent Fiduciary's ultimate decision); and (iii) more than 1 percent (1%) of such fiduciary's gross income, for federal income tax purposes, in its prior tax year, will be paid by UBOC and its affiliates in the fiduciary's current tax year.

(E) The term *Transferable Securities* shall mean securities (1) for which market quotations are readily available as determined pursuant to procedures established by the Funds under Rule 2a–4 of the 1940 Act; and (2) which are not: (i) Securities which may not be publicly offered or sold without registration under the Securities Act of 1933; (ii) securities issued by entities in countries which (a) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Funds, or (b) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange; (iii) certain portfolio positions (such as forward foreign currency contracts, futures and options contracts, swap transactions, certificates of deposit and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities or can only be traded with the counter-party to the transaction to effect a change in beneficial ownership; (iv) cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements) and that of the high none was the package together for this; and (v) other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable).

(F) The term "relative" means a "relative" as that term is defined in section 3(15) of ERISA (or a "member of the family," as that term is defined in section 4975(e)(6) of the Code), or a brother, sister, or a spouse of a brother or a sister.

Written Comments

The Department received three written comments with respect to the proposed exemption. Two comments sought clarification as to the terms of the proposed exemption, the remaining comment was submitted by UBOC. In its letter, UBOC stated the following:

(1) Footnote 14 of the Summary of Facts and Representations states that certain HighMark portfolios were redeemed on Dec. 14, 2001. The correct date was Dec. 12, 2001.

(2) Footnote in 19 indicates that UBOC agreed to make a cash payment sufficient to make the Retirement Plan whole with respect to the in-kind redemption of shares from the HighMark International Fund. As indicated its post transaction report dated January 25, 2002, U.S. Trust concluded that, based on its analysis of data from the actual transaction, the in-kind redemption was more favorable to the Retirement Plan than a hypothetical redemption in cash. Therefore, UBOC was not requested to, and did not, make a cash contribution to the Retirement Plan in connection with this redemption.

Accordingly, after giving full consideration to the entire record, including the written comment, the Department has decided to grant the exemption subject to the clarifications described above.

For further information regarding the comment and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–10976) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Andrea W. Selvaggio of the Department, telephone (202) 693–8547. (This is not a toll-free number.)

Pacific Investment Management Company LLC (PIMCO) Located in Newport Beach, CA

[Prohibited Transaction Exemption 2002–21; Exemption Application No. D–11005]

Exemption

Section I. Exemption for the Purchase of Fund Shares With Assets Transferred in Kind From a Plan Account

The restrictions of section 406(a) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, [2] shall not apply, effective February 5, 2002, to the purchase of shares of one or more open-end management investment companies (the PIMCO Mutual Funds) registered under the Investment Company Act of 1940 (the ICA), to which PIMCO or any affiliate of PIMCO (the PIMCO Affiliate) [3] serves as investment adviser and may provide other services, by an employee benefit plan (the Plan or Plans), whose assets are held by PIMCO, as trustee, investment manager or discretionary fiduciary, in exchange for securities held by the Plan in an account (the Account) or sub-Account with PIMCO (the Purchase Transaction), provided that the following conditions are met:

(a) A fiduciary who is acting on behalf of each affected Plan and who is independent of and unrelated to PIMCO, as defined in paragraph (g) of Section III below (the Second Fiduciary), provides, prior to the first Purchase Transaction, the written approval described in paragraph (b) or (c) of this Section I, as applicable, following the disclosure of written information concerning the PIMCO Mutual Funds, which includes the following:

(1) A current prospectus or offering memorandum for each PIMCO Mutual Fund which has been approved by the Second Fiduciary for that Plan's Account;[4]

[2] For purposes of this exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

[3] Unless otherwise noted, "PIMCO" refers to "PIMCO" and to any "PIMCO Affiliates" and the term "PIMCO Mutual Funds" refers to any registered investment funds that are managed or advised by PIMCO or a PIMCO Affiliate.

[4] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the securities were made in a registered public offering under the Securities Exchange Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit Second Fiduciaries to make informed investment decisions.

(2) A statement describing the fees to be charged to, or paid by, the Plan and the PIMCO Mutual Funds to PIMCO, including the nature and extent of any differential between the rates of the fees paid by the PIMCO Mutual Fund and the rates of the fees otherwise payable by the Plan to PIMCO;

(3) A statement of the reasons why PIMCO considers Purchase Transactions to be appropriate for the Plan;

(4) A statement on whether there are any limitations on PIMCO with respect to which Plan assets may be invested in the PIMCO Funds, and if so, the nature of such limitations;

(5) In the case of a Plan having total assets that are less than $200 million, in connection with obtaining the advance written approval described in paragraph (c)(2) of this Section I, the identity of all securities that are deemed suitable by PIMCO for transfer to the PIMCO Mutual Funds; and

(6) Upon such Second Fiduciary's request, copies of the proposed and final exemptions pertaining to the exemptive relief provided herein for Purchase Transactions occurring after the date of the final exemption.

(b) On the basis of the foregoing information, in paragraph (a) of this Section I, the Second Fiduciary of a Plan having total assets that are at least $200 million, gives PIMCO a standing written approval (subject to unilateral revocation by the Second Fiduciary at any time) for —

(1) The Purchase Transactions, consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act;

(2) The investment guidelines for the Account (the Strategy) and the management, by PIMCO, of client Plan assets in separate Accounts in the implementation of the Strategy;

(3) The investment of a certain portion (or portions) of the Accounts in specified PIMCO Mutual Funds, as part of PIMCO's ongoing implementation of the Strategy;

(4) The acquisition of shares of PIMCO Mutual Funds in cash or in kind, from time to time; and

(5) The receipt of confirmation statements with respect to the Purchase Transactions in the form of written reports to the Second Fiduciary.

(c) On the basis of the foregoing information in paragraph (a) of this Section I, the Second Fiduciary of a Plan having total assets that are less than $200 million, gives PIMCO—

(1) A standing written approval (subject to unilateral revocation by the Second Fiduciary at any time) for—

(i) The Strategy and the management, by PIMCO, of client Plan assets in separate Accounts in the implementation of the Strategy;

(ii) The investment of a certain portion (or portions) of the Accounts in specified PIMCO Mutual Funds, as part of PIMCO's ongoing implementation of the Strategy; and

(iii) The acquisition of shares of PIMCO Mutual Funds in cash or in kind, from time to time.

(2) Advance written approval for—

(i) Each Purchase Transaction, consistent with the responsibilities, obligations and duties imposed on fiduciaries by Part 4 of Title I of the Act; and

(ii) The receipt of confirmation statements with respect to Purchase Transactions in the form of written reports to the Second Fiduciary.

(d) No sales commissions or other fees are paid by a Plan in connection with a Purchase Transaction.

(e) All transferred assets are securities for which market quotations are readily available.

(f) The transferred assets consist of assets transferred to the Plan's Account at the direction of the Second Fiduciary, and any securities which have been acquired through the investment and reinvestment of such securities in the implementation of the Strategy.

(g) With respect to assets transferred in kind, each Plan receives shares of a PIMCO Mutual Fund which have a total net asset value that is equal to the value of the assets of the Plan exchanged for such shares, based on the current market value of such assets at the close of the business day on which such Purchase Transaction occurs, using independent sources in accordance with the procedures set forth in Rule 17a–7b under the ICA (Rule 17a–7), as amended from time to time or any successor rule, regulation or similar pronouncement, and the procedures established by the PIMCO Mutual Funds pursuant to Rule 17a–7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the day of the Purchase Transaction determined on the basis of reasonable inquiry from at least two sources that are market makers or pricing services independent of PIMCO.

(h) PIMCO sends by regular mail, express mail or personal delivery or, if applicable, by facsimile or electronic mail to the Second Fiduciary of each Plan that engages in a Purchase Transaction, a report containing the following information about each Purchase Transaction:

(1) A list (or lists, if there are multiple Purchase Transactions) identifying each of the securities that has been valued for purposes of the Purchase Transaction in accordance with Rule 17a–7(b)(4) of the ICA;

(2) The current market price, as of the date of the Purchase Transaction, of each of the securities involved in the Purchase Transaction;

(3) The identity of each pricing service or market maker consulted in determining the value of such securities;

(4) The aggregate dollar value of the securities held in the Plan Account immediately before the Purchase Transaction; and

(5) The number of shares of the PIMCO Mutual Funds that are held by the Account following the Purchase Transaction (and the related per share net asset value and the aggregate dollar value of the shares received) immediately following the Purchase Transaction.

(Such report is disseminated by PIMCO to the Second Fiduciary by regular mail, express mail or personal delivery, or if applicable, by facsimile or electronic mail, no later than 30 business days after the Purchase Transaction.)

(i) With respect to each of the PIMCO Mutual Funds in which a Plan continues to hold shares acquired in connection with a Purchase Transaction, PIMCO provides the Second Fiduciary with—

(1) A copy of an updated prospectus or offering memorandum for such PIMCO Mutual Fund, at least annually; and

(2) Upon request of the Second Fiduciary, a report or statement (which may take the form of the most recent financial report, the current Statement of Additional Information, or some other statement) containing a description of all fees paid by the PIMCO Mutual Fund to PIMCO.

(j) As to each Plan, the combined total of all fees received by PIMCO for the provision of services to the Plan, and in connection with the provision of services to a PIMCO Mutual Fund in which the Plan holds shares acquired in connection with a Purchase Transaction, is not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(k) All dealings in connection with a Purchase Transaction between a Plan and a PIMCO Mutual Fund are on a basis no less favorable to the Plan than dealings between the PIMCO Mutual Fund and other shareholders.

(l) No Plan may enter into Purchase Transaction with the PIMCO Mutual Funds prior to the date the proposed exemption is published in the **Federal Register.**

(m) PIMCO maintains for a period of six years, in a manner that is accessible for audit and examination, the records necessary to enable the persons, as described in paragraph (n) of this Section I, to determine whether the conditions of this proposed exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of PIMCO, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest, other than PIMCO, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (m) of this Section I.

(n)(1) Except as provided in paragraph (n)(2) of this Section I and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (m) of Section I above are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission;

(B) Any fiduciary of each of the Plans who has authority to acquire or dispose of shares of any of the PIMCO Mutual Funds owned by such a Plan, or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of the Plans or duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in paragraph (n)(1)(B) or (C) of this Section I shall be authorized to examine the trade secrets of PIMCO or commercial or financial information which is privileged or confidential.

Section II. Availability of Prohibited Transaction Exemption (PTE) 77–4 [5]

Any purchase of PIMCO Mutual Fund shares by a Plan that complies with the conditions of Section I of this proposed exemption shall be treated as a "purchase or sale" of shares of an open-end investment company for purposes of PTE 77–4 and shall be deemed to have satisfied paragraphs (a), (d) and (e) of Section II of PTE 77–4.

Section III. Definitions

For purposes of this exemption,

(a) The term "PIMCO" means Pacific Investment Management Company LLC, any successors thereto, and affiliates of PIMCO (as defined in paragraph (b) of this Section III), including Nicholas-Applegate Capital Management, PIMCO Equity Advisers, Cadence Capital Management, NFJ Investment Group, Value Advisors LLC, Allianz of America, Inc., Pacific Specialty Markets LLC, PIMCO/Allianz International Advisors LLC, OpCap Advisors and Oppenheimer Capital, and their existing and future affiliates.

(b) An "affiliate" of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "PIMCO Mutual Fund" or "PIMCO Mutual Funds" means any open-end investment company or companies registered under the ICA for which PIMCO serves as investment adviser, administrator, or investment manager. The term is also meant to include a PIMCO Affiliate Mutual Fund in which a PIMCO Affiliate serves as an investment adviser or investment manager.

(e) The term "net asset value" means the amount for purposes of pricing all purchases and redemptions calculated by dividing the value of all securities, determined by a method as set forth in a PIMCO Mutual Fund's prospectus and statement of additional information, and other assets belonging to each of the portfolios in such PIMCO Mutual Fund, less the liabilities charged to each portfolio, by the number of outstanding shares.

(f) The term "relative" means a relative as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) The term "Second Fiduciary" means a fiduciary of a plan who is independent of and unrelated to PIMCO. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to PIMCO if—

(1) Such Second Fiduciary directly or indirectly controls, is controlled by, or is under common control with PIMCO;

(2) Such Second Fiduciary, or any officer, director, partner, employee, or relative of such Second Fiduciary is an officer, director, partner, or employee of PIMCO (or is a relative of such persons); or

(3) Such Second Fiduciary directly or indirectly receives any compensation or other consideration from PIMCO for his or her own personal account in connection with any transaction described in this proposed exemption.

If an officer, director, partner, or employee of PIMCO (or a relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (A) the choice of the Plan's investment manager/adviser; (B) the written authorization provided to PIMCO for the Purchase Transactions; (C) the Plan's decision to continue to hold or to redeem shares of the PIMCO Mutual Funds held by such Plan; and (D) the approval of any change of fees charged to or paid by the Plan, in connection with the transactions described above in Section I, then paragraph (g)(2) of this Section III, shall not apply.

(h) The term "Strategy" refers to the set of investment guidelines that have been established in advance to govern the Account. The Strategy is created by PIMCO in collaboration with the Second Fiduciary of a client Plan and may be mutually amended, from time to time.

EFFECTIVE DATE: This exemption is effective as of February 5, 2002.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on February 5, 2002 at 67 FR 5307.

Written Comments

During the comment period, the Department received one written

[5] In relevant part, PTE 77–4 (42 FR 18732 (April 8, 1977) permits the purchase and sale by an employee benefit plan of shares of a registered open-end investment company when a fiduciary with respect to such plan is also the investment adviser for the mutual fund. Section II(a) of PTE 77–4 requires that a plan does not pay a sales commission in connection with such purchase or sale. Section II(d) describes the disclosures that are to be received by an independent plan fiduciary. For example, the plan fiduciary must receive a current prospectus for the mutual fund as well as full and detailed written disclosure of the investment advisory and other fees that are charged to or paid by the plan and the investment company. Section II(e) requires that the independent plan fiduciary approve purchases and sales of mutual fund shares on the basis of the disclosures given.

comment with respect to the proposed exemption and no requests for a public hearing. The comment letter was submitted by PIMCO and it requests that certain clarifications be made to the proposal.

Discussed below are the revisions suggested by PIMCO and the changes made by the Department to the final exemption in response to the concerns expressed by PIMCO in its comment letter.

1. *Name of Applicant.* On page 5307 of the proposed exemption there is a comma in the caption identifying PIMCO by its full name as the applicant in this exemption request. Because PIMCO explains that there is no comma in its full name, the Department has revised the caption in the final exemption to read "Pacific Investment Management Company LLC (PIMCO)."

2. *Timing of Disclosure Regarding Transferrable Securities.* On page 5308 of the proposal, Section I(a)(5) requires that PIMCO disclose, to a Second Fiduciary of a Plan having total assets that are less than $200 million, all securities PIMCO deems suitable for transfer to the PIMCO Mutual Funds. However, PIMCO wishes to clarify the timing of this disclosure by adding the following italicized language to Section I(a)(5):

> In the case of a Plan having total assets that are less than $200 million, *in connection with obtaining the advance written approval described in paragraph (c)(2) of this Section I,* the identity of all securities that are deemed suitable by PIMCO for transfer to the PIMCO Mutual Funds.

In response to this comment, the Department has revised Section I(a)(5) of the final exemption to reflect the change suggested by PIMCO.

3. *Transferred Assets and Ongoing Purchase Transactions.* On page 5308 of the proposed exemption, Section I(f) states that the transferred assets will consist of assets transferred to a Plan's Account at the direction of the Second Fiduciary. Because the Purchase Transactions under the exemption will be permitted on a recurring basis, PIMCO wishes to clarify that securities that are transferred to an Account by a Second Fiduciary, including those acquired through the investment and reinvestment of such securities, may be used to purchase additional shares, in-kind. Therefore, PIMCO suggests that the following italicized language be added to Section I(f) of the final exemption:

> The transferred assets consist of securities transferred to the Plan's Account at the direction of the Second Fiduciary, *and any securities which have been acquired through the investment and reinvestment of such securities in the implementation of the Strategy.*

The Department has revised Section I(f) of the final exemption, accordingly, in response to this comment.

4. *No Minimum Plan Size.* On page 5310 of the proposed exemption, the last sentence in Representation 2 of the Summary states, in part, that each Plan proposing to engage in Purchase Transactions must have total assets of at least $100 million. PIMCO notes that although there are different rules regarding disclosure and consent based on whether a Plan has at least $200 million in assets, there is no minimum asset size requirement for investing Plans. Therefore, PIMCO requests that this sentence be stricken from Representation 2 and the Department notes this revision in the final exemption.

Accordingly, after giving full consideration to the entire record, including the written comment, the Department has decided to grant the exemption subject to the clarifications described above. For further information regarding the comment and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–11005) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 693–8556. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 25th day of March, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 02–7519 Filed 3–27–02; 8:45 am]

BILLING CODE 4510–29–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities, National Foundation on the Arts and the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506

FOR FURTHER INFORMATION CONTACT: Laura S. Nelson, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended,

including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* April 1, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 426.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the February 1, 2002 deadline.
2. *Date:* April 2, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the February 1, 2002 deadline.
3. *Date:* April 4, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 426.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the February 1, 2002 deadline.
4. *Date:* April 5, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the February 1, 2002 deadline.
5. *Date:* April 8, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the February 1, 2002 deadline.
6. *Date:* April 10, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the February 1, 2002 deadline.
7. *Date:* April 10, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 426.
Program: This meeting will review applications for Special Projects, submitted to the Division of Public Programs at the February 1, 2002 deadline.
8. *Date:* April 12, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 426.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the February 1, 2002 deadline.
9. *Date:* April 15, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the February 1, 2002 deadline.
10. *Date:* April 19, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the February 1, 2002 deadline.
11. *Date:* April 22, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Libraries and Archives, submitted to the Division of Public Programs at the February 1, 2002 deadline.
12. *Date:* April 24, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the February 1, 2002 deadline.
13. *Date:* April 25, 2002.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for School Teachers, submitted to the Division of Education Programs at the March 1, 2002 deadline.
14. *Date:* April 26, 2002.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for School Teachers, submitted to the Division of Education Programs at the March 1, 2002 deadline.
15. *Date:* April 30, 2002.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for School Teachers, submitted to the Division of Education Programs at the March 1, 2002 deadline.

Laura S. Nelson,

Advisory Committee, Management Officer.

[FR Doc. 02–7421 Filed 3–27–02; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment drafts of two new guides in its Regulatory Guide Series. Regulatory Guides are developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guides are temporarily identified by their task numbers, DG–1114 and DG–1115, which should be mentioned in all correspondence concerning these draft guides. Draft Regulatory Guide DG–1114, "Control Room Habitability at Light-Water Nuclear Power Reactors," is being developed to provide guidance and criteria acceptable to the NRC staff for implementing the NRC's regulations regarding control room habitability.

Draft Regulatory Guide DG–1115, "Demonstrating Control Room Envelope Integrity at Nuclear Power Reactors," is being developed to provide guidance acceptable to the NRC staff for performing periodic verification of inleakage into the control room. These inleakage values are used to assure that the control room will be habitable during normal and accident conditions.

These draft guides have not received complete staff approval and do not represent official NRC staff positions.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted by mail to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555; or they may be hand-delivered to the Rules and Directives Branch, ADM, at 11555 Rockville Pike, Rockville, MD. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by June 28, 2002.

You may also provide comments via the NRC's interactive rulemaking Web site through the NRC home page, *http://www.nrc.gov*. This site provides the ability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking Web site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@NRC.GOV*. For information about Draft Regulatory Guide DG–1114 and the related documents, contact Mr. W.M. Blumberg at (301)415–1083, e-mail *WMB1@NRC.GOV*; for information about Draft Regulatory Guide DG–1115 and the related documents, contact Mr. S.F. LaVie at (301)415–1081, e-mail *SFL@NRC.GOV*.

Although a time limit is given for comments on these draft guides, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301)415–4737 or (800)397–4205; fax (301)415–3548; e-mail *PDR@NRC.GOV*. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by e-mail to *DISTRIBUTION@NRC.GOV*; or by fax to (301)415–2289. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them. (5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 20th day of March 2002.

For the Nuclear Regulatory Commission.

Mabel F. Lee,

Director, Program Management, Policy Development and Analysis Staff, Office of Nuclear Regulatory Research.

[FR Doc. 02–7501 Filed 3–27–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting: Notice of Application to Withdrawal From Listing and Registration on the New York Stock Exchange, Inc. (Bankers Trust Corporation and BT Alex. Brown Holdings Incorporated, 7⅝% Senior Notes (due 2005)) File No. 1–5920

March 22, 2002.

Bankers Trust Corporation and BT Alex. Brown Holdings Incorporated ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its 7⅝% Senior Notes (due 2005) ("Security"), from listing and registration on the New York Stock Exchange, Inc. ("NYSE" or "Exchange").

On January 24, 2002, and February 5, 2002, respectively, the Board of Directors of the Issuer adopted resolutions to terminate the NYSE listing of its Security. In June 1999, the Issuer was acquired by Deutsche Bank AG and the Issuer's common stock was terminated on the NYSE. The Issuer states that it wishes to reduce the administrative burden to former entities that are not actively engaged in customer business. In addition, as a part of the efforts of Deutsche Bank AG to promote a more uniform brand in the United States, the Issuer has proposed that the name of the Corporation be changed to Deutsche Bank Trust Corporation, effective on or about April 15, 2002. The Issuer states that withdrawal of the Security from listing and registration on the NYSE will not affect an investor's ability to trade in the over-the-counter market. The Security currently has a limited number of registered holders. The Issuer is not obligated by the terms of the indenture under which the Security was issued or by any other document to maintain a listing on the NYSE or any other exchange. The Company has stated that the NYSE does not intend to object to the withdrawal of the Security.

Any interested person may, on or before April 15, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–7464 Filed 3–27–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[1] 15 U.S.C. 78l(d).

SECURITIES AND EXCHANGE COMMISSION

File No. 1–13949

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration From the American Stock Exchange LLC (Local Financial Corporation, 11% Senior Notes)

March 22, 2002.

Local Financial Corporation, a Delaware corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its 11% Senior Notes ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Trustees ("Board") of the Issuer unanimously approved a resolution on February 27, 2002 to withdraw the Issuer's Security from listing on the Amex. In making the decision to withdraw its Security from the Amex, the Board states that the Issuer has no continuing obligation to list the Security. The Issuer states that the Security is rarely traded and the Issuer has no record of any transaction occurring on the Amex since the original listing of the Security in April 1998. In addition, the Issuer wishes to reduce the cost of continuing to list the Security and has other securities outstanding which obligate it to continue filing its reports with the Commission. The Issuer's application relates solely to the withdrawal of the Security from listing and registration under section 12(b) of the Act[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before April 15, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78l(b).

[4] 15 U.S.C. 78l(g).

[5] 17 CFR 200.30–3(a)(1).

Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–7463 Filed 3–27–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27509]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

March 22, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 16, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After April 16, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

American Electric Power Company Inc., et al. (70–10057)

American Electric Power Company Inc. ("AEP"), a registered holding company, and its twelve electric utility subsidiary companies, AEP Generating Company ("Generating"), Appalachian Power Company ("Appalachian"), Central Power and Light Company ("Central"), Columbus Southern Power Company ("Columbus"), Indiana Michigan Power Company ("Indiana"), Kentucky Power Company ("Kentucky"), Kingsport Power Company ("Kingsport"), Ohio Power Company ("Ohio"), Public Service Company of Oklahoma ("Oklahoma"), Southwestern Electric Power Company ("Southwestern"), West Texas Utilities Company ("West Texas"), and Wheeling Power Company ("Wheeling"), all located at 1 Riverside Plaza, Columbus, Ohio, 43215, (collectively, "Applicants") have filed a declaration under section 12(d) of the Act and rule 44 under the Act.

Applicants request authority to sell certain utility assets, particularly substations, transmission and distribution lines and other utility assets that serve customers of the Applicants as well as poles that will be transferred as part of joint use agreements. By previous order dated December 31, 1996 (HCAR No. 26622), AEP's electric utility subsidiaries were authorized to sell utility assets for consideration of up to $5 million per operating subsidiary per calendar year. This authority was granted through December 31, 2001. Applicants now request authority for the twelve utility subsidiaries to sell utility assets for consideration up to $15 million per operating company per calendar year ("Authorized Amount") through September 30, 2006 ("Authorization Period"). As the electric utility industry makes its transition to a more competitive environment, Texas has adopted measures requiring restructuring of utilities. In response to requests of customers and as mandated by the Public Utility Commission of Texas, AEP is required to transfer substations and transmission and distribution lines or other utility assets that serve the customer, if so requested by the customer, to that customer or to potential customers. In addition, AEP will be involved in routine transfers of poles to joint users.

Applicants request that they and any affiliated public utility company succeeding to the utility assets as part of restructuring of the AEP system required by restructuring of the electric power industry be permitted to transfer utility assets to customers and non-customers through the Authorization Period at not less than the net book value of the assets on the date of the sale. In the case of a lease, the lease payments will be valued over the term of the lease and be counted against the Authorized Amount in the initial year of the lease. Proceeds for sales of the utility assets will be added to the general funds of the companies making the sales and will be used to pay the general obligations of the companies.

Alliant Energy Corporation, et al. (70–10052)

Alliant Energy Corporation ("Alliant Energy"), a registered holding company, Alliant Energy Resources, Inc. ("AER"), a wholly owned direct nonutility subsidiary of Alliant Energy, Alliant Energy Corporate Services, Inc. ("Alliant Services"), a wholly owned direct service company subsidiary of Alliant Energy, Energys, Inc., a wholly owned direct nonutility subsidiary of Alliant Energy Integrated Services Company ("Integrated Services"),[1] Alliant Energy Generation, Inc., a wholly owned direct nonutility subsidiary of AER, Heartland Energy Group, Inc., a wholly owned direct nonutility subsidiary of Integrated Services, Heartland Energy Services, Inc., a wholly owned direct nonutility subsidiary of Alliant Energy Investments, Inc. ("AE Investments"),[2] all at 222 West Washington Avenue, Madison, Wisconsin 53703, Interstate Power and Light Company ("IP&L"), a direct public-utility company subsidiary of Alliant Energy, Alliant Energy Transportation, Inc. ("AE Transportation"), a wholly owned direct nonutility subsidiary of AER, AE Investments, a wholly owned direct nonutility subsidiary of AER, Iowa Land and Building Company, a wholly owned direct nonutility subsidiary of AE Investments, Alliant Energy International, Inc., a wholly owned direct nonutility subsidiary of AER, Integrated Services, a wholly owned direct nonutility subsidiary of AER, Alliant Energy Integrated Services-Energy Management LLC, a wholly owned direct nonutility subsidiary of Integrated Services, Alliant Energy Integrated Services-Energy Solutions LLC, a wholly owned direct nonutility subsidiary of Integrated Services, Iowa Land and Building Company, a wholly owned direct nonutility subsidiary of AE Investments, Prairie Ridge Business Park, L.C., a wholly owned direct nonutility subsidiary of AE Investments, Transfer Services, Inc., a wholly owned direct nonutility subsidiary of AE Transportation, Williams Bulk Transfer Inc., a wholly owned direct nonutility subsidiary of AE Transportation, all at Alliant Tower, 200 First Street, SE.,

[4] 15 U.S.C. 78l(g).

[1] Integrated Services is described below.

[2] AE Investments is described below.

Cedar Rapids, Iowa 52401, Alliant Energy Field Services, LLC, a wholly owned direct nonutility subsidiary of Integrated Services, 5033 A Tangle Lane, Houston, Texas 77056, Cedar Rapids and Iowa City Railway Company, a wholly owned direct nonutility subsidiary of AE Transportation, 2330 12th Street, SW., Cedar Rapids, Iowa 52404, Cogenex Corporation, a wholly owned direct nonutility subsidiary of Integrated Services, Boott Mills South, 100 Foot of John St., Lowell, Massachusetts 01852, Energy Performance Services, Inc., a wholly owned direct nonutility subsidiary of Integrated Services, Industrial Energy Applications, Inc., a wholly owned direct nonutility subsidiary of Integrated Services, both 201 Third Avenue, SE., Suite 300, Cedar Rapids, Iowa 52406, Heartland Properties, Inc., a wholly owned direct nonutility subsidiary of AE Investments, Capital Square Financial Corporation, a wholly owned direct nonutility subsidiary of AER, both 122 W. Washington Avenue, Madison, Wisconsin 53703, IEI Barge Services, Inc., a wholly owned direct nonutility subsidiary of AE Transportation, 18525 Hwy 20 West, East Dubuque, Illinois 61025, Industrial Energy Applications Delaware, Inc., a wholly owned direct nonutility subsidiary of Integrated Services, 5925 Dry Creek Lane, NE., Cedar Rapids, Iowa 52402, RMT, Inc., a wholly owned direct nonutility subsidiary of Integrated Services, 744 Heartland Trail, Madison, Wisconsin 53717, Schedin & Associates, Inc., a wholly owned direct nonutility subsidiary of Integrated Services, 920 Plymouth Building, 12 South Sixth Street, Minneapolis, Minnesota 55401, SVBK Consulting Group, Inc., a wholly owned direct nonutility subsidiary of Integrated Services, 37 N. Orange Ave., Suite 710, Orlando, Florida 32801, and Whiting Petroleum Corporation, a wholly owned direct nonutility subsidiary of AER, Mile High Center, Suite 2300, 1700 Broadway, Denver, Colorado 80290 (collectively, "Applicants"), have filed an application-declaration with the Commission under sections 6(a), 7, 9(a), 10, and 12(b) of the Act and rules 24, 43(a), 45(a), and 54 under the Act.

I. Background

By orders dated December 18, 1998 (HCAR No. 26956) and December 15, 2000 (HCAR No. 27304), the Commission authorized Alliant Energy to issue and sell $1 billion in notes and/or commercial paper through June 30, 2004 ("Prior Authorization Period") and to use the proceeds to fund two money pools, one for its public-utility company subsidiaries other than South Beloit Water, Gas & Electric Company ("Utility Money Pool") and the other for certain of its nonutility subsidiaries ("Nonutility Money Pool"). More specifically, by those orders the Commission authorized: (1) Alliant Energy to loan up to $475 million in 2001, through the Utility Money Pool, to IP&L, Wisconsin Power & Light Company, and Alliant Services; (2) Alliant Energy to lend up to $525 million through the Utility Money Pool during the remainder of the Prior Authorization Period; and (3) Alliant Energy to provide guaranties, enter into expense agreements, and otherwise provide credit support in an amount not to exceed $600 million at any time outstanding, to support a separate commercial paper program to fund the Nonutility Money Pool. Accordingly, AER established a separate commercial paper program and bank credit facilities totaling $600 million, which are used to fund loans through the Nonutility Money Pool. Alliant Energy guarantees all of those borrowings.

By order dated October 24, 2001 (HCAR No. 27456 and, together with HCAR No. 26956 and HCAR No. 27304, "Prior Orders"), the Commission authorized among other things: (1) Interstate Power Company, a wholly owned public-utility company subsidiary of Alliant Energy, to merge into IES Utilities Inc., another wholly owned public-utility company subsidiary of Alliant Energy; and (2) IES Utilities Inc. to borrow up to $250 million at any one time outstanding through the Utility Money Pool.

II. Proposals

Applicants seek to restate, modify, and extend the authorizations granted under the Prior Orders. Applicants request that the Commission authorize through December 31, 2004 ("Authorization Period") the continued operation of the Utility Money Pool. They state that the Utility Money Pool would be operated and administered in the same manner, except that: (1) WP&L, a direct public-utility company subsidiary of Alliant Energy, would no longer participate; and (2) Alliant Energy, IP&L, or both, would invest funds derived from external sources. To the extent required, Applicants request authority for the participants in the Utility Money Pool to make loans and extend credit to each other. [3]

Applicants also request that the Commission authorize the continued operation of the Nonutility Money Pool through the Authorization Period. They state that the Nonutility Money Pool would continue to be operated on the same terms and conditions as the Utility Money Pool, except that Alliant Energy intends to fund directly the Nonutility Money Pool using proceeds from sales of its short-term debt.[4] Applicants state that terminating AER's separate commercial paper facility would eliminate duplicate program costs. However, in the event that Alliant Energy decides to continue funding the Nonutility Money Pool through AER, Applicants request authority for Alliant Energy, through the Authorization Period, to guarantee borrowings by AER in an aggregate amount that would not exceed $700 million at any one time outstanding.[5] Applicants state that all loans to and borrowings from the Nonutility Money Pool would be used to finance the existing businesses of the participants and, correspondingly, would be exempt under rule 52(b) under the Act.

Applicants seek to obtain external funds to invest in, among other things, the Utility and Nonutility Money Pools. Specifically, they request authority for Alliant Energy to issue and sell through the Authorization Period up to an aggregate amount of $1 billion, at any time outstanding, of commercial paper to dealers and notes and other forms of short-term indebtedness to banks and other institutional lenders (collectively, "Short-Term Debt"). All Short-Term Debt would have maturities of less than one year from the date of issuance, and the effective cost of money on all Short-Term Debt would not exceed at the time of issuance 300 basis points over the London Interbank Offered Rate for maturities of one year or less. Applicants state that the proceeds from the sales of Short-Term Debt would be invested in the Utility and Nonutility Money Pools [6] and/or used for other corporate purposes, including funding of investments in exempt wholesale

[3] Applicants state that Alliant Energy would participate in the Utility Money Pool only as a lender.

[4] Currently, AER invests in the Nonutility Money Pool using external funds obtained through sales of its commercial paper and bank credit facilities it maintains, and Alliant Energy guarantees those debt issuances.

[5] The proposed guaranty authority would be in addition to the authorization granted by the Commission in an order dated October 3, 2001. *See Alliant Energy*, HCAR No. 27448.

[6] Applicants state that Alliant Energy would invest up to an aggregate amount of $350 million at any one time outstanding in the Utility Money Pool, and up to an aggregate amount of $700 million at any one time outstanding in the Nonutility Money Pool.

generators and foreign utility companies.

Applicants request authority for IP&L to issue and sell Short-Term Debt through the Authorization Period in a principal amount which, when added to the principal amount of its borrowings through the Utility Money Pool, would not at any time exceed $300 million. Applicants state that, presently, borrowings by IP&L have a lower effective cost than borrowings by Alliant Energy, its parent company.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7465 Filed 3–27–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 22–28586]

Application and Opportunity for Hearing: USG Corporation

March 22, 2002.

The Securities and Exchange Commission gives notice that USG Corporation has filed an application under Section 310(b)(1)(ii) of the Trust Indenture Act of 1939. USG asks the Commission to find that the trusteeship of National City Bank of Indiana as successor trustee under:

- An indenture dated October 1, 1986, between USG and Harris Trust and Savings Bank, a predecessor trustee, with respect to 9¼% Senior Notes due September 15, 2001 and 8½% Senior Notes due August 1, 2005, and
- 12 indentures between USG and certain predecessor trustees, with respect to tax-exempt bonds listed in Exhibit A, that have not been qualified under the 1939 Act,

is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify National City from acting as trustee under these indentures.

Section 310(b) of the 1939 Act provides, in part, that if a trustee under an indenture qualified under the Act has or acquires any conflicting interest described in that section, the trustee must, within ninety days after ascertaining that it has a conflicting interest, either eliminate the conflicting interest or resign. Section 310(b)(1) provides, with stated exceptions, that a trustee shall be deemed to have a conflicting interest if the trustee is also a trustee under another indenture under which any other securities of the same obligor are outstanding. However, under Section 310(b)(1)(ii), specified situations are exempt from the deemed conflict of interest under Section 310(b)(1). Section 310(b)(1)(ii) provides, in part, that an indenture to be qualified shall be deemed exempt from Section 310(b)(1) if:

> the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under the indenture * * * is not so likely to involve a *material conflict of interest* as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as such under one of such indentures * * * Section 310(b)(1)(ii) (emphasis added).

Under this provision, National City's trusteeship under the indentures may be excluded from the operation of Section 310(b)(1) if USG sustains the burden of proving, on application to the Commission, that a material conflict of interest is not so likely as to make it necessary in the public interest or for the protection of investors to disqualify National City from acting as trustee under any of the indentures.

In its application, USG alleges that:

1. USG issued the 9¼% Senior Notes due September 15, 2001 and the 8½% Senior Notes due August 1, 2005 in registered public offerings in the United States (Registration Statement Nos. 33–52433 and 33–60563), and USG qualified the indenture under the 1939 Act. USG issued the tax-exempt bonds under indentures that were not qualified under the 1939 Act. The securities outstanding under the indentures rank *pari passu* with each other and are wholly unsecured. However, none of the indentures references any other indenture.

2. As a result of a Resignation, Appointment and Acceptance Agreement, dated and effective June 18, 2001, National City succeeded as trustee under the qualified indenture. Under various other Resignation, Appointment and Acceptance Agreements that are listed in Exhibit A, National City has succeeded, or is in the process of succeeding, as trustee under the non-qualified indentures.

3. As of the date of USG's application, USG is in default under the indentures due to its filing of a voluntary petition for relief under Chapter 11 of the U.S. Bankruptcy Code on June 25, 2001. The commencement of a voluntary case under the U.S. Bankruptcy Code constitutes an "Event of Default" under Section 6.01 of the qualified indenture. The commencement of a voluntary case under the U.S. Bankruptcy Code also constitutes an "Event of Default" under each of the non-qualified indentures. Thus, USG is in default under all of the indentures.

4. Section 310(b)(1)(i) exempts an indenture from the provisions of Section 310(b) "if the indenture to be qualified and any such other indenture or indentures * * * are wholly unsecured and rank equally, and such other indenture or indentures * * * are specifically described in the indenture to be qualified or are thereafter qualified." None of the indentures references any other indenture. USG asserts that the absence of these references does not create a risk of material conflict between the indentures where none otherwise exists.

5. USG asserts that because the securities outstanding under all of the indentures rank equally with one another in right of payment and are wholly unsecured, it is highly unlikely that National City would ever be subject to a conflict of interest with respect to issues relating to the priority of payment. National City would neither be in a position, nor required by the terms of any indenture, to assert that securities outstanding under one indenture are entitled to payment prior to payment of claims under another indenture.

6. Further, USG asserts that there are no material variations among the default and remedy provisions of the indentures. USG asserts that because of the similarity of these provisions, including the cross-default provisions, and the defaults under all of the indentures, it is highly unlikely as a practical matter that National City would find itself in a position of proceeding against USG for a default under one indenture but not another indenture.

7. USG asserts that it is in the best interest of USG and the holders of the securities under the indentures that National City serves simultaneously as trustee under all the indentures. National City is not a creditor of USG and has no business relationship with USG other than under the indentures. National City's trusteeship also will allow USG to avoid the significant duplicative costs associated with having more than one trustee and their separate professionals review, understand, and administer similar indentures, and interact with USG and other parties in interest as USG works to address its present financial circumstances.

USG has waived notice of a hearing in connection with this matter. Any interested persons should look to the application for a more detailed statement of the asserted matters of fact and law. The application is on file in the Commission's Public Reference Section, File No. 22–28586, 450 Fifth Street, NW., Washington, DC 20549.

The Commission also gives notice that any interested persons may request in writing that a hearing be held on this matter. Interested persons must submit those requests to the Commission no later than April 22, 2002. Interested persons must include the following in their request for a hearing on this matter:

- The nature of that person's interest;
- The reasons for the request; and
- The issues of law or fact raised by the application that the interested person desires to refute or request a hearing on.

The interested person should address this request for a hearing to: Margaret H. McFarland, Deputy Secretary, U.S.

Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. At any time after April 22, 2002, the Commission may issue an order granting the application, unless the Commission orders a hearing.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

EXHIBIT A.—TAX-EXEMPT OBLIGATIONS OF, OR ASSUMED BY, USG CORPORATION

Date of indenture	Description of issue	Predecessor trustee	Principal outstanding	Interest rate (percent)	Date trusteeship assumed	Maturity date
12/01/84	Nolan County Industrial Development Corporation Industrial Development Revenue Bonds (United States Gypsum Company Project) Series 1984 due 2014.	Bank One [1] ..	$ 1,000,000	7.25	06/21/01	12/01/2014
08/01/97	State of Ohio Solid Waste Disposal Revenue Bonds (USG Corporation Project) Series 1997 due 2032.	Bank One	45,000,000	5.60	06/22/01	08/01/2032
03/01/98	State of Ohio Solid Waste Disposal Revenue Bonds (USG Corporation Project) Series 1998 due 2033.	Bank One	44,400,000	5.65	06/22/01	03/01/2033
08/01/99	State of Ohio Solid Waste Disposal Revenue Bonds (USG Corporation Project) Series 1999 due 2034.	Bank One	9,000,000	6.05	06/22/01	08/01/2034
07/10/99	Pennsylvania Economic Development Financing Authority Solid Waste Disposal Revenue Bonds (USG Corporation Project) Series 1999 due 2031.	Chase [2]	110,000,000	6.00	07/13/01	06/01/2031
09/01/77	Town of Shoals, Indiana Economic Development Revenue Bonds (United States Gypsum Company Project) Series A dated 1977 due 2007.	Bank One	1,000,000	5.90	08/01/01	09/01/2007
09/01/77	City of Fort Dodge, Iowa Industrial Development Revenue Bonds (United States Gypsum Company Project) Series A dated 1977 due 2007.	Bank One	1,000,000	5.90	09/18/01	09/01/2007
10/01/84	The Trustees of the Blaine County Industrial Authority Industrial Development Revenue Refunding Bonds (United States Gypsum Company Project) Series 1974 due 2010.	Bank One	1,000,000	7.25	[4]	10/01/2010
10/01/84	Jacksonville Port Authority Industrial Development Revenue Refunding Bonds (United States Gypsum Company Project) Series 1984 due 2014.	Bank One	1,000,000	7.25	09/06/01	10/01/2014
09/01/98	City of East Chicago, Indiana Solid Waste Disposal Revenue Bonds (USG Corporation Project) Series 1998 due 2038.	Bank One	10,000,000	5.50	10/16/01	09/01/2028
08/01/99	City of East Chicago, Indiana Solid Waste Disposal Revenue Bonds (USG Corporation Project) Series 1999 due 2029.	Bank One	10,000,000	6.375	10/16/01	08/01/2029
12/01/99	State of Oregon Solid Waste Disposal Facilities Economic Development Revenue Bonds Series 192 (USG Corporation Project) Series 1999.	Wells Fargo [3]	11,000,000	6.40	10/01/01	12/01/2029

[1] Bank One Trust Company, N.A.
[2] Chase Manhattan Trust Company, National Association.
[3] Wells Fargo Bank Northwest, National Association.
[4] Pending.

[FR Doc. 02–7426 Filed 3–27–02; 8:45 am]
BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 3915]

Shipping Coordinating Committee; Notice of Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open meeting at 10:00 a.m. on Tuesday, April 16, 2002, in Room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The purpose of this meeting is to prepare for the Eighty-Fourth Session of the International Maritime Organization (IMO) Legal Committee (LEG 84), scheduled for April 22 through 26, 2002.

The Legal Committee will review the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988, and its Protocol of 1988 relating to Fixed Platforms Located on the Continental Shelf (SUA Convention and Protocol) to determine if the instruments need to be updated in light of the September 11, 2001 terrorist attacks against the United States of America. The Committee will also examine the draft Wreck Removal Convention with the objective of having the draft ready for a Diplomatic Conference in the 2004–5 biennium. In addition, the Legal Committee will consider a proposal to increase the

limits of compensation under the 1992 protocols to the 1969 International Convention on Civil Liability for Oil Pollution Damage and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage. If results are submitted, the Legal Committee will study the survey conducted by the Comite Maritime International on the potential legal issues surrounding the topic of places of refuge. The Legal Committee will then turn its attention to the status of the implementation of the International Convention on Liability and Compensation for Damage in Connection With the Carriage of Hazardous and Noxious Substances by Sea. Time also will be allotted to address any other issues on the Legal Committee's work program.

Members of the public are invited to attend the SHC meeting up to the seating capacity of the room. Due to building security, it is recommended that those who plan on attending call or send an e-mail two days ahead of the meeting so that we may place your name on a list for security personnel to reference. For further information please contact Captain Joseph F. Ahern or Lieutenant Carolyn Leonard-Cho, at U.S. Coast Guard, Office of Maritime and International Law (G-LMI), 2100 Second Street, SW., Washington, DC 20593–0001; e-mail *cleonardcho@comdt.uscg.mil*, telephone (202) 267–1527; fax (202) 267–4496.

Dated: March 14, 2002.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 02–7471 Filed 3–27–02; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 3916]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 10:00 a.m. on Wednesday, April 24, 2002, in room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The purpose of this meeting will be to discuss the outcome of the forty-sixth session of the International Maritime Organization's Subcommittee on Fire Protection, held February 4–8, 2002. Preparations for the next session will also be discussed.

The meeting will focus on proposed amendments to the 1974 International Convention for the Safety of Life at Sea (SOLAS) concerning the fire safety of commercial vessels. Specific discussion areas include:

—Recommendation on evacuation analysis for new and existing passenger vessels;
—Smoke control and ventilation;
—Unified interpretations to SOLAS chapter II–2 and related fire test procedures;
—Analysis of fire casualty records;
—Large passenger ship safety; and
—Performance testing and approval standards for fire safety systems.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Chief, Office of Design and Engineering Standards, Commandant (G–MSE–4), U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593–0001, by calling: LCDR Brian Gilda at (202) 267–1444, or by visiting the following World Wide Web site: *http://www.uscg.mil/hq/g-m/mse4/stdimofp.htm.*

Dated: March 14, 2002.

Stephen Miller,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 02–7472 Filed 3–27–02; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular: Systems and Equipment Guide for Certification of Part 23 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed advisory circular (AC) and request for comments on proposed Advisory Circular (AC) 23–17A.

SUMMARY: This notice announces the availability of and request for comments on a proposed AC, Advisory Circular (AC) 23–17A, Systems and Equipment Guide for Certification of Part 23 Airplanes. Proposed Advisory Circular 23–17A provides information and guidance concerning acceptable means, but not the only means, of showing compliance with part 23 applicable to Subpart D from § 23.671 and Subpart F.

DATES: Comments must be received on or before May 28, 2002.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, Regulations & Policy (ACE–111), 901 Locust Street, Kansas City, MO 64106.

FOR FURTHER INFORMATION CONTACT: Les Taylor, Regulations & Policy (ACE–111), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration; telephone number (816) 329–4134.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this proposed AC either by downloading it from the Web site at *http://www.faa.gov/certification/aircraft/small_airplane_directorate_news_proposed.html* or by contacting the person named above under **FOR FURTHER INFORMATION CONTACT.**

Comments Invited

We invite interested parties to submit comments on the proposed AC. Commenters must identify AC 23–17A and submit comments to the address specified above. The FAA will consider all communications received on or before the closing date for comments before issuing the final AC. By making prior arrangements with the individual listed under **FOR FURTHER INFORMATION CONTACT,** the proposed AC and comments received may be inspected in the Standards Office (ACE–110), Room 301, 901 Locust, Kansas City, Missouri, between the hours of 8:30 and 4:00 p.m. weekdays, except on Federal holidays.

Background

The Federal Aviation Administration reviewed the airworthiness standards of part 23 in 1968. Since then, the standards have been amended several times. Accordingly, the FAA is proposing and requesting comments on AC 23–17A, which will provide guidance for the original issue of part 23 and the various amendments up through Amendment 23–53. The amended version of the advisory circular covers policy available through June 30, 2001. Policy available after that date will be covered in future amendments to the advisory circular.

Issued in Kansas City, Missouri, on March 13, 2002.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–7487 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Ten Current Public Collections of Information.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the FAA invites public comment on ten currently approved public information collections which will be submitted to OMB for renewal.

DATES: Comments must be received on or before May 28, 2002.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Judy Street, Room 613, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Therefore, the FAA solicits comments on the following current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection in preparation for submission to renew their clearances.

1. 2120–0009, Pilot Schools—FAR 141. The information collected is used to determine compliance with 14 CFR part 141 of civilian schools giving instruction in flying. These schools may receive certification if the minimal acceptable training standards prescribed by this regulation are met. The current estimated annual reporting burden is 28,878 hours.

2. 2120–0044, Rotocraft External-Load Certificate Application. The information collected is required by 14 CFR part 133 and used by the FAA to process the operating certificate for non passenger-carrying rotorcraft external-load operations conducted for compensation or hire. The FAA requires information reporting by affected rotorcraft external-load operators in order to maintain its regulatory responsibilities. The current estimated annual reporting burden is 3,268 hours.

3. 2120–0060, General Aviation/Air Taxi Activity and Avionics Survey. Respondents to this survey are owners of general aviation aircraft and the collected information covers civil aeronautics, the development of air commerce and aeronautical industries, the development and use of navigable airspace, and aids for air navigation. The information collected is used by the FAA, NTSB, other government agencies, the aviation industry, and others for safety assessment, planning forecasting, cost/benefit analysis, and to target areas for research. The current estimated annual reporting burden is 4,875 hours.

4. 2120–0505, Indirect Air Carrier Security, 14 CFR part 109. Security programs required by 14 CFR part 109 set forth procedures to be used by indirect air carriers in carrying out their responsibilities involving the protection of persons and property against acts of criminal violence, aircraft piracy, and terrorist activities in the forwarding of package cargo by passenger aircraft. The information collection burden is a recordkeeping burden that requires each affected air carrier to keep at least one copy of its security program at its principle business office and a complete copy of the pertinent portions of its security program where package cargo is accepted. The current estimated annual reporting burden is 664 hours.

5. 2120–0577, Explosives Detection System Certification Training. The FAA has prepared a management plan that outlines the framework for explosive detection systems (EDS) certification testing. This plan is based on the general testing protocols developed independently by the National Academy of Sciences. Private manufacturers seeking FAA certification for their candidate EDS must submit complete descriptive data and their test results (vendor qualification data package) to the FAA prior to receiving permission to ship their equipment to the FAA Technical Center for certification testing. The current estimated annual reporting burden is 775 hours.

6. 2120–0587, Aviator Safety Studies. In order to develop effective intervention programs to improve aviation safety, data are required on the type and range of various pilot attributes related to their skill in making safety-related aeronautical decisions. The information collected will be used to develop new training methods particularly suited to general aviation pilots. The current estimated annual reporting burden is 13,333 hours.

7. 2120–0601, Financial Responsibility for Licensed Launch Activities. The information collected is used to determine if licensees have complied with federal responsibility requirements (including maximum probable loss determination) as set forth in regulations and in license orders issued by the Office of the Associate Administrator for Commercial Space Transportation. Respondents are all licensees authorized to conduct licensed launch activities. The current estimated annual reporting burden is 1,827 hours.

8. 2120–0633, Exemptions for Air Taxi and Commuter Air Carrier Operations. This collection is used to (1) expedite the FAA's issuance of operating authority for small charter air carriers, and (2) protect the competitive interests of these carriers, and (3) relieve the safety concerns of the traveling public with regard to the operations of the carriers. The current estimated annual reporting burden on the air taxi and commuter air carrier operators is 793 hours.

9. 2120–0646, Protection of Voluntarily Submitted Information. This collection is intended to encourage the aviation community to voluntarily share information with the FAA so that the agency may work cooperatively with industry to identify modifications to rules, policies, and procedures needed to improve safety, security, and efficiency of the National Airspace System. The current estimated annual reporting burden is 5 hours.

10. 2120–0677, Enhanced Security Procedures at Certain Airports, Washington DC Area. This SFAR has put into place security measures and air traffic control procedures that allow three Maryland airports (Potomac, Hyde, and College Park) to resume normal flight operations, small business operations and private pilot operations at each of these locations after the massive closure of airspace following September 11, 2001. Respondents include airport security personnel, clerical support personnel, and pilots. The current estimated annual reporting burden is 8,299 hours.

Issued in Washington, DC, on March 20, 2002.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 02–7504 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 14, 2001 on pages 57149–57150.

DATES: Comments must be submitted on or before April 29, 2002. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: 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; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration

Title: Aircraft Registration.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0042.

Form(s): AC8050–1, AC8050–2, AC8050–4, AC8050–81, AC8050–98, AC8050–117.

Affected Public: A total of 41978 individual airmen, state & local governments, and businesses.

Abstract: The information requested is used by the FAA to register an aircraft or hole an aircraft in trust. The information required to register and prove ownership of an aircraft is required by any person wishing to register an aircraft.

Estimated Annual Burden Hours: An estimated 67,153 hours annually.

Issued in Washington, DC, on March 22, 2002.

Patricia W. Carter,

Acting Manager, Standard and Information Division, APF–100.

[FR Doc. 02–7489 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–21]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 17, 2002.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–11870 or FAA–2002–11868 at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on March 25, 2002.

Gary A. Michel,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–11870.

Petitioner: The Boeing Company.

Section of 14 CFR Affected: 14 CFR 25.365(e).

Description of Relief Sought: To permit a time-limited exemption for a period of time not to exceed five years to allow continued delivery of Model 747 airplanes, both in production and retrofit, which incorporate enhanced security flight deck doors meeting the requirements of 14 CFR 25.795(a)(1) and (2).

Docket No.: FAA–2002–11868.

Petitioner: The Boeing Company.

Section of 14 CFR Affected: 14 CFR 25.365(e).

Description of Relief Sought: To permit a time-limited exemption for a period of time not to exceed five years to allow continued delivery of Model 747 airplanes, both in production and retrofit, which incorporate enhanced security flight deck doors meeting the requirements of 14 CFR 25.795(a)(1) and (2).

[FR Doc. 02–7484 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–22]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 8, 2002.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number of FAA–2001–11316 at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed stamped postcard.

You must also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Vanessa Wilkins, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–8029.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on March 22, 2002.

Gary A. Michel,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2001–11316.
Petitioner: Fairchild Dornier Gmbh.
Section of 14 CFR Affected: 14 CFR 25.785(b) (formerly § 25.785(a)).
Description of Relief Sought: To allow Fairchild Dornier to install side-facing divan seats in Dornier 328–100 and 328–300 series airplanes, and to provide Fairchild Dornier with relief from the requirement that each seat, berth, safety belt, harness, and adjacent part of the airplane at each station designed as occupiable during takeoff and landing be designed so that a person making proper use of these facilities will not suffer serious injury in an emergency landing as a result of the inertia forces specified in §§ 25.561 and 25.562.

[FR Doc. 02–7485 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–23]

Petition for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Denise Emrick (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on March 25, 2002.

Gary A. Michel,

Acting Assistant Chief Counsel for Regulations.

Disposition of Petitions

Docket No.: FAA–2001–10800.
Petitioner: Sierra Industries, Inc.
Section of 14 CFR Affected: 14 CFR 91.9(a) and 91.531(a)(1) and (2).
Description of Relief Sought/Disposition: To permit certain qualified pilots of its Cessna Citation Model 500 series airplanes, equipped with certain supplemental type certificates, to operate those aircraft without a pilot who is designated as second in command. *Grant, 3/11/2002, Exemption No. 5517F (Previously Docket No. 26734)*

Docket No.: FAA–2002–11564.
Petitioner: Cedar Rapids Police Department, Air Support Division.
Section of 14 CFR Affected: 14 CFR 91.209(a) and (b).
Description of Relief Sought/Disposition: To permit the Cedar Rapids Police Department to conduct air operations without lighted position and anticollision lights required by § 91.209. *Grant, 3/11/2002, Exemption No. 6780B (Previously Docket No. 27821)*

Docket No.: FAA–2002–11402.
Petitioner: Experimental Aircraft Association.
Section of 14 CFR Affected: 14 CFR 61.58(a)(2) and 91.5.
Description of Relief Sought/Disposition: To permit Experimental Aircraft Association members to complete an approved training course in lieu of a pilot proficiency check. *Grant, 3/11/2002, Exemption No. 4941G (Previously Docket No. 25242)*

Docket No.: FAA–2002–11498.
Petitioner: Air Tractor, Inc.
Section of 14 CFR Affected: 14 CFR 61.31(a)(1).
Description of Relief Sought/Disposition: To permit Air Tractor and pilots of Air Tractor AT–802 and AT–802A airplanes to operate those airplanes without holding a type rating, although the maximum gross weight of the airplane exceeds 12,500 pounds. *Grant, 3/11/2002, Exemption No. 5651G (Previously Docket No. 27122)*

Docket No.: FAA–2002–11568.
Petitioner: Broward County Public Works Department, Mosquito Control Section.
Section of 14 CFR Affected: 14 CFR 137.53(c)(2).
Description of Relief Sought/Disposition: To permit Broward County Public Works Department, Mosquito Control Section to conduct aerial applications of insecticide materials from a Beechcraft C–45H aircraft without the aircraft being equipped with a device that is capable of jettisoning at least one-half of the aircraft's maximum authorized load of agricultural materials within 45 seconds when operating over a congested area. *Grant, 3/11/2002, Exemption No. 6470C (Previously Docket No. 28422)*

Docket No.: FAA–2002–11284.
Petitioner: Tulsa Air & Space Center Airshows, Inc.
Section of 14 CFR Affected: 14 CFR 91.315, 119.5(g), and 119.21(a).
Description of Relief Sought/Disposition: To permit Tulsa Air &

Space to operate its North American B–25 aircraft for the purpose of carrying passengers for compensation or hire on local flights for educational and historical purposes. *Grant, 3/12/2002, Exemption No. 7126B)*

[FR Doc. 02–7486 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–24]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 17, 2002.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–90001. You must identify the docket number FAA–2001–11155 at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Vanessa Wilkins, Office of Rulemaking (ARM–1) Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–8029.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on March 25, 2002.

Gary A. Michel,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2001–11155.

Petitioner: The Boeing Company.

Section of 14 CFR Affected: 14 CFR 25.961(a)(5).

Description of Relief Sought: Boeing is requesting relief from the requirements of 14 CFR 25.961(a)(5) for JP–4 and Jet B fuel usage on 757–300 airplanes powered by Pratt & Whitney engines. The regulation requires that the airplane and engines perform satisfactorily with the critical fuel at a temperature of at least 110°F. Boeing requests that FAA approve a set of limitations for JP–4 and Jet B fuels on the Pratt & Whitney powered 757–300 in lieu of compliance with the specified temperature of 110°F. The limitations consist of restricting the fuel temperature to 85°F, restricting the initial cruise altitude vs. fuel temperature, and restricting JP–4 and Jet B fuels to the main tanks only.

[FR Doc. 02–7488 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–18]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of a petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 17, 2002.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on March 21, 2002.

Gary A. Michel,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–11619.

Petitioner: FedEx Express.

Section of 14 CFR Affected: 14 CFR 121.503(b).

Description of Relief Sought: To permit FedEx Express pilots to operate additional flight hours, when necessary, after having exceeded 8 hours of flight time within the preceding 24 hours.

[FR Doc. 02–7507 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–19]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 17, 2002.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM—1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on March 21, 2002.

Gary A. Michel,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29969.

Petitioner: National Agricultural Aviation Association.

Section of 14 CFR Affected: 14 CFR 91.313(e).

Description of Relief Sought:

To permit NAAA members to ferry restricted category agricultural aircraft and authorize operations over densely populated areas, on congested airways, or into busy airports where passenger transport operations are being conducted, without previously issuing a waiver or operation limitations. The exemption, if granted, would apply only to aircraft being ferried from one location to another without a dispensable load.

Dispositions of Petitions

Docket No.: FAA–2001–8613.

Petitioner: Midwest Express Airlines, Inc.

Section of 14 CFR Affected: 14 CFR 91.205(b)(12).

Description of Relief Sought/Disposition:

To permit MWEA to replace the required approved pyrotechnic signaling device on each aircraft with crewmember personal flotation devices each equipped with an approved survivor locator light.

Denial, 02/20/200, Exemption No. 7720

Docket No.: FAA–2000–8497.

Petitioner: America West Airlines, Inc.

Section of 14 CFR Affected: 14 CFR 91.205(b)(12).

Description of Relief Sought/Disposition:

To permit America West to operate its aircraft over water without at least one pyrotechnic signaling device aboard the aircraft.

Denial, 02/20/200, Exemption No. 7719

Docket No.: FAA–2000–8579.

Petitioner: Astral Aviation, Inc. dba Skyway Airlines.

Section of 14 CFR Affected: 14 CFR 91.205(b)(12).

Description of Relief Sought:

To permit Astral to replace the required approved pyrotechnic signaling device on each aircraft with crewmember personal flotation devices each equipped with an approved survivor locator light.

Denial, 02/20/200, Exemption No. 7721.

[FR Doc. 02–7508 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–20]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued.

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 17, 2002.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal

holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1) Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on March 21, 2002.

Gary A. Michel,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2001–11169
Petitioner: Lockheed Martin
Section of 14 CFR Affected: 14 CFR SFAR–88
Description of Relief Sought:
To permit Lockheed Model L–188 airplanes to operate without meeting the requirements of SFAR–88.

Dispositions of Petitions

Docket No: 30122
Petitioner: Bombardier Aerospace Dallas/Fort Worth Customer Training Center
Section of 14 CFR Affected: 14 CFR from 91.105(a) and 135.338(f)
Description of Relief Sought/ Disposition:
To permit persons assigned as required crewmembers on aircraft operated by Bombardier Aerospace to temporarily relinquish their crewmember stations to Bombardier Aerospace DFW–CTC instructors for the purpose of meeting the requirements of 14 CFR 142.53(b)(1) when those instructors do no hold valid medical certificates issued by the FAA. In addition, the proposed exemption would permit individuals who meet the requirements of § 142.53(b)(1) to be considered to meet the requirements of § 135.338(f)(1).
Denial, 02/28/2002, Exemption No. 7732
Docket No.: FAA–2001–11011
Petitioner: Executive Jet International
Section of 14 CFR Affected: 14 CFR 135.152(j)
Description of Relief Sought/ Disposition:
To permit EJI to operate one Gulfstream Model GV (GV) airplane (Serial No. 687) without that airplane being equipped with the required flight data recorder after the August 19, 2002, compliance date. The FAA notes that EJI did not own the indicated aircraft at the time the petition was submitted; the airplane manufacturer (Gulfstream Aerospace Incorporated) petitioned for relief on behalf of EJI, citing EJI's "willingness to accept" this GV airplane if the requested relief were granted.
Denial, 02/25/2002, Exemption No. 77735

[FR Doc. 02–7509 Filed 3–27–02; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Air Carrier and General Aviation Maintenance Issues

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of public meeting.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public of a meeting of the FAA Aviation Rulemaking Advisory Committee to discuss Air Carrier and General Aviation Maintenance Issues. Specifically, the committee will discuss tasks concerning quality assurance and ratings for aeronautical repair stations.

DATES: The meeting will be held April 17–18, 2002, from 10 a.m. to 5 p.m. Arrange for teleconference capability and presentations no later than 3 business days before the meeting.

ADDRESSES: The meeting will be held at the Helicopter Association International, 1635 Prince Street, Alexandria, VA 22134–2818.

FOR FURTHER INFORMATION CONTACT: Vanessa R. Wilkins, Federal Aviation Administration, Office of Rulemaking (ARM–207), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8029; fax (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to § 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to discuss air carrier and general aviation maintenance issues. The meeting will be held April 17–18, 2002, from 10 a.m. to 5 p.m. at the Helicopter Association International, 1635 Prince Street, Alexandria, VA 22134–2818. The committee will discuss quality assurance and ratings for aeronautical repair stations.

Attendance is open to the public, but will be limited to the space available. The FAA will arrange teleconference capability for individuals wishing to participate by teleconference if we receive notification no later than 3 business days before the meeting. Arrangements to participate by teleconference can be made by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Callers outside the Washington metropolitan area will be responsible for paying long distance charges.

To present oral statements at the meeting, members of the public must make arrangements no later than 3 business days before the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director, or by bringing the copies to the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as assistive listening device, if requested no later than 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on March 25, 2002.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 02–7482 Filed 3–27–02; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Airport Certification Issues Meeting

AGENCY: Federal Aviation Administrative (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss Airport Certification issues.

DATES: The meeting will be held on April 8, 2002, from 1:00 p.m. to 4:00 p.m. Arrange presentations by April 1, 2002.

ADDRESSES: The meeting will be held at the Federal Aviation Administration, 800 Independence Ave. SW, Room 600 East, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Marisa Mullen, FAA, Office of Rulemaking (ARM–205), 800 Independence Avenue, SW,

Washington, DC 20591. Telephone, (202) 267–7653, fax (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to § 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on April 8, 2002, from 1:00 p.m. to 4:00 p.m. at the Federal Aviation Administration, 800 Independence Ave. SW, Room 600 East, Washington, DC 20591. The agenda will inciude:

1. Opening Remarks.
2. Committee Administration.
3. Rescue and Firefighting Requirements Working Group Report.
4. Future Meetings.

Attendance is open to the interested public but will limited to the space available. The FAA will arrange teleconference capability for individuals wishing to participate by teleconference if we receive notification before April 1, 2002. Arrangements to participate by teleconference can be made by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Callers outside the Washington metropolitian area will be responsible for paying long distance charges.

The public must make arrangements by April 1, 2002, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director, or by bringing the copies to the meeting. Public statements will only be considered if time permits. In addition, sign and oral interpretation, as well as an assistive listening device, can be made available, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on March 19, 2002.

Ben Castellano,

Assistant Executive Director for Airport Certification Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 02–7506 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Airworthiness Approval of Traffic Alert and Collision Avoidance Systems and Mode S Transponders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice announces the availability of and requests comments on a revised draft Advisory Circular (AC) 20–131B Airworthiness Approval of Traffic Alert and Collision Avoidance Systems (TCAS II) and Mode S Transponders. The draft AC provides guidance material for the airworthiness approval of Traffic Alert and Collision Avoidance Systems (TCAS II) certified to Technical Standard Order (TSO)—C119b and Mode S transponders.

DATES: Comments submitted must be received on or before June 26, 2002.

ADDRESSES: Send all comments on the proposed advisory circular to: Federal Aviation Administration (FAA), Aircraft Certification Service, Aircraft Engineering Division, Avionic Systems Branch, AIR–13, 800 Independence Avenue, SW., Washington, DC 20591. Or deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mary Grice, Federal Aviation Administration (FAA), Aircraft Certification Service, Aircraft engineering Division, Avoionic Systems Branch AIR–130, 800 Independence Avenue SW, Washington, DC 20591, Telephone: (202) 267–9897, FAX: (202) 267–5340.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the draft AC listed in this notice by submitting such written data, views, or arguments, as they desire, to the aforementioned specified address. Comments must be marked "Comments to AC 20–131B." Comments received on the draft advisory circular may be examined, both before and after the closing date, in Room 815, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, S.W., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. all communications received on or before the closing date for comments specified will be considered by the Director of the Aircraft Certification Service before issuing the final AC.

Background

The FAA is developing a new Advisory Circular, AC 20–131B, Airworthiness Approval of Traffic Alert and Collision Avoidance Systems (TCAS II) and Mode S Transponders. This advisory circular (AC) provides guidance material for the airworthiness approval of Traffic Alert and Collision Avoidance systems (TCAS II) and Mode transponders. This revision to the current AC is prompted by the development of TCAS II version 7 and the publication of Technical Standard Order (TSO) C–119b, Traffic Alert and Collision Avoidance system (TCAS) Airborne Equipment. TCAS II, dated 18 December, 1998. At this time, there is no plan to mandate an upgrade of existing TCAS II units to version 7. TCAS II version 7 was developed to be interoperable with existing TCAS II version v6.04a equipment. Version 7 includes numerous software changes improving surveillance performance and providing other improved capabilities such as in multiple aircraft encounters. This AC also proposes a reduction or elimination of flight test requirements under certain conditions when upgrading existing TCAS II units.

How To Obtain Copies

A copy of the revised draft AC may be obtained via Internet, *(http://www.faa.gov/avr/air/airhome.htm),* or on request from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on March 14, 2002.

John W. McGraw,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 02–7505 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Third Party War Risk Liability Insurance

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of extension.

SUMMARY: This notice contains the text of a memo from the Secretary of Transportation to the President regarding the extension of the provision of aviation insurance coverage for U.S. flag commercial air carrier service in domestic and international operations.

DATES: Dates of extension from March 21, 2002 through May 19, 2002.

FOR FURTHER INFORMATION CONTACT: Helen Kish, Program Analyst, APO–3, or Eric Nelson, Program Analyst APO–3, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591, telephone 202–267–9943 or 202–267–3090. Or online at *FAA Insurance Web site: http://api.hq.faa.gov/911policies/inscover.html.*

SUPPLEMENTARY INFORMATION: On March 19, 2002, the Secretary of Transportation authorized a 60-day extension of aviation insurance provided by the Federal Aviation Administration as follows:

Memorandum To the President

"Pursuant to the authority delegated to me in paragraph (3) of Presidential Determination No. 01–29 of September 23, 2001, I hereby extend that determination to allow for the provision of aviation insurance and reinsurance coverage for U.S. Flag commercial air service in domestic and international operations for an additional 60 days.

Pursuant to section 44306(c) of chapter 443 of 49 U.S.C.—Aviation Insurance, the period for provision of insurance shall be extended from March 21, 2002, through May 19, 2002."

/s/ Norman Y. Mineta

Affected Public: Air Carriers who currently have Third Party War-Risk Liability Insurance with the Federal Aviation Administration.

Issued in Washington, DC on March 22, 2002.

John M. Rodgers,

Director, Office of Aviation Policy and Plans.

[FR Doc. 02–7483 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11944]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ALEXES.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before April 29, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11944. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: ALEXES. *Owner:* Action Beach and Bay Rentals.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "LOA: 38′ Beam: 14″ Draft: 3′4″ Displacement: 24,000 lbs."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "Point Conception, California to Cabo San Lucas, BCS Mexico, and out 200 miles . . ." ". . . charter boat . . .".

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1963. *Place of construction:* uncertain.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "Action Beach has operated the ALEXES as a charter boat from Mission Bay, San Diego, California for two years. No adverse impact on other commercial passenger vessel operators has occurred, and none is expected if this waiver is granted."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "No adverse impact on US shipyards will occur if this waiver is granted."

Dated: March 22, 2002.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–7480 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11910]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel HOLY MOSES.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before April 29, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11910. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, S.W., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* HOLY MOSES. *Owner:* David L. Williams Trust.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "L/O; 50′3″; Registered Length, LWL/45′8″; Beam: 15′6″; Draft: 4′6″; Tonnage: Net/40; Gross/50″.

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "The vessel will be used for . . . 1 to 10 day charters, with a maximum of six [6], charter passengers on one day trips, and 1 to 3 charter passengers on overnight charters. The vessel operates in the waters of Puget Sound, USA . . . and Southern Alaska, USA."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1981. *Place of construction:* Kaohsiung, Taiwan, ROC.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "The operation of HOLY MOSES Charters . . . will have "0" impact on other charter operations in the San Juan Islands area of Puget Sound because:

(a) Charter guests for the H/M operation have been and will be derived from the charter customers of LinnLine Marine, Inc. "which has been in the sailing charter business in Hawaii since 1977. These customers have chartered with us for many years and we have become good friends and therefore compatible for extended charters.

(b) Our customers book with us because they wish to cruise with us and are not nor would be available to other operators in the Northwest area.

(c) H/M charter activity is limited to the summer months of June thru September; and due to sleeping arrangements aboard the vessel, is limited to a max of 3 charter guests for overnight trips, which consists of 5 to 10 days in length and we limit these to 4 to 6 charters per season. These "guests". . . are "friends". . . since they do contribute to the cost of the cruise are considered in the eyes of maritime law, "paying guests" and I, by accepting said contributions, I am . . . "chartering".

There are a number of large charter co.'s operating in the San Juan Islands area . . . The larger companies have fleets of vessels and offer both crewed and "bare boat" type's of charters. Again, there will be no impact on their operations as stated above, 100% of our guests are from my own past charters customers and not drawn from their area.

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "a. There will be no negative impact of US ship yards as the cost of producing a vessel of the class quality and equipped as HOLY MOSES is, would be over three times the amount that I have invested in the vessel. There is no possible way that I could or would be able to afford to buy one. b. The positive impact on US ship yards will be that I will be able to keep spending money with them to have the vessel hauled and . . . maintained at least once a year."

Dated: March 22, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–7476 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11909]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MOJO.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before April 29, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11909. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime

Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: MOJO. Owner: Ridgeway Yachting, LLC.

(2) Size, capacity and tonnage of vessel. According to the applicant: Gross tonnage: 30 GRT, Net tonnage: 27 NRT, Length 52.4, Breadth 15.0, Depth 10.5

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "* * * day and term charters * * * from Long Island Sound to Northern Maine. For day charters we would like to carry the maximum 12 passengers and for term charters no more than 6."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1987. Place of construction: Kaohsiung Hsien, Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "While there are a large number of people interested in chartering sailboats (aka. demand) in New England there are relatively few charter boats available for public hire in the region (aka. supply). As such, we believe the impact of our high quality marketing efforts (see enclosed brochure) will actually help grow the industry and satisfy, as yet, unmet demand while not adversely impacting the businesses of existing charter operators."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "* * * "MoJo" would provide additional revenue opportunities for seaside resort communities and boat yards through New England."

Dated: March 22, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–7477 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11907]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel PET.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before April 29, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11907. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW, Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: PET. *Owner:* Allen Douglas Henderson.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "Length 56.5′ Breadth 13.4′ Depth 8.9′ Gross 33 Net 30".

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "Our plan is short term charters with a captain and twelve or less passengers during Classic Regattas races and similar events. Our passengers would be drawn from a select group of clientele interested in wooden sailing vessels. The market was checked and there is an unmet demand for this type of charter." "PET will operate mainly in New England waters and the Atlantic seaboard including the waters of Long Island Sound, Rhode Island Sound, Massachusetts Bay and the Gulf of Maine in the summer time and the waters off the southeast coast of Florida in the wintertime."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of*

construction: 1982. *Place of construction:* Whangarei, New Zealand.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "* * * the impact on other commercial passenger vessel operators will be negligible or non-existent * * * Considering the activities I plan to pursue I am confident that this waiver will have no adverse effect upon commercial vessel operators."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "Because of the size and type of vessel and the uses contemplated by this waiver, there will be no negative impact on our U.S. shipyards and all repair work or retrofitting of the vessel will be done in U.S. Shipyards therefore, this waiver will have a positive impact."

Dated: March 22, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–7479 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11908]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel QUINTESSENCE.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before April 29, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11908. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW, Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: QUINTESSENCE.

Owner: Roy F. Stringfellow.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "LOA 55′ * * * gross tonnage of 38 tons."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:*

"The main use of the vessel is recreational but I do like to offer day and term charters on Biscayne Bay down to the Florida Keys. There are no plans for any domestic commercial activity beyond the eastern coastal waters of the United States and Gulf of Mexico". "I would like for my request to cover from Panama City eastward around the Keys up to Jacksonville."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1988. *Place of construction:* Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "I * * * assist other full time captains when additional boats are needed to accommodate large groups which we get from the conventions and meeting held in Florida. This waiver will have very little impact on the other operators other than to increase their business by offering a larger fleet to their clients."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "I also expect no impact on U.S. shipyards as recreation is the main purpose of my ownership."

Dated: March 22, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–7478 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–02–11923]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of Information.

SUMMARY: Before a Federal agency can collect certain information from the public; it must receive approval from the Office of Management and Budget (OMD). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before May 28, 2002.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Jonathan D. White, Office of Defects Investigation, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Room 5319 Washington, DC 20590. Telephone: (202) 366–5226; Fax: (202) 366–7882. Please identify any relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act 1995, before the agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

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

(ii) 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;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How 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, e.g., permitting electronic submission of responses.

Incompliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Defect Noncompliance Determination.

OMB Control Number: 2127–0004.

Affected Public: Manufactures.

Form Number: OMB 83–I.

Abstract: NHTSA is amending its regulation pertaining to Chapter 301 of Title 49 that requires motor vehicle and motor vehicle equipment manufacturers to include a schedule for dealer notification in their defect and noncompliance reports. This amendment also requires manufacturers to advise dealers of the prohibition against selling defective or noncomplying vehicles in dealer inventory until all outstanding recall work has been completed.

Estimated Burden Hours: 6,348.

Number of Respondents: 600.

Issued on: March 25, 2002.

Kathleen C. DeMeter,

Director, Office of Defects Investigation.

[FR Doc. 02–7481 Filed 3–27–02; 8:45 am]

BILLING CODE 4910–59–P

Corrections

Federal Register
Vol. 67, No. 60
Thursday, March 28, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL HOUSING FINANCE BOARD

12 CFR Chapter IX

[No. 2002–05]

RIN 3069–AB12

Technical Amendments to Federal Housing Finance Board Regulations

Correction

In rule document 02–5462 beginning on page 12841 in the issue of Wednesday, March 20, 2002, make the following correction:

§ 951.4 [Corrected]

On page 12852, in the first column, in § 951.4, amendatory instruction "118.", the words "Council members" should read, "Council members'".

[FR Doc. C2–5462 Filed 3–27–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and & Medicaid Services

42 CFR Parts 410, 411, 413, 424, and 489

[CMS–1163–CN]

RIN 0938–AK47

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Correction

Correction

In rule document 02–6757 appearing on page 13278, in the issue of Friday, March 22, 2002, make the following correction:

On page 13278, in the third column, under the heading, **Corrections to Preamble**, in the first line, "column 3" should read "column 2".

[FR Doc. C2–6757 Filed 3–27–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program (NTP); National Institute of Environmental Health Science (NIEHS)

Correction

In notice document 02–5652 beginning on page 10734 in the issue of Friday, March 8, 2002, make the following correction:

On page 10735, in the first column, under **Request for Public Comments**, in the first paragraph, three lines from the bottom "[Please insert date 60 days from publication of this notice]" should read "May 7, 2002".

[FR Doc. C2–5652 Filed 3–27–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Agency

21 CFR Part 1308

[DEA–225P]

Schedule of Controlled Substances: Proposed Rule: Rescheduling of Buprenorphine From Schedule V to Schedule III

Correction

In proposed rule document 02–6767 beginning on page 13114 in the issue of Thursday, March 21, 2002, make the following corrections:

1. On page 1135, in the first column, in the second paragraph, in the first line, "(0.3mg/m1)" should read, "(0.3mg/ml)".

2. On the same page, in the first column, in the second paragraph, in the fifth line, "Subozone®" should read, "Suboxone®".

3. On the same page, in the second column, in the second paragraph, in the thirteenth line, "table" should read, "tablet".

4. On the same page, in the same column, in the second paragraph, in the 15th line, "fewer" should read, "newer".

5. On page 13115, under the heading "**What Is the Effect of This Notice?**", in the first paragraph, in the fourth line, "salts or " should read, " salts of".

[FR Doc. C2–6767 Filed 3–27–02; 8:45 am]
BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

A.C.L.N. Ltd.; Order of Suspension of Trading

March 18, 2002.

Correction

In notice document 02–6819 appearing on page 13029 in the issue of Wednesday, March 20, 2002, the heading is corrected to read as set forth above.

[FR Doc. C2–6819 Filed 3–27–02; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Thursday,
March 28, 2002

Part II

Office of Management and Budget

Draft Report to Congress on the Costs and Benefits of Federal Regulations; Notice

OFFICE OF MANAGEMENT AND BUDGET

Draft Report to Congress on the Costs and Benefits of Federal Regulations

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice and request for comments.

SUMMARY: OMB requests comments on the attached Draft Report to Congress on the Costs and Benefits of Federal Regulation. The Draft Report is divided into four chapters. Chapter I discusses regulatory policy during the Administration's first year. It discusses OMB's role in coordinating regulatory policy, its open and transparent approach to regulatory oversight, and its function as overseer of information and quality analysis. Chapter II presents estimates of the costs and benefits of Federal regulation and paperwork with an emphasis on the major regulations issued over the last 30 months. Chapter III discusses developments in regulatory policy governance that have recently taken place in the international arena and its relevance for the U.S. Chapter IV asks for recommendations from the public for the reform of Federal rules.

DATES: To ensure consideration of comments as OMB prepares this Draft Report for submission to Congress, comments must be in writing and received by OMB no later than May 28, 2002.

ADDRESSES: Comments on this Draft Report should be addressed to John Morrall, Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10235, 725 17th Street, NW., Washington, DC 20503.

You may also submit comments by facsimile to (202) 395–6974, or by electronic mail to *jmorrall@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: John Morrall, Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10235, 725 17th Street, NW., Washington, DC 20503. Telephone: (202) 395–7316.

SUPPLEMENTARY INFORMATION: Congress directed the Office of Management and Budget (OMB) to prepare an annual Report to Congress on the Costs and Benefits of Federal Regulations. Specifically, Section 624 of the FY2001 Treasury and General Government Appropriations Act, also known as the "Regulatory Right-to-Know Act," (the Act) requires OMB to submit a report on the costs and benefits of Federal regulations together with recommendations for reform. The Act says that the report should contain estimates of the costs and benefits of regulations in the aggregate, by agency and agency program, and by major rule, as well as an analysis of impacts of Federal regulation on State, local, and tribal government, small business, wages, and economic growth. The Act also states that the report should go through notice and comment and peer review.

John D. Graham,

Administrator, Office of Information and Regulatory Affairs.

Draft Report to Congress on the Costs and Benefits of Federal Regulations; Executive Summary

This Draft Report to Congress on regulatory policy was prepared pursuant to the Regulatory Right-to-Know Act (Section 624 of the Treasury and General Government Appropriations Act, 2001), which requires such an account each year. It provides (a) an overview of the Bush Administration's centralized approach to federal regulatory policy; (b) a statement of the costs and benefits of federal regulations, including assessments of their impact on State, local and tribal governments, small businesses, wages and economic growth; and (c) recommendations for regulatory reforms. The report will be published in final form after revisions to this draft are made based on public comment, external peer review, and interagency review.

Its major features and findings include:

1. In the last six months, OMB has cleared 41 significant federal regulations aimed at responding to the terrorist attacks of September 11th. These rules addressed urgent matters such as homeland security, immigration control, airline safety, and assistance to businesses harmed by the resulting economic disaster experienced in several regions of the country.

2. The Bush Administration's approach to regulatory review, through OMB's Office of Information and Regulatory Affairs (OIRA), is characterized by openness, transparency, analytic rigor, and promptness. OIRA's website puts that perspective on display, with daily updates and an unprecedented amount of information about OIRA's activities. The 20 significant rules that OMB returned to agencies for reconsideration from July 1, 2001 to March 1, 2002 are more than the total number of rules returned to agencies during the Clinton Administration. Inadequate analysis by agencies is the most common reason for returns. The number of OMB reviews consuming more than the allotted 90 days has declined from what had regularly been 15–20 rules to near zero in recent months. OMB has also demonstrated its commitment to necessary federal regulation by clearing numerous well-analyzed rules and prompting agencies to initiate or complete cost-effective rulemaking opportunities. In order to perform its role with greater competence, OIRA is expanding its staffing expertise in several fields of science and engineering that are central to reviewing regulatory proposals.

3. Under the Bush Administration, OIRA is taking a proactive role in suggesting regulatory priorities for agency consideration. In order to play this role constructively, we have devised the "prompt" letter as a modest device to bring a regulatory matter to the attention of agencies. OIRA's initial five prompt letters have addressed a range of issues at four different agencies, including the use of lifesaving defibrilators in the workplace, food labeling requirements for trans fatty acids, and better information regarding the environmental performance of industrial facilities.

4. Pursuant to statutory mandate, OIRA has issued government-wide guidelines to enhance the quality of information that federal agencies disseminate to the public. OIRA is now working with agencies to finalize their guidelines by October 1, 2002. These guidelines will offer a new opportunity for affected members of the public to challenge agencies when poor quality information is disseminated. OMB has required each agency to develop an administrative mechanism to resolve these challenges, including an independent appeals mechanism.

5. The report summarizes regulatory reform activities now underway in developed countries throughout the world, with special focus on the European Union.

6. Major federal regulations cleared by OMB from April 1, 1995 to September 30, 2001 were examined to determine their quantifiable benefits and costs. The estimated annual benefits range from $49 billion to $68 billion while the estimated costs range from $51 billion to $54 billion. Estimates of the total benefits and costs of *all* federal regulations currently in effect are found in the Appendix, because they are based substantially on figures that the agencies did not produce and OMB did not–review. The estimates of total benefits, which are highly uncertain, range from

about one-half to three times the total costs, which are pegged at $520 billion to $620 billion per year. Total cost figures are roughly comparable to the federal government's total discretionary budget authority in FY 2001.

Finally, OMB seeks public comment on all aspects of this Draft Report. OMB is also calling for public nominations of regulatory reforms in the following three areas:

- Reforms to specific existing regulations that, if adopted, would increase overall net benefits to the public, considering both qualitative and quantitative factors. These reforms might include (1) extending or expanding existing regulatory programs; (2) simplifying or modifying existing rules or (3) or rescinding outmoded or unnecessary rules.
- Identification of specific regulations, guidance documents, and paperwork requirements that impose especially large burdens on small businesses and other small entities without an adequate benefit justification.
- Reviews of problematic agency "guidance" documents of national or international significance that should be reformed through notice and comment rulemaking, peer review, interagency review, or rescission.

Nominations should be presented in the format provided in the report to facilitate orderly consideration by OMB, agencies, and the public. OMB will consider the nominations, provide a preliminary evaluation, and report these evaluations in the final draft of this report. OMB will request that agencies consider all nominations but especially those that OMB's preliminary evaluation suggest merit "high priority."

In addition, OMB would welcome: (1) Comments on any cases where consultations under the Unfunded Mandates Reform Act between federal agencies and State, local, and tribal governments were not sufficient or timely enough to have a meaningful impact on the rulemaking process; and (2) suggestions of analytical issues needing refinement or development to improve OMB's analytic guidance document.

Chapter I: Regulatory Policy Under the Bush Administration: The First Year

Federal regulation is a fundamental instrument of national policy. It is one of the three major tools—besides spending and taxing—used to implement policy. It is used to advance numerous public objectives, from homeland security to privacy, environmental protection, food safety, transportation safety, delivery of quality health care, equal employment opportunity, energy security, educational quality, immigration control and consumer protection. Yet regulation also is costly. While the exact cost of regulation is uncertain, the total cost is comparable to discretionary spending—about $640 billion in 2001. Regulation can increase the cost of producing goods and services in the economy, thereby raising prices to the consumer, creating potential competitive problems for U.S. firms in a global economy, exacerbating fiscal challenges to State and local governments, and placing jobs and wages at risk. Regulatory policy does not lend itself to simple answers because the underlying scientific and economic issues often are complex, there may be tradeoffs between laudable social objectives, and success often hinges on the details about how a rule is designed, implemented and enforced.

The Bush Administration supports federal regulations that are sensible and based on sound science, economics, and the law. Through OMB's Office of Information and Regulatory Affairs (OIRA), the Administration is stimulating development of a regulatory process that adopts new rules when markets fail, simplifies and modifies existing rules to make them more effective and/or less costly or intrusive, and rescinds outmoded rules whose benefits do not justify their costs. In pursuing this agenda, OIRA has pursued an approach based on the principles of regulatory analysis and policy espoused in Executive Order 12866, signed into law by President Clinton in 1993.

The regulatory reforms now being implemented and described below, while modest, incremental and generally procedural in nature, promise to have a powerful positive long run effect on the quality of federal regulation. With regard to federal regulation, the Bush Administration's objective is quality, not quantity. Those rules that are adopted promise to be more effective, less intrusive, and more cost-effective in achieving national objectives while demonstrating greater durability in the face of political and legal attack.

One of OIRA's most important functions is coordinating the President's regulatory policy. As discussed in last's year's annual report to Congress, the first regulatory action taken by the Bush Administration was issuance of the "Card Memorandum," a January 20, 2001 directive from the President's Chief of Staff, Andrew H. Card, Jr., to agency heads to take steps to ensure that policy officials in the incoming Administration had the opportunity to review any new or pending regulations. In last year's report, we provided a summary of actions taken by agencies pursuant to rules targeted for scrutiny by the Card memo, and by a subsequent OMB memorandum to agencies. In Appendix A of this report, we provide an update of these actions. In the next section, we discuss another coordinating role OMB is playing—one that was unexpected.

A. The Regulatory Response to September 11th

After the shocking terrorist attacks of September 11, 2001, the American public looked to the federal government to take action not only to prevent future security threats but also to provide relief for individuals affected by the tragedies. In response, the federal government revisited its current practices and procedures, and sought solutions to address these concerns. Also in response to the attacks, several agencies including Departments of Justice, Transportation, Labor, Health and Human Services, and Commerce and the Office of Personnel Management, Small Business Administration, and Office of Management and Budget issued new regulations. Table 1 lists the 41 significant federal regulations issued in response to the terrorist attacks.

TABLE 1.—THE 41 REGULATIONS RESPONDING TO THE TERRORIST ATTACKS OF SEPT. 11, 2001

Agency	Sub agency	Title	Rulemaking stage
DOC	BXA	India and Pakistan: Lifting of Sanctions, Removal of Indian and Pakistani Entities, and Revision in License Review Policy.	Final Rule.
DOJ	BOP	National Security: Prevention of Acts of Rule Violence and Terrorism.	Interim Final Rule.
DOJ	LA	September 11th Victim Compensation Fund of 2001	Pre-rule.
DOJ	LA	September 11th Victims Compensation Fund of 2001	Final Rule.

TABLE 1.—THE 41 REGULATIONS RESPONDING TO THE TERRORIST ATTACKS OF SEPT. 11, 2001—Continued

Agency	Sub agency	Title	Rulemaking stage
DOJ	INS	Custody Procedures	Interim Final Rule.
DOJ	INS	Review of Custody Determinations	Interim Final Rule.
DOJ	LA	September 11th Victim Compensation Fund of Rule 2001	Interim Final Rule.
DOL	ETA	Disaster Unemployment Assistance Program Amendment	Interim Final Rule.
DOT	FAA	Screening of Checked Baggage on Flights within the United States.	Final Rule.
DOT	FAA	Aircraft Security under General Operating and Flights Rules	Final Rule.
DOT	FAA	Flight Crew Compartment Access and Door Design	Final Rule.
DOT	OST	Procedures for Compensation of Air Carriers	Final Rule.
DOT	FRA	Locational Requirement for Dispatching of U.S. Rail Operations.	Interim Final Rule.
DOT	FAA	Flight Crew Compartment Access and Door Designs	Final Rule.
DOT	FAA	Criminal History Background Checks	Final Rule.
DOT	FAA	Security Screeners: Qualifications, Training and Testing	Other.
DOT	FAA	Security Considerations in the Design of the Flight Deck on Transport Category Airplanes.	Other.
DOT	TSA*	Imposition and Collection of Passenger Civil Aviation Security Fees in the Wake of September 11, 2001.	Other.
DOT	TSA	Aviation Security Infrastructure Fees	Interim Final Rule.
DOT	TSA	Security Programs for Aircraft with a Maximum Certificated Takeoff Weight of 12,500 Pounds or More.	Interim Final Rule.
DOT	TSA	Civil Aviation Security Rules	Interim Final Rule.
DOT	FAA	Airspace and Flight Operations Requirements for the 2002 Winter Olympic Games, Salt Lake City, UT.	Final Rule.
DOT	FAA	Procedures for Reimbursement of Proposed Airports, On-Airport Parking Lots and Vendors of On-Airfield Direct Services to Air Carriers for Security Mandates.	Notice of Proposed Rulemaking.
DOT	FAA	Firearms, Less-Than-Lethal Weapons, and Emergency Services on Commercial Air Flights.	Request for comments.
DOT	FAA	Temporary Extension of Time Allowed for Certain Training and Testing.	Final Rule.
DOT	FAA	Security control of Air Traffic	Final Rule; request for comments.
DOT	FAA	Temporary Flight Restrictions	Final Rule.
HHS	SAMHSA	Substance Abuse and Mental Health Services Administration Mental Health and Substance Abuse Emergency Response Criteria.	Interim Final Rule.
OMB		Regulation for Air Carrier Guarantee Loan Program	Final Rule.
OPM		Absence and Leave Use of Restored Annual Leave	Interim Final Rule.
OPM		Absence and Leave Use of Restored Annual Leave	Final Rule.
OPM		Administratively Uncontrollable Overtime Pay	Interim Final Rule.
SBA**		Size Standards; Inflation Adjustment	Interim Final Rule.
SBA		Disaster Loan Program	Interim Final Rule
SBA		Small Business Size Standards: Travel Agencies	Interim Final Rule.
Treasury	FinCEN	Amendment to the Bank Secrecy Act Regulations Rule	Interim Final Rule.
Treasury	FinCEN	Proposed Amendment to the Bank Secrecy Act Regulations	Notice of Proposed Rulemaking.
Treasury	FinCEN	Cooperative Efforts to Deter Terrorist Rule and Financing and Money Notice of Laundering.	Temporary Rule and Notice of Proposed Rulemaking.
Treasury	Departmental Offices	Counter Money Laundering Requirements—Correspondent Accounts with Foreign Shell Banks; Rulemaking Recordkeeping Related to Foreign Banks with Correspondent Accounts.	Temporary Rule and Notice of Proposed Rulemaking.
Treasury	IRS	Special Form 720 Filing Rule	Final Rule Rule without Notice of Proposed Rulemaking.
Treasury and other Financial Institutions***		Identity Verification Program	Notice of Proposed Rulemaking.

* Traffic Safety Administration.
** Small Business Administration.
*** Office of Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision, and National Credit Union.

As an integral part of the expedited issuance of these rules, OIRA conducted its full regulatory review and coordination function under Executive Order 12866. OIRA ensured that all affected agencies were aware of what other agencies were proposing and facilitated their timely comments on the proposed actions. These efforts made sure that all September 11th related rules received priority attention from the appropriate reviewers and that the Administration's best solutions to the circumstances caused by the terrorist attacks were implemented.

The Administration issued two types of rules in response to the events of September 11th. The first improves and strengthens national security. The

second directs relief to the individuals affected by the attacks.

The Department of Justice promulgated several rules that addressed the need for heightened security at home and compensation for victims of the attacks. Shortly after the September 11th, 2001 terrorist attack, the President signed the "September 11th Victim Compensation Fund of 2001" into law as Title IV of the Air Transportation Safety and System Stabilization Act. The Act authorizes compensation to any individual (or the personal representative of a deceased individual) who was physically injured or killed as a result of the terrorist-related aircraft crashes on that day. The Victims Compensation Fund is designed to provide a no-fault alternative to tort litigation for individuals who were physically injured or killed as a result of the aircraft hijackings and crashes on September 11th. This regulation established procedural rules for administration of the Victims Compensation Fund.

A second Justice rule involved the monitoring of communications between an inmates and their attorneys or their agents, where the Attorney General has determined that such actions are reasonably necessary in order to deter future acts of violence or terrorism, and upon a specific notification to the inmate and attorneys involved. Under the rule, a privilege team of individuals not involved in the underlying investigation would sift through the attorney-client communications. The privilege team would disclose information to the investigators and prosecutors only upon approval of a federal judge, unless the team leader determined that acts of violence or terrorism are imminent.

On the immigration side, the Department of Justice and the Immigration and Naturalization Service issued two rules signaling the need for tighter security. INS established an automatic stay of the judge's decision in cases where the individual is ordered to be released, allowing INS to continue to detain the alien while it appeals the decision. An additional INS rule extended the period an individual can be held in custody after his or her initial arrest. This rule afforded the INS additional time to run background security clearances on individuals to determine whether they were security risks.

The Department of Transportation and the Federal Aviation Administration issued over a dozen rules in four key areas: flight-deck security requirements, airline compensation. background checks, and flight rules. In order to improve security on aircrafts, the FAA issued a series of rules to strengthen cockpit doors and locks to protect against unauthorized access to the cockpit. FAA also issued an interim final rule to require more permanent measures such as the replacement of cockpit doors. In addition, to fund enhanced security measures, such as airport screener services, a rule was promulgated that allowed for a $2.50 security fee per segment traveled, with a maximum of $10.00 per round trip. The fee is to be used for enhanced security protections.

In compensation, FAA issued a rule which set forth procedures for the allocation for approximately $5 billion to air carriers affected by the events of September 11th. In the final two categories of rules, the FAA promulgated several regulations regarding criminal history background checks, security procedures, screening of passengers, and screening of checked baggage.

The Treasury Department issued a series of rules to tighten the security of financial banking and establish procedures to identify suspicious transactions as part of the counter money-laundering program. With the need to deter the financing of terrorist acts, the Treasury also issued a rule permitting information sharing among financial institutions and the federal government.

The second category of rules promulgated seeks to provide assistance to individuals affected by the September 11th attacks. The Department of Labor issued a rule regarding disaster relief for individuals unemployed as a result of the attacks, clarifying eligibility requirements. In addition, the Office of Personnel Management set forth a rule to assist agencies dealing with individuals who were forced to take leave during the national emergency and risked losing annual leave time. A second OPM regulation clarified technical procedures on compensation of individuals whose work is now related to the September 11th tragedy and recent security concerns. This would include law enforcement officials who have been temporarily reassigned work in response to recent national emergency declaration.

The Department of Health and Human Services issued a rule regarding mental health and substance abuse that was drafted prior to the 11th. After the events, the Department added language to the preamble discussing the attacks, though no changes to the regulation itself were made. Finally, the Small Business Administration set forth rules on disaster loan programs and inflation that may occur as a result of the terrorist attacks and economic downturns.

Since the events of September 11, the Administration has sought to address the need for heightened national security in addition to assistance for disaster victims. OIRA has collaborated with the agencies on 41 significant regulatory actions made necessary by the events of September 11th. The regulatory actions summarized above occurred in the months soon after the attacks in order to implement solutions expeditiously.

B. An Open Approach to Centralized Regulatory Oversight

The Bush Administration supports strong, centralized oversight by OMB's Office of Information and Regulatory Affairs (OIRA) to stimulate development of a smarter regulatory process. To best achieve this goal, OIRA has developed a more transparent and open approach to centralized regulatory oversight. This policy of openness reflects the preferences of the current OMB Director and OIRA Administrator but also responds to past complaints that OMB decision making was secretive and rooted more in interest-group politics than professional analysis. Although some critics continue to perceive OIRA as a mysterious organization, the long-term, cumulative impact of the steps described below should demystify the process of regulatory oversight.

OMB has taken the following specific steps to enhance the openness of the regulatory review process:

- OIRA is improving implementation of the public disclosure provisions in E.O. 12866, including both the letter and spirit of the provisions relating to communications with outside parties interested in regulations under review by OIRA. The Administrator's relevant guidance to OIRA staff is available on OIRA's website: < *http://www.whitehouse.gov/omb/inforeg/regpol.html*>.
- For meetings subject to the disclosure provisions of E.O. 12866, OIRA maintains a log (which notes the meeting date, topic, lead agency, and participants) on OIRA's website and docket room. We also invite the relevant agency and file any documents submitted at EO 12866 meetings in our docket room with copies provided to the agency.
- Under the E.O. 12866 disclosure procedures, we are posting information about written correspondence from outside parties on regulations under review by OIRA. Information on this correspondence—including the date of the letter, the sender and his or her organizational affiliation, and the

subject matter—is available on the OIRA website. Copies of these letters are also available in the docket room.[1]

• OIRA has increased the amount of information available on the OIRA website. In addition to the information on meetings and correspondence noted above, OIRA makes available communications from the OIRA Administrator to agencies, including "prompt," "return," and "post clearance" letters, as well as the Administrator's memorandum to the President's Management Council (September 20, 2001) on "Presidential Review of Agency Rulemaking by OIRA."

• OIRA has adopted an open-door approach to meetings with outside parties, leading to meetings with more than 100 outside groups from July 2001 to December 2001 on matters of general regulatory policy or specific rules.

• OIRA has initiated a multi-year process aimed at linking up to the Administration's E-government initiative, thereby allowing outside parties electronic access to the information now contained in OIRA's docket room while giving the public greater opportunity to provide and view the electronic input of others on OIRA decision-making.

Openness does not necessarily reduce controversy. In pursuit of the policies and priorities of the Bush Administration, OIRA is already establishing procedures and making decisions that are controversial. That is the nature of regulatory policy. However, the objective of openness is to transform controversy from a dispute about decision process (who was able to speak with OMB officials before the decision was made?) to a dispute about the substance of regulatory analysis or policy (e.g., do the benefits of this rule justify the costs?). Indeed, explicitness about the grounds for regulatory decision making will in some cases sharpen public controversy by making differences of opinion more apparent to everyone interested in regulatory outcomes. Thus, OIRA does not regard absence of public controversy as a measure of success of regulatory oversight.

C. Gatekeeper for New Rulemakings

Presidential Executive Order 12866 provides OIRA with substantial authority to review rulemaking proposals from agencies. During the Clinton Administration, concerns were raised that the sound principles and procedures in this Order were not always implemented and enforced by OIRA.

An average of 600 significant rulemaking actions were approved per year during the Clinton Administration. During the last three years of the Clinton Administration, there were exactly zero rules returned to agencies by OMB for reconsideration. [2] The absence of returns could indicate either that the agency-OIRA relationship was tilted too heavily in favor of the agencies or that the agencies were meeting OIRA's expectations. Although it is often better for OIRA to work with an agency to resolve a problem rather than simply return a rule, the degree of OIRA's actual effectiveness can be questioned when it declines to use its authority to return rules.

Under the Bush Administration, OIRA has revived the "return letter," making clear that OMB is serious about the quality of new rulemakings. From July 2001 to December 2001, there were 18 significant rulemakings returned to agencies for reconsideration.[3] As the data in Table 2 illustrate, this represents a significant rate of return when measured against recent history. The technical and policy rationales for these returns are stated in letters to agency officials that are made public and posted on OIRA's web site. In five cases, after modifications and later submission for review under E.O. 12866, OIRA approved the rule. More importantly, agencies are beginning to invite OIRA staff into earlier phases of regulatory development in order to prevent returns late in the rulemaking process. It is at these early stages where OIRA's analytic approach can most improve on the quality of regulatory analyses and the substance of rules.

TABLE 2.—EXECUTIVE ORDER REVIEWS 1981–2001

Year	Total reviews	Returns	Percent
All	35,111	414	1.2
2001	700	18	2.6
2000	579	0	0.0
1999	583	0	0.0
1998	486	0	0.0
1997	507	4	0.8
1996	503	0	0.0
1995	619	3	0.5
1994	861	0	0.0
1993	2,167	9	0.4
1992	2,286	9	0.4
1991	2,525	28	1.1
1990	2,138	21	1.0
1989	2,220	29	1.3
1988	2,362	29	1.2
1987	2,315	10	0.4
1986	2,011	29	1.4
1985	2,213	34	1.5
1984	2,113	58	2.7
1983	2,484	32	1.3
1982	2,641	56	2.1
1981	2,798	45	1.6

[1] Please call (202) 395 -6880 for access to the docket room located in Room 10102, the New Executive Office Building, 725 17th St., NW., Washington DC 20503.

[2] During the full eight years of the Clinton Administration, OMB returned for reconsideration approximately one rule in 500.

[3] A detailed table of the number of regulations reviewed by OMB by agency and type of action taken from January 1, 2001 to the present is maintained on our website at <*http://www.whitehouse.gov/library/omb/OMBRCYTD-2001.html*>.

In a September 20, 2001 memorandum to the President's Management Council, the OIRA Administrator summarized for top agency officials the supporting information that must accompany a draft significant regulatory action. The six specific elements are described below.

- First, the agency should articulate how the draft regulatory action is consistent with the principles and procedures of E.O. 12866 and the underlying statute(s). An important aspect of OIRA's review of a draft rule is an evaluation of the possible impact on the programs of other Federal agencies. OIRA will make an assessment, in collaboration with policy officials from interested agencies, as to whether the draft action is consistent with the policies and priorities of the Administration.
- Second, the agency must prepare a formal regulatory impact analysis for rulemaking actions deemed economically significant. This analysis should include an assessment of benefits and costs (quantitative and qualitative) and a rigorous analysis of several regulatory alternatives. The RIAs should be timely and prepared in a way consistent with OMB's government-wide guidance, as explained by OMB on March 22, 2000 and June 19, 2001. An RIA is necessary regardless of whether the underlying statute governing agency action requires, authorizes or prohibits cost-benefit analysis as an input to decisionmaking. The public and Congress have an interest in benefit and cost information, regardless of whether it plays a central role in decisionmaking under the agency's statute. Congress has mandated that OMB provide this information in this annual report to Congress on the costs and benefits of regulation.
- Third, for draft regulatory actions that are supported by risk assessments of health, safety and environmental hazards, OIRA recommends that agencies adopt the basic informational quality and dissemination standards that Congress adopted in the Safe Drinking Water Act Amendments of 1996. These standards were recently codified in OMB's government-wide guidelines on information quality.
- Fourth, OIRA recommends that draft RIAs, including supporting technical documents (*e.g.*, risk assessments), be subjected to formal, independent external peer review by qualified specialists. Given the growing public interest in peer review at agencies, OIRA recommends that (a) peer reviewers be selected primarily on the basis of necessary technical expertise; (b) peer reviewers be expected to disclose to agencies prior technical/policy positions they may have taken on the issues at hand; (c) peer reviewers be expected to disclose to agencies their sources of personal and institutional funding (public and private); and (d) peer reviews be conducted in an open and rigorous manner. OIRA will give a measure of deference to agency analysis that has been developed in conjunction with such peer review procedures. EPA's recent decision to affirm an arsenic standard in drinking water of 10 parts per billion is a good illustration of a recent regulatory decision that was supported by rigorous external peer reviews.
- Fifth, for regulatory actions with impacts on State, local, and tribal governments, OIRA staff will insist on agency certification of compliance with Executive Orders 13132 and 13175 and compliance with the Unfunded Mandates Reform Act. The OMB Director has pledged to Congress that OIRA will return any rulemaking proposal to agencies that has not been subjected to adequate consultation with affected State, local, and tribal officials.
- Sixth, the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires that OIRA ensure that impacts on small businesses and other small entities are taken into account in the regulatory process. This work is done in part in collaboration with the Small Business Administration's Chief Counsel for Advocacy. OIRA looks to see that an appropriate analysis of small business impacts has been performed, including an evaluation of regulatory alternatives designed to reduce the burden on small businesses without compromising the statutory objective. In the cases of OSHA and EPA rulemakings under SBREFA that are expected to have economically significant impacts on a substantial number of small entities, OIRA staff participate in Small Business Advocacy Panels prior to publication of a rulemaking proposal.

In addition, under E.O. 13045, OIRA reviews proposed regulatory actions that may pose disproportionate environmental or safety risks to children. [4] E.O. 13045 requires agencies to prepare an evaluation of the risks to children of planned regulations including an explanation of why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

Finally, OIRA administers the provisions of Executive Order 13211, especially the required "Statements of Energy Effects," in situations where a rule may have significant impacts on energy supply, distribution or use. OIRA published guidance for implementing the new energy executive order on July 13, 2001.

Despite the apparent complexity of these analytical and procedural requirements, OIRA is committed to performing its regulatory reviews within the 90-day period set out in E.O. 12866. As Table 3 reveals, OIRA has already made substantial progress in reducing the number of reviews that consume more than the allotted 90 days. The OIRA Administrator has informed OIRA staff that no review will be permitted to extend beyond 90 days without the explicit permission of the OIRA Administrator.

TABLE 3.—EO 12866 REVIEWS OVER 90 DAYS BY DATE

Month	Year	Pending Over 90 Days	Pending	Percent Over 90 days
January	1999	15	77	19.5
April	1999	10	84	11.9
July	1999	11	84	13.1
October	1999	16	76	21.1
January	2000	15	83	18.1
April	2000	19	124	15.3

[4] See E.O. 13045, Protection of Children From Environmental Health Risks and Safety Risks, April 21, 1997.

TABLE 3.—EO 12866 REVIEWS OVER 90 DAYS BY DATE—Continued

Month	Year	Pending Over 90 Days	Pending	Percent Over 90 days
July	2000	24	101	23.8
October	2000	42	154	27.3
January	2001	50	117	42.7
April	2001	4	72	5.6
July	2001	25	97	25.8
October	2001	1	62	1.6
January	2002	0	86	0.0

OIRA regards the 90-day review limit as a performance indicator for a strong regulatory gatekeeper. In previous Administrations there were cases where OIRA reviews consumed more than six months or even more than a year without any conclusion for the agency. OIRA intends to provide agencies with prompt and explicit responses to its draft rulemaking actions.

D. Proactive Role in Establishing Regulatory Priorities

Historically, OIRA has been a reactive force in the regulatory process, responding to proposed and final rulemakings generated by federal agencies. Under the Bush Administration, OIRA is taking a proactive role in suggesting regulatory priorities for agency consideration. In order to play this role constructively, we have devised the "prompt" letter as a modest device to bring a regulatory matter to the attention of agencies.

OIRA's initial five prompt letters have addressed a range of issues at four different agencies:

- A letter to FDA requested that a consumer labeling rule involving the trans fatty-acid content of foods be finalized in order to reduce an established risk factor for coronary artery disease;
- A letter to OSHA urged that actions be taken to promote the availability and proper use of automated external defibrilators, a technology that can save lives among people suffering from sudden cardiac arrest;
- A letter to NHTSA urged initiation of a new rulemaking that would require vehicle manufacturers to test cars and light trucks for occupant protection in what are called "offset" frontal collisions, a crash mode responsible for a significant number of lower extremity injuries to occupants;
- A letter to EPA urged administrative and legislative action to reduce public exposure to fine particles in outdoor air emissions, coupled with a targeted, multi-year research program aimed at discovering which sources of particles are most responsible for the adverse health impacts of breathing fine particulate matter; and
- A letter to EPA encouraged steps to improve the utility of the data available on the environmental performance of industrial facilities. Better environmental information plays an essential role in advancing our objectives of protecting public health and the environment. The letter suggested that EPA explore several steps to enhance the practical utility of the information available to the public by establishing a single facility identification number, setting up an integrated system for reporting and access of data across multiple programs, and improving the timeliness of the availability of Toxic Release Inventory data.

Prompt letters do not have the mandatory implication of a Presidential directive. Unlike a "return letter," which is authorized by E.O. 12866, the prompt letter simply constitutes an OIRA request that an agency elevate a matter in priority, recognizing that agencies have limited resources and many conflicting demands for priority attention. The ultimate decision about priority setting remains in the hands of the regulatory agency.

. An important feature of the prompt letter can be its public nature, aimed at stimulating agency, public and congressional interest in a potential regulatory priority. Although prompt letters could be treated as confidential pre-decisional communications, OIRA believes that it was wiser to make these prompt letters publicly available in order to focus congressional and public scrutiny on the important underlying issues.

OIRA's experience with the first five prompt letters suggests that (a) preliminary dialogue between OIRA and agency staff is advisable; (b) touching base with OMB budget officials and interested EOP staff is wise; and (c) informal communication with policy officials at agencies is necessary, though it is important for OIRA to send some prompt letters that policy officials at agencies would prefer not to receive.

The original ideas for the initial five prompt letters came from OIRA personnel but there is no reason why members of the public should not suggest ideas for prompt letters to the OIRA Administrator. These suggestions can be faxed to the OIRA Administrator at (202) 395–3047 (note OIRA is still not receiving first-class mail due to the anthrax threat) or submitted in the public comment process leading to the publication of this annual report. Agencies are still responding to the first five prompt letters, but the original letters and initial agency responses are posted on OIRA's web site.

E. Overseer of Analysis and Information Quality

The public image of OIRA, insofar as one exists, is an office that concentrates on clearing, modifying, or returning specific rulemaking proposals by agencies. OIRA also plays an important role, as a result of its broad-based responsibility, for ensuring the quality of information used and disseminated by agencies, including the information posted on agency web sites, issued in routine, yet important statistical reports, and used in regulatory impact analyses.

In the Bush Administration, OIRA has taken a strong interest in improving the quality of information and analysis used and disseminated by agencies. This initiative complements a variety of the initiatives in the President's Management Agenda.

The Paperwork Reduction Act of 1980, as amended in 1995, provides OMB broad authority in the field of information policy. OMB Circular A–130, "Management of Federal Information Resources," provides structure and content to the executive branch's commitment to information dissemination.

During the Clinton Administration, concerns were raised that scientific information produced with federal financial support and used to support binding agency actions were not always available for public scrutiny and reanalysis. With new authority from Congress, OMB played an important

role, through OMB Circular A–110, in clarifying the degree of public access to such information required through the Freedom of Information Act.

In Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554), Congress further directed OMB to issue government-wide guidelines to ensure and maximize the quality of information disseminated by federal agencies. After two rounds of public and interagency comment, OMB issued these final guidelines on September 28, 2001 and January 3, 2002.[5] Each federal agency, including the independent agencies, must now issue tailored information-quality guidelines that are compatible with OMB's general guidelines. Section 515 reflects a concern by Congress that some agencies are distributing information to the public that is of questionable quality, objectivity, usefulness and security.

The OMB guidelines provide affected parties concerned about poor quality information with the opportunity to seek administrative corrections to agency information, with assurances that their complaints will be addressed in a timely manner. Although some agencies already have well-developed information quality management procedures, OMB believes agency practices are uneven and relatively little thought has been devoted to assuring the objectivity of agency responses to complaints from the public.

Improving information quality is costly and thus it is important that the value of better information to the public be considered. In this regard, the OMB guidelines draw a consequential distinction between "influential" and ordinary information, where "influential" is defined, when used in the context of "scientific, financial and statistical information," as information that the agency "can reasonably determine * * * will have or does have a clear and substantial impact on important public policies or important private sector decisions." Influential information is subject to higher quality standards by the OMB guidelines.

With several important exceptions and qualifications, the OMB guidelines require that influential information disseminated by agencies be reproducible by qualified third parties. If influential information is to be disseminated without the capability of reproduction, it is subject to some special robustness and transparency requirements. The OMB guidelines provide agencies a measure of flexibility in the interpretation and implementation of these expectations.

In order to facilitate better public and scientific input into the process of information-quality improvement, OMB has encouraged agencies to commission the National Research Council of the National Academy of Sciences to undertake several workshops aimed at assisting agencies in the development of their information quality guidelines. OMB is also organizing several interagency committees to address information quality issues that are likely to be common across two or more federal agencies. OMB will review the proposed and final information guidelines prepared by agencies pursuant to statutory mandate.

OMB's new information quality guidelines establish stricter standards for agency analyses of original data than for the data themselves. OMB believes that agencies are in a better position than OMB to establish specific quality standards for the generation of original and supporting data.

With regard to the quality of regulatory impact analyses prepared by agencies, OIRA has initiated a process of refinement to its formal analytic guidance documents. This activity, to be co-chaired by the OIRA Administrator and a member of the Council of Economic Advisors (CEA), will be supported by public comment, agency comments, and external peer review. In this draft report, OMB is seeking comment on the particular analytic issues that should be addressed in the refinement of OMB's analytic guidelines. At a minimum, OMB–CEA intend to address the following issues

- The practice of applying a 7% real discount rate to future costs and benefits;
- The methods employed to account for latency periods between exposure to toxic agents and development of chronic diseases;
- The methods employed to evaluate the risk of premature death, particularly the relative advantages and disadvantages of differing statistical approaches including the quality-adjusted-life year (QALY) approach; [6]
- The need for use of methods of risk assessment that supply central estimates of risk as well as upper and lower bounds on the true yet unknown risks;
- The need for methods of risk assessment to account for the vulnerabilities of specific subpopulations such as the children, the elderly, and the infirm; and
- Methods for valuing improvements in the health of children.

We urge public commentators and agencies to nominate additional analytic issues for consideration in this process. The ultimate guidance that emerges from this process will be used by OIRA when evaluating the regulatory proposals and analyses submitted by agencies.

F. Expanded and Diversified Professional Staff

In Supreme Court Justice Stephen Breyer's book *Breaking the Vicious Circle*, centralized regulatory oversight is viewed as a predominantly professional activity rooted in the analytical insights gleaned from tools that are taught in professional schools throughout the United States. OIRA's history and structure is based on this professional model. If OIRA were strictly a political review mechanism, there might be no need for career civil servants at OIRA. Yet the Bush Administration supports the development of a strong professional staff at OIRA to support Presidential management of the regulatory state. OMB has reviewed the situation and determined that additional allocations of staff are necessary at OIRA.

As Table 4 shows, staffing at OIRA declined steadily from a peak of 90 FTEs in 1981, when the Office was first created, to a low of 47 FTEs from 1997 to 2000. The decline occurred continuously for 20 years, through both Republican and Democratic Administrations. The decline in OIRA staffing has been steeper than the general decline experienced throughout the Office of Management and Budget. These staffing declines have occurred at the same time that OIRA has assumed new statutory responsibilities from the Congress on issues concerning unfunded mandates, paperwork reduction, small business, regulatory accounting, and information policy.

TABLE 4.—OIRA STAFF CEILING

Fiscal year	Full time equivalents ceiling
1981	90
1982	79
1983	77
1984	80
1985	75

[5] A final corrected version was published on February 22, 2002 (67 FR 8452). It is also available on our web site at <*http://www.whitehouse.gov/omb/*>.

[6] The quality-adjusted-life-year or QALY approach weights life-years extended based on criteria established by medical experts, patients, and community residents to allow comparisons of different health outcomes. See M.R. Gold, J.E. Siegel, L.B. Russell, and M.C. Weinstein, (eds.) *Cost-Effectiveness in Health and Medicine*. New York, NY, Oxford University Press, 1996.

TABLE 4.—OIRA STAFF CEILING—Continued

Fiscal year	Full time equivalents ceiling
1986	*75/69
1987	69
1988	69
1989	62
1990	65
1991	*65/60
1992	60
1993	57
1994	52
1995	50
1996	49
1997	47
1998	47
1999	47
2000	47
2001	49
2002	54

*Indicates a ceiling was reduced in mid-year.

The Bush Administration has begun to reverse the 20-year decline in OIRA staffing, adding a total of seven new OIRA positions for a total of about 54 FTEs. Four of these positions will provide new science and engineering expertise to OIRA. This will enable us to develop a more diversified pool of expertise to ask penetrating technical questions about agency proposals. It will also enable us to collaborate more effectively with our colleagues in the Office of Science and Technology Policy. The remaining positions will buttress OIRA's staffing in information technology and policy for the E-Government initiative. The new staffing will complement OIRA's historical staffing strengths in economics, policy analysis, statistics and law.

G. Facilitator of Targeted Agency Reviews of Existing Rules

There are so many federal regulations now on the books that there has never been an accurate, up-to-date count of their exact number. Since many of these rules are quite old, it is logical to suggest that existing rules be reviewed to determine whether they remain appropriate. Yet regulated entities often adapt creatively to federal rules in ways that reduce or minimize their adverse impact while fulfilling the social objective. The dynamics of post-regulation behaviors call into question the validity of efforts to simply add up the costs and benefits of existing rules based on analyses done prior to the original promulgation of rules.

Thus, any comprehensive effort to look at existing rules requires original data collection and evaluation, a resource-intensive exercise for agencies and regulated entities. Across-the-board reviews of all existing rules have been attempted in the past but have not always been particularly successful and have induced a questionable allocation of limited agency and OIRA resources. The Bush Administration believes that a targeted review process for existing rules, pursuant to public comment and new statutory authority provided to OIRA, is the best available mechanism to facilitate review of existing rules outside of the authority under the Regulatory Flexibility Act. [7]

Last year's version of this report to Congress represented OIRA's first effort to facilitate reviews of existing rules under unique statutory authority provided to OIRA. We requested that public commentators nominate specific existing rules that should be rescinded or changed to increase net benefits by either reducing costs or increasing benefits. We called for such nominations in a **Federal Register** notice that also requested public comment on a draft version of the year 2001 report to Congress. We provided a suggested format for nominations in order to facilitate organized public comment and both OIRA and agency consideration of nominations.

We believe that OIRA's first effort at targeted reviews of existing rules was partially successful but can be improved. There were a total of 71 specific nominations covering 17 agencies suggested by 33 commentators. A particularly diligent commentator, the Mercatus Center at George Mason University, submitted 44 nominations based on public filings before agencies they had been doing for several years.

OIRA evaluated these nominations and assigned each nomination to one of three categories: (1) High priority, indicating that OIRA is inclined to agree with the comment and look into the suggestion, (2) medium priority, meaning that OIRA needs more information before it can give a clear indication of priority, and (3) low priority, meaning that OIRA is not convinced of the merits of the suggestion. There were a total of 23 nominations rated by OIRA as "high priority." Appendix B to this report provides preliminary information about what agencies are doing about these 23 regulations. We intend to update this accounting of the outcome of reform nominations in our final report.

Eight of the 23 nominations address EPA rules while another five address rules that might be considered environmental in nature (i.e., those concerning DOI, DOE and USDA rules). However, a closer examination of OIRA's decision making process reveals no implicit or explicit intent to target environmental rules for scrutiny.

The distribution of nominated rules by agency reflects the concerns raised by public comments, not the interests of OIRA. Of the 71 nominations, over half (43) might be considered "environmental" regulations, a pattern that is unsurprising since federal environmental regulation is of broad public interest and a source of persistent public controversy. OIRA was quite critical in its internal evaluation of all nominations, including those in the environmental arena. Only 13 of the 33 "environmental" rule nominations were rated as "high priority" for agency reconsideration. A review of these 13 nominations reveals that some had already been established as an Administration priority for review. Few comments suggested repeal or loosening of environmental standards. The new reform ideas (*e.g.*, regarding rules under Toxic Substances Control Act (TSCA) and Resource Conservation and Recovery Act (RCRA) were modest in nature. OIRA welcomes nominations from all interested parties, including regulated entities.

Indeed OIRA desires the broadest possible public participation in the nomination process including input from environmental advocacy groups, consumer groups, and public health and safety groups. We will be taking several aggressive steps to broaden participation by these groups in coming years. OIRA will not rely exclusively on the **Federal Register** as a vehicle to publicize the request for public nominations. OIRA's website will also this opportunity. A press release will be issued to increase public awareness of nomination opportunities. OIRA welcomes all good ideas, regardless of whether or not statutory change is required, though suggestions that do not entail legislative action may receive more near-term priority.

H. Formation of a Scientific Advisory Panel to OIRA

At the suggestion of the OMB Director, OIRA is in the process of forming a scientific advisory panel that will suggest initiatives to OIRA, evaluate OIRA's ongoing activities, comment on national and international policy developments of interest to OIRA, and act as a resource and recruitment mechanism for OIRA staff. OIRA envisions that the panel will be comprised of academics with

[7] Section 610 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires agencies to review rules that have a significant economic impact on a substantial number of small entities within 10 years of their publication.

specialized expertise in economics, administrative law, regulatory analysis, risk assessment, engineering, statistics, and health and medical science. The composition and formation of the panel will comply with the guidance on competent and credible peer review mechanisms espoused by the OIRA Administrator in his September 20, 2001, memorandum to the President's Management Council.

OIRA envisions that the panel will meet twice each year in Washington, DC. Panel meetings will be open to the public. OIRA expects that the first meeting of this panel will occur this summer.

I. Agency Compliance With the Unfunded Mandates Reform Act

In last year's report to Congress "Making Sense of Regulation," OMB included its annual report to Congress on agency compliance with the Unfunded Mandates Reform Act in addition to OIRA's report on the costs and benefits of regulations. This was done because the two reports together address many of the same issues and both highlight the need for regulating in a responsible manner that both accounts for the costs and benefits of rules and takes into consideration the interests of our intergovernmental partners.

OIRA intends to continue to publish these two reports together. We are currently working with the agencies to gather data on the extent of consultations with State, local, and tribal governments through September 2001. The results of this work will appear along with a discussion of any rules that imposed and unfunded mandate (defined in the Act as expenditures of $100 million or greater) between May 2001 and October 2001 in the final report.

However, as noted in last year's report, many of our intergovernmental partners feel that they are not being consulted sufficiently on those issues that matter most to them. The Office of Management and Budget is particularly interested in what State, local, and tribal governments perceive as failures in the consultation process. We invite public comment on the two questions listed below:

1. In the examples of federal consultation described in last year's report (available at *http://www.whitehouse.gov/omb/inforeg/costbenefitreport.pdf*), was the consultation sufficient? Was it conducted at a time in the decisionmaking process when it was meaningful? Were the views of States, local governments and tribes sufficiently solicited by the agencies?

2. Are there instances other than those described in last year's report where consultation should have taken place between an agency and a State, local, or tribal government where it did not?

Responses to these two questions will be very valuable as the Administration develops policies to further the rights of State, local and tribal governments under the Unfunded Mandates Reform Act.

J. Summary Statistics on the Bush Administration's Regulatory Record

Basic statistics about regulatory transactions provide a crude indicator of the dynamics of regulatory activity at federal agencies and OIRA. In Table 15 in Appendix E, we provide a statistical comparison of regulatory transactions (total and by agency) for calendar years 1998, 1999, 2000, and 2001.

These data indicate that out of the roughly 4,500 regulatory actions that occur on average each year, about 500 are judged to be significant and a far smaller number, about 70, are judged to be economically significant. Only "significant" actions are subject to OIRA review under E.O. 12866, and only the "economically significant" rules are required to be supported by a regulatory impact analysis. Ranked by the number of E.O. reviews at OIRA, the busiest 11 regulatory agencies over the last four years are, in order: HHS, USDA, EPA, DOT, DOI, DOC, HUD, OPM, VA, DOJ, ED. Three agencies—HHS, EPA, and USDA—accounted for about 70 percent of the economically significant rules.

Chapter II: The Costs and Benefits of Federal Regulations

Section 624 of the FY 2001 Treasury and General Government Appropriations Act, the "Regulatory Right-to-Know Act," [8] requires OMB to submit "an accounting statement and associated report" including:

"(1) An estimate of the total annual costs and benefits (including quantifiable and nonquantifiable effects) of Federal rules and paperwork, to the extent feasible:

(A) In the aggregate;

(B) by agency and agency program; and

(C) by major rule;

"(2) an analysis of impacts of Federal regulation on State, local, and tribal government, small business, wages, and economic growth; and

"(3) recommendations for reform.[9]

This report revises the estimates in last year's report by updating the estimates to the end of fiscal year 2001 (September 30, 2001). We make three types of revisions. First, we include the costs and benefits of the economically significant rules reviewed by OMB between April 1, 1999 and September 30, 2001. Second, we revised our estimates and discussion of estimates based on studies and data that became available since the last report was written. Third, we updated our estimates to 2001 dollars from the 1996 dollars used in the four previous reports.

Estimates of the Total Costs and Benefits of Regulations Reviewed by OMB [10]

Table 5 presents estimates by agency of the costs and benefits of major rules reviewed by OMB over the period April 1, 1999 to September 30, 2001.[11] We reviewed 117 final major rules over that period. Of the 117 rules, 72 implemented federal budgetary programs, which caused income transfers from one group to another, and 45 imposed mandates on state and local entities or the private sector.[12] Of the 45 social regulations, we are able to present estimates of both monetized costs and benefits for 19 rules.[13] Seven agencies issued major regulations adding from $32 billion to $53 billion annual benefits and from $15 billion to $18 billion annual costs over the 30 month period. About 80% of the benefits and 70% of the costs were from one agency, EPA. Table 6 presents estimates for six and a half years by expanding the period covered by Table 5 back by four years to April 1, 1995.[14] Before April 1, 1995, OMB did not systematically

[8] 31 U.S.C. 1105 note, Pub. L. 106–554, § 1(a)(3) [Title VI, § 624], Dec. 21, 2000, 114 Stat. 2763, 2763A–161. (See Appendix F).

[9] Recommendations for reform are discussed in Chapter IV.

[10] In our previous four reports, we presented detailed discussions about the difficulty of estimating and aggregating the costs and benefits of different regulations over long time periods and across many agencies. We do not repeat those discussions here. Our previous reports are on our website at *<http://www.whitehouse.gov/omb/inforeg/regpol.html>*.

[11] The list of major rules and their individual cost and benefit estimates and discussion of the assumptions and calculations used to derive the estimates are in Appendix D.

[12] Rules that transfer Federal dollars among parties are not included because transfers are not social costs or benefits. If included, they would add equal amounts to benefits and costs.

[13] We used agency estimates where available. If an agency quantified estimates but did not monetize, we used standard assumptions to monetize as explained in Appendix D.

[14] Table 6 is the sum of Table 5 in this report and Table 5 from the 2000 report (OMB 2000) after converting to 2001 dollars and excluded three regulations to prevent double counting: emission standards for heavy duty engines and the NAAQS ozone and particulate matter rules. These calculations are explained in Appendix D. Two other rules reviewed by OMB are not included: OSHA's ergonomics rule that was overturned under the Congressional Review Act and FDA's tobacco rule that was overturned by the Supreme Court.

estimate and sum the benefits of major rules.

TABLE 5.—ESTIMATES OF THE ANNUAL COSTS AND BENEFITS OF MAJOR RULES, APRIL 1, 1999 TO SEPTEMBER 30, 2001

[Millions of 2001 dollars]

Agency	Costs	Benefits
Agriculture	814	<1.
DOE	1,520	3,110.
HHS	2,400	5,792.
HUD	150	190.
DOL	78	167.
DOT	400 to 1,600	140 to 2,000.
EPA	10,742 to 12,302	23,738 to 43,491.
Total	16,104 to 19,264	33,137 to 54,350.

TABLE 6.—ESTIMATES OF THE ANNUAL COSTS AND BENEFITS OF MAJOR RULES, APRIL 1, 1995 TO SEPTEMBER 30, 2001

[Millions of 2001 dollars]

Agency	Costs	Benefits
Agriculture	2,249 to 2,271	2,938 to 5,989.
Ed	362 to 610	655 to 814.
DOE	1,836	3,991 to 4,059.
HHS	2,988 to 3,067	8,165 to 9,182.
HUD	150	190.
DOL	361	1,173 to 3,557.
DOT	1,756 to 3,808	2,400 to 4,312.
EPA	41,523 to 42,326	29,140 to 66,092.
Total	51,225 to 54,429	48,652 to 67,602.

We provide revised estimates of the aggregate costs and benefits of social regulation (health, safety and environmental regulation) in the aggregate and by major program as of September 30, 2001, in Appendix C.[15] We also include estimates of the aggregate costs of economic and process regulation in Appendix C.[16] We include these aggregate estimates in the appendix rather than the text to emphasize the quality differences in the two sets of estimates. The estimates of the costs and benefits of Federal regulations over the period April 1, 1995 to March 31, 2001, are based on agency analyses subject to public notice and comments and OMB review under E.O. 12866. The estimates in the Appendix for earlier regulations are based on studies of varying quality. Some are first-rate studies published in peer reviewed journals. Others are non random surveys of questionable methodology. And some estimates are based on studies completed 20 years ago for regulations issued over 30 years ago, whose precise cost and benefit estimates today are unknown.

Also included in Appendix C is an analysis of impacts of Federal regulation on State, local, and tribal governments, small business, wages, and economic growth, as required by Section 624(a)(2) of the Act.

Estimates of Benefits and Costs of This Year's "Major" Rules

In this section, we examine the benefits and costs of each "major rule," as required by section 624(a)(1)(C). We have included in our review those final regulations on which OMB concluded review during the 18-month period April 1, 2000, through September 30, 2001. We used an 18 month period this year to transition to a fiscal year reporting period. The four previous reports used a "regulatory year," ending on March 31st.

The statutory language categorizing the rules we consider for this report differs from the definition of "economically significant" in Executive Order 12866 (section 3(f)(1)). It also differs from similar statutory definitions in the Unfunded Mandates Reform Act and subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996—Congressional Review of Agency Rulemaking. Given these varying definitions, we interpreted section 624(a)(1)(C) broadly to include all final rules promulgated by an Executive branch agency that meet any one of the following three measures:

- Rules designated as "economically significant" under section 3(f)(1) of Executive Order 12866
- Rules designated as "major" under 5 U.S.C. 804(2) (Congressional Review Act)
- Rules designated as meeting the threshold under Title II of the Unfunded Mandates Reform Act (2 U.S.C. 1531–1538)

We also include a discussion of major rules issued by independent regulatory agencies, although OMB does not review these rules under Executive Order 12866. This discussion is based on data provided by these agencies to the General Accounting Office (GAO) under the Congressional Review Act that met the criteria noted above. Of these rules, USDA submitted nineteen; the DOC, DOE, Social Security Administration, and Federal Emergency Management Administration, each submitted three; HHS twenty-two; DOL eight; Treasury, DOJ, Architectural and Transportation Barriers Compliance Board (ATBCB), DoD, the Office Federal Housing Enterprise Oversight, Veterans Administration, Office of Personnel Management each submitted one; DOI five; DOT four; EPA seven; SBA and

[15] We calculated these estimates by adding the estimates in Table 5 above to Table 4 of the 2000 OMB report and updating Table 4's 1996 dollars to 2001 dollars using the CPI.

[16] Economic regulation restricts the price or quantity of a product or service that firms produce including whether firms can enter or exit specific industries.

FAR two. One of these rules was a common rule issued by three agencies-DOL, HHS and Treasury. These 86 rules represent less than 20 percent of the final rules reviewed by OMB during this period.

Social Regulation

Of the 86 economically significant rules reviewed by OMB, 34 are regulations requiring substantial additional private expenditures and/or providing new social benefits as described in Table 7. EPA submitted seven; DOI, DOL and HHS each submitted five; USDA, DOC, DOE each submitted three; DOT two; DOJ, Treasury and ATBCB each submitted one. Agency estimates and discussion are presented in a variety of ways, ranging from a mostly qualitative discussion, for example, the USDA's National Organic Program rule where all of the benefits and costs except for the recordkeeping component were discussed qualitatively, to a more complete benefit-cost analysis such as the EPA's heavy-duty engine and vehicle rule.

TABLE 7.—SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/00–9/30/01
[As of date of completion of OMB review]

Agency	Rule	Benefits	Costs	Other information
USDA	Roadless Area Conservation	Estimated $219,000/year cost savings from reduced road maintenance activities.	Loss of $56.9 million (direct) and $164 million (total) per year in the short term, with an additional impact of $12.4 million (direct) and $20.2 million (total) per year in the long term.	Monetized costs include an estimated 1,054 direct and 4,032 total jobs lost related to road construction, timber harvesting, and mining in the short term, with an additional 308 direct and 509 total jobs lost in the long term. [66 FR 3268—3269] Other costs include the following: "about 873 million tons of phosphate and 308—1,371 million tons of coal would likely be unavailable for development. About 11.3 trillion cubic feet of undiscovered gas and 550 million barrels of undiscovered oil resources may be unavailable." [66 FR 3269] A variety of other nonquantified benefits were mentioned in the preamble to the final rule.
USDA	National Organic Program	Not estimated	$13 million/yr for record-keeping; others not estimated.	Because basic market data on the prices and quantities of organic goods and the costs of organic production are limited, it is not possible to provide quantitative estimates of all benefits and costs of the final rule. Consequently, the analysis does not estimate the magnitude or the direction (positive or negative) of net benefits." [65 FR 80663]
USDA	Retained Water in Raw Meat and Poultry Products.	Not estimated	$110 million	"Consumers will benefit from the additional information on retained water that will be provided as a result of the labeling requirement. The information on retained water should contribute to a sounder basis for purchasing decisions. Consumers are currently not being informed about the amount of retained water. Consumers will benefit from having improved knowledge of product quantity in terms of meat or poultry meat content." [66 FR 1768]
DOC	Annual Framework Adjustment (framework 14) for the Atlantic sea scallop fishery management plan for 2001.	Not estimated	Not estimated.	
DOC	Closure of Critical Habitat Pursuant to a Court Order.	Not estimated	Up to $88 million	"NMFS estimates that the potential economic losses in closing critical habitat to pollock trawling from June through December 2000 could be as high as $88 million. Industry has estimated that if the injunction remains in place through the A/B seasons, loses could be as high as $250 million." [65 FR 49769]
DOC	Steller Sea Lion Protection Measures for the Groundfish Fisheries Off Alaska.	Not estimated	Not estimated	"NMFS issues an emergency interim rule to implement Steller sea lion protection measures to avoid the likelihood that the groundfish fisheries off Alaska will jeopardize the continued existence of the western population of Steller sea lions or adversely modify its critical habitat. These management measures will disperse fishing effort over time and area and provide protection from fisheries competition for prey in waters adjacent to rookeries and important haulouts".[66 FR 7276]
DOE	Energy Conservation Standards for Fluorescent Lamp Ballasts.	$3.51 billion (present value) in energy savings between 2005 and 2030.	$.9 billion (present value) for purchases between 2005 and 2030.	DOE projects a cumulative reduction in nitrogen oxide emissions of 59.6 thousand metric tons (undiscounted) over the period 2005–2030 and a cumulative reduction in carbon dioxide equivalent emissions of 19 million metric tons (undiscounted) over the period 2005–2020.
DOE	Energy Conservation Standards for Water Heaters.	$8.6 billion (present value) in energy savings between 2004 and 2030.	$6.4 billion (present value) for purchases between 2004 and 2030.	DOE projects a cumulative reduction in nitrogen oxide emissions of 90 thousands metric tons discounted over the period 2004–2030 and a cumulative reduction in carbon dioxide equivalent emissions of 50 million metric tons discounted over the period 2004–2020.
DOE	Energy Conservation Standards for Clothes Washers.	$27.2 billion (present value) in energy and water savings between 2004 and 2030.	$11.9 billion (present value) for purchases between 2004 and 2030.	DOE projects a cumulative reduction in nitrogen oxide emissions of 70.8 thousand metric tons discounted over the period 2004–2030 and a cumulative reduction in carbon dioxide equivalent emissions of 24.1 million metric tons discounted over the period 2004–2020.
HHS	Health Insurance Reform: Standards for Electronic Transactions.	$36.9 billion over 10 years	$7 billion over 10 years	"The costs of implementing the standards specified in the statute are primarily one-time or short-term costs related to conversion. These costs include system conversion/upgrade costs, start-up costs of automation, training costs, and costs associated with implementation problems. These costs will be incurred during the first three years of implementation * * * The benefits of EDI include reduction in manual data entry, elimination of postal service delays, elimination of the costs associated with the use of paper forms, and the enhanced ability of participants in the market to interact with each other." [65 FR 50351] The discounted present value of the savings is $19.1 billion over ten years. Furthermore, the updated impact analysis still produces a conservative estimate of the impact of administrative simplification. For example, the new impact analysis assumes that over the ten-year post-implementation period, only 11.2% of the growth in electronic claims will be attributable to HIPAA." [65 FR 50355]
HHS	Safe and Sanitary Processing and Importing of Juice.	$151 monthly/yr	$44 million to $55 million in the first year and $23 million/yr thereafter.	"The quantified benefits (discounted annually over an infinite time horizon at 7 percent) are expected to be about $2 billion ($151 million/7 percent) and the quantified costs (discounted annually over an infinite time horizon at 7 percent) are expected to be about $400 million." [66 FR 6190]

TABLE 7.—SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/00–9/30/01—Continued
[As of date of completion of OMB review]

Agency	Rule	Benefits	Costs	Other information
HHS	Standards for Privacy of Individually Identifiable Health Information.	Net present value savings of $19 billion.	Net present value costs of $11.8 billion.	The Rule shows a net savings of $29.9 billion over 10 years (2002–2011), or a net present value savings of $19 billion. This estimate does not include the growth in "e-health" and "e-commerce" that may be spurred by the adoption of uniform codes and standards. This final Privacy Rule is estimated to produce net costs of $18.0 billion, with net present value costs of $11.8 billion (2003 dollars) over ten years (2003–2012). This estimate is based on some costs already having been incurred due to the requirements of the Transactions Rule, which included an estimate of a net savings to the health care system of $29.9 billion over 10 years (2002 dollars) and a net present value of $19.1 billion. The Department expects that the savings and costs generated by all administrative simplification standards should result in a net savings to the health care system. [65 FR 82761]
HHS	Labeling of Shell Eggs	$261 million/yr	$56 million in the first year. $10 million/yr. thereafter.	"Although there were no comments directly on the estimated benefits, several comments argued that FDA used too high a baseline number of SE illnesses. In addition, some comments cited new data from CDC on SE. In the economic analysis in the proposal, FDA used the results of the USDA SE risk assessment for one estimate of the baseline risk and the CDC Salmonella surveillance data for another estimate of the baseline." [65 FR 76105] "The agency estimated the median benefits attributable to labeling alone to be $261 million using the USDA SE risk assessment baseline and $103 million using the CDC surveillance baseline." [65 FR 76106]
HHS/DOL/Treasury.	Nondiscrimination in Health Coverage in the Group Market.	Not estimated	A one time cost of $19 million the first year for affected businesses, plus $10.2 million annually for government enforcement.	"The premium and claims cost incurred by group health plans to provide coverage under HIPAA's statutory nondiscrimination provisions to individuals previously denied coverage or offered restricted coverage based on health factors are offset by the commensurate or greater benefits realized by the newly eligible participants on whose behalf the premiums or claims are paid." [66 FR 1389]
DOI	Early-Season Migratory Bird Hunting Regulations 2000–2001.	$50 million to $192 million/yr.	Not estimated	The analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $429 million and $1,084 million at small businesses [66 FR 49485]. The listed benefits represent estimated consumer surplus.
DOI	Late Season Migratory Game Bird Hunting regulations 2000–2001.	$50 million to $192 million/yr.	Not estimated	The analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $429 million and $1,084 million at small businesses [66 FR 49485]. The listed benefits represent estimated consumer surplus.
DOI	Early-Season Migratory Bird Hunting Regulations 2001–2002.	$50million to $192 million/yr.	Not estimated	The analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $429 million and 1,084 million at small businesses [66 FR 49485]. The listed benefits represent estimated consumer surplus.
DOI	Late season Migratory Game Bird Hunting regulations 2001–2002.	$50 million to $192 million/yr.	Not estimated	The analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $429 million and $1,084 million at small businesses [66 FR 49485]. The listed benefits represent estimated consumer surplus.
DOI	Mining Claims under the General Mining Law; Surface Management.	Not estimated	Enforcement and administrative costs of $15.6 million annually ($1999); foregone production between 0 and $133 million per year.	"* * * these values may overstate actual losses because a number of factors will act to mitigate any production losses and because they are calculated using a base of total U.S. gold production, not production originating from public lands. Simply adjusting for production originating on public lands could reduce the value of forgone production by half." [65 FR 70101]
DOJ	Adjustment of Status to That Person Admitted for Permanent Residence.	Not estimated	$178 million in 2001, $99.2 million in 2002, and 91.9 million in 2003.	"This rule adds the new sunset date of April 30, 2001, for the filing of qualifying petitions or applications that enable the applicant to apply to adjust status using section 245(i) of the Act, clarifies the effect of the new sunset date on eligibility, and discusses motions to reopen." [66 FR 16383]
DOL	Ergonomics Program	$9.1 billion/yr. (1996 dollars)	$4.5 billion/yr (1996 dollars)	"The cost analysis does not account for any changes in the economy over time, or for possible adjustments in the demand and supply of goods, changes in production methods, investment effects, or macroeconomic effects of the standard." [65 FR 68773]
DOL	Occupational Injury and Illness Recording and Reporting Requirements.	Not Estimated	$38.6 million	Qualitative benefits of the rule include: (1) Enhanced ability of employers and employees to prevent injuries and illnesses, and (2) Increased utility of and data to OSHA.
DOL	Safety Standards for Steel Erection.	22 fatalities and 1,142 injuries per year.	$78.4 million/year	OSHA estimates that, of the 35 annual steel erection fatalities, 8 fatalities will be averted by full compliance with the existing standard and that an additional 22 fatalities will be averted by compliance with the final standard. Additionally, of the 2,279 lost-workday steel erection injuries occurring annually, OSHA estimates that 1,142 injuries will be averted by full compliance with the existing and final standards [66 FR 5199] OSHA projects that full compliance with the final standard will, after deducting costs incurred to achieve compliance with the existing standard, result in net (or incremental) annualized costs of $78.4 million for affected establishments. [66 FR 5251]

TABLE 7.—SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/00–9/30/01—Continued
[As of date of completion of OMB review]

Agency	Rule	Benefits	Costs	Other information
DOL	Amendments to Summary Plan Description Regulations.	Not estimated	$47 million in 2001, $208 million in 2002, $24 million/yr. thereafter.	"The regulation will ensure that participants have better access to more complete information about their benefit plans. Such information is important to participants' ability to understand and secure their rights under their plans at critical decision points, such as when illness arises, when they must decide whether to participate in a plan, or when they must determine which benefit package option might be most suitable to individual or family needs." "Improved information is expected to promote efficiency by fostering competition based on considerations beyond pricing alone, and by encouraging providers to enhance quality and reduce costs for value-conscious consumers. Complete disclosure will limit competitive disadvantages that arise when, for example, incomplete or inaccurate information on different benefit option packages is used for decision making purposes. Information disclosure also promotes accountability by ensuring adherence to standards. Equally importantly, information disclosure under the SPD regulation, if combined with additional disclosures pertaining to plan and provider performance, and with other health system reforms that promote efficient, competitive choices in the health care market, could yield even greater benefits." [65 FR 70234]
DOT	Light Truck Average Fuel Economy Standard, Model Year 2003.	Not estimated	Not estimated.	
DOT	Advanced Airbags	-233 to 215 fatalities and 1,966 to 2,388 nonfatal injuries prevented and $.2 billion to $1.3 billion in reduced property damage/yr.	$400 million to $2 billion/yr	Benefit estimates are undiscounted.
ATBCB	Electronic Information Technology Accessibility Standards.	Not estimated	$177–1,068 million/yr. in $2000.	The federal proportion of the costs will range from $85 million to $691 million.
EPA	Identification of Dangerous Levels of Lead.	$45 billion to 176 billion (present value over 50 years).	$70 billion (present value over 50 years).	"The upper benefit estimate is obtained using the IEUBK model while the lower benefit estimate is obtained using the empirical model." [66 FR 1235] EPA calculated present values using a 3 percent discount rate.
EPA	Lead and Lead Compounds: Lowering of Reporting Thresholds; Community Right-to-Know Toxic Chemical Release Reporting.	Not Estimated	$80 million in first year; $40 million in subsequent years.	Benefits include more information about environmental releases of lead and lead compounds and promotion of pollution prevention.
EPA	Revisions to the Water Quality Planning and Management Regulation.	Not estimated	$23 million/yr ($2000) annualized over 10 yrs.	EPA believes that these regulations will benefit human health and the environment by establishing clear goals for identification of impaired waterbodies and establishment of TMDLs and establishing priorities for clean-up. [65 FR 43586]
EPA	Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring.	$140–198 million/yr	$206 million/yr	"EPA was not able to quantify many of the health effects potentially associated with arsenic due to data limitations. These health effects include other cancers such as skin and prostate cancer and non-cancer endpoints such as cardiovascular, pulmonary, and neurological impacts." [66 FR 7012] The benefit estimates do not account for significant time lags between reduced exposure and reduced incidence of disease.
EPA	Control of emissions of air pollution from 2004 and later model year highway heavy-duty engines; revision of light-duty truck definition.	Reduced emissions of 2.5 million tons/year nitrogen oxides, 167,000 tons/year nonmethane hydrocarbons, 11160 tons/year air toxics (benzene, formaldehyde, acetaldehyde, 1,3-butadiene).	$479 million/yr.	
EPA	Heavy-Duty Engine and Vehicle Standards.	$70.4 billion in 2030 (1999$)	$4.3 billion in 2030 (1999$)	Benefit and cost estimates are annualized to the year 2030.
EPA	National emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources.	$280 million to $370 million/yr ($1999).	$240 million in capital costs and then $30 million annually ($1999).	"Implementation is expected to reduce emissions of HAP, PM, VOC, CO, and SO2, while it is expected to slightly increase emissions of NOX. Such pollutants can potentially cause adverse health effects and can have welfare effects, such as impaired visibility and reduced crop yields. (In the benefits analysis, we have not conducted detailed air quality modeling to evaluate the magnitude and extent of the potential impacts from individual pulp and paper facilities. Nevertheless, to the extent that emissions from these facilities cause adverse effects, this final rule would mitigate such impacts". [66 FR 3189])

TRANSFER RULES

Dept. of Agriculture (USDA)

Agricultural Disaster and Market Assistance
2000 Crop Agricultural Disaster and Market Assistance
Market Assistance for Cottonseed, Tobacco, and Wool and Mohair
Bioenergy Program
Farm Storage Facility Loan Program
Wool, Mohair, and Apple Market Loss Assistance Programs
Dairy, Honey, and Cranberry Market Loss Assistance and Sugar Programs
Livestock Assistance, American Indian Livestock Feed, Pasture Recovery, and Dairy Price Support Programs
2000 Crop Disaster Program
Catastrophic Risk Protection Endorsement
Food Stamp Program: Recipient Claim Establishment and Collection Standards
National School Lunch and School Breakfast Program: Additional menu Planning Approaches
Requirements for and Evaluation of WIC Program Bid Solicitations for Infant Formula Rebate Contracts
Non-Discretionary Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996
Non-Citizen Eligibility and Certification Provisions of Public Law 104–193
Food Stamp Program: Personal Responsibility Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

Dept. of Defense

Tricare: Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), NDAA for FY 2001 and Pharmacy Benefits Program
Dept. of Health and Human Services (HHS)

TABLE 7.—SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/00–9/30/01—Continued
[As of date of completion of OMB review]

Agency	Rule	Benefits	Costs	Other information
	Medicare Program: Medicare + Choice			
	Prospective Payment System for Home Health Agencies			
	Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities			
	Medicare Program: Hospital Inpatient Payments and Rates and Costs of Graduate Medical Education (1999)			
	Medicare Program: Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2001 Rates			
	Medicare Program: Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2001			
	Medicare Program: Expanded Coverage for Outpatient Diabetes			
	Prospective Payment System for Hospital Outpatient Services			
	Revision to Medicaid Upper Payment Limit Requirements for Inpatient Hospital Services			
	Medicaid Program: Medicaid Managed Care			
	Medicaid Program: Change in Application of Federal Financial Participation Limits			
	Medicare Program: Inpatient Payments and Rates and Costs fo Graduate Medical Education (2000)			
	Medicare Program: Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update			
	Medicare Program: Prospective Payment System for Inpatient Rehabilitation Hospital Services			
	Medicare Program: Changes to the Hospital Inpatient Prospective Payment Systems and Rates and Costs fo Graduate Medical Education for Fiscal Year 2002			
	Modification of the Medicaid Upper Payment Limit Transition Period for Hospitals, Nursing Facilities, and Clinic Services			
	State Child Health; Implementing Regulations for the State Children's Health Insurance Programs			
Social Security Administration				
	Supplemental Security Income: Determining Disability for a Child Under Age 18			
	Revised Medical Criteria for Determination of Disability, Musculoskeletal System and Related Criteria			
	Collection of the Title XVI Cross-Program Recovery			
The Office of Federal Housing Enterprise Oversight				
	Risk-based Capital			
Department of Labor				
	Government Contractors, Affirmative Action Requirements			
	Claims for Compensation Under the Energy Employees Occupational Illness Compensation Program Act			
	Procedures for Predetermination of Wage Rates; Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction and to Certain Nonconstruction Contracts ("Helpers")			
	Birth and Adoption Unemployment Compensation			
Dept. of Transportation				
	Safety Incentive Grants for the Use of Seatbelts			
	Amendment of Regulations Governing Railroad Rehabilitation and Improvement Financing Program			
Veterans Administration				
	Disease Associated with Exposure to Certain Herbicide Agents: Type 2 diabetes			
Federal Emergency Management Administration				
	Supplemental Property Acquisition and Elevation Assistance			
	Disaster Assistance: Cerro Grande Fire Assistance			
	Supplemental Property Acquisition and Elevation Assistance			
Small Business Administration				
	Small Business Size Standards: General Building Contractors, etc.			
	New Market Venture Capital Program			
Office of Personnel Management				
	Health Insurance Premium Conversion			
Federal Acquisition Regulation (FAR)				
	Electronic Commerce in Federal Procurement: FAR case 1997–304			
	Electronic Commerce and Information Technology Accessibility: FAR case 1999–607			
Securities and Exchange Commission (SEC)				
	Disclosure of Mutual Fund After-Tax Returns			
	Privacy of Consumer Financial Information (Regulation S–P)			
	Selective Disclosure and Insider Trading			
	Unlisted Trading Privileges			
	Disclosure of Order Execution and Routing Practices			
	Revision of the Commission's Auditor Independence Requirements			
Federal Trade Commission (FTC)				
	Privacy of Consumer Financial Information			
Federal Communications Commission (FCC)				
	Promotion of Competitive Networks in Local Telecommunications Markets			
	Competitive Bidding Procedures			
	Installment Payment Financing for Personal Communications Services (PCS) Licensees			
	Assessment and Collection of Regulatory Fees for Fiscal Year 2000			
	Narrowband Personal Communications Services; Competitive Bidding			
	24 Ghz Service; Licensing and Operation			
	Extending Wireless Telecommunications Services to Tribal Lands			
	Assessment and Collection of Regulatory Fees for Fiscal Year 2001			
Nuclear Regulatory Commission				
	Revision of Fee Schedules; 100% Fee Recovery			
	Emergency Core Cooling System Evaluation Models			
	Revision of Fee Schedules; Fee Recovery for FY 2001			
Federal Reserve System				
	Privacy of Consumer Financial Information			

1. Benefits Analysis

Agencies monetized at least some benefit estimates for 19 of the 34 rules including: (1) EPA's estimate of $70.4 billion in 2030 primarily from reduced PM exposure from diesel fuel; (2) DOE's present value estimate of $8.6 billion from 2004 through 2030 in energy savings from water heater energy conservation; and (3) DOI's estimate of $50 million to $192 million per year in benefits from its migratory bird hunting

regulations. In one case, the agency provides some of the benefit estimates in monetized and quantified for, but discusses other benefits qualitatively. Namely, USDA estimated that the Roadless Area Conservation rule will save $219,000 per year from reduced road maintenance but did not quantify the benefits associated with projected increases in air and water quality and biodiversity. In three cases, the agencies did not monetize all of the quantified benefits. For example, DOE quantified and monetized the energy saving benefits from its three energy conservation standards, but did not monetize the projected reductions in nitrogen oxide emissions. In 14 cases, agencies did not report any quantified or monetized benefit estimates.

2. Cost Analysis

For 26 of the 34 rules, agencies provided monetized cost estimates. These include such items as HHS's estimate of $56 million in the first year and $10 million annually thereafter as the cost of labeling shell eggs. For the remaining seven rules, DOI's four migratory bird hunting rules, DOC's two emergency fishery management rules, and DOT's light truck fuel economy rule, the agencies did not estimate costs

3. Net Monetized Benefits

Twelve of the 34 rules provided at least some monetized estimates of both benefits and costs. Of these, the estimated monetized benefits of nine of the rules unambiguously exceed the estimated monetized costs. The magnitude of the net benefits vary from less than $100 million per year to $66 billion per year. Two rules have negative net monetized benefits with variation ranging from approximately $10 million per year to $70 million per year. One rule yielded an estimate that included the possibility of positive or negative net benefits. EPA estimated that the expected benefits from identifying dangerous levels of lead range from $45 billion to $176 billion over 50 years depending on the underlying model, resulting in the net benefit estimates ranging from -$25 billion to $106 billion.

The presentation of the monetized benefits and costs varied. Five rules presented both benefits and costs in present value terms, whereas two rules used annualized forms. Four rules presented the estimated benefits in annualized forms and the costs in annual form. This distinction is important since annualized form smooths the projected streams of benefits and costs evenly over a period of time while the annual form does not. The annual form allows the reader to glean information on not only how much benefits and costs are likely to accrue but when.

4. Rules Without Quantified Effects

Three of the rules in Table 7 are classified as economically significant even though the agency did not provide any quantified estimates their effects.

DOC—Steller Sea Lion Protection Measures for the Groundfish Fisheries Off Alaska: Based upon publicly available information, OMB determined that rules covering these species were major.

DOC—Annual Framework Adjustment (framework 14) for the Atlantic Sea Scallop Fishery Management Plan for 2001: Based upon publicly available information, OMB determined that rules covering these species were major.

DOT—Light Truck CAFÉ: For each model year, DOT must establish a corporate average fuel economy (CAFÉ) standard for light trucks, including sport-utility vehicles and minivans. (DOT also sets a separate standard for passenger cars, but is not required to revisit the standard each year.) For the past five years, however, appropriations language has prohibited NHTSA from spending any funds to change the standards. In effect, it has frozen the light truck standard at its existing level of 20.7 miles per gallon (mpg) and has prohibited NHTSA from analyzing effects at either that or alternative levels. Although DOT did not estimate the benefits and costs of the standards, the agency's experience in previous years indicates that they may be substantial. Over 5 million new light trucks are subject to these standards each year, and the 20.7 mpg standard is binding on several manufacturers. In view of these likely, substantial effects, we designated the rule as economically significant even though consideration of the effects was prohibited by law.

Transfer Regulations

Of the 86 rules listed in Table 7, 53 implement Federal budgetary programs. The budget outlays associated with these rules are "transfers" to program beneficiaries. Of the 53, 16 are USDA rules in which 10 are crop assistance and disaster aids for farmers and 6 are food stamp program rules. HHS promulgated 17 rules implementing Medicare and Medicaid policy. The Social Security Administration and Federal Emergency Management Agency each promulgated three rules. DOL promulgated four rules including two on compensation programs on occupational illness and paid leave for birth and adoption. DOT, SBA and FAR each finalized two rules, one of which promotes safety incentive grants for seatbelt use. DoD, the Office of Federal Housing Enterprise Oversight, Veterans Administration, and the Office of Personnel Management each finalized one rule.

Major Rules for Independent Agencies

The congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (SBREFA) require the General Accounting Office (GAO) to submit reports on major rules to the committees of jurisdiction, including rules issued by agencies not subject to Executive Order 12866 (the "independent" agencies). We reviewed the information on the costs and benefits of major rules contained in GAO reports for the period of April 1, 2000 to September 30, 2001.

GAO reported that five independent agencies issued nineteen major rules during this period. Two agencies did not conduct benefit-cost analyses. Three agencies considered benefits and costs of the rules. OIRA lists the agencies and the type of information provided by them (as summarized by GAO) in Table 8. Securities and Exchange Commission and Federal Trade Commission consistently considered benefits and costs in their rulemaking processes while Federal Communications Commission did not prepare benefit-cost analyses.

In comparison to the agencies subject to E.O. 12866, the independent agencies provided relatively little quantitative information on the costs and benefits of the major rules. As Table 8 indicates, eight of the 19 rules included some discussion of benefits and costs. Six of the 19 regulations had monetized cost information; three regulations monetized benefits. However, it is difficult to discern whether the rigor and the extent of the analyses conducted by the independent agencies are similar to those agencies subject to the Executive Order.

Chapter III: Regulatory Governance Abroad

As a special feature, this year's Annual Report to Congress on the Costs and Benefits of Regulation includes information on regulatory governance developments in other developed countries. The information is drawn from reports from the Organisation for Economic Co-operation and Development (OECD), Asian Pacific Economic Cooperation, (APEC) and the European Commission (EC) and supplemented by insights drawn from

OIRA discussions with OECD, APEC, and EC officials.

TABLE 8.—RULES FOR INDEPENDENT AGENCIES (APRIL, 2000–SEPTEMBER, 2001)

Agency	Rule	Information on costs or benefits	Monetized costs	Monetized benefits
Federal Communications Commission	Narrowband personal communications services.	No	No	No.
Federal Communications Commission	Assessment and collection of regulatory fees for fiscal year 2000.	No	No	No.
Federal Communications Commission	Extending wireless telecommunications services to tribal lands.	No	No	No.
Federal Communications Commission	Installment payment financing for personal communications services (PCS) licensees.	No	No	No.
Federal Communications Commission	Competitive bidding procedures	No	No	No.
Federal Communications Commission	24 Ghz Service; Licensing and operation	No	No	No.
Federal Communications Commission	Promotion of competitive networks in local telecommunications markets.	No	No	No.
Federal Communications Commission	Assessment and collection of regulatory fees for fiscal year 2001.	No	No	No.
Federal Reserve System	Privacy of consumer financial information	No	No	No.
Federal Trade Commission	Privacy of consumer financial information	Yes	No	No.
Nuclear Regulatory Commission	Emergency core cooling system evaluation models.	Yes	Yes	Yes.
Nuclear Regulatory Commission	Revision of fee schedules; 100% fee recovery, FY 2000.	No	No	No.
Nuclear Regulatory Commission	Revision of fee schedules; Fee recovery for FY 2001.	No	No	No.
Securities and Exchange Commission	Privacy of consumer financial information	Yes	Yes	No.
Securities and Exchange Commission	Selective disclosure and insider trading	Yes	Yes	No.
Securities and Exchange Commission	Unlisted trading privileges	Yes	No	No.
Securities and Exchange Commission	Disclosure of order execution and routing practices.	Yes	Yes	Yes.
Securities and Exchange Commission	Revision of the commission's auditor independence requirements.	Yes	Yes	Yes.
Securities and Exchange Commission	Disclosure of mutual fund after-tax returns	Yes	Yes	No.

OECD Activities

The OECD consists of 30 democracies with advanced, market economies, in Western Europe, North America, Australia, New Zealand, Japan, and Korea. As an integral part of its mission, OECD's Public Management program (PUMA) assists governments with the "tools" and "rules" of good governance to build and strengthen effective, efficient and transparent government structures.

The OECD countries have developed, through OECD's PUMA activities, a systematic approach to evaluating the quality of national regulatory management programs. In its 1997 report, OECD reported that the number of countries with such programs has grown from three or four in 1980 to almost all 30 OECD countries today. The international public debate about regulatory improvement has been transformed from a discussion about whether regulatory reform programs should be adopted to a debate about what specific measures should be implemented to improve regulatory performance.

In 1995 the OECD published the first internationally accepted set of principles on ensuring regulatory quality: the Recommendation of the Council of the OECD on Improving the Quality of Government Regulation. We have reproduced these principles in Box 1. OECD reports that experience in member countries reveals that an effective regulatory management system requires three basic components: a regulatory policy adopted at the highest political level; explicit and measurable standards for regulatory quality; and a continuing regulatory management capacity. Countries vary in how well they provide these components, which OECD considers as mutually reinforcing in their impact on the quality of regulatory governance.

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Box 1. The OECD Reference Checklist for Regulatory Decision-making

- **Is the problem correctly defined?**

The problem to be solved should be precisely stated, giving evidence of its nature and magnitude, and explaining why it has arisen (identifying the incentives of affected entities).

- **Is government action justified?**

Government intervention should be based on explicit evidence that government action is justified, given the nature of the problem, the likely benefits and costs of actions (based on a realistic assessment of government effectiveness), and alternative mechanisms for addressing the problem.

- **Is regulation the best form of government action?**

Regulators should carry out, early in the regulatory process, an informed comparison of a variety of regulatory and non-regulatory policy instruments, considering relevant issues such as costs, benefits, distributional effects and administrative requirements.

- **Is there a legal basis for regulation?**

Regulatory processes should be structured so that all regulatory decisions rigorously respect the "rule of law; that is responsibility should be explicit for ensuring that all regulations are authorized by higher level regulations and consistent with treaty obligations, and comply with relevant legal principles such as certainty, proportionality and applicable procedural requirements.

- **What is the appropriate level (or levels) of government for this action?**

Regulators should choose the most appropriate level of government to take action, or if multiple levels are involved, should design effective systems of co-ordination between levels of government.

- **Do the benefits of regulation justify the costs?**

Regulators should estimate the total expected costs and benefits of each regulatory proposal and of feasible alternatives, and should make the estimates available in accessible format to decision-makers. The costs of government action should be justified by its benefits before action is taken.

- **Is the distribution of effects across society transparent?**

To the extent that distributive and equity values are affected by government intervention, regulators should make transparent the distribution of regulatory costs and benefits across social groups.

- **Is the regulation clear, consistent, comprehensible and accessible to users?**

Regulators should assess whether rules will be understood by likely users, and to that end should take steps to ensure that the text and structure of rules are as clear as possible.

- **Have all interested parties had the opportunity to present their views?**

Regulations should be developed in an open and transparent fashion, with appropriate procedures for effective and timely input from interested parties such as affected businesses and trade unions, other interested groups, or other levels of government.

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In light of these OECD principles, the Secretariat of the OECD has been sponsoring, since 1998, detailed reviews of the regulatory governance programs in member countries. Sixteen country reviews have been completed from 1998 to 2001 and several more are now underway. OECD also commissioned a regulatory survey of member countries in 2000, convened a meeting of senior risk management officials from governments in October 2001, and sponsored an international meeting in December 2001.

Taken as a whole, the country-specific reviews, the 2000 OECD survey and recent international meetings reveal that the most common feature of regulatory management programs is that affected parties be consulted prior to regulation. A requirement for regulatory impact analysis prior to regulation has also been adopted in a majority of OECD countries. About half have some general requirement that regulatory alternatives be considered. Formal evaluation requirements for existing rules are less widespread. Some countries (*e.g.*, Japan and Korea) have focused on the need to reduce overregulation while in other countries (*e.g.*, the United States) the recent focus has been on improving regulatory quality through better analysis of benefits, costs and alternatives.

APEC Activities

The Asia-Pacific Economic forum was established by President George H.W. Bush in 1989. It is the primary international organization for promoting open trade and international cooperation among the 21 Pacific Rim countries. In addition to the seven OECD Pacific Rim countries, APEC includes Russia, China, Hong Kong, Chinese Taipei, Singapore, and Chile, among others. The APEC economies account for almost 50 percent of world trade. APEC is promoting increased transparency, openness and predictability based on the rule of law for both trade and regulation. It seeks to eliminate impediments to trade and investment by encouraging member economies to reduce barriers, adopt transparent, market-oriented policies and address such issues as outdated telecommunications regulatory practices. APEC requires its member countries to post on its web site individual action plans (IAPs) that set out how they plan to meet the APEC goals and to update them each year. One of the IAPs is a deregulation initiative based on the USG's and other countries' experiences. The main focus of the deregulation initiative is to promote information sharing and dialogue, and increase the transparency of existing regulatory regimes and regulatory reform processes. OIRA has been helping USTR and the State Department promote this effort by highlighting our open, transparent, and analytically based regulatory development and oversight program.

EC Activities

The European Union has been criticized on the grounds that its approach to governance is too disconnected from the concerns of ordinary residents of the member states. To address these concerns, the European Commission prepared in early 2001 a white paper entitled "European Governance," which describes major areas of concern and promising directions for reform of governance in the EU. Public consultation on the contents of the white paper is scheduled to extend until March 2002, with conclusions drawn by the EC prior to the next Intergovernmental Conference, where European governance will be debated.

The white paper addressed broad concerns about good governance and the need for increased openness, participation, accountability, effectiveness and coherence. These five principles are designed to reinforce the overriding principles of proportionality and subsidiarity. Before launching an initiative, applying these principles means checking systematically to determine (a) if public action is really necessary; (b) if the European level is the most appropriate one; and (c) if the measures chosen are proportionate to the objectives.

Concern about regulatory policy—both the EC's and the member states roles—is featured in the white paper. As the executive arm of the European Union, the EC was granted the exclusive power to propose or initiate legislation and policy for Europe. The European Parliament (elected representatives of the people) and the European Council (comprised of representative ministers from member states) can modify EC proposals but do not have the power to initiate proposals. The EC has the initiating role in both "regulations," which become law throughout Europe after Council and Parliament approval, and "directives", which must be "transposed" (i.e., tailored and implemented) by the Member States before they are legally enforceable.

The white paper calls for attention to "improving the quality, effectiveness and simplicity of regulatory acts". The mechanisms cited include formal regulatory analysis, consideration of various policy instruments, choice of the right type of instrument, consideration of "co-regulation" involving cooperation among regulated entities, more cooperation among member states on practices and targets, evaluation and feedback once rules are established, discouraging over complicated proposals, and faster legislative processes. The white paper, recognizing the extent of existing regulation but the absence of credible regulatory agencies in some areas, calls for both a comprehensive program of simplification of existing regulations as well as the creation of some new independent regulatory agencies (*e.g.*, in airline and food safety where public confidence in Europe is low). The white paper also notes that a stronger regulatory system in Europe will allow the EU to be a more effective advocate of regulatory management in international settings.

Soon after the Commission adopted the white paper in July 2001, a more specific "communication" was issued by the EC on "Simplifying and Improving the Regulatory Environment." This document calls for at least a 25 percent reduction in the overall volume of European regulation (measured as the number of printed pages of laws) and the withdrawal of 100 or so pending yet outmoded proposals from before 1999. With regard to new actions, the communication calls for enhancement of consultation, especially electronic, on-line consultation, and impact analysis. The latter, defined as "pre-assessments" of draft proposals to determine which proposals merit detailed impact analysis, including assessments covering economic, social and environmental consequences.

A far more detailed report on "better regulation" was prepared by an authoritative group chaired by the distinguished Frenchman Dieudonne Mandelkern. Known as the Mandelkern Report. As published in November 2001, this report emphasized the economic significance of regulatory policy, suggesting that regulatory expenditures comprise perhaps 2 percent to 5 percent of the European gross domestic product. The report rejects unthinking deregulation but recognizes that better regulation is necessary to enhance public confidence in government and assure that the public-welfare benefits of regulatory policy are attained in the future.

The Mandelkern Report provides a detailed action plan on the themes of impact assessment, consultation, simplification, institutional structures to promote better regulation, alternatives to regulation, public access to the texts

of regulations and "transposition" (or the tailoring and implementation of EC directives by the member states of Europe). Annex A of the Mandelkern Report draws from the recent OECD regulatory work to define the crucial steps in achieving better regulation.

Late in 2001 the Economic and Social Committee of the European Parliament issued an "Opinion" on regulatory simplification by a vote of 62 votes in favor, 5 votes against and 5 abstentions. The Committee concluded as follows:

—The over-regulation of business is primarily a national problem but it also has a European dimension that needs to be addressed;
—There is a manifest need for a fundamental overhaul of the regulatory framework within the European Union, accompanied by a streamlining and simplification of the existing body of legislation;
—This regulatory review must focus not just on the future but also on the existing body of legislation and must be oriented not only towards simplification and improved methods but towards quantitative reductions;
—The regulatory environment should establish a level playing field for businesses operating throughout Europe, which means a reduction in the variability in the requirements on businesses established by the member states;
—A regulatory review body should be set up to review existing legislation and set out the guidelines for introducing new legislation. It should also conduct ex-post evaluations of the effects of legislation. This body should comprise representatives of the Commission, the national agencies and business.

The stage is obviously set for a vigorous public debate about which steps should actually be taken to accomplish better regulation throughout the European Union. It is too early to assess what actions will be taken, but the next steps taken by the European Commission may be critical in determining whether meaningful regulatory improvements will occur. Even if the EC does take concrete steps, supportive steps will also be required by the other EU institutions as well as the member states.

Chapter IV. Recommendations for Reform

In addition to estimates of the costs and benefits of Federal rules and paperwork, the Regulatory Right-to-Know Act also requires OMB to submit "recommendations for reform." Below we highlight for comment two reform initiatives. First, we repeat our solicitation of public comments on regulations or regulatory programs in need of reform. Second, we invite a review of agency practice regarding guidance documents.

Review of Regulations and Regulatory Programs

Efforts to improve regulation should not be prospective only. Agencies also should look back and review existing rules to streamline and modernize those that are outdated, duplicative, ineffective, or unnecessary. With the passage of time, outmoded agency decisions need review and revision.

OMB is calling for public nominations of regulatory reforms to specific existing regulations that, if adopted, would increase overall net benefits to the public, considering both qualitative and quantitative factors. These reforms might include (1) extending or expanding existing regulatory programs; (2) simplifying or modifying existing rules or (3) rescinding outmoded or unnecessary rules.

The Administration recognizes that agencies should be particularly sensitive to the burden of their rules on small business. The Regulatory Right-to-Know Act directs that analysis of the impacts of Federal rules should give special consideration to small business impacts. As Congress stated in the findings for the Small Business Regulatory Enforcement Fairness Act of 1996, "small businesses bear a disproportionate share of regulatory costs and burdens." A recent empirical study sponsored by the Small Business Administration Office of Advocacy supports this finding. The study shows that the average regulatory costs per employee were about 60 percent higher for small businesses than for large businesses: the average regulatory cost was about $7,000 for firms with less than 20 employees compared to about $4,500 for firms with over 500 employees.[17] This is a significant finding since small firms accounted for about three-quarters of the employment growth and 90 percent of the new business growth in the 1990s.[18] Small business ownership is a critical vehicle for all Americans—and increasingly for women and minorities—to achieve greater economic opportunity.[19] Accordingly, OMB requests comments on needed reforms of regulations unnecessarily impacting small businesses and identification of specific regulations and paperwork requirements that impose especially large burdens on small businesses and other small entities without an adequate benefit justification. OMB also requests comments from the small business community on problematic guidance documents discussed in the following section. OMB will coordinate with the Office of Advocacy of the Small Business Administration on this initiative.

While broad reviews of existing regulations have been required since 1981 under Executive Orders 12291, 12498, and 12866, they have met with limited success. Clearly, achieving broad agency review of existing rules is much easier said than done. In the first annual report on Executive Order 12866 released in November 1994, OIRA Administrator Sally Katzen noted that bureaucratic incentives make such review a difficult undertaking. While the "lookback" process had begun under E.O. 12866, she said, "it had proven more difficult to institute than we had anticipated.* * * [A]gencies are focused on meeting obligations for new rules, often under statutory or court deadlines, at a time when staff and budgets are being reduced; under these circumstances, it is hard to muster resources for the generally thankless task of rethinking and rewriting current regulatory programs" (p. 36). Past efforts at broad reviews of existing regulations, including reviews under Executive Order 12866 and the National Performance Review, were largely unsuccessful.[20] Beyond bureaucratic disincentives, resource constraints, and the complexity of the task, reviewing old rules may be hampered by unfounded fears that any attempt to modernize or streamline old rules is a veiled attempt to "rollback" needed safeguards. The difficulties and concerns surrounding this task do not mean it should be abandoned; they do counsel that an across-the-board review of all existing rules could be a poor use

[17] See W. Mark Crain & Thomas D. Hopkins, "The Impact of Regulatory Costs for Small Firms," a report for the U.S. Small Business Administration, Office of Advocacy, RFP No. SBAHQ–00–R–0027 (2001).

[18] *Small Business Economic Indicators 2000* (SBA, Office of Advocacy 2001).

[19] The number of women-owned businesses increased by 16 percent between 1992 and 1997 (*Women in Business*, 2001: SBA, Office of Advocacy, October 2001) while the while the percent of minority-owned businesses increased from 6.8 percent in 1982 to 14.6 percent in 1997 (*Minorities in Business, 2001:* SBA,Office of Advocacy, November 2001) .

[20] See, e.g., General Accounting Office, *Regulatory Reform: Agencies' Efforts to Eliminate and Revise Rules Yield Mixed Results* (Oct. 1997); Statement of L. Nye Stevens, Director, Federal Management and Workforce Issues, General Government Division, General Accounting Office, before the Senate Committee on Governmental Affairs, February 24, 1998.

of OMB and agency resources, and that a review of old rules should be done carefully and openly . Accordingly, OMB has established a modest process to review and improve old rules based on a public comment process.

With respect to improving existing rules or eliminating outmoded ones, OIRA would like to receive comments that are as specific as possible. In addition to supplying documentation and supporting materials (including citations to published studies), OIRA would appreciate use of the following format to summarize the suggestions:

FORMAT FOR SUGGESTED REGULATORY REFORM IMPROVEMENTS

Name of regulation	
Regulating Agency	(Include any subagency).
Citation	(Code of Federal Regulations).
Authority	(Statute).
Description of Problem	(Harmful impact and on whom).
Proposed Solution	(Both the fix and the procedure to fix it).
Estimate of Economic Impacts	(Quantified benefits and costs if possible. Qualitative descriptions if needed).

In selecting which rules or regulatory programs to propose for review, commenters should consider the extent to which (1) the rule or program could be revised to be more efficient or effective; (2) the agency has discretion under the statute authorizing the rule to modify the rule or program; and (3) the rule or program is important relative to other rules or programs being considered for review.

Review of Problematic Agency Guidance

As the scope and complexity of regulation and the problems it addresses have grown, so too has the need for government agencies to inform the public and provide direction to their staffs. To meet these challenges, agencies have relied increasingly on issuing guidance documents. The use of guidance documents is widespread, and often for good reasons. Agencies may properly provide guidance to interpret existing law, through an interpretative rule, or to clarify how the agency will treat or enforce a governing legal norm, through a policy statement. In some cases, Congress has directly expressed the need for guidance, such as the small business compliance guides mandated by Section 212 of the Small Business Regulatory Enforcement Fairness Act.[21] Guidance documents, used properly, can channel the discretion of agency employees, increase efficiency by simplifying and expediting agency enforcement efforts, and enhance fairness by providing the public clear notice of the line between permissible and impermissible conduct while ensuring equal treatment of similarly situated parties.

Experience has shown, however, that guidance documents also may be used improperly. Problematic guidance documents have received increasing scrutiny by the courts, the Congress and scholars.[22] While recognizing the enormous value of agency guidance in general, in this section OMB requests public comment on problematic agency guidance documents.

To promulgate regulations, an agency must ordinarily comply with the notice-and-comment procedures specified in the Administrative Procedure Act (APA), 5 U.S.C. 553. Section 553 requires that agencies must, in many cases, publish a notice of proposed rulemaking in the **Federal Register**. 5 U.S.C. 553(b). When notice is given, agencies also generally give interested persons an opportunity to comment on the proposal in writing. Agencies also may invite the public to present their views in person. 5 U.S.C. 553(c). Unless otherwise required by statute, notice and opportunity for comment are not required when an agency issues rules of agency organization, procedure, or practice; or where the agency finds for good cause that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(A)–(B).

Generally speaking, guidance (as opposed to regulations) is issued without notice and comment in order to clarify or explain an agency interpretation of a statute or regulation. These guidance documents may have many formats and names, including guidance documents, manuals, interpretive memoranda, staff instructions, policy statements, circulars, bulletins, and so on.

Beyond being exempt from notice-and-comment procedures, guidance documents may not normally be subject to judicial review or the kind of careful OMB and interagency review required by Executive Order 12866, as amended. Finally, some guidance documents may not be subjected to the rigorous expert peer review conducted on some complex legislative rulemakings. Because it is procedurally easier to issue guidance documents, there may be an incentive for regulators to issue guidance documents rather than conduct notice and comment rulemakings. As the D.C. Circuit recently observed in *Appalachian Power:*

> The phenomenon we see in this case is familiar. Congress passes a broadly worded statute. The agency follows with regulations containing broad language, open-ended phrases, ambiguous standards and the like. Then as years pass, the agency issues circulars or guidance or memoranda, explaining, interpreting, defining and often expanding the commands in regulations. One guidance document may yield another and then another and so on. Several words in a regulation may spawn hundreds of pages of text as the agency offers more and more detail regarding what its regulations demand of regulated entities. Law is made, without notice and comment, without public participation, and without publication in the **Federal Register** or the Code of Federal Regulations.
>
> 208 F.2d at 1019. Through guidance documents, agencies sometimes have issued or extended their "real rules," *i.e.*, interpretative rules and policy statements, quickly and inexpensively—particularly with the use of the Internet—and without following procedures prescribed under statutes or Executive orders.

[21] 5 U.S.C. 601 note, Title II of Pub. L. 104–121, Mar. 29, 1996.

[22] E.g., *United States* v. *Mead*, 533 U.S. 218 (2001); *Appalachian Power Company* v. *Environmental Protection Agency*, 208 F.3d 1015 (D.C. Cir. 2000); "Non-Binding Legal Effect of Agency Guidance Documents," H Rep. 106–1009 (106th Cong., 2d Sess. 2000); H.R. 3521, the "Congressional Accountability for Regulatory Information Act of 2000," Section 4; Robert A. Anthony "Interpretative Rules, Policy Statements, Guidances, Manuals and the Like—Should Federal Agencies Use Them to Bind the Public?," 41 Duke L.J. 1311 (1992); Richard J. Pierce, Jr., "Seven Ways to Deossify Agency Rulemaking," 47 Admin. L. Rev. 59 (1995); Peter L. Strauss, "Comment, the Rulemaking Continuum," 41 Duke L.J. 1463 (1992); Administrative Conference of the United States, Rec. 92–2, 1 CFR 305.92–2 (1992); Carnegie Commission, *Risk and the Environment: Improving Regulatory Decisionmaking* (1993).

The failure to comply with the APA's notice-and-comment requirements or observe other procedural review mechanisms can undermine the lawfulness, quality, fairness, and political accountability of agency policymaking. The misuse of agency guidance also can impose significant costs on or limit the freedom of regulated parties without affording an opportunity for public participation.

Problematic guidance may take a variety of forms. An agency publication that is characterized as some kind of "guidance" document or "policy statement" may directly or indirectly seek to alter rights or impose obligations and costs not fairly discernible from the underlying statute or legislative rule that the document purports to interpret or implement. Such documents are occasionally treated by the agency as having legally binding effect on private parties. When that occurs, substantial question can arise regarding the propriety of the guidance itself—specifically whether it should be considered a regulation subject to APA procedures. Some guidance documents also may be founded on complex technical or scientific analyses or conclusions, which would be improved not only by public comment but also by expert, independent peer review. Finally, problematic guidance might be improved by interagency review.

The benefits of these procedural safeguards are well established. Notice-and-comment procedures can benefit agency policymaking in several ways. Potentially affected parties may improve the quality of a rule by supplying helpful information or alerting the agency to unintended consequences of a proposal. Notice-and-comment procedures also increase fairness by allowing potentially affected parties to participate in the decisionmaking process, and enhance political accountability by providing the public and its elected representatives advance notice of its policy decisions and an opportunity to shape them. As the Supreme Court recently confirmed in the *Mead* decision, the rule of law supports the use of regulations over guidance to bind the public, and guidance will receive less deference by the courts than properly implemented agency rules. Legislative rulemaking may also increase efficiency by allowing an agency to resolve recurring issues of legislative fact once instead of addressing such issues repeatedly on a case-by-case basis. Moreover, independent and expert peer review of highly technical or scientific agency guidance can enhance its objectivity and reliability and lead to better-informed decisionmaking. Finally, interagency review can ensure that agency action is consistent with Administration policy and is beneficial from a broader, societal perspective.

Under its obligation to promote recommendations for reforming the regulatory process and agency rules under the "Regulatory Right-to-Know Act" as well as its general duties to manage the efficiency and integrity of the regulatory process, OMB requests public comment on problematic Federal agency guidance. Specifically, OMB seeks public comment on the nature and extent of problematic guidance documents in agency policymaking, the adverse impacts, the benefits of proper guidance documents, criteria to identify problematic guidance, current examples of problematic guidance documents, and suggestions on how problematic guidance can be curtailed without undermining the typically appropriate use of guidance by Federal agencies.

OMB asks commenters to identify examples of problematic agency "guidance" documents of national or international significance. Commenters should submit to OMB a copy of the problematic guidance, with any relevant portions identified. They also should submit recommendations for remedying the problem, such as reissuance through notice and comment rulemaking, peer review, interagency review or rescission. Where guidance elaborates on an existing legislative rule or statute, OMB requests that commenters provide a copy of the relevant rule or statute and a concise explanation of how the guidance alters rights or imposes costs and obligations on the public that are not fairly discernible from the text of the statute or legislative rule, as well as, to the extent feasible, an estimate of such costs. In such cases, commenters also should explain whether the agency has provided reasonably sufficient detail in the legislative rule before resorting to guidance, considering the importance of the relevant issues, competing demands on the agency, available resources, and the need for resolution of the issues. In addition to supplying documentation and supporting materials (including citations to published studies), OIRA would appreciate use of the following format to summarize the suggestions.

FORMAT FOR SUGGESTED GUIDANCE DOCUMENT IMPROVEMENTS

Name of guidance document	
Regulating Agency	(Include any subagency).
Citation	(E.g. FEDERAL REGISTER).
Authority	(Statute or Legislative Rule).
Description of Problem	(Harmful impact and on whom).
Proposed Solution	(Both the fix and the procedure to fix it).
Estimate of Economic Impacts	(Quantified benefits and costs if possible. Qualitative descriptions if needed).

Appendix A. Update of Impact of the Card Memorandum

On January 20, 2001, the President's Chief of Staff issued a directive to agency heads to take steps to ensure that policy officials in the incoming Administration had the opportunity to review any new or pending regulations. This followed similar practices adopted at the beginning of previous administrations.

In last year's annual report to Congress, we provided a summary of actions taken by agencies pursuant to rules identified by the directive, and by a subsequent OMB memorandum to agencies. These actions, subject to certain exceptions, included withdrawing unpublished regulations from the **Federal Register** and from OMB's Office of Information and Regulatory Affairs, and delaying the effective date of final rules published in the **Federal Register** but not yet in effect. As noted in last year's annual report, by the end of May 2001, agencies had conducted reviews and taken appropriate action on most of the regulations subject to the directive and to subsequent OMB guidance. The final disposition of many of these rules, however, had not been decided.

The directives issued by Chief of Staff Card and OMB Director Mitchell E. Daniels, Jr. to Federal agencies to review and, if necessary and appropriate, withdraw unpublished regulations and delay the effective date of certain published regulations allowed newly appointed political officials to ensure that regulations published and implemented after January 20, 2001, reflected the priorities and policies of the Bush Administration. Given the deliberative (and often lengthy) nature of the rulemaking process, some of the regulations subject to the reviews and procedures required by the directives remain under active consideration by agencies.

Agency heads also had to review published final rules that had not yet become effective to decide which ones should go into effect as scheduled and which ones should be delayed to allow for the proper policy review. According to a recent General Accounting Office (GAO) report, a total of 371 published final rules were potentially subject to the directives' requirements that effective dates be delayed by agencies.[23] GAO found that, as of January 20, 2002, agencies had allowed 281 of these 371 rules to go into effect without delay. Agencies decided to delay the effective dates of the remaining 90 regulations. Table 9 lays out an agency-by-agency accounting of these rules. GAO's review of the 90 rules delayed by agencies determined that 75 went into effect after one or more delays. GAO reported that 13 of the delayed regulations were modified, withdrawn, and/or replaced by agencies. Other delayed rules were the subject of pending litigation including some of the 15 rules that remained delayed as of January 20, 2002.[24]

TABLE 9.—NUMBER OF REGULATIONS DELAYED AND NOT DELAYED

Department/Agency	Delayed	Not delayed	Total
Agriculture	10	6	16
Commerce	2	12	14
Education	3	10	13
Energy	8	6	14
Health and Human Services	16	13	29
Housing and Urban Development	4	1	5
Interior	6	2	8
Justice	4	4	8
Labor	5	3	8
Transportation	15	117	132
Treasury	0	12	12
Environmental Protection Agency	8	52	60
Independents and Other	9	43	52
Total	90	281	371

Source: General Accounting Office, "Delay of Effective Dates of Final Rules Subject to the Administration's January 20, 2001, Memorandum" (GAO–02–370R) [forthcoming].

Following the issuance of the directives, OMB instructed agencies to withdraw from OMB review regulations that they had submitted prior to January 20th. Except for those rules that met the exemptions provided for by the Card Memorandum, agencies formally withdrew 130 regulations. By the end of 2001, OMB subsequently cleared 61 after they were reviewed and resubmitted to OMB. Table 10 presents the numbers of regulations that agencies withdrew from OMB and those that agencies then submitted to OMB for Executive Order 12866 review and approval.

TABLE 10.—NUMBER OF REGULATIONS WITHDRAWN FROM AND SUBSEQUENTLY CLEARED BY OMB

Department/Agency	Withdrawn (as of 5/18/01)	Cleared (as of 12/31/01)
Agriculture	13	7
Commerce	5	3
Defense	2	1
Education	1	0
Health and Human Services	13	5
Housing and Urban Development	11	5
Interior	3	0
Justice	13	7
Labor	2	0
Transportation	12	5
Veterans Affairs	18	12
Environmental Protection Agency	21	10
Office of Personnel Management	6	3
Small Business Administration	3	1
Social Security Administration	2	1
Other	5	1
Total	130	61

Source: General Services Administration, Regulatory Information Service Center.

Appendix B. Proposals for Reform of Regulations

In the draft version of last year's annual report, OMB asked for suggestions from the public about specific regulations that should be modified or rescinded in order to increase net benefits to the public. We received suggestions regarding 71 regulations from 33 commenters involving 17 agencies. In an initial review of the comments, OIRA placed the suggestions into three categories: high priority, medium priority, and low priority.

Twenty-three agency actions were rated Category 1, those suggestions OIRA agreed

[23] General Accounting Office, "Delay of Effective Dates of Final Rules Subject to the Administration's January 20, 2001, Memorandum" (GAO–02–370R) [forthcoming].

[24] General Accounting Office, ibid., p. x. GAO's report provides a detailed discussion of specific actions taken by agencies on regulations delayed pursuant to the Card Memorandum.

were "high priority review" candidates. Since the publication of last year's report, OIRA has discussed these regulations with the agencies to better understand where they fit with agency priorities. As detailed below, agencies have already taken action on a number of these suggestions. On others, agencies have agreed to consider the need for reform and will be evaluating specific actions. Finally for some, agencies have convinced us that reform is unnecessary. A status report on the high priority reviews is provided below.

USDA: Forest Service Planning Rules and Roadless Area Conservation Regulations (2 rules)—On May 10, 2001, a federal judge issued an injunction blocking implementation of the roadless rule and a portion of the forest planning rule. In July, the Forest Service issued an advanced notice soliciting comments on possible changes to the roadless rule in light of the court action. Further action awaits the Forest Service's consideration of comments.

Department of Education: Regulations Related to Financial Aid.—These regulations are the subject of annual regulatory negotiations. For this year the Department has made clear its commitment to streamlining the regulations consistent with statutory requirements.

Department of Energy: Central Air Conditioning and Heat Pump Energy Conservation Standards—On January 3, 2002, DOE submitted a revision to this rule to OMB for review. OMB completed review on February 1, 2002.

Department of Health and Human Services: Standards for Privacy of Individually Identifiable Health Information—HHS has issued guidance clarifying the requirements of this rule and has publicly committed to making regulatory changes to certain aspects of the rule.

Department of Health and Human Services: Food Labeling: Trans Fatty Acids in Nutrition Labeling, Nutrient Content and Health Claims—OIRA Administrator John D. Graham sent a prompt letter to FDA on September 18, 2001 urging the agency to finalize this rulemaking. Secretary Thompson responded on November 26, 2001, agreeing that finalization was a high priority. FDA is currently awaiting the results of a National Academy of Science's study on this subject prior to proceeding with the final rule.

Department of the Interior: Amendments to National Park Service Snowmobile Regulations—The snowmobile industry filed a lawsuit against this rule, and this Administration reached a settlement with the plaintiffs on June 29, 2001 to revise the January 22, 2001 final rule. Public comments are now being solicited on several alternatives.

Department of the Interior: Regulations Governing Hardrock Mining Operations—DOI completed a revision of these regulations on October 31, 2001.

Department of Labor: Procedures for Certification of Employment-Based Immigration and Guest Worker Applications—On November 21, 2001, DOL submitted a proposed regulation on this subject to OMB for review. We completed review on February 19, 2002.

Department of Labor: Proposal Governing "Helpers" on Davis-Bacon Act Projects—DOL has decided that changes in the Davis-Bacon regulations are not appropriate at this time.

Department of Labor: Overtime Compensation Regulations Under the Fair Labor Standards Act—DOL is considering whether revisions to these regulation would be appropriate.

Department of Labor: Recordkeeping and Notification Requirements Under the Family and Medical Leave Act—DOL is considering whether revisions to these regulations would be appropriate.

Department of Labor: Equal Opportunity Survey—DOL is considering whether modifications to the survey would be appropriate.

Department of Transportation: Hours of Service of Drivers—DOT is considering revisions to these regulations which were proposed in 2000. Any final rule will reflect public comments in response to the notice of proposed rulemaking.

Equal Employment Opportunity Commission: Uniform Guidelines for Employee Selection Procedures—EEOC has requested and received an extension of clearance of these guidelines under the Paperwork Reduction Act to allow further consideration of changes.

Environmental Protection Agency: "Mixture and Derived From" Rule—EPA is considering whether revisions to these regulations would be appropriate.

Environmental Protection Agency: Proposed Changes to the Total Maximum Daily Load Program—EPA is considering whether revisions to these regulations would be appropriate.

Environmental Protection Agency: Drinking Water Regulations: Cost Benefit Analyses—OIRA will address these issues in its forthcoming analytical guidance project.

Environmental Protection Agency: Economic Incentive Program Guidance—EPA issued guidance in January 2001, and the States are now using the guidance in developing economic incentive programs. OIRA will consider further review of the guidance after the States have further experience with the current guidelines.

Environmental Protection Agency: New Source Review—EPA is considering whether revisions to these regulations and guidance documents are appropriate.

Environmental Protection Agency: Concentrated Animal Feeding Operations Effluent Guidelines—This rule was proposed in December 2000. EPA is currently examining comments and will consider all of these comments and those raised in the last report in producing a final rule.

Environmental Protection Agency: Arsenic in Drinking Water—EPA has decided not to modify this final rule.

Environmental Protection Agency: Notice of Substantial Risk: TSCA—EPA is considering several options to address the issues raised in its last report.

Appendix C. Estimates of the Aggregate Costs and Benefits of Regulation

Since there are so many different types of Federal regulation, it is useful to break rules down into categories. Three main categories of regulations are widely used: social, economic and process. The discussions in earlier reports provide examples for each of these categories.

A. Social Regulation

Table 11 presents the estimate of the total annual costs and benefits of social regulation (health, safety, and the environmental regulation) in the aggregate and by major program as of September 30, 2001. We calculated it by adding the estimates from table 1 in Chapter II to Table 4 from the 2000 OMB report, updated to 2001 dollars.

TABLE 11.—ESTIMATES OF TOTAL ANNUAL MONETIZED COSTS AND MONETIZED BENEFITS OF SOCIAL REGULATIONS

[Billions of 2001 dollars as of 2001, Q3]

	Environmental	Transportation	Labor	Other	Total
Costs	$120 to 203	$17 to 22	$20 to 22	$24 to 30	$181 to 277.
Benefits	$120 to 1,783	$95 to 126	$32 to 34	$61 to 66	$308 to 2,009.
Net Benefits[a]	$-83 to 1,663	$73 to 109	$10 to 14	$31 to 42	$31 to 1,828.

Source: Table 6, Ch.II and Table 4 from (OMB 2000) as adjusted per fn. 6 updated to 2001 dollars.

[a] Lower estimate calculated by subtracting high cost from low benefit. Higher estimate calculated by subtracting low cost from high benefit.

Note: The dollar figures in this table do not reflect benefits that were quantified but not monetized. They also do not reflect benefits and costs (including indirect costs) that were not quantified.

B. Economic Regulation

Economic regulation restricts the price or quantity of a product or service that firms produce, including whether firms can enter or exit specific industries. In previous reports, OIRA presented an estimate that the efficiency costs of economic regulation amounted to $80 billion (updated to 2001 dollars). In a 1999 comprehensive report on regulatory reform in the United States by a panel of experts from around the world, the OECD estimated that additional reforms in

the transportation, energy and telecommunications sectors would lead to an increase in GDP of 1 percent (OECD, 1999). One percent of the 2001 GDP of $10.15 trillion is about $100 billion. This estimate does not include the costs of international trade protection, which Hopkins included in his estimate of the cost of economic regulation.

According to a recent study, the potential consumer gains from removing trade barriers existing in 1990 would be about 1.3 percent of GDP (Council of Economic Advisers 1998) or about $130 billion for the 2001, assuming trade barriers have not changed.[25] These estimates taken together suggest that Hopkins' 1992 estimate may be too low. Crain and Hopkins (2001) in a report for the Small Business Administration recently estimated the efficiency costs of economic regulation at $150 billion (updated to 2001 dollars).[26] Crain and Hopkins state that they reestimated the earlier Hopkins estimate based on OMB's 2000 report which also discussed the CEA (1998) estimate cited above. Economic theory predicts that regulation that restricts competitive prices and establishes entry barriers produces no social benefits except in the case of natural monopoly, a phenomenon becoming rare in a world of rapid technological progress.

C. Process Regulation

The main burden of process regulation consist of the paperwork costs imposed on the public. Section 624(a)(1)(A) of the FY 2001 Treasury and General Government Appropriations Act (the Act), also known as the "Regulatory Right to Know Act," calls on OMB to examine the costs and benefits of paperwork. OMB has worked in the past with IRS on this issue. Currently, IRS is developing a new model that will estimate the amount of burden incurred by wage and investment taxpayers as a result of complying with the tax system. IRS has undertaken this study to improve understanding of taxpayer burdens, to enable us to measure both current and future levels of burden, and to help isolate the burden of particular tax provisions, regulations, or procedures. To help provide input into reporting of monetized burdens, the IRS paperwork burden study included the development of a white paper, "Revealed and Stated Preference Estimation of the Value of Time Spent for Tax Compliance" (Cameron 2000).

In the annual *Information Collection Budgets*, OIRA calculates paperwork burden imposed on the public, using information that agencies give us with their information collection requests. Table 12 presents estimates of paperwork burden in terms of the hours the public devotes annually to gathering and providing information for the Federal government. At a future point, OIRA hopes to be able to provide information on the dollar cost of paperwork burden imposed by Federal agencies. At present, it is not feasible to estimate the value of annual societal benefits of the information the government collects from the public.

Table 12 shows total burden hours by agency of the paperwork approved by OMB under the Paperwork Reduction Act as of September 30, 2001. The total burden of 7,651 million hours is made up of 6,416 million hours for the Treasury Department (84 percent) and 1,235 million hours for the rest of the Federal government. Using the estimate of average value of time from our previous four reports ($30 in 2001 dollars) per hour for individuals and entities that provide information to the government, we derive a cost estimate of public paperwork of $230 billion. Note, however, that (1) this is a rough average and should not be applied to individual agencies or agency collections: and (2) this estimate should not be added to our estimates of the costs of regulation because it would result in some double counting. Our estimates of regulatory costs already include some paperwork costs. Many paperwork costs arise from regulations, often for enforcement and disclosure purposes. One way to eliminate this overlap is to focus on tax compliance costs by using the burden estimate for the Treasury Department. This produces an estimate of $190 billion. The basis for our complex tax system is presumably related to considerations of equity and fairness. The changes in the distribution of income that our tax system produces are transfers and not counted as social benefits.

TABLE 12.—SUMMARY OF ACTIVE INFORMATION COLLECTIONS APPROVED UNDER THE PAPERWORK REDUCTION ACT AS OF 09/30/2001

[Millions of hours]

Department/Agency	Total hour burden
Agriculture	86.72
Commerce	10.29
Defense	92.05
Education	40.50
Energy	3.84
Health and Human Services	186.61
Housing and Urban Development	12.05
Interior	7.55
Justice	40.52
Labor	186.10
State	16.57
Transportation	80.33
Treasury	6,415.84
Veterans Affairs	5.30
EPA	130.78
FAR	23.74
FCC	40.10
FDIC	10.53
FEMA	5.50
FERC	3.95
FTC	72.59
NASA	6.87
NSF	4.72
NRC	8.17
SEC	144.28
SBA	1.93
SSA	24.26
Government Total	7,651.42

Table 13 presents an estimate of the total annual costs and benefits of Federal rules and paperwork to the extent feasible in the aggregate, as required by Section 624 (a)(1)(A) of the Act.

TABLE 13.—TOTAL ANNUAL COST AND BENEFITS OF REGULATIONS AS OF SEPTEMBER 30, 2001

[Billions of 2001 dollars]

Type of regulation	Costs	Benefits
Social	181 to 277	308 to 2,009.
Economic (efficiency Loss)	150	0.
Process	190	0 .
Total	521 to 617	308 to 2,009.
Economic (transfer)	337	337

Source: Table 11 and text.

[25] The CEA report also went on to state that studies of this type only capture static costs, fail to capture value of foregone varieties of products, quality improvements, and productivity enhancements that would take place in the absence of trade barriers, and thus understate the benefits from trade (CEA 1998, p. 238). The Michigan Model of World Production and Trade, a computational general equilibrium model that takes into account some of these considerations, predicts that the elimination of all global trade restrictions (not just U.S.) would increase U.S. GDP by 5.92 percent. (Brown, Deardorff, and Stern, 2001).

[26] Crain and Hopkins also include an alternative estimate of the cost of economic regulation of $435 billion by including transfer costs, which are equal shifts of income from one group of citizens to another. Since transfers are not net costs to society (one person's loss is another's gain), transfers should not be added to our other cost estimates. Nevertheless, transfers may affect economic incentives and produce indirect costs to society.

Sec. 638 (a)(2) of the Act calls on OMB to present an analysis of the impacts of Federal regulation on State, local, and tribal governments, small business, wages, and economic growth.

Impact on State, Local, and Tribal Government

Over the past five years, five rules have imposed costs of more than $100 million on State, local, and Tribal governments (and thus have been classified as public sector mandates under the Unfunded Mandates Act of 1995).[27] All five of these rules were issued by the Environmental Protection Agency. These rules are described in greater detail below.

- *EPA's Rule on Standards of Performance for Municipal Waste Combustors and Emissions Guidelines* (1995): This rule set standards of performance for new municipal waste combustor (MWC) units and emission guidelines for existing MWCs under sections 111 and 129 of the Clean Air Act [42 U.S.C. 7411, 42 U.S.C. 7429]. The standards and guidelines apply to MWC units at plants with aggregate capacities to combust greater than 35 megagrams per day (Mg/day) (approximately 40 tons per day) of municipal solid waste (MSW). The standards require sources to achieve the maximum degree of reduction in emissions of air pollutants that the Administrator determined is achievable, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements.

EPA estimated the national total annualized cost for the emissions standards and guidelines to be $320 million per year (in constant 1990 dollars) over existing regulations. EPA estimated the cost of the emissions standards for new sources to be $43 million per year. EPA estimated the cost of the emissions guidelines for existing sources to be $277 million per year. The annual emissions reductions achieved through this regulatory actions include, for example, 21,000 Mg. of SO2; 2,800 Mg. of particulate matter (PM); 19,200 Mg of NOX; 54 Mg. of mercury; and 41 Kg. of dioxin/furans.

- *EPA's Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills* (1996): This rule set performance standards for new municipal solid waste landfills and emission guidelines for existing municipal solid waste landfills to implement section 111 of the Clean Air Act. The rule addressed non-methane organic compounds (NMOC) and methane emissions. NMOC include volatile organic compounds (VOC), hazardous air pollutants (HAPs), and odorous compounds. Of the landfills required to install controls, about 30 percent of the existing landfills and 20 percent of the new landfills are privately owned. The remainder are publicly owned. The total nationwide annualized costs for collection and control of air emissions from new and existing MSW landfills are estimated to be $94 million per year annualized over five years, and $110 million per year annualized over 15 years.

- *National Primary Drinking Water Regulations: Disinfectants and Disinfection Byproducts* (1998): This rule promulgates health-based maximum contaminant level goals (MCLGs) and enforceable maximum contaminant levels (MCLs) for about a dozen disinfectants and byproducts that result from the interaction of these disinfectants with organic compounds in drinking water. The rule will require additional treatment at about 14,000 of the estimated 75,000 water systems nationwide affected by this rule. The costs of the rule are estimated at $700 million annually. The quantified benefits estimates range from zero to 9,300 avoided bladder cancer cases annually, with an estimated monetized value of $0 to $4 billion. Possible reductions in rectal and colon cancer and adverse reproductive and developmental effects were not quantified.

- *National Primary Drinking Water Regulations: Interim Enhanced Surface Water Treatment* (1998): This rule establishes new treatment and monitoring requirements (primarily related to filtration) for drinking water systems that use surface water as their source and serve more than 10,000 people. The purpose of the rule is to enhance protection against potentially harmful microbial contaminants. EPA estimated that the rule will impose total annual costs of $300 million per year. The rule is expected to require treatment changes at about half of the 1,400 large surface water systems, at an annual cost of $190 million. Monitoring requirements add $96 million per year in additional costs. All systems will also have to perform enhanced monitoring of filter performance. The estimated benefits include mean reductions of from 110,000 to 338,000 cases of cryptosporidiosis annually, with an estimated monetized value of $0.5 to $1.5 billion, and possible reductions in the incidence of other waterborne diseases.

- *National Pollutant Discharge Elimination System—Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges* (1999): This rule would expand the existing National Pollutant Discharge Elimination System program for storm water to cover smaller municipal storm sewer systems and construction sites that disturb one to five acres. The rule allows for the exclusion of certain of these sources from the program based on a demonstration of the lack of impact on water quality. EPA estimates that the total cost of the rule on Federal and State levels of government, and on the private sector, is $803.1 million annually. EPA considered alternatives to the rule, including the option of not regulating, but found that the rule was the option that was, "most cost effective or least burdensome, but also protective of the water quality."

While these five EPA rules were the only ones over the past five years to require expenditures by State, local and Tribal governments exceeding $100 million, they were not the only rules with impacts on other levels of governments. For example, 15 percent, 10 percent, and 6 percent of rules listed in the April 2000 Unified Regulatory Agenda cited some impact on State, local or Tribal governments, respectively. In general, OMB works with the agencies to ensure that the selection of the regulatory option for all final rules complies fully with the Unfunded Mandates Reform Act. For proposed rules, OMB works with the agencies to ensure that they also solicited comment on alternatives that would reduce costs to all regulated parties, including State, local and Tribal governments.

Agencies have also significantly increased their consultation with State, local, and Tribal governments on all regulatory actions that impact them. For example, EPA and the Department of Health and Human Services have engaged in particularly extensive consultation efforts over a wide variety of programs, on both formal unfunded mandates as defined by the Unfunded Mandates Reform Act and other rules with intergovernmental impacts. Agencies have also made real progress in improving their internal systems to manage consultations better. This has helped them analyze specific rules in ways that reduce costs and increase flexibility for all levels of government and for the private sector, while implementing important national priorities.

This Administration will bring more uniformity to the consultation process to help both agencies and intergovernmental partners know when, how and with whom to communicate. States and localities should have a clear point of contact in each agency, and agencies must understand that "consultation" means more than making a telephone call the day before a rulemaking action is published in the **Federal Register**. Finally, this Administration intends to enforce the Unfunded Mandates Reform Act to ensure that agencies are complying with both the letter and the spirit of the law. If an agency is unsure whether a rule contains a significant mandate, it should err on the side of caution and prepare an impact statement prior to issuing the regulation.

Clearly, more still needs to be done to ensure that this consultation takes place in all instances where it is needed and early in the federal decisionmaking process. Toward that end, the President established an Interagency Working Group on Federalism. Devolving authority and responsibility to State and local governments, and to the people, is a central tenet of the President's management of the Executive Branch. This working group is striving to turn this principle into policy.

In Chapter I above we ask for comments from the public for suggestions to help improve the consultation process. We intend to include a discussion of those comments in the final report. We also intend to include in our final report a full discussion of agency

[27] EPA's proposed rules setting air quality standards for ozone and particulate matter may ultimately lead to expenditures by State, local or tribal governments of $100 million or more. However, Title II of the Unfunded Mandates Reform Act provides that agency statements on compliance with Section 202 must be conducted "unless otherwise prohibited by law." The conference report to this legislation indicates that this language means that the section "does not require the preparation of any estimate or analysis if the agency is prohibited by law from considering the estimate or analysis in adopting the rule." EPA has stated, and the courts have affirmed, that under the Clean Air Act, the air quality standards are health-based and EPA is not to consider costs.

compliance with the Unfunded Mandates Reform Act.

Impact on Small Business

The Administration explicitly recognizes the need to be sensitive to the impact of regulations and paperwork on small business with Executive Order 12866, "Regulatory Planning and Review." The Executive Order calls on the agencies to tailor their regulations by business size in order to impose the least burden on society, consistent with obtaining the regulatory objectives. It also calls for the development of short forms and other streamlined regulatory approaches for small businesses and other entities. Moreover, in the findings section of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Congress stated that ". . . small businesses bear a disproportionate share of regulatory costs and burdens." This is largely attributable to fixed costs—costs that all firms must bear regardless of size. Each firm has to determine whether a regulation applies, how to comply, and whether it is in compliance. As firms increase in size, fixed costs are spread over a larger revenue and employee base resulting in lower unit costs.

This observation is supported by empirical information from a study sponsored by the Office of Advocacy of the Small Business Administration (Crain and Hopkins 2001). That study found that regulatory costs per employee decline as firm size—as measured by the number of employees per firm—increases. Crain and Hopkins (2001) estimate that the total cost of regulation (environmental, workplace, economic, and tax compliance regulation) was 60 percent greater per employee for firms with under 20 employees compared to firms with over 500 employees. [28]

These results do not indicate, however, the extent to which reducing regulatory requirements on small firms would affect net benefits. That depends upon the differences between relative benefits per dollar of cost by firm size, not on differences in costs per employee. If benefits per dollar of cost are smaller for small firms than large firms, then decreasing requirements for small firms while increasing them for large firms should increase net benefits. The reverse may be true in some cases.

Impact on Wages

The impact of Federal regulations on wages depends upon how "wages" are defined and on the types of regulations involved. If we define "wages" narrowly as workers' take-home pay, social regulation usually decreases average wage rates, while economic regulation often increases them, especially for specific groups of workers. If we define "wages" more broadly as the real value or utility of workers' income, the directions of the effects of the two types of regulation can be reversed.

[28] The average per employee regulatory costs were $6,975 for firms with under 20 employees compared to $4,463 for firms with over 500 employees. These findings are based on their overall estimate of the cost of Federal regulation for 2000 of $843 billion. (*See* Crain and Hopkins, "The Impact of Regulatory Costs for Small Firms" SBA, Office of Advocacy, 2001).

1. Social Regulation

By broad measures of welfare, social regulation, regulation directed at improving health, safety, and the environment is intended to create benefits for workers and consumers that outweigh the costs. Compliance costs, however, must be paid for by some combination of workers, business owners, and/or consumers through adjustments in wages, profits, and/or prices. This effect is most clearly recognized for occupational health and safety standards. As one leading text book in labor economics suggests: "Thus, whether in the form of smaller wage increases, more difficult working conditions, or inability to obtain or retain one's first choice in a job, the costs of compliance with health standards will fall on employees." [29]

Viewed in terms of overall welfare, the regulatory benefits of improved health, safety, and environmental improvements for workers can outweigh their costs assuming the regulation produces net benefits. In the occupational health standards case, where the benefits of regulation accrue mostly to workers, workers are likely to be better off if health benefits exceed compliance costs. [30] Although wages may reflect the cost of compliance with health and safety rules, the job safety and other benefits of such regulation can compensate for the monetary loss. Workers as consumers benefitting from safer products and a cleaner environment may also come out ahead if regulation produces significant net benefits for society.

2. Economic Regulation

For economic regulation, designed to set prices or conditions of entry for specific sectors, these effects may at times be reversed to some degree. Economic regulation can result in increases in income narrowly defined for workers in the regulated industries, but decreases in broader measures of income based on utility or overall welfare, especially for workers in general. Economic regulation is often used to protect industries and their workers from competition. Examples include the airline and trucking industries in the 1970s and trade protection, today. These wage gains come at a cost in inefficiency from reduced competition, however, which consumers must bear. Moreover, growth in real wages, which are limited generally by productivity increases, will not grow as fast without the stimulation of outside competition. [31]

These statements are generalizations for the impact of regulation in the aggregate or by broad categories. Specific regulations can increase or decrease the overall level of benefits accruing to workers depending upon the actual circumstances and whether net benefits are produced.

[29] From Ehrenberg and Smith's *Modern Labor Economics*, p. 279.

[30] Based on a cost benefit analysis of OSHA's 1972 Asbestos regulation by Settle (1975), which found large net benefits, Ehrenberg and Smith cite this regulation as a case where workers' wages were reduced, but they were made better off because of improved health (p. 281).

[31] Winston (1998) estimates that real operating costs declined between 25 and 75 percent in the sectors that were deregulated over the last 20 years—transportation, energy, and telecommunications.

Economic Growth

The conventional measurement of GDP does not take into account the market value of improvements in health, safety, and the environment. It does incorporate the direct compliance costs of social regulation. Accordingly, conventional measurement of GDP can suggest that regulation reduces economic growth. [32] In fact, sensible regulation and economic growth are not inconsistent once all benefits are taken into account. By the same token, inefficient regulation reduces true economic growth.

The OECD (1999) estimates that the economic deregulation that occurred in the U.S. over the last 20 years permanently increased GDP by 2 percent. The OECD also estimates that further deregulation of the transportation, energy, and telecommunication sectors would increase U.S. GDP by another 1 percent. Jaffe, Peterson, Portney, and Stavins (1995) summarize their findings after surveying the evidence of the effects of environmental regulation on economic growth as follows: "Empirical analysis of the productivity effects have found modest adverse impacts of environmental regulation." Based on the studies that tried to explain the decline in productivity that occurred in the US during the 1970s, they placed the range attributable to environmental regulation from 8 percent to 16 percent (p. 151).

As indicated above, conventionally measured GDP growth does not take into account the market value of the improvements in health, safety, and the environment that social regulation has brought us. If even our lower range estimate of the benefits of social regulation ($266 billion) were added to GDP, then the more comprehensive measure of GDP, one that includes the value of nonmarket goods and services provided by regulation, would be about 3 percent greater. [33] Focusing on the effect of social regulation on economic growth is misleading if it does not take into account the full benefits of regulation.

More important than knowing the impact of regulation in general on growth is the impact of specific regulations and alternative regulatory designs on economic growth. As Jaffe et al put it: "Any discussion of the productivity impacts of environmental protection efforts should recognize that not all environmental regulations are created equal in terms of their costs or their benefits." (p 152).

[32] Social regulation reduces measured growth by diverting resources from the production of goods and services that are counted in GDP to the production or enhancement of "goods and services" such as longevity, health, and environmental quality that generally are not counted in GDP.

[33] Including the value of increasing life expectancy in the GDP accounts to come up with a more comprehensive measure of the full output of the economy is not as far fetched as it sounds. It was first proposed and estimated in 1973 by D. Usher in "An Imputation to the Measure of Economic Growth for Changes in Life Expectancy" *NBER Conference on Research in Income and Wealth.*

In this regard, market-based or economic-incentive regulations will tend to be more cost-effective than those requiring specific technologies or engineering solutions. Under market-based regulation, profit-maximizing firms have strong incentives to find the cheapest way to produce the social benefits called for by regulation. How you regulate can go a long way toward reducing any negative impacts on economic growth and increasing the overall long run benefits to society.

Appendix D. Explanation of Calculations for Costs and Benefits Tables

Chapter II presents estimates of the annual costs and benefits of major regulations reviewed by OMB between April 1, 1995 and September 30, 2001, for which we had quantified costs and benefits. The explanation for the calculations of the major rules reviewed by OMB between April 1, 1995 and March 31, 1999, is in Chapter IV of our 2000 report (OMB 2000). Table 14 presents OIRA's estimates of the benefits and costs of the 19 individual rules reviewed between April 1, 1999 and September 30, 2001 which were included in Table 5. As mentioned in Chapter II, we adjusted these estimates to update the estimates to 2001 dollars and removed three EPA regulations to prevent double counting. First, we decided to exclude the benefit and cost estimates for the Ozone and fine Particulate Matter NAAQS. EPA has adopted a number of key rules in the ensuing five years—for example, the NO_X SIP Call, the Regional Haze rule, the Tier II rule setting stringent emission limits for light duty vehicles, and the Heavy Diesel Engine rules setting stringent emission limits for on-highway diesel engines. These rules can achieve emission reductions and impose costs that were also included in the EPA benefit and cost estimates developed for the O_3 and PM NAAQS rules. Second, EPA issued a 1998 rule limiting Heavy Duty Diesel Engine emissions beginning in 2004 and "reaffirmed" the 1998 rule in a final rule issued last year. OIRA has used the benefit and cost estimates from EPA's 2001 rulemaking because we believe it provides a better estimate of the likely emission reductions and costs of these emission standards.

In assembling estimates of benefits and costs, OIRA has:

(1) Applied a uniform format for the presentation of benefit and cost estimates in order to make agency estimates more closely comparable with each other (for example, providing the benefit and cost streams over time and annualizing benefit and cost estimates); and

(2) monetized quantitative estimates where the agency has not done so (for example, converting some projections of tons of pollutant per year to dollars).

Adopting a format that presents agency estimates so that they are more closely comparable also allows, at least for purposes of illustration, the aggregation of benefit and cost estimates across rules. While OIRA has attempted to be faithful to the respective agency approaches, the reader should be cautioned that agencies have used different methodologies and valuations in quantifying and monetizing effects.

Valuation Estimates for Regulatory Effects [34]

Agencies continue to take different approaches in monetizing benefits for rules that affect small risks of premature death. As a general matter, we have deferred to the individual agencies' judgment in this area. In cases where the agency both quantified and monetized fatality risks, we have made no adjustments to the agency's estimate. In cases where the agency provided only a quantified estimate of fatality risk, but did not monetize it, we have monetized these estimates in order to convert these effects into a common unit. For example, in the case of HHS's organ donor rule, the agency estimated, but did not monetize, statistical life-years saved (although it has discussed its use of $116,500 per life-year in other contexts). OIRA valued those life-years at $116,500 each. For NHTSA's child restraint rule, OIRA used NHTSA's approach to valuing life saving benefits.

In cases where agencies have not adopted estimates of the value of reducing these risks, OIRA used estimates supported by the relevant academic literature.[35] OIRA did not attempt to quantify or monetize fatality risk reductions in cases where the agency did not at least quantify them. As a practical matter, the aggregate benefit and cost estimates are relatively insensitive to the values we have assigned for these rules because the aggregate benefit estimates are dominated by EPA's rules.

The following is a brief discussion of OIRA's valuation estimates for other types of effects that agencies identified and quantified, but did not monetize.

- *Injury.* For the child restraint rule, the Department of Transportation approach of converting injuries to "equivalent fatalities" was adopted. These ratios are based on DOT's estimates of the value individuals place on reducing the risk of injury of varying severity relative to that of reducing risk of death. For the OSHA industrial truck operator rule, OIRA did not monetize injury benefits beyond OSHA's estimate of the direct cost of lost workday injuries. For the OSHA safety standards for steel erection, OIRA monetized injury benefits using a value of $50,000 per injury averted.
- *Change in Gasoline Fuel Consumption.* We valued reduced gasoline consumption at $.80 per gallon pre-tax.
- *Reduction in Barrels of Crude Oil Spilled.* OIRA valued each barrel prevented from being spilled at $2,000. This is double the sum of the most likely estimates of environmental damages plus cleanup costs contained in a recently published journal article (Brown and Savage, 1996).
- *Change in Emissions of Air Pollutants.* Estimates of the benefits per ton for reductions in hydrocarbon, nitrogen oxide (NO_X), sulfur dioxide (SO_2), and fine particulate matter (PM) were derived from EPA's pulp and paper cluster rule (October, 1997). These estimates were obtained from the RIA prepared for EPA's July, 1997 rules revising the primary NAAQS for ozone and fine PM. In this area, as in others, the academic literature offers a number of methodologies and underlying studies to quantify the benefits. There remain considerable uncertainties with each of these approaches. In particular, the derivation and application of per-ton coefficients to value reductions in these pollutants requires significant simplifying assumptions. This is particularly true with respect to the relationship between changes in emitted precursors pollutants and changes in the ambient pollutant concentrations which yield actual benefits. As a result of these simplifying assumptions, the monetary benefit estimates obtained by multiplying tons reduced by benefit estimates per-ton, which we derive from analyses of other rules, should be considered highly uncertain. For each of these pollutants, the following values (all in 1996$) were used for changes in emissions: [36]

Hydrocarbons: $519 to $2,360/ton;
Nitrogen Oxides: $519 to $2,360/ton;
Particulate Matter: $11,539/ton; and
Sulfur Dioxide: $3,768 to $11,539/ton.

The NO_X benefit estimate is based on benefit transfer values ranging from $519 to $2,360 per ton derived from a 1997 benefit analysis of VOC emission reductions, as noted above. This analysis required two key assumptions: (1) That NO_X reductions have no effect on particulate matter concentrations; and (2) that NO_X and VOC reductions contribute proportionately to ozone reductions. While reductions in VOC and NO_X emissions both lead to reductions in ambient concentrations of ozone, reductions in NO_X emissions also lead to reductions in particulate matter. In addition, reductions in NO_X may have a disproportionate impact on reductions in ozone. For these reasons, estimates of benefits based on the VOC transfer coefficients should be viewed with caution. All else equal, they are likely to underestimate actual NO_X -related benefits.

Analysis of other recent EPA rules yield a range of estimates for the NO_X benefits per ton. Each of these analyses is arguably methodologically superior to the 1997 benefit analysis. For example, the OTAG SIP and the Section 126 rules limiting NO_X emissions from electric utilities yielded estimates of $960 to $2500 per ton and $1350 to $2100 per ton in 2007, respectively, and the recent Tier 2 rule limiting NO_X emissions from cars and light trucks yielded estimates of $4500 to $7900 per ton in 2030. Finally, a recent EPA memo on the benefits of the NSR program provided an estimate based on previous EPA analyses that the average mortality-related benefits estimate is around $1300 per ton of NO_X reduced. The

[34] The following discussion updates the monetization approach used in previous reports and draws on examples from this and previous years.

[35] As a result of OSHA's interpretation of the Supreme Court's decision in the "Cotton Dust" case, *American Textile Manufacturers Institute* v. *Donovan*, 452 U.S. 491 (1981), OSHA does not conduct cost-benefit analysis or assign monetary values to human lives and suffering.

[36] Where applicable, the lower (higher) end of the value ranges in all of the tables throughout this report reflect the lower (higher) values in these ranges.

corresponding benefits estimate for SO_2 reductions is $7300 per ton. In these studies, the mortality-related benefits generally accounted for over 90 percent of monetary benefits. Currently, we recognize that there are potential problems and significant uncertainties that are inherent in any benefits analysis based on $/ton benefit transfer techniques. The extent of these problems and the degree of uncertainty depends on the divergence between the policy situation being studied and the basic scenario providing the benefits transfer estimate.

Several factors may be responsible for uncertainty and variability in the benefits transfer values. These factors include sources of emissions, meteorology, transport of emissions, initial pollutant concentrations, population density, and population demographics, such as proportion of elderly and children and baseline incidence rates for health effects. In order to minimize the uncertainty associated with benefits transfer, benefit transfer values should be taken from situations that are similar to the rule being evaluated. For example, where possible, benefit transfer values for individual pollutants should be based on primary benefits analyses for rules where the pollutant of interest, e.g. NO_x, is the primary pollutant controlled by the rule.

These additional issues are particularly relevant for the NO_X benefits transfer conducted for this report. Alternative benefits transfer analyses are available, as outlined above, including a benefits transfer estimate offered by EPA based on its recent analysis of the Tier 2 rule and the EPA staff estimate recently included in the New Source Review docket. Relative to the 1997 VOC rule, the benefits transfer based on these alternative analyses are (a) more focused on NO_X emissions, (b) based on more up-to-date data and methods, and (c) focused on sources more similar in character to the sources being evaluated in this report. The EPA staff estimate for the NSR docket is within the $520 to $2,360 per ton estimate used in this report.

In order to make agency estimates more consistent, we developed benefit and cost time streams for each of the rules. Where agency analyses provide annual or annualized estimates of benefits and costs, we used these estimates in developing streams of benefits and costs over time. Where the agency estimate only provided annual benefits and costs for specific years, we used a linear interpolation to represent benefits and costs in the intervening years.[37] For the Tier 2 rule and the Heavy Duty Diesel Engine rules, EPA only developed benefit estimates for a single year (2030) because of the difficulty of doing the air quality modeling necessary to support development of benefits estimates over multiple years. However, EPA did develop estimates of the expected emission reductions for intermediate years. We used these emission reduction estimates to scale the 2030 benefit estimate to provide a benefit stream over the relevant time period. For the Regional Haze rule, EPA provided only an estimate of benefits and costs in 2015. To develop benefit and cost streams, we used a linear extrapolation of benefits and costs beginning in 2009 and scaling up to the reported 2015 estimates.

Agency estimates of benefits and costs cover widely varying time periods. While HHS analyzed the effects of providing transplant-related data from 1999 through 2004, other agencies generally examined the effects of their regulations over longer time periods. HHS used a 10-year period for its over-the counter drug labeling rule; DOL also used a 10-year period for its truck operator training rule. EPA's analyses on disinfection and enhanced water treatment rules evaluated the effects over a twenty-year period. The differences in the time frames used for the various rules evaluated generally reflect the specific characteristics of individual rules such as expected capital depreciation periods or time to full realization of benefits.

In order for comparisons or aggregation to be meaningful, benefit and cost estimates should correctly account for all substantial effects of regulatory actions, including potentially offsetting effects, which may or may not be reflected in the available data. We have not made any changes to agency monetized estimates. To the extent that agencies have adopted different monetized values for effects—for example, different values for a statistical life or different discounting methods—these differences remain embedded in the tables. Any comparison or aggregation across rules should also consider a number of factors which our presentation does not address. For example, these analyses may adopt different baselines in terms of the regulations and controls already in place. In addition, the analyses for these rules may well treat uncertainty in different ways. In some cases, agencies may have developed alternative estimates reflecting upper- and lower-bound estimates. In other cases, the agencies may offer a midpoint estimate of benefits and costs. In still other cases the agency estimates may reflect only upper-bound estimates of the likely benefits and costs.

While we have relied in many instances on agency practices in monetizing costs and benefits, we believe that it may be critical in the coming year to take a more precise look at the variety of agency practices in use. Accordingly, our citation of or reliance on agency data in this report should not be taken as an OIRA endorsement of all of the varied methodologies used to derive benefit and cost estimates.

TABLE 14.—ESTIMATE OF BENEFITS AND COSTS OF 19 MAJOR RULES, APRIL 1, 1999 TO SEPTEMBER 30, 2001

[Annualized 2001 dollars in millions]

Regulation	Agency	Benefits	Costs	Explanation
1999–2000:				
Lead-Based Paint Hazards	HUD	190	150	Both costs and benefits come from Table 4 of the 2001 report. The present value estimates are amortized over five years.
Storm Water Discharges Phase II.	EPA	700–1,700	900–1,100	From Table 4 of 2001 report.
Tier 2 Motor Vehicle Emission Standards.	EPA	7,300–13,400	4,000	EPA provided a monetized benefit estimate only for the year 2030. EPA also estimated reductions for various individual years between 2004 and 2030. We assumed that the monetized benefits were directly correlated with emission reductions. We developed an annualized stream of emission reductions by interpolating between years for which EPA provided estimates. We then prorated the monetized benefits annually in proportion to the annual emission reductions. Finally, we annualized the resulting stream of monetized benefits. We used EPA's annual cost estimates to develop the annualized cost estimates.

[37] In other words, if hypothetically we had costs of $200 million in 2000 and $400 million in 2020, we would assume costs would be $250 million in 2005, $300 million in 2010, and so forth.

TABLE 14.—ESTIMATE OF BENEFITS AND COSTS OF 19 MAJOR RULES, APRIL 1, 1999 TO SEPTEMBER 30, 2001—Continued

[Annualized 2001 dollars in millions]

Regulation	Agency	Benefits	Costs	Explanation
Regional Haze	EPA	300–7,000	300–1,600	EPA provided a monetized benefit and cost range of estimates only for the year 2015. EPA also estimated emission reductions targeted for improving visibility for various individual years between 2010 and 2105, We assumed that the monetized benefits were directly correlated with emission reductions. We developed an annualized stream of emission reductions by assuming a linear improvement in haze from 2010 to 2015. We than prorated the monetized benefits annually in proportion to the annual emission reductions. Finally, we annualized the resulting stream of monetized benefits. We used EPA's annual cost estimates to develop the annualized cost estimates.
Handheld Engines	EPA	250–860	190–250	For benefits, we valued EPA's annualized emission reductions at $1,000—$2500 per ton. Costs and benefits are taken directly from table 4: Summary of Agency Estimates for Final Rules 4/1/99–3/31/00, converted to 2001$.
Total		8,740–23,150	5,540–7,100	
2000–2001:				
Roadless Area Conservation	USDA	0.219	184	Both costs and benefits come from Table 7: summary of Agency Estimates for Final Rules, 4/1/00–9/30/01. The benefits are taken as given. Costs aggregate the total short-term and long term per year costs provided.
Energy Conservation Standards for Fluorescent Lamp Ballasts.	DOE	280	70	Benefits and costs are estimated by amortizing the estimated present value of $3.51 billion in benefits and $.9 billion in costs over the next 30 years.
Energy Conservation Standards for Water Heaters.	DOE	680	510	Benefits and costs are estimated by amortizing the estimated present value of $8.6 billion in benefits and $6.4 billion in costs over the next 30 years.
Energy Conservation Standards for Clothes Washers.	DOE	2,150	940	Benefits and costs are estimated by amortizing the estimated present value of $27.2 billion in benefits and $11.9 billion in costs over the next 30 years.
Health Insurance Reform: Standards for Electric Transactions.	HHS	2,720	700	Benefits are estimated by annualizing the $19.1 billion present value of benefits estimated to accrue in the next 10 years. Costs are estimated by assuming that the estimated $7 billion of costs occur evenly over the next 10 years.
Safe and Sanitary Processing and Importing of Juice.	HHS	150	30	Benefits above are identical to what is listed in Table 7; the costs are estimated as $23 million per year with an up-front costs of $44–$55 million in the first year. The first year costs are amortized over the next 30 years.
Standards for Privacy of Individually Identifiable Health Information.	HHS	2,700	1,680	Amortized the net present value of benefits and costs of $19 billion and $11.8 billion respectively.
Labeling of Shell Eggs	HHS	261	15	Benefits above are identical to what is listed in Table 7; the costs are estimated as $10 million per year with an up-front costs of $56 million in the first year. The first year costs are amortized over the next 30 years.
Safety Standards for Steel Erection.	DOL	167	78	Benefits are estimated at 22 fatalities averted and 1,142 injuries averted per year. Each fatality averted is valued at $5 million, and each injury averted is valued at $50,000. Costs are what was estimated by the agency.
Advanced Airbags	DOT	140–1,600	400–2000	Based on methodology in NHTSA's "The Economic Cost of Motor Vehicle Crashes, 1994."
Identification of Dangerous Levels of Lead.	EPA	1,750–6,840	2,700	Calculated by amortizing the estimated present value of benefits of $45–$176 billion as well as the estimated present value of benefits of $70 billion using a discount rate of 3%, a rate explicitly specified the EPA in this rule.
Arsenic and Clarifications	EPA	140–198	206	Both costs and benefits taken directly from Table 7.

TABLE 14.—ESTIMATE OF BENEFITS AND COSTS OF 19 MAJOR RULES, APRIL 1, 1999 TO SEPTEMBER 30, 2001—Continued

[Annualized 2001 dollars in millions]

Regulation	Agency	Benefits	Costs	Explanation
National Emission Standards for Hazardous Air Pollutants for Chemical Recovery.	EPA	293–393	32	Both costs and benefits taken directly from Table 7.
Heavy-Duty Engine and Vehicle Standards.	EPA	13,000	2,400	We estimated the present value of the stream of costs and benefits generated until 2030, deflated the present value to 2001$'s, and then annualized the streams.
Total		24,435–31,139	9,965–11,565	

Note: Assumptions: 7% discount rate unless another rate explicitly identified by the agency. For DOL: $5 million VSL assumed for deaths averted when not already quantified. Injuries averted valued at 50,000 both of the above from Viscusi. All values converted to 2001 dollars. All costs and benefits stated on a yearly basis.

Appendix E.

TABLE 15.—REGULATIONS REVIEWED BY AGENCY, 1998—2001

	Total	2001	2000	1999	1998
USDA:					
S	225	53	56	69	47
ES	46	8	24	10	4
HHS:					
S	334	66	89	88	91
ES	101	28	26	22	25
EPA:					
S	201	52	51	42	56
ES	56	9	18	15	14
DOT:					
S	129	48	29	26	26
ES	38	14	7	8	9
DOC:					
S	139	20	47	46	26
ES	11	2	4	4	1
DOI:					
S	142	32	63	28	19
ES	16	3	6	4	3
ED:					
S	58	9	29	23	6
ES	1	0	0	1	0
HUD:					
S	126	35	29	36	26
ES	6	0	2	3	1
VA:					
S	113	68	12	20	13
ES	5	4	1	0	0
DOJ:					
S	108	39	29	13	27
ES	4	2	0	1	1
OPM:					
S	121	32	37	28	24
ES	0	0	0	0	0
Sum:					
S	1,696	445	471	419	361
ES	284	70	88	68	58

*Data are all for years beginning 2/1 and extending through 1/31 the next year.
S = Significant rulemaking.
ES = Economically significant rulemaking.

Appendix F. The "Regulatory Right-to-Know Act" [38]

SEC. 624. (a) IN GENERAL.—For calendar year 2002 and each year thereafter, the Director of the Office of Management and Budget shall prepare and submit to Congress, with the budget submitted under section 1105 of title 31, United States Code, an accounting statement and associated report containing—

(1) an estimate of the total annual costs and benefits (including quantifiable and nonquantifiable effects) of Federal rules and paperwork, to the extent feasible—

(A) in the aggregate;

(B) by agency and agency program; and

(C) by major rule;

(2) an analysis of impacts of Federal regulation on State, local, and tribal government, small business, wages, and economic growth; and

(3) recommendations for reform.

(b) NOTICE.—The Director of the Office of Management and Budget shall provide public notice and an opportunity to comment on the statement and report under subsection (a)

[38] Section 624 of the Treasury and General Government Appropriations Act, 2001, 31 U.S.C. 1105 note, Pub. L. 106–554, sec. 1(a)(3) [Title VI, sec. 624], Dec. 21, 2000, 114 Stat. 2763, 2763A–161.

before the statement and report are submitted to Congress.

(c) GUIDELINES.—To implement this section, the Director of the Office of Management and Budget shall issue guidelines to agencies to standardize—

(1) measures of costs and benefits; and

(2) the format of accounting statements.

(d) PEER REVIEW.—The Director of the Office of Management and Budget shall provide for independent and external peer review of the guidelines and each accounting statement and associated report under this section. Such peer review shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

[FR Doc. 02–7257 Filed 3–27–02; 8:45 am]

BILLING CODE 3110–01–P

Federal Register

Thursday,
March 28, 2002

Part III

Department of Education

Elementary and Secondary School Counseling Programs; Notice

DEPARTMENT OF EDUCATION

[CFDA No: 84.215E]

Elementary and Secondary School Counseling Programs

AGENCY: U.S. Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2002.

SUMMARY: We invite applications for new grant awards for FY 2002 for the Elementary and Secondary School Counseling Programs. These grants are authorized under Title V, Part D, Subpart 2 of the Elementary and Secondary Education Act (ESEA). We also announce the final priority and selection criteria to govern this competition and FY 2002 award of these grants. The Office of Elementary and Secondary Education, Safe and Drug-Free Schools Program will administer this grant competition.

Purpose of Program: The purpose of this program is to focus Federal financial assistance on establishing and expanding elementary school counseling programs.

Eligible Applicants: Eligible applicants under this competition are local educational agencies (LEAs). LEAs may apply in consortia with one or more LEAs; however, each participating LEA must ensure that all requirements of the priority for this competition are met.

Applications Available: March 28, 2002.

Deadline for Receipt of Applications: May 13, 2002.

Deadline for Intergovernmental Review: July 11, 2002.

Available Funds: approximately $2.3 million.

Estimated Number of Awards: 7.

Maximum Grant Award: $400,000 (for each year of funding).

Estimated Size of Awards: $250,000—$400,000.

Estimated Average Size of Awards: $335,000.

Note: This Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Program Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, 97, 98, and 99.

SUPPLEMENTARY INFORMATION: In making awards under this grant program, we will ensure an equitable geographic distribution among the regions of the United States and among LEAs located in urban, suburban, and rural areas.

Contingent upon the availability of funds, we may make additional awards in FY 2003 from the rank-ordered list of unfunded applications from this competition.

Note: Section 5421(g)(2) of the ESEA requires the Secretary to award grants to LEAs only to establish or expand counseling programs in elementary schools if the appropriation for the program is less than $40,000,000. The appropriation for fiscal year 2002 is $32,500,000, so FY 2002 funds may be used only to establish or expand counseling programs in elementary schools.

Definitions: By statute, the following definitions apply to this program:

(1) The term 'child and adolescent psychiatrist' means an individual who–

(A) possesses State medical licensure; and

(B) has completed residency training programs in both general psychiatry and child and adolescent psychiatry;

(2) The term 'other qualified psychologist' means an individual who has demonstrated competence in counseling children in a school setting and who–

(A) is licensed in psychology by the State in which the individual works; and

(B) practices in the scope of the individual's education, training, and experience with children in school settings;

(3) The term 'school counselor' means an individual who has documented competence in counseling children and adolescents in a school setting and who—

(A) is licensed by the State or certified by an independent professional regulatory authority;

(B) in the absence of such State licensure or certification, possesses national certification in school counseling or a specialty of counseling granted by an independent professional organization; or

(C) holds a minimum of a master's degree in school counseling from a program accredited by the Council for Accreditation of Counseling and Related Educational Programs or the equivalent;

(4) The term 'school psychologist' means an individual who—

(A) has completed a minimum of 60 graduate semester hours in school psychology from an institution of higher education and has completed 1,200 clock hours in a supervised school psychology internship, of which 600 hours are in the school setting;

(B) is licensed or certified in school psychology by the State in which the individual works; or

(C) in the absence of such State licensure or certification, possesses national certification by the National School Psychology Certification Board; and

(5) The term 'school social worker' means an individual who—

(A) holds a master's degree in social work from a program accredited by the Council on Social Work Education; and

(B)(i) is licensed or certified by the State in which services are provided; or

(ii) in the absence of such State licensure or certification, possesses a national credential or certification as a school social work specialist granted by an independent professional organization.

Waiver of Proposed Rulemaking: It is the Secretary's practice, in accordance with the Administrative Procedure Act (5 U.S.C. 553), to offer interested parties the opportunity to comment on proposed rules. Section 437 (d)(1) of the General Education Provisions Act (GEPA), however, exempts from this requirement rules that apply to the first competition under a new or substantially revised program. This is the first competition under the Elementary and Secondary School Counseling Programs, which was substantially revised by the No Child Left Behind Act.

Absolute Priority: Under 34 CFR 75.105(c)(3), we give an absolute priority to LEA projects that establish or expand elementary school counseling programs at elementary schools with at least one grade below fifth and no grade higher than eighth. Under this competition, we fund only applications that meet this absolute priority.

Statutory Requirements: The statute requires each program assisted under this competition to:

(1) Be comprehensive in addressing the counseling and educational needs of all students;

(2) Use a developmental, preventive approach to counseling;

(3) Increase the range, availability, quantity, and quality of counseling services in elementary schools of the LEA;

(4) Expand counseling services through qualified school counselors, school social workers, school psychologists, other qualified psychologists, or child and adolescent psychiatrists;

(5) Use innovative approaches to increase children's understanding of peer and family relationships, work and self, decision making, academic and career planning, or to improve peer interaction;

(6) Provide counseling services in settings that meet the range of student needs;

(7) Include in-service training for teachers, instructional staff, and appropriate school personnel, including in-service training in appropriate

identification and early intervention techniques by school counselors, school social workers, school psychologists, other qualified psychologists, and child and adolescent psychiatrists;

(8) Involve parents of participating students in the design, implementation, and evaluation of the counseling program;

(9) Involve community groups, social service agencies, or other public or private entities in collaborative efforts to enhance the program and promote school-linked integration of services;

(10) Evaluate annually the effectiveness and outcomes of the counseling services and activities assisted under this section;

(11) Ensure a team approach to school counseling in the schools served by the LEA by working toward ratios recommended by the American School Health Association of one school counselor to 250 students, one school social worker to 800 students, and one school psychologist to 1,000 students; and

(12) Ensure that school counselors, school psychologists, other qualified psychologists, school social workers, or child and adolescent psychiatrists paid from funds made available under this section spend a majority of their time counseling students or in other activities directly related to the counseling process.

The statute also requires each grantee to—

(1) Assure that the funds made available for any fiscal year will be used to supplement, and not supplant, any other Federal, State, or local funds used for providing school-based counseling and mental health services to students.

(2) Assure that the applicant will appoint an advisory board composed of interested parties, including parents, teachers, school administrators, counseling service providers, and community leaders to advise the LEA on the design and implementation of the counseling program.

(3) Use not more than 4 percent of the amounts made available for any fiscal year for administrative costs.

Selection Criteria: We will use the following selection criteria to evaluate applications under this competition.

The maximum score for all of these criteria is 100 points.

The maximum score for each criterion is indicated in parenthesis with the criterion.

(1) *Need for the project* (20 points).

(A) Applicants must propose projects that demonstrate the greatest need for new or additional counseling services among children in the elementary schools served by the project;

(B) In determining applications with the greatest need the following factors are considered:

(i) The magnitude or severity of the problem to be addressed by the proposed project;

(ii) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project; and

(iii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses; and

(C) In describing the proposed project, applicants must:

(i) Describe the school population to be targeted by the program; the particular counseling needs of that population; the current ratios of students to school counselors, students to school social workers, and students to school psychologists; and the current school counseling resources available for meeting such needs; and

(ii) Describe how diverse cultural populations, if applicable, will be served through the program.

(2) *Quality of the project design* (20 points).

(A) Applicants must propose projects that demonstrate the most promising and innovative approaches for initiating or expanding counseling services in the target schools;

(B) In determining the quality of the project design the following factors are considered:

(i) The extent to which the design of the proposed project is appropriate to, and will successfully address, the counseling needs of the target population;

(ii) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance; and

(iii) The extent to which the proposed project will establish linkages with other appropriate agencies or organizations providing services to the target population; and

(C) In describing the project design, applicants must:

(i) Describe the activities, services, and training to be provided by the program and the specific approaches to be used to meet the needs of the target population; and

(ii) Describe how the LEA will involve community groups, social service agencies, and other public and private entities in collaborative efforts to enhance the program and promote school-linked services integration.

(3) *Quality of the project evaluation* (20 points).

(A) Applicants must provide a detailed description of their plan to annually evaluate the outcomes and effectiveness of the proposed counseling services and strategies;

(B) In determining the quality of the project evaluation the following factors are considered:

(i) The extent to which the methods of evaluations are thorough, feasible, measurable, and appropriate to the goals, objectives, and outcomes of the proposed project;

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible; and

(iii) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings; and

(C) In describing the proposed project evaluation, applicants must:

(i) Describe the methods to be used to evaluate the outcomes and effectiveness of the project; and

(ii) Agree to cooperate with any national evaluation of this grant competition that we may require.

(4) *Quality of the management plan* (20 points).

(A) Applicants must provide a detailed description of their plan to manage the activities outlined in their proposal;

(B) In determining the quality of the management plan the following factors are considered:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timeliness, and milestones for accomplishing project tasks;

(ii) The extent to which the time commitments of the project director, project evaluator, and other key project personnel are appropriate and adequate to meet the objectives of the proposed project; and

(iii) The extent to which the applicant will ensure that a diversity of perspectives is brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate; and

(C) In describing the management plan, applicants must:

(i) Describe how the LEA will involve community groups, social service

agencies, and other public or private entities in collaborative efforts to enhance the program and promote school-linked services integration; and

(ii) Document that the LEA has the personnel qualified to develop, implement, and administer the program.

(5) *Adequacy of resources* (20 points).

(A) Applicants must describe the resources committed to the proposed project;

(B) In determining the adequacy of resources for the proposed project, the following factors are considered:

(i) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project;

(ii) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits; and

(iii) The potential for the incorporation of the project purposes, activities, or benefits into the ongoing program of the agency or organization at the end of Federal funding.

Pilot Project for Electronic Submission of Applications

In FY 2002, the U.S. Department of Education is expanding its pilot project of electronic submission of applications to include certain formula grant programs, as well as additional discretionary grant competitions. The Elementary and Secondary School Counseling Programs is one of the programs included in the pilot project. If you are an applicant under the Elementary and Secondary School Counseling Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Within three working days of submitting your electronic application fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from the e-APPLICATION system.

2. Make sure that the institution's Authorizing Representative signs this form.

3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).

4. Place the PR/Award number in the upper right hand corner of ED 424.

5. Fax ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the Elementary and Secondary School Counseling Programs at: *http://e-grants.ed.gov.*

We have included additional information about the e-APPLICATION pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

For Applications or Information Contact: Loretta McDaniel, U.S. Department of Education, Safe and Drug-Free Schools Program, 400 Maryland Avenue, SW., Room 3E220, Washington, DC 20202–6123. Telephone: (202) 260–2661, or the following e-mail or Internet addresses:

loretta.mcdaniel@ed.gov.

www.ed.gov/offices/OESE/SDFS.

If you use a telecommunications device for the deaf (TDD) you may call the Federal Information Relay Service at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in this section. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498, or in the Washington, DC area at (202) 512–1530.

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Program Authority: 20 U.S.C. 5421.

Dated: March 25, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–7474 Filed 3–27–02; 8:45 am]

BILLING CODE 4001–01–M

Federal Register

Thursday,
March 28, 2002

Part IV

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Parts 2560 and 2570

Delinquent Filer Voluntary Compliance Program; Final Rule

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Parts 2560 and 2570

RIN 1210–AA86

Delinquent Filer Voluntary Compliance Program

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice, Delinquent Filer Voluntary Compliance Program.

SUMMARY: This Notice modifies the Delinquent Filer Voluntary Compliance Program ("DFVC Program" or "Program") announced by the Department of Labor's Pension and Welfare Benefits Administration in 1995. The DFVC Program is intended to encourage, through the assessment of reduced civil penalties, delinquent plan administrators to comply with their annual reporting obligations under Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). Following a review of the DFVC Program, as adopted in 1995, the Department has determined to update the Program and adjust the civil penalty structure under the Program in an effort to further encourage and facilitate voluntary compliance by plan administrators with ERISA's annual reporting requirements. Because the modifications to the DFVC Program include lower civil penalty assessments, the modifications are being put into effect upon publication of this notice in the **Federal Register**. Nonetheless, the Department is seeking comments from the public on the modified Program.

DATES: *Effective Date:* March 28, 2002. The modified Program adopted herein supercedes and replaces, as of its effective date, the DFVC Program as adopted on April 27, 1995 (60 FR 20874).

Comment Date: Written comments must be received by the Department no later than May 28, 2002.

ADDRESSES: Interested persons are invited to submit written comments on the DFVC Program to: DFVC Comments, Office of Regulations and Interpretations, Room N–5669, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210. All submissions will be open to public inspection at the Public Documents Room, Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Jennifer C. Warner or Scott C. Albert, Office of the Chief Accountant, Pension and Welfare Benefits Administration, telephone (202) 693–8360. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

The Secretary of Labor has the authority under section 502(c)(2) of ERISA to assess civil penalties of up to $1,100 [1] a day against plan administrators who fail or refuse to file complete and timely annual reports as required under section 101(b) of ERISA and the Secretary's regulations. Pursuant to 29 CFR 2560.502c–2 and 29 CFR 2570.60 *et seq.*, the Pension and Welfare Benefits Administration (PWBA) has maintained a program for the assessment of civil penalties for noncompliance with ERISA's annual reporting requirements. Under this program, plan administrators filing late annual reports may be assessed $50 per day for each day an annual report is filed after the date on which the annual report was required to be filed, without regard to any extensions of time for filing. Plan administrators who fail to file an annual report may be assessed a penalty of $300 per day, up to $30,000 per year, until a complete annual report is filed. The Department may, in its discretion, waive all or part of a civil penalty assessed under section 502(c)(2) upon a showing by the administrator that there was reasonable cause for the failure to file a complete and timely annual report or that there was reasonable cause why the penalty, as calculated, should not be assessed.

In an effort to encourage delinquent filers to voluntarily comply with the annual reporting requirements under Title I of ERISA, the Department adopted, on April 27, 1995, the Delinquent Filer Voluntary Compliance (DFVC) Program (60 FR 20874). The Program, as adopted in 1995, permitted administrators otherwise subject to the assessment of higher civil penalties for failing to file a timely annual report to pay reduced civil penalties for voluntarily complying with the requirement to file an annual report under Title I of ERISA.

Under the 1995 DFVC Program, plan administrators filing the Form 5500–C (plans with fewer than 100 participants at the beginning of the plan year or plans filing the Form 5500–C pursuant to the "80–120" participant rule in § 2520.103–1(d) ("small plans")) were subject to a civil penalty assessment of $50 per day up to $1,000 when the annual report was twelve months or less late, and $2,000 when the annual report was more than twelve months late.[2] Plan administrators filing the Form 5500 (plans with 100 or more participants at the beginning of the plan year other than a plan filing pursuant to the "80–120" participant rule ("large plans")) were subject to a civil penalty assessment of $50 per day up to $2,500 when the annual report was one year or less late, and $5,000 when the annual report was more than one year late. A civil penalty assessment of $2,500 applied to late filings by plan administrators for apprenticeship and training plans described in § 2520.104–22 and "top hat" plans described in § 2520.104–23(a). Under the terms of the DFVC Program, the Department reserved the right to modify or terminate the Program upon publication of a notice in the **Federal Register**.

B. Modifications to the DFVC Program

The Department is modifying the DFVC Program in order to further facilitate and encourage voluntary compliance with the annual reporting requirements. These modifications take the form of reducing civil penalty assessments, as well as simplifying and updating the process governing participation in the DFVC Program. A discussion of the changes follows.

1. Applicable Penalty Amount

Since the adoption of the DFVC Program in 1995, the Department has received input from plan administrators, as well as from accountants, third party administrators, and other members of the employee benefits community, indicating that the civil penalty assessments provided for under the 1995 Program, while less than the otherwise applicable penalties, nonetheless may be an impediment to many delinquent filers, especially administrators of small plans, because of the absence of a per plan, rather than a per annual report, based cap on the penalty amount. For example, under the 1995 Program, the administrator of a small pension plan with respect to which no annual reports were filed for plan years 1995—1999 would have to pay a civil penalty assessment of $2,000 per report and, therefore, would be required to pay a civil penalty

[1] In accordance with the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, the Department's regulation at 29 CFR 2575.502c–2 increased the maximum civil penalty from $1,000 a day as stated in section 502(c)(2) of ERISA to $1,100 a day for violations occurring after July 29, 1997.

[2] Plan administrators were not allowed to use the Form 5500–R when filing annual reports under the DFVC Program.

assessment of $10,000 ($2,000 × five plan years), a sizeable amount for many small employers. Public input in this area is consistent with the Department's finding that, although small employers constitute about 80 percent of the Title I of ERISA filers, the majority of plan administrators electing to comply under the DFVC Program are administrators of large plans.

Accordingly, the Department, in an effort to encourage voluntary compliance with ERISA's annual reporting requirements, is modifying the civil penalty structure under the DFVC Program. Specifically, the per day late filing penalty amount for plan administrators taking part in the DFVC Program has been reduced for large and small plans from $50 per day to $10 per day. In the case of a single late annual report filing for a plan, the cumulative daily penalty amount for a plan year is capped at $750 for small plans and $2,000 for large plans. The DFVC Program, as modified, also contains a new per plan cap on the penalty to address the concerns about the cumulative effect of the per annual report penalties when a plan has annual reporting delinquencies for multiple plan years. The per plan cap is $1,500 for a small plan and $4,000 for a large plan and applies on a submission-by-submission basis. Thus, in the case of the previous example where the plan administrator for a small plan did not file an annual report for a five-year period, the applicable penalty amount under the revised DFVC Program would be $1,500 (rather than $10,000 under the 1995 DFVC Program) provided the plan administrator included the annual reports for all five plan years in the same DFVC Program submission.[3]

The Department believes that this approach to applying the caps will encourage complete annual reporting compliance reviews with respect to specific plans, while facilitating Program administration. Although there is nothing in the DFVC Program that precludes a plan administrator from making separate or multiple submissions under the Program, the per plan cap on penalties starts over for each separate submission for a plan that is made under the DFVC Program.[4]

The Department also is revising the applicable penalty structure under the DFVC Program for apprenticeship and training plans and "top hat" plans, as well as adding another class of plans that are eligible to pay special reduced penalties under the Program. In lieu of the $2,500 penalty amount for apprenticeship and training plans and "top-hat" plans, the applicable penalty amount under the modified DFVC Program for such plans is $750. As was the case under the 1995 Program, the applicable penalty will be applied without regard to the number of apprenticeship and training or "top hat" plans maintained by the same plan sponsor and without regard to the number of plan participants covered under such plan or plans. In addition, the Department is establishing a maximum $750 per plan penalty cap for administrators of small plans sponsored by Internal Revenue Code (Code) section 501(c)(3) organizations (including small Code section 403(b) plans). This special penalty amount, however, will not be available if, as of the date the plan files under the DFVC Program, there is a delinquent or late annual report due for a plan year during which the plan was a large plan. The Department is establishing this reduced penalty for administrators of such small plans in recognition of the special character of these organizations, and in light of the fact that the administrators/sponsors of such plans may receive most or all of their funding from government programs and other charitable, educational, or scientific grants, and, in the case of Code section 403(b) plans that are required to file annual reports under ERISA, because the information that is required to be filed annually is similar to the registration-type information required to be filed by apprenticeship and training plans and "top hat" plans under §§ 2520.104–22 and 2520.104–23.

2. Simplification of Process

As noted above, the Department is simplifying the procedures governing participation in the DFVC Program. These changes are intended to make the Program easier for plan administrators to use and to conform the Program to the recent streamlining of the annual report and the implementation of the computerized ERISA Filing Acceptance System (EFAST).

As with the 1995 DFVC Program, the Program adopted herein conditions relief on the filing of a complete annual report, including all required statements and schedules, for each plan year for which relief is sought under the Program. Under the Program, this requirement can be satisfied by the administrator filing an annual report for each plan year for which relief is sought using either: (1) The annual return/report form issued for the plan year(s) for which relief is sought; or (2) the most current annual return/report form available at the time the administrator elects to participate in the Program. By affording this option, administrators can choose to file the Form which is most efficient, and least burdensome, for their particular plan and circumstance.

Also, as with the 1995 Program, the modified Program provides that penalty amount payments must be accompanied by a paper copy of the filed annual return/report (excluding any required statements or schedules).[5] Unlike the 1995 Program, however, the forms and penalty payment no longer have to be annotated in bold red print identifying the filing as a DFVC filing.

3. Scope of Program

As with the 1995 DFVC Program, the modified Program only applies to the correction of reporting violations under Title I of ERISA.[6] Filings that are not required under Title I of ERISA, such as Form 5500–EZ filings, are not eligible for the DFVC Program. Annual reports filed under the DFVC Program may be subjected to the usual edit tests and plan administrators have an opportunity to correct identified deficiencies in accordance with the procedures described in § 2560.502c–2. The failure to correct deficiencies in accordance with these procedures may result in the assessment of further penalties, and the payment of DFVC Program penalties do not serve to reduce the additional civil penalties that may be assessed for the filing of a deficient annual report.

Request for Comments, Effective Date and Requests for Refunds

Although the Department is not required to seek public comments on an enforcement policy, the Department

[3] There is no "per administrator" or "per sponsor" cap. Thus, if the same person is the administrator of several plans required to file annual reports under Title I of ERISA, the administrator would need to calculate the applicable penalty amount for each plan.

[4] For purposes of determining whether there is one or more submissions, the mere fact that a submission is transmitted in multiple envelopes or packages will not affect the submission's status as a single submission where there is evidence (*e.g.*, an accompanying letter or note) indicating that submission has been transmitted contemporaneously in multiple envelopes or packages.

[5] While electronic filing of DFVC submissions and deposit of penalty amounts is not currently available, the Department will be evaluating this area for possible future improvements.

[6] Although this Notice does not provide relief from late filing penalties under the Code or Title IV of ERISA, both the IRS and PBGC have agreed to provide certain penalty relief under the Code and Title IV of ERISA. Sections 5.02 and 5.03 of this Notice include information furnished to the Department by the Internal Revenue Service (IRS) and the Pension Benefit Guaranty Corporation (PBGC) regarding the penalty relief they are providing for delinquent Form 5500 Annual Returns/Reports filed for Title I plans when the condition of the DFVC Program have been satisfied.

solicits comments from the public on all aspects of this Program, including whether the reduced penalty amounts being adopted are set at appropriate levels and whether additional classes of filers should be provided special reduced penalty amounts. At the same time, the Department has determined that the relief afforded by this Program should be made available during and after the comment period. Delaying implementation of the revisions to the DFVC Program until after the end of the comment period would only deprive plan administrators of the ability to pay reduced penalties during the comment period. Accordingly, the DFVC Program adopted herein will be effective upon publication in the **Federal Register**.

In general, the Department will consider requests for refunds under the DFVC Program only when it is determined, upon review, that there was no reporting violation (e.g., the plan was not required to file an annual report or the report was filed timely) or the penalty assessment was otherwise improper. In this regard, the Department will not make refunds with respect to any DFVC filings merely because they were submitted prior to the effective date of the Program adopted herein. In the Department's view such filers received the relief with respect to which the paid penalty related. With regard to DFVC filings received on or after the effective date of the Program adopted herein and with respect to which the plan administrator incorrectly determined the penalty amount by referring to the superceded 1995 Program, the Department intends to return the DFVC Program submission (but not the annual report filing that is submitted to EFAST) to afford the filer the opportunity to make a DFVC submission in accordance with the modified program.

Summary of Economic Impact of the Amended DFVC Program

This amendment to the DFVC Program is intended to increase compliance with reporting requirements by increasing Program participation, especially among small plans. Under the existing Program, administrators of small plans, which are likely to represent a large majority of delinquent filers, have made up only a minority of Program participants. This amendment will reduce Program penalties for many participants, especially for administrators of small plans that have failed to file reports for many years, thereby encouraging more delinquent plan administrators to participate.

By increasing compliance with reporting requirements, the amended Program will yield economic benefits. Greater compliance will improve the quality and availability of information on plans. Plans' annual reports are the principal source of information about the operation, funding and investments of employee benefit plans. Information derived from these reports is integral to PWBA's enforcement, research and policy development programs, and is widely used by other Federal agencies, Congress and the private sector in assessing employee benefit, tax, and economic trends and policies. Plans' reports also serve as the primary means by which participants, beneficiaries and the general public can monitor plan operations. For all of these reasons, better information will serve to improve the security of plan assets and benefits and to promote sound employee benefits policy. Plans that comply with reporting requirements also tend to stay in compliance with reporting requirements, redoubling the benefit of bringing plans into compliance at the earliest opportunity. Finally, participating plan administrators will benefit insofar as they will be relieved of the risk of incurring larger penalties outside the Program, and insofar as the penalties that many must pay in order to participate in the Program will be reduced.

The Department believes that the benefits of the amended Program will exceed its costs. Participating plan administrators will incur a cost in connection with the payment of penalties. Participation in the Program is voluntary, however, so it is reasonable to conclude that participating plans derive an economic benefit equal to or greater than this cost. The Department also notes that the payment of such penalties constitutes a transfer from plan administrators to the U.S. Treasury, thereby benefiting taxpayers at large. The only potentially meaningful economic cost of the Program is the potential for the loss of income to the U.S. Treasury from reduced penalties. This loss of income will be partly or fully offset by penalties paid by plan administrators that would not have participated at the existing Program's higher penalty levels. Moreover, any loss of Treasury revenue will be nominal and more than offset by the benefits of fuller reporting outlined above.

Because the amended program will substantially reduce Program penalties for many participating plan administrators, the Department expects that participation in the Program will grow. The Department lacks an empirical basis on which to estimate the amount by which it will grow, however. In order to assess potential growth, the Department adopted conservative assumptions regarding responsiveness to decreases in Program penalties. On that basis, it is projected that participation by plan administrators in the amended Program will increase to about 2,500 plans per year, up from 1,400 plans under the current Program, an increase of about 75 percent. Participation by administrators of large plans will increase by more than 50 percent to reach about 1,300, while participation by administrators of small plans will grow by more than 100 percent to about 1,100. Total penalties paid under the Program are projected to fall by about one-half, however, from about $9.3 million annually to about $4.7 million. The Department believes that these estimates are highly conservative, and that participation might increase more, while penalties paid might decrease less or even increase. The derivation of these estimates and basis for the Department's conclusion that they are conservative is detailed below.

Executive Order 12866

Under Executive Order 12866, the Department must determine whether a regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Pursuant to the terms of the Executive Order, it has been determined that this action is "significant" and subject to OMB review under section 3(f)(4) of the Executive Order because it offers a novel method for encouraging compliance while reducing regulatory burden.

As described earlier in this preamble, PWBA introduced the DFVC Program in

April of 1995 in an effort to encourage compliance with annual reporting requirements, which are met generally by filing the Form 5500 Annual Return/Report of Employee Benefit Plan. This amendment to the Program is intended to increase compliance with reporting requirements by increasing Program participation, especially among administrators of small plans. Under the existing Program, small plan administrators, which are likely to represent a large majority of delinquent filers, have made up only a minority of Program participants. (Among the approximately 1 million plans expected to file annual reports normally this year, about 750,000 are expected to be small plans.) This amendment will reduce Program penalties for many Program participants, especially for small plan administrators that have failed to file reports for many years (whose penalties will be capped at $1,500 per plan), thereby encouraging more delinquent administrators to participate and come into compliance with reporting requirements.

To date under the existing Program, 17,545 separate filings have been made by 8,634 separate plans, involving total penalties to plan administrators in excess of $50 million. This amounts to approximately 1,400 participating plans filing about 2,900 annual reports each year, and the administrators of those plans paying penalties of about $9 million. Of the 17,545 filings, 10,082 were for large plans, and 6,781 were for small plans. In addition, there were 672 "top hat" filers and 10 apprenticeship and training plan filers.

About 70 percent of both large and small plan DFVC Program filings were made twelve or more months after they were otherwise due. About 63 percent of participating plan administrators filed for one plan year, about 16 percent filed for two plan years, and 21 percent filed for three or more plan years. The average was approximately two plan years. As a result, most DFVC Program participants paid the applicable maximum for each filing based on the size of the plan and the filing's original due date. Participating plan administrators filing two or more years' reports paid such maximum penalties separately for each report filed.

In developing the amended Program, the Department endeavored to select penalty levels that will maximize reporting compliance, especially among small plans. Maximizing compliance means maximizing Program participation, and with it the prompt submission of now delinquent filings, while at the same time maximizing on-time submission of future filings. The amended Program's penalties are therefore calibrated to be at once low enough so that delinquent plan administrators will not be dissuaded from participating, and high enough to hold plan administrators appropriately accountable for filing on time.

This amendment to the DFVC Program generally will reduce the penalties owed by participating plan administrators. For example, the penalty owed by small and large plan administrators submitting single filings more than 12 months late will be reduced from $2,000 and $5,000, respectively, to $750 and $2,000. The penalty owed by administrators of small and large plans submitting five years' worth of filings all more than 12 months late will be reduced from $10,000 and $25,000 to $1,500 and $4,000.

To gauge the potential impact of the interaction of the new per plan caps for delinquencies involving multiple plan years, which are $1,500 for small plans and $4,000 for large plans, with the single plan year maximum penalties of $750 and $2,000, we computed the penalties that would have been paid by the past DFVC filers under the amended structure, assuming no changes in Program participant characteristics or increase in participation in response to the reduced penalties. This simple calculation of penalties under the prior and amended structures shows a reduction in total penalties paid of about $39 million or 70 percent.

The amended Program will yield economic benefits. Fuller compliance will improve the quality and timeliness of information on the operation and assets of employee benefit plans, which will help to secure plan benefits and assets and promote sound public policy. Participating plan administrators will benefit from shedding the risk of incurring larger penalties outside the Program and from reductions in the penalties they must pay under the Program.

The amended Program's benefits are expected to exceed its costs. Because participation in the Program is voluntary, it is reasonable to conclude that participating plan administrators derive an economic benefit at least equal to the cost of the penalty. The payment of such penalties also enriches the U.S. Treasury to the benefit of taxpayers. Because the amended Program imposes smaller penalties, total penalties paid to the Treasury may fall. The economic cost associated with such a loss of Treasury revenue is expected to be small and more than offset by the benefits of fuller reporting.

The Department estimates that plan participation in the amended Program will increase to about 2,500 filings per year, up from 1,400 under the current Program. Total penalties paid by plan administrators under the Program are projected to fall by about one-half, from about $9.3 million annually to about $4.7 million. These estimates are highly conservative; participation might increase more, while penalties paid might decrease less or even increase.

Basis for Estimate of Economic Impact

As noted above, under the existing DFVC Program, 17,545 separate filings have been made by 8,634 separate plans, involving total penalties to plan administrators in excess of $50 million. This amounts to approximately 1,400 plans participating each year, paying penalties of about $9 million. Based on the discounts available under the amended penalty structure, the Department expects the number of plan administrators participating annually to increase to about 2,500, resulting in annual penalties of about $4.7 million.

Assuming a plan administrator is aware of a plan's reporting obligations, and of any failure to satisfy them, the decision whether or not to participate in the Program is essentially an economic one. The plan administrator must weigh the alternative of remaining out of compliance—and the attendant risk of becoming subject to larger penalties—against the cost of paying reduced penalties under the amended Program. The penalty under the Program can be thought of as a price the administrator can pay to achieve compliance and be relieved from the risk of larger penalties. The size and risk of unreduced penalties represents the value of such relief. Reduced penalties under the Program and potential full penalties will be different for different plans, reflecting their differing characteristics and circumstances. All else equal, the smaller the penalties under the Program relative to the potential unreduced penalties—that is, the lower the price of participation relative to its value—the larger the number of plan administrators that will participate.

Assuming that the risk and potential amount of full penalties are fixed, the increase in participation in the amended Program will depend on the number of delinquent plans, the amount by which penalties under the amended Program are discounted relative to those under the existing Program, and the responsiveness of plan administrators to this price reduction. Price responsiveness is commonly expressed in terms of "elasticity," or the percent increase in quantity demanded that will result from a one percent decrease in price. If administrators' elasticity of

demand for the Program is one, then a one percent decrease in the penalty will result in a one percent increase in the number of administrators participating.

The Department has no empirical basis on which to estimate the price elasticity of demand for the Program. Estimating elasticity generally requires observation of demand at different price levels. Casual observation reveals that the number of plan administrators participating in the existing Program generally is higher at lower penalty levels. In particular, relatively few participating plan administrators—and very few participating small plan administrators—submitted several years of delinquent filings and consequently owed relatively large penalties. This observation seems consistent with the premise that lower penalties encourage higher participation, but it falls short of providing formal supporting evidence. The Department lacks data on the number and circumstances of nonparticipating delinquent plan administrators. Therefore, it is not possible to determine whether variations in the number of plans participating at different penalty levels under the existing Program reflects responsiveness to those levels or the numbers and circumstances (and potential full penalties) of unobserved, nonparticipating delinquent plan administrators whose participation would trigger penalties at those levels. The Department also lacks any longitudinal basis for estimating the elasticity, because prior to this amendment the penalty levels under the Program had not been changed.

The Department nevertheless attempted to assess the potential magnitude of increased participation in the amended DFVC Program. To do this, the Department examined historical data on participation in the Program, relying on the general assumption that the potential users of the amended Program will resemble the past users of the existing Program. Then, by adopting assumptions regarding the elasticity of demand for the Program and comparing the penalties owed by past participants in the existing Program with the penalties they would owe under the amended Program, the Department projected participation in the amended Program.

Lacking a basis for estimating plan administrators' true elasticities, the Department adopted what it believes are conservative assumptions (that is, assumptions which are likely to be lower then the true elasticities). In the face of uncertainty, it is generally appropriate to adopt conservative assumptions, in order to avoid over estimating the potential benefits of the Program.

The Department assumed that the price elasticity of demand for the Program among administrators of large plans (those with 100 or more participants) is one. and that among administrators of small plans is two. More precisely, it assumed that demand is linear and that large and small plans' price elasticities of demand at the starting positions on their demand curves (the equilibria under the current Program) are equal to one and two, respectively. A large decrease in price will result in movement down the demand curve into a region where elasticity is less than at the starting position. (As a result, total penalties collected under the amended Program are expected to be less than the assumed starting-point elasticities alone would imply.) The Department believes that these assumptions conservatively represent the likely price responsiveness of nonparticipating delinquent plan administrators.

First, the assumption of linear demand (and attendant decreasing elasticity) is inherently conservative in connection with large price decreases. A more plausible, nonlinear demand function with constant elasticity would suggest much larger increases in Program participation.

For administrators of many plans, the price decrease associated with movement from the existing to the amended Program will be large. This is especially true of administrators that are delinquent in connection with several plan years' filings, because the amended Program caps penalties for such plans, while the existing Program caps them only for each separate filing by such plans. For example, historical penalties owed under the existing Program equaled or exceeded $25,000 for 74 participating large plans each year. These would include plan administrators that submitted five or more years' reports, all 12 months or more late, who would owe the maximum $5,000 per filing. Historical penalties equaled or exceeded $10,000 for 52 participating small plans annually, which similarly would include plan administrators owing the maximum $2,000 penalty for each of five or more years' worth of filings. Under the amended Program, similar large plans' penalties will be capped at $4,000 per plan, small at $1,500, representing price reductions of at least 84 percent and 70 percent, respectively.

Microeconomic theory suggests that demand for most goods and services is likely to be better represented by a demand curve with constant elasticity than by a linear one, especially in connection with large price changes. Consider the administrator of a large plans in this example. The Department, assuming linear demand and a starting elasticity of one, projects that an 84 percent fall in price results in an 84 percent increase in participation. However, this implies that the elasticity of demand at the new equilibrium would be just 0.09—that is, an additional one percent price decrease would increase participation by less than one-tenth of one percent. In the case of a small plan administrator, and assuming a starting elasticity of two, elasticity at the new equilibrium would be just 0.37. Under the potentially more plausible assumption of constant demand elasticities of one and two respectively for large and small plans, the 84 percent price decrease available to the large plan administrator would increase participation by 525 percent, while small plan administrators' price decrease would increase their participation by 1,011 percent. This suggests that the Department's assumptions are highly conservative and that the increase in participation, particularly among small plans that are many years delinquent, could be much larger than projected.

Second, the increase in the Program participation is unlikely to be constrained by market saturation anytime soon, and this is especially true for administrators of small plans. Thus, the premise that demand might exhibit a constant elasticity (and that therefore large price decreases could result in very large participation increases) is especially plausible for administrators of small plans.

Participation by both large and small plan administrators over the life of the Program is ultimately constrained to no more than the number of nonparticipating delinquent plans that exist. The Department has no way of knowing this number. As yet, however, there is no evidence that participation in the Program is nearing this constraint. Participation in the Program has been quite consistent since its inception, at about 2,900 filings per year, with small plans representing about 40 percent of each year's total. Small plans in particular are likely to represent a large majority of nonparticipating delinquent plans, just as they represent a large majority of plans that file annual reports on time. For example, among the approximately one million plans expected to file reports this year, about 250,000 will be large and about 750,000 will be small.

Consider again the above example of plans that submitted five or more years'

filings 12 or more months late under current Program. Is it plausible that demand could exhibit constant elasticity and that participation increases could therefore be very large? If participation by large plan administrators in similar circumstances increased by 525 percent, the number participating each year on average would grow from about 74 plans to about 463, which is equal to approximately 0.2 percent of large plan filers. A 1,011 percent increase in small plan administrator participation would mean that the number participating each year would grow from about 52 plans to about 578, which is equivalent to about 0.08 percent of small plan filers. Given these relative magnitudes, even these large increases in participation might be viewed as plausible. This would seem to confirm that the Department's assumptions of linear demand, with starting elasticities for large and small plans of one and two respectively, are conservative.

The Department requests comments on all aspects of this analysis, including the penalty levels as they apply to large and small plan administrators, assumptions concerning price responsiveness, and the characteristics of future filers as compared with the actual Program participants. The Department is particularly interested in information on existing rates and reasons for non-compliance with reporting requirements, and specific factors that may influence the decision whether or not to participate in the DFVC Program in light of the penalty reductions being implemented.

Paperwork Reduction Act

The Department, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. Chapter 35). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. OMB clearance of the information collection request (ICR) included in the existing DFVC Program was scheduled to expire prior to the implementation of this modified Program. In order to maintain OMB approval of the ICR, PWBA published a preclearance notice soliciting comments on the ICR (66 FR 44159, August 22, 2001). OMB received the submission for continued approval of the ICR on December 21, 2001. OMB approved the ICR on February 21, 2002. This approval will continue through February 28, 2005, unless the ICR is substantively or materially changed.

Although the Department has updated the Program and adjusted the penalty structure in an effort to further facilitate voluntary compliance, the information collection provisions of the Program are not substantively or materially changed. Under both the existing and amended DFVC Program, participating filers must supply a photocopy of the Form 5500 (without schedules or attachments) as filed along with their penalty check. The Department has, however, adjusted its burden estimates to reflect the expectation of additional participation in the Program due to the reduced penalty incentive and the addition of a penalty cap for small plans sponsored by Code section 501(c)(3) organizations. A summary of the effect of the adjustment has been provided to OMB.

Requests for copies of the ICR may be addressed to: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745 (these are not toll-free numbers).

It is estimated that 2,500 filers will avail themselves of the opportunity to correct potential violations pursuant to the DFVC Program annually. The Department estimates that approximately 30 minutes will be required to read instructions, prepare a check, photocopy the Form 5500, and mail the package. It is further assumed that 90 percent of plan administrators sponsors will purchase services from a professional (e.g., accountant or attorney) to comply with the requirements of the Program, and that 10 percent will use in-house staff. The professional wage rate incorporated in the burden cost estimates is $75 per hour. Material and mailing costs are estimated at $0.70 per mailing.

The time and mailing cost assumptions have been increased from what was used in the past (21 minutes and $0.37) due principally to the change in the penalty structure to incorporate a penalty cap for multiple plan year delinquencies. It is assumed that multiple plan year delinquencies will be filed together, requiring some additional time and mailing cost. The method for estimating the number of respondents has also changed due to the change in the penalty structure, with multiple plan year filings now considered one response. As a result, the total number of respondents counted for PRA purposes is reduced, despite the fact that participation in the Program is assumed to increase.

Agency: Pension and Welfare Benefits Administration, Department of Labor.

Title: Delinquent Filer Voluntary Compliance Program.

OMB Number: 1210–0089.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Frequency of Response: On occasion.

Total Respondents: 2,500.

Total Responses: 2,500.

Estimated Burden Hours: 125.

Estimated Annual Costs (Operating and Maintenance): $86,000.

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Regulatory Flexibility Act

This document constitutes an enforcement policy of the Department and is not being issued as a general notice of proposed rulemaking. Therefore, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) does not apply. However, PWBA has considered the potential costs and benefits of this action for administrators of small plans, that is, plans with fewer than 100 participants, in connection with this amendment to the DFVC Program. The basis of the definition of a small plan is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants. Under section 104(a)(3), the Secretary may also provide for simplified annual reporting and disclosure if the statutory requirements of part 1 of Title I of ERISA would otherwise be inappropriate for welfare benefit plans.

Small plans represent approximately 75 percent of all annual report filers, but have represented only about 35 percent of DFVC Program filings, despite lower scheduled maximum penalties for small plans. Small plan participants in the Program have represented an average of 0.4 percent of small Form 5500 filers, while large plans have represented about 2 percent of large filers. The reasons for these differentials cannot be known with certainty. The rate of participation in the Program by small plans has been relatively stable since its inception at about 1,000 filings on behalf of 520 plans per year. Historical DFVC Program data also show that more than 70 percent of both large and small DFVC Program filers are more than 12 months late when the filing is

completed, and small plan filers are about as likely as large plan filers to be required to make two or more filings at the same time to bring the plan into compliance with reporting requirements. This suggests that the penalty structure in effect prior to this amendment, though lower for small plan administrators on a per plan year filing basis, might have discouraged participation when multiple years were involved. Informal comments received by the Department have offered this view.

Under PWBA's program for the assessment of civil penalties for noncompliance with reporting requirements, plan administrators filing late annual reports may be assessed $50 per day for each day an annual report is filed after the date on which the annual report was required to be filed, without regard to any extensions of time for filing. Plan administrators who fail to file an annual report may be assessed a penalty of $300 per day, up to $30,000 per year, until a complete annual report is filed. The distribution of actual DFVC filers based on the ratio of their voluntary penalty to the penalty that would have been imposed by the Department in penalty enforcement under this program shows that 80 percent of small plan DFVC filers, as compared with only 30 percent of large plan filers, have paid less than 10 percent of the enforcement program penalty. Forty percent of small plan filers paid less than 5 percent of the enforcement program penalty that would otherwise have been imposed. This also seems consistent with the conclusion that a large penalty serves as a significant disincentive for small plan administrators.

The reduction in the participating small plan administrators' maximum penalty for a single year's filing from $2,000 to $750 and the availability of the $1,500 cap for multiple plan year delinquencies is expected to significantly reduce the penalties paid by small DFVC filers. A comparison of the penalties paid under the existing DFVC structure with those that would have been paid under the amended structure by small plans shows a reduction of about 72 percent, or approximately $8 million, assuming no change in behavior or characteristics of the filers.

Based on the discounts available under the amended penalty structure, and assuming an elasticity of two, as described earlier, the number of small plans coming into compliance is expected to increase by 561 plans, to about 1,081 plans per year, with penalties totaling $1.2 million. This expected outcome is consistent with the stated purpose of the amendment.

The Department believes that the DFVC Program as modified offers a flexible and economically advantageous method for administrators of small plans to correct reporting delinquencies, which recognizes the special circumstances of small plans. The Department invites comments on this analysis and on alternatives that might further reduce potential burdens for small plans.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this regulatory action does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, and will not impose an annual burden of $100 million or more on the private sector.

Federalism Statement

Executive Order 13132 outlines fundamental principles of federalism and requires the adherence to specific criteria by federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. This action does not have federalism implications because it has no 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. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supercede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in this enforcement policy do not alter the fundamental reporting requirements or penalty provisions of Title I of the statute with respect to employee benefit plans, and as such have no implications for the States or the relationship or distribution of power between the national government and the States.

Congressional Review Act

The DFVC Program is subject to the provisions of the Congressional Review Act (5 U.S.C. 801 *et seq.*) and will be transmitted to Congress and the Controller General for review. The Program is not a "major rule" as that term is defined in 5 U.S.C. 804 because it is not likely to result in (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Section 1—Delinquent Filer Voluntary Compliance (DFVC) Program

The DFVC Program is intended to afford eligible plan administrators (described in Section 2 of this Notice) the opportunity to avoid the assessment of civil penalties otherwise applicable to administrators who fail to file timely annual reports for plan years beginning on or after January 1, 1988. Eligible administrators may avail themselves of the DFVC Program by complying with the filing requirements and paying the civil penalties specified in Section 3 or Section 4, as appropriate, of this Notice.

Section 2—Scope, Eligibility and Effective Date

.01 *Scope.* The DFVC Program described in this Notice provides relief from assessment of civil penalties otherwise applicable to plan administrators who fail or refuse to file timely annual reports. Relief under this Program does not extend to penalties that may be assessed for annual reports that are determined by the Department to be incomplete or otherwise deficient.

.02 *Eligibility.* The DFVC Program is available only to a plan administrator that complies with the requirements of Section 3 or Section 4, as appropriate, of this Notice prior to the date on which the administrator is notified in writing by the Department of a failure to file a timely annual report under Title I of ERISA.

.03 *Effective date.* The DFVC Program described herein shall be effective March 28, 2002. The Department intends that this DFVC Program to be of indefinite duration; however, the Program may be modified from time to time or terminated in the sole discretion of the Department upon publication of notice in the **Federal Register**.

Section 3—Plan Administrators Filing Annual Reports

.01 *General.* A plan administrator electing to file a late annual report (Form 5500 Series Annual Return/Report) under this DFVC Program must comply with the requirements of this Section 3.

.02 *Filing a Complete Annual Report.*

(a) The plan administrator must file a complete Form 5500 Series Annual Return/Report, including all required schedules and attachments, for each plan year for which the plan administrator is seeking relief under the Program. This filing shall be sent to PWBA at the appropriate EFAST address listed in the instructions for the most current Form 5500 Annual Return/Report, or electronically in accordance with the EFAST electronic filing requirements. See the EFAST Internet site at *www.efast.dol.gov* to view forms and instructions.

Note: Do not forward the applicable penalty amount described in Section 3.03 to the EFAST addresses listed above.

(b) For purposes of subparagraph (a), the plan administrator shall file either: (1) The Form 5500 Series Annual Return/Report form (but not a Form 5500–R) issued for each plan year for which the relief is sought, or (2) the most current Form 5500 Annual Return/Report form issued (and, if necessary, indicate in the appropriate space on the first page of the Form 5500 the plan year for which the annual return/report is being filed). Forms may be obtained from the IRS by calling 1–800–TAX–FORM (1–800–829–3676). Forms for certain pre-1999 plan years also are available through the Internet sites for PWBA and the Internal Revenue Service (IRS) (*www.dol.gov/dol/pwba, www.irs.gov*). For further information on EFAST filing requirements, see the EFAST Internet site (*www.efast.dol.gov*) and the instructions for the most current Form 5500.

.03 *Payment of Applicable Penalty Amount.*

(a) The plan administrator shall pay the applicable penalty amount by submitting to the DFVC Program the information described in subparagraph (b) along with a check made payable to the "U.S. Department of Labor" for the applicable penalty amount determined in accordance with subparagraph (c). This separate submission shall be made by mail to: DFVC Program, PWBA, P.O. Box 530292, Atlanta, GA 30353–0292. The annual returns/reports for multiple plans may not be included in a single DFVC Program submission. A separate submission to the DFVC Program (including a separate check for the applicable penalty amount) must be made for each plan.

Note: Personal or private delivery service cannot be made to this address.

(b)(1) The administrator shall submit to the DFVC Program, with the applicable penalty amount, a paper copy of the Form 5500 Annual Return/Report filed as described in paragraph .02(a), without schedules and attachments. In the event that the plan administrator files as described in paragraph .02(a) using a 1998 or prior plan year form, a paper copy of only the first page of the Form 5500 or Form 5500–C, as applicable, should be submitted to the DFVC Program.

(2) In the case of a plan sponsored by a Code section 501(c)(3) organization described in paragraph .03(c)(4), the administrator shall clearly note "501(c)(3) Plan" in the upper-right hand corner of the first page of the Form 5500 Annual Return/Report submitted to the DFVC Program (in Atlanta, Georgia). This notation should not be included on the annual report filed with PWBA pursuant to paragraph .02 (in Lawrence, Kansas) because it may interfere with the proper processing of the required report.

(c) The applicable penalty amount shall be determined as follows:

(1) In the case of a plan with fewer than 100 participants at the beginning of the plan year (or a plan that would be treated as such a plan under the "80–120" participant rule described in 29 CFR 2520.103–1(d) for the subject plan year) (hereinafter "small plan"), the applicable penalty amount is $10 per day for each day the annual report is filed after the date on which the annual report was due (without regard to any extensions), not to exceed the greater of: $750 per annual report or, in the case of a DFVC submission relating to more than one delinquent annual report filing for the plan, $1,500 per plan.

(2) In the case of a plan with 100 or more participants at the beginning of the plan year (other than a plan that is eligible to use and uses the "80–120" participant rule) (hereinafter "large plan"), the applicable penalty amount is $10 per day for each day the annual report is filed after the date on which the annual report was due (without regard to any extensions), not to exceed the greater of: $2,000 per annual report or, in the case of a DFVC submission relating to more than one delinquent annual report filing for the plan, $4,000 per plan.

(3) In the case of a DFVC submission relating to more than one delinquent annual report filing for a plan, the applicable penalty amount shall be determined by reference to paragraph (c)(2) if for any plan year for which the submission is made the plan was a "large plan."

(4) In the case of a plan administrator filing an annual report for a "small plan" that is sponsored by a Code section 501(c)(3) organization (including a Code section 403(b) plan), the applicable penalty amount is $10 per day for each day the annual report is filed after the date on which the annual report was due (without regard to any extensions), not to exceed $750 per DFVC submission, including DFVC submissions that relate to more than one delinquent annual report filing for the plan. This paragraph (c)(4) shall not apply if, as of the date the plan files pursuant to this DFVC Program, there is a delinquent or late annual report due for a plan year for which the plan was a "large plan." See paragraph .03(b)(2) for special instructions pertaining to small plans sponsored by Code section 501(c)(3) organizations.

.04 *Liability for Applicability Amount.*

The plan administrator is personally liable for the payment of civil penalties assessed under section 502(c)(2) of ERISA, therefore, civil penalties, including amounts paid under this DFVC Program, shall not be paid from the assets of an employee benefit plan.

Section 4—Plan Administrators Filing Notices for Apprenticeship and Training Plans and Statements for "Top Hat" Plans

.01 *General.* Administrators of apprenticeship and training plans, described in 29 CFR 2520.104–22, and administrators of pension plans for a select group of management or highly compensated employees, described in 29 CFR 2520.104–23(a) ("top hat plans"), who elect to file the applicable notice and statement described in sections 2520.104–22 and 2520.104–23, respectively, as a condition of relief from the annual reporting requirements may, in lieu of filing any past due annual report and paying otherwise applicable civil penalties, comply with the requirements of this Section 4. Administrators who have complied with the requirements of this Section 4 shall be considered as having elected compliance with the exemption(s) and/or alternative method of compliance prescribed in §§ 2520.104–22, or 2520.104–23, as appropriate, for all subsequent plan years.

.02 *Filing Applicable Notice or Statement with the U.S. Department of Labor.*

The plan administrator must prepare and file a notice or statement meeting the requirements of §§ 2520.104–22, or 2520.104–23, as appropriate.

The apprenticeship and training plan notice described in § 2520.104–22 shall be sent by mail or by private delivery service to: Apprenticeship and Training Plan Exemption, Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200

Constitution Avenue NW., Washington, DC 20210.

The "top hat" plan statement described in § 2520.104–23 shall be sent by mail or by private delivery service to: Top Hat Plan Exemption, Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Note: A plan sponsor maintaining more than one "top hat" plan is not required to file a separate statement for each such plan. See § 2520.104–23(b).

.03 *Payment of Applicable Penalty Amount.*

(a) The plan administrator shall pay the applicable penalty amount by submitting to the DFVC Program the information described in subparagraph (b) along with a check made payable to the "U.S. Department of Labor" for the applicable penalty amount determined in accordance with subparagraph (c). This submission shall be made by mail to: DFVC Program, PWBA, P.O. Box 530292, Atlanta, GA 30353–0292.

Note: Personal or private delivery service cannot be made to this address.

(b) The administrator shall submit to the DFVC Program with the applicable penalty amount the most current Form 5500 Annual Return/Report (without schedules and attachments). For purposes of this requirement, the plan administrators must complete Form 5500 line items 1a–1b, 2a–2c, 3a–3c, and use plan number 888 for all "top hat" plans and plan number 999 for all apprenticeship and training plans. In the case of plan sponsors maintaining more than one "top hat" plan and plan sponsors maintaining more than one apprenticeship and training plan described in § 2520.104–22, the plan administrator shall clearly identify each such plan on the Form 5500 filed with the Department of Labor or on an attachment thereto. The plan administrator also must sign and date the Form 5500.

(c) The applicable penalty amount is $750 for each DFVC submission, without regard to the number of plans maintained by the same plan sponsor for which notices and statements are filed pursuant to Section 4 and without regard to the number of plan participants covered under such plan or plans.

.04 *Liability for Applicability Amount.* The plan administrator is personally liable for the payment of civil penalties assessed under section 502(c)(2) of ERISA, therefore, civil penalties, including amounts paid under this DFVC Program, shall not be paid from the assets of an employee benefit plan.

Section 5—Waiver of Right to Notice, Abatement of Assessment and Plan Status

.01 Payment of a penalty under the terms of this DFVC Program constitutes, with regard to the filings submitted under the Program, a waiver of an administrator's right both to receive notices of intent to assess a penalty under § 2560.502c–2 from the Department and to contest the Department's assessment of the penalty amount.

.02 Although this Notice does not provide relief from late filing penalties under the Code, the Internal Revenue Service (IRS) has provided the Department with the following information. The Code and the regulations thereunder require information to be filed on the Form 5500 Series Annual Return/Report and provide the IRS with authority to impose or assess penalties for failing to timely file. The IRS has agreed to provide certain penalty relief under the Code for delinquent Form 5500 Annual Returns/Reports filed for Title I plans where the conditions of this DFVC Program have been satisfied. See IRS Notice 2002–23.

.03 Although this Notice does not provide relief from late filing penalties under Title IV of ERISA, the Pension Benefit Guaranty Corporation (PBGC) has provided the Department with the following information. Title IV of ERISA and the regulations thereunder require information to be filed on the Form 5500 Series Annual Return/Report and provide the PBGC with authority to assess penalties against a plan administrator under ERISA § 4071 for late filing of the Form 5500 Series Annual Return/Report. The PBGC has agreed that it will not assess a penalty against a plan administrator under ERISA § 4071 for late filing of a Form 5500 Series Annual Return/Report filed for a Title I plan where the conditions of this DFVC Program have been satisfied.

.04 Acceptance by the Department of a filing and penalty payment made pursuant to this DFVC Program does not represent a determination by the Department of Labor as to the status of the arrangement as a plan, the particular type of plan under Title I or ERISA, the status of the plan sponsor under the Code, or a determination by the Department of Labor that the provisions of §§ 2520.104–22 or 2520.104–23 have been satisfied.

Signed at Washington, DC, this 25th day of March, 2002.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 02–7514 Filed 3–27–02; 8:45 am]

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Thursday,
March 28, 2002

Part V

Department of Labor

Pension and Welfare Benefits Administration

Adoption of Voluntary Fiduciary Correction Program; Notices

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

RIN 1210–AA76

Adoption of Voluntary Fiduciary Correction Program

AGENCY: Pension and Welfare Benefits Administration, Labor.

SUMMARY: The Department of Labor adopts the Voluntary Fiduciary Correction Program (VFC Program or Program) by the Department of Labor's Pension and Welfare Benefits Administration (PWBA). The VFC Program allows certain persons to avoid potential Employee Retirement Income Security Act of 1974, as amended (ERISA), civil actions initiated by the Department of Labor and the assessment of civil penalties under section 502(l) of ERISA in connection with investigation or civil action by the Department. The VFC Program is designed to benefit workers by encouraging the voluntary and timely correction of possible fiduciary breaches of Part 4 of Title I of ERISA.

EFFECTIVE DATE: April 29, 2002.

ADDRESSES: Address questions regarding specific applications for relief under the VFC Program to the appropriate PWBA Regional Office listed in Appendix C.

FOR FURTHER INFORMATION CONTACT: *For Specific Applications Under the VFC Program:* Contact the appropriate PWBA Regional Office listed in Appendix C.

For General Questions Regarding the VFC Program: Contact the appropriate PWBA Regional Office listed in Appendix C or Jeffrey A. Monhart, Lead Investigator, Office of Enforcement, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC, (202) 693–8454, or Elizabeth A. Goodman, Pension Law Specialist, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC, (202) 693–8510. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Discussion of the Program and Comments

Background

Title I of ERISA, 29 U.S.C. section 1001 *et seq.*, establishes certain standards with which officials of employee benefit plans covered by ERISA must comply. PWBA helps the public to understand the requirements of Title I of ERISA. In addition, PWBA conducts investigations to deter and correct violations of ERISA.

Based on PWBA's experience with the Pension Payback Program, 61 FR 9203 (March 7, 1996) (Pension Payback Program), and continued public interest in such programs, PWBA decided to establish the VFC Program on an interim basis (Interim VFC Program). The Interim VFC Program was published in the **Federal Register** on March 15, 2000 (65 FR 14164), and has been administered out of each of PWBA's ten regional offices since April 14, 2000. The VFC Program is designed to assist Plan Officials (as defined in Section 3) by specifying the steps necessary to correct certain potential violations of Title I of ERISA. Based on its experience with administering the Program on an interim basis and the public comments received, PWBA has decided to implement the Program on a permanent basis. The Program will continue to be operated out of the ten regional PWBA offices.

Section 409 of ERISA provides that a fiduciary who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by Part 4 of Title I of ERISA shall be personally liable to make good to a plan any losses to the plan resulting from each breach, and to restore to the plan any profits of such fiduciary which have been made through the use of assets of the plan by the fiduciary. Where more than one fiduciary is liable for a breach, liability is joint and several. The Secretary of Labor has the authority, under sections 502(a)(2) and 502(a)(5), to bring civil actions to enforce the provisions of Title I of ERISA. Section 502(l) requires the assessment of a civil penalty in an amount equal to 20 percent of the amount recovered under any settlement agreement with the Secretary or ordered by a court in an action initiated by the Secretary under section 502(a)(2) or 502(a)(5) with respect to any breach of fiduciary responsibility under (or other violation of) Part 4 by a fiduciary. Under section 502(l)(1)(B), this civil penalty also is assessed against knowing participants in a breach.

PWBA believes that the possibility of investigation, commencement of a civil action, and imposition of a civil penalty under section 502(l) of ERISA may constrain persons who have engaged in a possible breach of fiduciary responsibility under Part 4 of Title I of ERISA from identifying themselves and working with PWBA to correct the breach fully and make the plan whole. To encourage the full correction of certain breaches of fiduciary responsibility and the restoration to participants and beneficiaries of losses resulting from those breaches, PWBA has decided to implement the VFC Program on a permanent basis. Under the Program, persons who are potentially liable for a breach are relieved of the possibility of civil investigation of that breach and/or civil action by the Secretary with respect to that breach, and imposition of civil penalties under section 502(l), if they satisfy the conditions for correcting the breach as described in the VFC Program.

If a person files an application under the VFC Program, but the corrective action falls short of a complete and acceptable correction, PWBA may reject the application and pursue enforcement, including assessment of a section 502(l) penalty. However, no section 502(l) penalty would be imposed on any amounts already restored to the plan by the applicant prior to filing the VFC Program application. The penalty would only apply to the additional recovery amount, if any, paid to the plan pursuant to a court order or a settlement agreement with the Department.

The March 15, 2000 Interim VFC Program

The Interim VFC Program was set forth in seven sections and three appendices. It was structured to maximize the ability of Plan Officials to identify and correct possible breaches that are within the scope of the Program without the need to consult with PWBA. As noted in Section 1, Purpose and Overview of the Voluntary Fiduciary Correction Program, PWBA believed that the VFC Program would assist Plan Officials in understanding the requirements of Part 4 of Title I of ERISA and would facilitate the correction of transactions and the restoration of losses to employee benefit plans resulting from fiduciary breaches.

Section 2, Effect of the VFC Program, made clear that the applicant must be careful to ensure that the eligibility requirements are met and the corrections specified for individual transactions are performed before an application is filed under the VFC Program. Generally, if an applicant is in full compliance with all of the terms and procedures set forth in the VFC Program, PWBA will issue a "no action letter" in the format shown in Appendix A with respect to the breach described in the application. Relief under the Interim VFC Program was limited to the transactions identified in the application and to the persons who corrected those transactions. In certain cases, such as where PWBA might become aware of possible criminal behavior, material misrepresentations or omissions in the VFC Program

application, or other abuse of the VFC Program, relief would not be available under the Interim VFC Program. In those cases, the Department reserved the right to initiate an investigation, which could lead to enforcement action. PWBA expected that such cases would be unusual. Full correction under the Interim VFC Program did not preclude any other governmental agency, including the Internal Revenue Service (IRS), from exercising any rights it might have had with respect to the transactions that were the subject of an application. PWBA sought comments on possible areas of coordination between PWBA and the IRS that would facilitate voluntary correction of breaches of Title I of ERISA. PWBA noted that based on its preliminary review of the VFC Program, the IRS had indicated that except in those instances where the fiduciary breach or its correction results in a tax abuse situation or a plan qualification failure, a correction under this Program generally would be acceptable under the Internal Revenue Code.

The Interim VFC Program was designed to address a wide variety of situations where plans have been harmed as a result of possible breaches of fiduciary duty. Section 3, Definitions, made clear that a transaction may be corrected without a determination that there is an actual breach; there need only be a possible breach. In addition, persons who may correct a fiduciary breach include not only any breaching fiduciary, but also plan sponsors, parties in interest or other persons in a position to correct a breach. However, the definition of Under Investigation, along with the criteria set forth in Section 4, Program Eligibility, provided that persons or plans who are the subject of pending investigations for violations of Title I of ERISA, or who appear to have engaged in criminal violations, could not take advantage of the VFC Program. Further, PWBA reserved the right to reject an application when warranted by the facts and circumstances of a particular case.

The Interim VFC Program noted that PWBA believes that it must assess a penalty under section 502(l) of ERISA to the extent that it negotiates relief owed to the plan as a result of a transaction in exchange for a no action letter to the potentially liable persons. Accordingly, the Interim VFC Program was structured so that applicants have the maximum information available to identify eligible transactions and make complete and fully acceptable corrections without discussion or negotiation with the Department.

Section 5, General Rules for Acceptable Correction, set forth issues that are likely to be present with regard to any transaction described in Section 7. For example, Section 5 described how fair market value determinations must be made, how correction amounts must be determined, and what documentation is required for all applications. Section 5 also made clear that the cost of correction must be borne by the applicant and not the plan. In addition, Section 5 stated when notice must be provided to participants and when former employees who have already been cashed out of a plan must also be included in any amount restored to a plan.

Section 6, Application Procedures, specified the requirements for the application, including documentation and the penalty of perjury statement that must be signed by a plan fiduciary with knowledge of the transaction and the applicant's authorized representative, if any. Section 6 was supplemented by Appendix B, the VFC Program Checklist that was designed to help the applicant determine whether he or she has met all of the application requirements, including all necessary documentation, prior to submission to PWBA.

Section 7, Description of Eligible Transactions and Methods of Correction, set forth five types of transactions that may be corrected pursuant to the VFC Program. The first, "Delinquent Participant Contributions to Pension Plans," was included in the Interim VFC Program based on PWBA's experience with the Pension Payback Program. Unlike the Pension Payback Program, the Interim VFC Program did not exempt from excise taxes any violations of section 4975 of the Internal Revenue Code (the Code). PWBA included the other types of transactions based on its enforcement experience. For the interim stage of the VFC Program, PWBA took a conservative approach and limited the eligible transactions to those where the nature of the transaction and the required correction could be described accurately without reference to specific circumstances, and thus could be corrected satisfactorily without consultation and negotiation with PWBA. PWBA sought comments on whether different correction methods or earnings calculation methods should be available in the Program.

Comments on the Interim VFC Program

In General

In general, comments received on the VFC Program were favorable. Commenters expressed support for a formal program that encourages identification and correction of potential breaches of fiduciary duty. Among the advantages cited were increased fiduciary oversight of plans, reduction of litigation costs, and security of benefits.

Some commenters represented generally, however, that the VFC Program contains disincentives to participation. Other commenters stated that Section 2(c)(6) (Other actions not precluded) will deter potential applicants. These comments noted that Section 2(c)(6) does not preclude PWBA from seeking injunctive relief against any person responsible for a transaction, referring information concerning the transaction to the IRS, or imposing civil penalties under section 502(c)(2) of ERISA. Commenters also pointed out that other parties, including participants, could file suit against applicants. Several comments observed that PWBA reserves the right to reject an application if the facts and circumstances warrant, and that PWBA may initiate a civil or criminal investigation in certain cases. Commenters suggested these provisions might discourage potential applicants from participating in the Program.

Several commenters expressed concern that the Department might target VFC Program applicants for investigation. Commenters believe that the lingering risk of enforcement action creates a disincentive for potentially liable parties to identify themselves to the Department. These comments suggested that the Department should offer public assurances that applicants will not be investigated. The commenters also questioned whether the Department would target an applicant plan for other potential violations for which VFC Program relief had not been requested. Commenters suggested the Department should offer VFC Program relief for violations of sections 403 and 404(a) of ERISA if those violations relate to a transaction corrected under the Program.

PWBA believes that the benefits of participating in the VFC Program should outweigh any concern about possible enforcement by the Department in response to an application. As noted in the preamble to the Interim VFC Program, the Department generally does not anticipate taking enforcement action in response to an application except in the unusual situation where PWBA becomes aware of possible criminal behavior, material misrepresentations or omissions in the VFC Program application, or other abuse of the Program. Moreover, although the VFC

Program does not provide specifically for relief from violations of section 403 and 404 of ERISA, the Department anticipates that as a general matter applicants will have corrected violations of section 403 and 404 that are integrally related to transactions corrected under the Program. PWBA continues to believe, however, that transactions violative of section 403 and 404 are not appropriate for the Program because unlike the transactions selected for the Program, the nature of the corrections required for violations of sections 403 and 404 will vary under the facts and circumstances of the particular transactions, and thus, proper correction is likely to require negotiations subject to the section 502(l) penalty. PWBA encourages plan officials who discover a transaction that is a breach of both section 404 and 406 to make full correction under the Program and to take any additional action necessary to correct the section 404 violations in conjunction with the appropriate regional office. PWBA emphasizes in this regard that only amounts actually negotiated as settlement in excess of those paid under the VFC Program, or otherwise paid to the plan by the correcting officials after discussion with PWBA, are potentially subject to section 502(l) penalties.

Specific Comments

Excise Tax Relief

Several commenters requested that the VFC Program be amended to provide for relief from excise taxes in addition to the Program's relief from ERISA section 502(l) penalties. Commenters noted that the Department granted relief from excise taxes in its Pension Payback Program. Commenters stated that they believed that the possibility of referral by the Secretary of Labor to the Internal Revenue Service as mandated by section 3003 of ERISA and the absence of any relief under the VFC Program from the Code's requirement that excise taxes be paid in full for the transactions at issue would provide significant disincentives for participating in the Program.

As discussed in more detail in the preamble to the Notice of Proposed Class Exemption, published in this issue of the **Federal Register** simultaneously with the adoption of the VFC Program (Class Exemption),[1] PWBA has determined that limited excise tax relief is appropriate for the correction of certain transactions under the Program.

PWBA also notes that applicants who would not otherwise be liable for excise taxes under section 4975(a) of the Code, but who are in a position to correct a breach, are not made liable for excise taxes solely by virtue of their participation in the Program.

Notice to Participants

The majority of commenters requested that PWBA eliminate or reduce the notice requirements in Section 5, General Rules for Acceptable Corrections. Commenters noted that the Department generally does not require notice of correction to participants when the Department resolves investigations through voluntary compliance or lawsuits. Commenters stated that the notice requirement might invite participant litigation concerning the transaction described in a VFC Program application. Other commenters maintained that notice of the correction might erode employee morale, and that participants would receive sufficient notice simply by observing any increase in their account balance. One commenter explicitly supported the notice requirement in the Interim VFC Program.

PWBA believes that informed participants promote the goals of sound plan administration and protection of benefits. PWBA agrees, however, that the original notice requirements could discourage correction through participation in the VFC Program, and therefore eliminate opportunities to protect and restore plan benefits. Accordingly, in the permanent VFC Program, PWBA has omitted those notice requirements specified in section 5(e) of the Interim VFC Program. To the extent that the applicant avails him or herself of excise tax relief under the Class Exemption, however, the notice requirements described therein must be followed. PWBA also expects that if correction under the Program involves an adjustment of account balances or supplemental distributions, the plan will explain to the affected participants and beneficiaries the basis for such adjustment or distribution.

Protection of Participant Privacy Data

Commenters objected to the fact that requiring production on request to participants of the entire application and supporting documents, which was part of the original notice requirement in section 5(e) of the Interim VFC Program, if read literally, could be interpreted to require the production of protected privacy data. Although the notice requirement, which included a notice of the right to obtain a copy of the application, has been eliminated from the Program, PWBA believes that participants have a right to obtain copies of the application and supporting documentation. PWBA believes that it would be required to produce portions of the application under the Freedom of Information Act. Therefore, such information will be made available by PWBA to any participant or beneficiary who formally seeks such information, but no privacy data that would be protected under law will be disclosed. PWBA encourages plan officials to give copies of applications directly to participants, but recognizes that privacy data need not be disclosed.

Voluntary Self-Correction

A number of commenters suggested that PWBA expand the VFC Program to include voluntary self-correction similar to that in IRS Rev. Proc. 2001–16 (now Rev. Proc. 2001–17). [2] These commenters suggested that the VFC Program provide that if a plan official were to correct a transaction in accordance with the Program without making an application, that PWBA would not take action against potentially liable parties if the transaction in question were discovered on audit. Commenters suggested that adding a self-correction option would encourage correction of minor technical breaches by plan officials and would obviate the need for PWBA to process applications for such types of transactions.

PWBA has decided not to include a formal self-correction option in the VFC Program. PWBA believes that an important result under the VFC Program is certainty that applicants have complied with the terms of the Program and have revealed the details of the transaction and the correction under penalty of perjury. PWBA does not believe that it is possible to offer relief under the VFC Program without the opportunity to scrutinize details of the transaction and correction as would be provided in a formal application. Nonetheless, PWBA notes that an ERISA section 502(l) penalty is assessed only on amounts obtained pursuant to a settlement agreement with the Secretary or ordered by a court to be paid in a judicial proceeding instituted by the Secretary under subsection 502(a)(2) or (5). Accordingly, if a potentially liable party were to have corrected a transaction as specified by the Program and the transaction with the correction were later to be discovered on audit, any

[1] All references to the Class Exemption hereafter include the Proposed Class Exemption until finalized.

[2] The Interim VFC Program referred to IRS Rev. Proc. 2000–16. IRS Rev. Proc. 2001–17 superceded IRS Rev. Proc. 2000–16. For convenience, all references to the IRS correction programs and procedures are to IRS Rev. Proc. 2001–17 and include reference to any subsequent versions in future years.

penalty to be assessed on an applicable recovery amount within the meaning of section 502(l) would be limited to any additional amount that might be required by PWBA to be paid following the audit.[3]

Expansion of the VFC Program To Include Additional Transactions

PWBA sought input from the public on whether the VFC Program should be expanded to include additional transactions. Some commenters believed that the VFC Program should not be limited to specific transactions, but rather should include all types of fiduciary breaches. Other commenters suggested that certain specific transactions be added to the VFC Program. These transactions included plan contracts that result in excessive surrender charges, losses due to a failure to monitor investments, failure to diversify plan investments and problems with Summary Plan Descriptions (SPDs), Form 5500s and qualified domestic relations order (QDRO) administration. PWBA believes that these transactions are not appropriate for the VFC Program because the adequacy of the correction depends on facts and circumstances and therefore is not sufficiently uniform to be described in the Program in a manner that would obviate the need for any negotiation to ensure full correction. In addition, a separate voluntary compliance program (the Delinquent Filer Voluntary Compliance Program) is maintained for resolution of annual reporting (Form 5500 series) compliance issues. After considering the comments, PWBA has decided to maintain the basic structure of the Interim VFC Program and limit relief to the transactions specified. PWBA believes that the transactions currently included in the Program represent those with respect to which plans will maximize recoveries by voluntary correction without requiring negotiation between applicants and the Department. The Program has been expanded to add correction of delinquent employee contributions to both insured and funded welfare plans. PWBA will continue to review the scope of the VFC Program as it gains more experience with administering the Program. In this regard, PWBA invites members of the public to submit additional comments on viable transactions and reasonable methods of correction through the VFC Program for those suggested transactions.

Use of Alternative Correction Methods

PWBA requested input from the public on additional or different correction methods. Commenters generally favored having more flexibility in choosing correction options. After evaluating the comments, however, PWBA continues to believe that giving applicants complete flexibility in choosing correction methods will necessitate a level of review and negotiation by PWBA that would result in a settlement agreement within the meaning of ERISA section 502(l). Accordingly, PWBA will not make any changes to the VFC Program to permit alternative correction methods.

Use of New Prohibited Transactions as an Alternative Correction Method

One commenter suggested, with respect to proposed alternative correction methods, that the VFC Program permit engaging in a new prohibited transaction to correct the breach where the new prohibited transaction is the most viable way to correct the transaction that is the subject of the application. The Interim VFC Program contains correction methods that do not involve engaging in a new prohibited transaction because a new prohibited transaction would require exemptive relief or be subject to excise taxes.

Parties who believe that it is not feasible to correct a transaction through the VFC Program because the only viable correction, in the applicant's opinion, involves a new prohibited transaction may seek voluntary compliance with the Department outside of the VFC Program or may apply for individual relief from the prohibited transaction provisions for the new transaction from the Office of Exemption Determinations. In such circumstances, the corrected transaction would be subject to any applicable excise taxes and ERISA section 502(l) penalties, but the new transaction would not require the payment of excise taxes. PWBA notes in this regard that Prohibited Transaction Exemption 94–71 exempts from excise taxes new prohibited transactions that are used to correct a past transaction where the Department in a written settlement agreement approves the new prohibited transaction. However, PTE 94–71 does not relieve liable parties from excise taxes for the corrected transaction.

Proof of Payment to Missing Individuals Who Are Entitled to Distributions Under the VFC Program

The correction procedures under the Interim VFC Program required applicants to provide evidence that all participants and beneficiaries entitled to an additional distribution have been paid. One commenter noted that it can take a significant amount of time to locate former employees who are not in current pay status with the plan, their beneficiaries, and alternate payees, and suggested that the Program be amended to provide, similar to the IRS correction programs in Rev. Proc. 2001–17, that the applicant be required only to demonstrate that it has segregated funds for missing individuals and is taking appropriate steps to locate and pay those individuals. PWBA agrees that requiring proof of payment to all entitled individuals could significantly delay an applicant's ability to obtain relief under the Program. PWBA therefore has amended Section 5(d) of the VFC Program to require proof of payment only to participants and beneficiaries whose current location is known to the plan and/or applicant. For missing individuals who need to be located, applicants need only demonstrate that they have segregated adequate funds to pay the missing individuals and demonstrate that they have commenced the process of locating those individuals using either the IRS and Social Security Administration locator services, or other comparable means.

Comments Suggesting Changes Where Correction Includes Distribution to Participants

One commenter suggested that because the cost of making the distribution may sometimes exceed the amount of the distribution, PWBA should use a "reasonableness standard" with some flexibility where either the costs of full correction exceed the actual benefit to the plan or it is impossible to make full correction. The Interim VFC Program did not have a *de minimus* exception for making required distributions. Another commenter suggested that the VFC Program be modified to take into account situations where the costs of correction exceed the benefit to the plan. The IRS Rev. Proc. 2001–17 has an exception for making required distributions where the amount of the distribution is less than $20 and the cost of the distribution exceeds the distribution.

PWBA has decided to amend the VFC Program by adding Section 5(e), *De Minimus* Exception, to parallel the IRS

[3] PWBA notes that if it discovered on audit a prohibited transaction that is subject to section 4975 of the IRC, it would have an obligation under section 3003 of ERISA to make a referral to the IRS. When plan officials desire to correct a prohibited transaction, plan officials should make sure they satisfy the requirements of both the Department of Labor and the IRS.

correction programs with respect to former employees, their beneficiaries and alternate payees who have neither account balances with, nor a right to future benefits, from the plan. Under the new section 5(e), where correction under the Program requires distributions to such individuals in amounts of less than $20 per individual, and the applicant demonstrates in its submission that the cost of making the distribution exceeds the cost of correction, the applicant need not make distributions to those individuals who have separated from the plan and who would receive less than $20 as part of the correction. Instead, the applicant need only make payment to the plan in the required amount and the payments will be treated as any other payments or credits to the plan that are not allocated to individual accounts.

Another commenter noted that in situations where assets of the plan are overvalued, such as those situations described in section 7(d) of the Interim VFC Program, correction requires the applicant to make good the losses to the plan, without regard to whether assets are recovered from any participants or beneficiaries who might have received an overpayment. That commenter suggested that the VFC Program should be revised to allow plan fiduciaries first to attempt to collect any overpayment from a participant or beneficiary before the applicant is required to restore the amount overpaid to the plan. PWBA has determined not to amend the VFC Program in this regard. PWBA is concerned that encouraging applicants to pursue participants and beneficiaries for excess benefit payments will unduly delay making the plan whole.

Use of Alternative Earnings Calculations

PWBA also requested comments from the public on whether different earnings calculations might be appropriate to correct some or all of the transactions in the Program. Generally, commenters believed that alternative methods should be permitted so long as they provide adequate recovery. Some commenters believed that the methods described in the Program were too rigid. Others believed that certain of the methods provided more relief than could be obtained by the Department in litigation. Evaluation of alternative earnings calculations, however, would require discussions and negotiations between PWBA and the applicant. Thus, PWBA continues to believe that applicants must use the earnings calculation methods described in the VFC Program in order to obtain relief under the Program and has not amended the Program in this regard.

PWBA also received comments on certain specific aspects of the earnings calculations for the Program. PWBA notes that the correction methods, including earnings calculations in the Program, are fairly closely patterned on those in the IRS correction methods for prohibited transactions (*see* 26 CFR 53.4941(e)–1(c)) and in the IRS correction programs (Rev. Proc. 2001–17).

One commenter suggested that using the Internal Revenue Code section 6621 rate as a "floor" provided an inappropriate windfall to the plan. According to the commenter, profits made on the use of the plan funds rather than the loss to the plan should only be required where there is proof of a causal connection between the use of the funds and the profits gained by the breaching party. PWBA has determined not to amend the Program in this regard. Section 409 of ERISA provides that any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this title shall be personally liable to make good to the plan any losses to the plan resulting from each breach, and to restore to the plan any profits of such fiduciary which have been made through the use of assets of the plan by the fiduciary. The VFC Program is structured to make the plan whole without the need for investigation and suit and the costs attendant thereto in exchange for relief from penalties under section 502(l).

Another commenter suggested that for an ERISA section 404(c)-type plan, it would be more appropriate to use a blended rate, as opposed to the highest rate of return, if, for administrative convenience as was permitted under the Interim VFC Program, the applicant was not using the actual return an individual participant would have earned based on his or her investment allocations. PWBA notes that IRS Rev. Proc. 2001–17, Appendix B, permits IRS program applicants to use the highest rate of return for administrative convenience when adding funds to a plan participant's account as part of a correction. Rev. Proc. 2001–17 provides, however, that the employer correcting the violations may use the blended overall return for the plan only if a plan participant has not made any investment allocations and funds are being added to his or her account as part of the correction. PWBA has decided to amend Section 5(b)(5) of the VFC Program to track more closely the IRS correction programs. The VFC Program is modified to permit the use of a blended rate for affected participants who have not made any investment allocations. Where participants have made elections, the applicant must still either calculate the actual rate of return or use the investment with the highest rate of return among the designated broad range of investment alternatives available to the participants.

Certain commenters, as well as applicants who have participated in the Interim VFC Program, identified ambiguities in the earnings calculation methods for lost earnings with respect to delinquent participant contributions to pension plans. PWBA recognizes that calculating lost earnings, particularly for delinquent contributions to 401(k) plans, may be complicated, depending on the length of the delinquency, the number of investment options and the performance of those options. PWBA has elected not to change the VFC Program with respect to the earnings calculations; it believes that only a general formula will address the myriad situations that may arise. PWBA has however, slightly modified the examples to eliminate some references to annualized yields for short correction periods to lessen any possible confusion in applying the principles set forth in the examples. Nonetheless, PWBA recognizes that there may be situations, depending on the duration of the delinquency and the information available to the correcting officials regarding investment performance, where use of a fraction of an annualized yield may be appropriate.

Form 5500 Filings Associated With VFC Program

PWBA received several comments with respect to Form 5500 filings associated with the VFC Program. Commenters generally were concerned that they not be subject to penalties for improper filings if they filed an amended return in connection with the VFC Program. One commenter suggested that the Delinquent Filer Voluntary Compliance Program be consolidated with the VFC Program. Another commenter suggested that there be no penalties associated with any filings required by the VFC Program. One commenter suggested that PWBA eliminate any requirement for filing amended returns to reflect the transactions corrected by the VFC Program.

PWBA has decided to keep the filing requirements associated with the VFC Program as published in the Interim VFC Program. PWBA believes that where a plan has engaged in a prohibited transaction or plan assets have been valued improperly, Forms 5500 must be amended to reflect these

important reporting items. PWBA notes that filing an amended return for these purposes will not trigger a penalty, and accordingly, there is no need to provide special relief under section 502(c)(2). Penalties attach under section 502(c)(2) for delinquent and non-filers. If a plan has filed a return that is inadequate, PWBA can reject the return. If the filer does not correct the return within 45 days of rejection by the Office of the Chief Accountant, PWBA may then assess a penalty. PWBA does not anticipate that amended Forms 5500 filed to reflect transactions or valuations corrected in accordance with the terms of the VFC Program will be subject to rejection for those amendments alone.

The Delinquent Filer Voluntary Compliance Program, as currently operated, applies only to delinquent and non-filers. PWBA anticipates that applicants under the VFC Program will need only to amend their previously filed Forms 5500 to the extent the prohibited transactions or improper valuations were not reported adequately. Accordingly, there is no need to merge the two programs. Nonetheless, if a plan has filing problems and transactions that could be corrected through the VFC Program, all of which need to be corrected, plan officials may wish to consider applying to both programs simultaneously.

Anonymous Presubmissions

Commenters suggested that the public would benefit from the ability of potentially liable parties to presubmit applications anonymously to PWBA prior to filing a formal application for relief under the Program. Certain commenters suggested that if the determination as to the type of transaction to be included in an application and the correction method to be used were negotiated on an anonymous basis, PWBA could negotiate the precise relief necessary without engaging in a settlement agreement within the meaning of section 502(l). PWBA does not believe that it is either practical or appropriate to amend the VFC Program to provide for a formal anonymous presubmission process. A formal process would result in duplicative effort and could be cumbersome to administer. In addition, PWBA believes that negotiation of the type of transaction and the appropriate correction could lead to a settlement within the meaning of section 502(l) even if the negotiations took place on an anonymous basis. PWBA notes that each regional PWBA office has a VFC Program Coordinator. Members of the public are free to contact the VFC Program Coordinator and discuss on an informal, hypothetical basis general issues regarding the scope of the Program, including the types of transactions appropriate for an application and the types of correction that would satisfy the Program.

Ability To Amend Application To Avoid Final Rejection

One commenter requested that the VFC Program expressly provide for amendment of applications. The commenter suggested that Plan Officials be given the opportunity to conduct their own compliance reviews after submitting a preliminary application outlining suspected but uncorrected breaches. The comment stated that such a procedure would enable fiduciaries to resolve known and undiscovered breaches during the compliance review. The commenter suggested that the Department defer any enforcement action pending its receipt of the final application. The commenter also suggested that the VFC Program provide that if the Department intended to reject an application, it provide notice to the applicant, the basis for rejection, and a deadline for correcting deficiencies. The Department believes a formal procedure for amendment of applications as proposed by the commenter is not necessary. The Department emphasizes that the VFC Program includes no limitations on amendment of applications provided such change does not result from negotiation with PWBA. Accordingly, PWBA does not believe it is necessary to amend the VFC Program to provide for a formal procedure. In its administration of the VFC Program, PWBA anticipates providing applicants sufficient opportunity, as the circumstances warrant, to correct defects.

Tolling Agreements

One commenter suggested that certain applicants might desire to enter into tolling agreements with PWBA. This commenter requested that tolling agreements be made part of the VFC Program. PWBA believes that only in rare situations would it be necessary to use tolling agreements in connection with the VFC Program. PWBA believes that in most situations, the transaction that is the subject of the application will be fully corrected in accordance with the VFC Program and there will be no extenuating circumstances that would warrant a tolling agreement with respect to the transaction or related transactions. However, in situations where an applicant believes that it will need additional time to complete an application or to file additional applications for related transactions, PWBA will consider entering into tolling agreements with the applicant. The mere fact that an applicant has entered into a tolling agreement with respect to a transaction or transactions ultimately corrected pursuant to a formal application under the VFC Program will not itself take the application out of the VFC Program and subject the applicant to the possibility of the imposition of section 502(l) penalties. PWBA does not believe, however, that it is necessary to amend the VFC Program formally to permit or require tolling agreements.

Whether Persons Other Than the Applicant Should Be Entitled to Relief Under the VFC Program

Various commenters expressed concern that the relief under the VFC Program was limited to the Program applicant and was not extended to all persons who might have participated in the breach. PWBA does not believe that it is appropriate to extend relief to persons who have not participated in the application process. The application process requires persons in a position to correct the breach to evaluate the transaction and correction and to attest under penalty of perjury as to the accuracy of the application, including whether the correction has been made in accordance with the VFC Program. PWBA notes that more than one party can submit an application. Thus, for example, if a plan sponsor, as the named fiduciary, decides to correct a transaction, and all the plan fiduciaries involved in the transaction join in the submission of the application, including executing the penalty of perjury statement, the relief provided under the VFC Program would extend to all the fiduciaries participating in the application. The Program has been amended to make clear that any number of Plan Officials may be applicants who sign the penalty of perjury statement.

Penalty of Perjury Statement

PWBA received numerous comments that the penalty of perjury statement (Section 6(g)) needed clarification. Several comments noted that the penalty of perjury statement appears to be broader than the eligibility standards (Section 4, VFC Program Eligibility). One commenter questioned why both a plan fiduciary with knowledge of the transaction and the applicant's authorized representative (if any) must sign and date the statement. The commenter represented that the transaction at issue would typically be beyond the personal knowledge of the representative. PWBA has decided to retain the language of the original

penalty of perjury statement. The penalty of perjury statement, eligibility provisions, and PWBA's reservation of the right to reject an application when warranted by facts and circumstances are all intended to help the potential applicant evaluate whether participation in the VFC Program is appropriate. PWBA believes these provisions are necessary to limit its review to the application only and to avoid follow-up investigations that could render the Program less efficient and focused. PWBA believes the review and signature of the authorized representative is a necessary safeguard that presents an insignificant burden.

Scope of the Term "Under Investigation"

PWBA received several comments requesting clarification of Section 3(b)(3) (Under Investigation) of the VFC Program. In response to the comments, PWBA is amending the definition of Under Investigation to clarify that the definition does not include work paper reviews initiated by PWBA's Office of Chief Accountant under authority of section 504(a) of ERISA. Although PWBA is not making any further amendments to the definition, PWBA also notes, by way of clarification, that a party is Under Investigation if it has received oral or written notification from PWBA of a PWBA investigation of the plan concerning any issue. However, a plan is not Under Investigation if PWBA staff have contacted a Plan Official or representative in connection with a participant complaint that does not relate to a transaction described in the VFC Program application.

Required Documentation Under the VFC Program

Commenters suggested that various types of documentation required by the VFC Program are unnecessary or overly burdensome. One commenter suggested that there is no reason to require the provision of a fidelity bond. Another commenter questioned the need to provide a copy of the entire plan document as part of the application and suggested that providing the relevant portion of the plan should be adequate. PWBA has determined to retain generally all of the documentation requirements of the VFC Program. The documentation is necessary for PWBA to evaluate fully the application and the transaction at issue. However, PWBA believes that streamlining the documentation requirements may encourage additional participation in the VFC Program. Accordingly, PWBA is eliminating the requirement in Section 6(e)(i) of the Interim VFC Program that applicants produce a copy of the fidelity bond. Instead, Section 6(e)(i) of the VFC Program now provides that applicants need only identify in their application the current fidelity bond that meets the requirements of section 412 of ERISA. In addition, the Program is amended to require only production of relevant portions of the plan with the initial application. There may be situations where PWBA will want to examine additional provisions of the plan when reviewing the application. Accordingly, the VFC Program now provides that as part of the application process, applicants may be required to produce the entire plan document on request.

Departmental Approval of Preventive Measures Taken by Applicants

Section 2(c)(2) (Effect of the VFC Program—No implied approval of other matters) states that a no action letter does not imply approval of steps that fiduciaries take to prevent recurrence of the breach described in an application and to ensure future compliance with Title I of ERISA. Appendix B (VFC Program Checklist) at item 12 asks whether the plan has implemented measures to ensure that the transactions specified in the application do not recur. Appendix B states that PWBA will not opine on the adequacy of these measures. One commenter requested that Plan Officials be given the opportunity to request and obtain PWBA's approval of preventive measures. PWBA believes such a procedure is beyond the scope of the VFC Program. A VFC Program application is an insufficient record upon which this type of opinion could be rendered, and PWBA designed the Program to avoid conducting additional inquiries.

Required Use of Independent and Expert Evaluations and Written Appraisals

Each of the Loan and Purchase, Sale, and Exchange corrections described in Section 7(b) and (c) of the Interim VFC Program requires that an independent party provide a specific determination or report. Additionally, the correction of Benefits and Plan Expenses transactions described in Sections 7(d) and (e) requires action by an independent appraiser and an estimator, respectively. Commenters generally represented that these requirements were unnecessary and impractical. One commenter suggested that PWBA clarify that ERISA does not mandate independent written appraisals prior to the sale of an asset that is not publicly traded. Another comment suggested that certification by the applicant or other alternative evidence of a fair market interest rate should suffice. The VFC Program's principle of independence derives in part from PWBA's prohibited transaction exemption program. PWBA believes the requirement for a neutral, qualified independent party is an established and proper safeguard. The unilateral nature of PWBA's application review also compels the requirement of an independent judgment. An objective of the Program is that PWBA need not audit the circumstances of the transaction and its correction. The VFC Program is designed to provide a record free of any appearance of self-dealing or imprudence in the correction of transactions. Accordingly, PWBA has decided not to amend the requirements for the use of independent and expert evaluations and appraisals.

The Revised VFC Program

The VFC Program as adopted here retains the same basic structure as the Interim VFC Program, while adding two new transactions. The effect of the VFC Program, the eligibility requirements, and the application procedures are unchanged. As discussed in more detail above in the responses to specific public comments, the major changes to the Program are the proposal to provide relief from some excise taxes associated with transactions that can be corrected under the Program and the elimination of the requirement of notice to participants, as described in Section 5(e) of the Interim VFC Program. As stated previously, where the applicant is eligible for and elects to take advantage of the excise tax relief available under the Class Exemption, the separate notice requirements of the Class Exemption must be met. The documentation requirements have been simplified to permit applicants to provide a statement that they have a fidelity bond, rather than provide a copy of the bond itself. Additionally, applicants need only submit relevant portions of the applicable plan documents with the application, rather than the entire plan document.

Executive Order 12866

Under Executive Order 12866, the Department must determine whether a regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially

affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it has been determined that this action would create a novel method for accomplishing compliance while reducing regulatory burdens and making effective use of federal resources. As such, this notice is consistent with the principles of the Executive Order. Therefore, this action is "significant" and subject to OMB review under section 3(f)(4) of the Executive Order.

In the Department's view, the benefits of the VFC Program will substantially outweigh its costs, because participation is voluntary, the administrative cost of correcting a potential fiduciary breach through voluntary participation in the Program is lower than the cost of a correction resulting from investigation and litigation, and the value and security of the assets of plans participating in the Program will be increased.

No costs are imposed by the VFC Program unless Plan Officials choose to avail themselves of the opportunity to correct a potential fiduciary breach under the terms of the Program. Because the decision to participate in the VFC Program is made by the relevant Plan Officials, participation is expected to occur only when the projected benefit outweighs the anticipated cost for the plan. The costs of electing to correct potential breaches of fiduciary responsibility under the terms of the VFC Program are expected to arise from the requirement for those participating in the VFC Program to obtain fair market value determinations, computations of losses or profits on the use of plan assets, the administrative costs of supplemental distributions, recomputations of account balances, transaction costs for disposal of assets, and the description and documentation of the correction for purposes of the application to the Department.

The value of assets or losses restored to employee benefit plans as a result of Plan Officials' participation in the VFC Program is viewed as a transfer from a fiduciary or other party in interest to the participants and beneficiaries of the plan. Plan Officials may not transfer the costs of compliance with the terms of this VFC Program to participants and beneficiaries.

The principal benefit of this VFC Program accrues to participants and beneficiaries through restoration of losses to the plan or reversal of impermissible transactions involving the assets of the plan, resulting in greater security of their plan assets. Benefits also accrue to plan fiduciaries through both risk reduction and the savings of civil penalties that would otherwise be payable on the amount of assets recovered by plans following a civil investigation or litigation. Where the Department determines that it will take no civil enforcement action and recommend no further legal action in response to a completed application under the VFC Program, the fiduciary is relieved of potential demands on its resources that might be imposed by a civil investigation and any subsequent litigation.

The VFC Program also allows the Department to encourage compliance with Part 4 of Title I of ERISA while making even more effective use of its limited enforcement resources. The Department believes that the correction of violations through the VFC Program is less costly than correction through active intervention, and that VFC Program applicants have a high likelihood of accomplishing an appropriate correction of a potential violation. To the extent that Plan Officials who wish to correct potential violations do so voluntarily and appropriately, the Department may direct its resources toward other areas where active intervention is more likely to be necessary.

More generally, publication of the specific examples of transactions which may violate ERISA and the activities required to correct those violations will serve to better inform plan fiduciaries and assist them in satisfying their fiduciary obligations in future transactions involving plan assets.

Under the Interim VFC Program, the total benefit to participants and beneficiaries is estimated at approximately $80 million, while the benefit to Plan Officials, to the extent it can be quantified, is estimated at $5.4 million. The Department originally estimated the cost of the Interim VFC Program for the Plan Officials who chose to participate at $1.9 million. Because the Department has amended the VFC Program by streamlining documentation requirements, the overall benefits and costs of the Program as adopted vary from those proposed in the Interim VFC Program only to the extent that the estimated cost for applying to the Program for 700 Plan Officials has been reduced to $1.8 million as a result of the modification in the documentation requirements. Under the Interim VFC Program, initial estimates of costs and benefits were based on the upper bound of the number of Plan Officials that might avail themselves of the Program based on the transactions eligible for correction. Because the actual number of Plan Officials that have taken advantage of the program, averaged over a nine-month period, has not contradicted the original estimates, the Department continues to believe that 700 Plan Officials remains a reasonable estimate of the number of applicants that will avail themselves of the VFC Program. The number of Program participants during the initial months of the Program has been lower than originally projected. However, the addition of a transaction to the permanent Program, the availability of the related exemption, and the elimination of the notice requirement except for that in the related exemption, is expected to increase participation.

Finally, these figures do not include an estimate of the potential benefit to Plan Officials of the reduced risk of investigation and litigation, or the benefit to the Department, to participants and beneficiaries, and to the public in general of realizing efficiencies in the use of enforcement resources because these elements are not readily quantifiable. Because this VFC Program is voluntary, the Department assumes that Plan Officials will in no event make use of the VFC Program unless the projected benefit outweighs the estimated cost of participation.

A discussion of the elements of the costs and benefits of this VFC Program and estimates of their magnitude where they can be specifically quantified follows. Based on the Department's previous experience with the Pension Payback Program, in which approximately 0.1 percent of plans that permitted employee contributions elected to participate during the six-month period when the Pension Payback Program was in effect, the Department projects that Plan Officials of approximately 700 plans will apply for and use the VFC Program. The Department expects a similar rate of participation among the approximately 200,000 plans that currently permit employee contributions. However, it assumes the participation by Plan Officials of 200 plans will occur over an

annual period in the absence of the six-month time limitation included in the Pension Payback Program. Because the VFC Program permits correction of several other types of transactions in addition to the repayment of delinquent employee contributions, the Department has assumed that the annual rate of participation in the VFC Program by Plan Officials of plans other than those which permit employee contributions will be comparable to the 0.1 per cent assumed for those which permit employee contributions, resulting in participation by Plan Officials of about 500 additional plans, and total participation of 700 plans. The Department views this estimate as an upper bound; actual participation may be somewhat smaller depending on the cost effectiveness of correcting the actual transactions involved, the complexity of the legal and factual issues involved in a given transaction, and the degree of similarity between a specific transaction representing a breach of fiduciary responsibility and a transaction and correction described by the terms of the VFC Program. The Department recognizes that Plan Officials may not view the VFC Program as offering a cost-effective means of correcting all potential violations.

The Department also estimates that $80 million, or an average of $114,300 per plan, will be recovered by plans annually as a result of participation in the VFC Program. Based on its enforcement experience, the Department estimates that about 70 per cent of this total, or $56 million, will consist of restored principal and earnings losses, and restored profits on the use of plan assets by fiduciaries or parties in interest. The total estimated recovery represents the midpoint between the average monetary recovery (excluding assets recovered through litigation) per plan that resulted from civil investigations completed by the Department in the year ended September 30, 1998, and the average per plan monetary recovery which arose from the Pension Payback Program, as applied to the 700 plans assumed to elect to participate in the VFC Program. The Department believes this estimate is reasonable in light of the range of transactions which may be corrected under the VFC Program. It is estimated that approximately 88,000 participants, or an average of 126 participants per plan, will be affected annually by corrections under the VFC Program.

Based on its recent experience with the collection of civil penalties under section 502(l), the Department estimates that Plan Officials will be relieved of approximately $5.4 million in civil penalties as a result of correction of transactions through the VFC Program. This estimate is based on the 700 plans assumed to participate, and the average 502(l) penalty actually collected per plan subject to the penalty in the last two fiscal years. Actual collections take into account the offset of any excise tax payable as a result of a violation of section 4975 of the Code. Relief from section 4975 excise taxes under the Code is available to Plan Officials under the newly proposed Class Exemption to Permit Certain Transactions identified in the Voluntary Fiduciary Correction Program, also published simultaneously in this issue of the **Federal Register** (Application No. D–10933).

The costs for Plan Officials to participate in the VFC Program arise from a range of possible required activities depending on the nature of the transaction to be corrected, including evaluation by Plan Officials and their professionals of the need and usefulness of participation in the VFC Program, obtaining market value determinations, executing asset transactions, adjusting account balances and benefit distributions, documenting the correction, and completing and mailing the application to participate in the Program. The Department anticipates that Plan Officials will in most cases seek the services of a professional (typically an attorney, accountant, or professional administrator) to conduct the applicable activities, although the resources of Plan Officials are expected to be needed as well to gather information, and prepare, sign, and photocopy the application. It is estimated that the entire correction will require approximately 39 hours to complete, including 8 hours of the Plan Official's time, and 31 hours of a professional's time.

At the assumed rate of participation, the total cost of these activities is estimated to amount to $1.8 million (or an average of $2,600 per Plan Official), at an average cost of $57 per hour for work performed in house by Plan Officials and their employees, and a rate of $70 per hour for purchased services. This estimate also includes application materials and mailing costs.

Paperwork Reduction Act

At the time of publication of the Interim VFC Program in the **Federal Register** (65 FR 14164, Mar. 15, 2000), the Department submitted to OMB the information collection request (ICR) included in the Interim VFC Program using emergency procedures for review and clearance in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. Chapter 35). Although the Department requested emergency review of the ICR by April 14, 2000, and OMB granted approval of the ICR through September 30, 2000, the Department continued to receive comments until May 15, 2000. The OMB number assigned to the ICR is 1210–0118. The Department subsequently applied for and was granted approval by OMB for an extension of the information collection request. The current OMB approval for this ICR will expire on November 30, 2003. Based on comments received from the public after the Notice in the **Federal Register** and additional consideration by the Department, modifications in the documentation and notification requirements were made to the Interim VFC Program. No comments were received in response to the Department's solicitation of comments concerning the ICR included in the Interim VFC Program. The changes in the hour and cost burdens reflected below are therefore the result of changes made by the Department to the VFC Program as adopted.

The VFC Program permits Plan Officials voluntarily to correct certain potential violations of Part 4 of Title I of ERISA, resulting in the receipt of a "no action" letter from the Department signifying that the applicant had been relieved of the possibility of civil investigation for that breach and/or civil action by the Secretary with respect to that breach, as well as the imposition of civil penalties under section 502(l) of ERISA. Comments received, however, requested that the Department also consider granting relief from the excise taxes imposed on prohibited transactions under section 4975 of the Code because the taxes were considered by Plan Officials to be a disincentive for participation in the VFC Program. In response, the Department is publishing simultaneously the proposed Class Exemption.

Under the Interim VFC Program, notification to interested persons of the application and correction of the eligible transaction was considered a condition for obtaining a "no action" letter. A number of commenters, however, observed that a notice of correction was not generally required by the Department in other circumstances where corrections have occurred and that notification was therefore unnecessary and burdensome. While the Department agreed to remove the notice requirement from the VFC Program, the Department also determined that where a Plan Official intended to seek relief from section 4975 of the Code, interested persons should be made aware of the material facts of the eligible transaction and the resulting correction.

Therefore, under the VFC Program as adopted, the notice requirement has been eliminated as a part of the application process; however, a notice requirement has been included among the conditions for relief under the Class Exemption. For purposes of the PRA, the ICR previously described under the Interim VFC Program has been revised to indicate that notification is now a requirement under the Class Exemption rather than under the VFC Program as implemented on a permanent basis. Because the Class Exemption is only used in connection with the VFC Program, the Class Exemption also published simultaneously herewith is treated for purposes of the PRA as a modification of the information collection requirements of the VFC Program.

Based on additional observations received from commenters, the Department has also reduced the documentation required to be included with an application. Proof of bonding, formerly indicated by including a copy of the bond with the application, has been simplified by permitting a Plan Official to simply state in the application that the plan has a current fidelity bond that meets the requirements of section 412 of ERISA. Finally, the Program has been amended to require only production of relevant portions of the employee benefit plan, instead of a copy of the entire plan, with the initial application.

The ICR included in the VFC Program as adopted requires a Plan Official to describe the correction of the potential breach of fiduciary duty and to provide supporting documentation with respect to the correction. The type of supporting documentation will vary with the nature of the transaction involved, but is described in this VFC Program in as specific a manner as feasible. The Plan Official is also required to complete an application, which includes identification of the employee benefit plan and the Plan Official, or representative, relevant plan documents, a statement under penalty of perjury, and signature. Under certain circumstances, for instance if the correction under the Program involves an adjustment of account balances or supplemental distributions for participants or beneficiaries, the plan is expected to explain the basis for the adjustment or distribution. Because plans regularly report to participants or beneficiaries on changes in their account balance, the Department has not attributed an additional cost for disseminating this information. The information submitted to the Department will permit the Department to verify the correction of potential fiduciary breaches and restoration of losses, to evaluate the adequacy of actions taken by a Plan Official pursuant to the VFC Program, and to determine whether further action is necessary to protect the rights of participants and beneficiaries.

It is estimated that Plan Officials of 700 employee benefit plans will avail themselves of the opportunity to correct potential violations pursuant to the VFC Program. The Department estimates that approximately 8 hours of a Plan Official's time will be required to assemble documents and complete and sign the application to participate in the VFC Program. For 700 Plan Officials, the total hour burden is 5,600 hours. At a cost of $57 per hour for a financial manager's time, the administrator most likely to compile the necessary documents, the cost of the hour burden is $319,200.

It is further assumed that evaluation, correction, and documentation of transactions under the VFC Program will require approximately 31 hours, and that Plan Officials will generally elect to hire service providers to complete this work. The Department originally allotted six hours of a service provider's time for the completion of work attributed to the information collection. This included preparing descriptions and documentation, copying relevant supporting statements, and completing the application. Based on comments received on the Interim VFC Program, the Department has reduced the amount of supporting documentation required for the application process (i.e., requiring that only relevant parts of plan documents be submitted and acknowledging that a statement fidelity bonding is sufficient to replace a copy of the bond) and removed the notice requirement from the VFC Program as adopted and included it with the proposed exemption. Because of the changes in document production and notification, the Department has reduced by one hour the number of hours expected to be associated with information collection by service providers under the Program as adopted. Based on the reduction from six to five hours for purchased services, and at an assumed hourly rate of $70 per hour, the total estimated cost to 700 Plan Officials is $246,400. This includes an allowance of $2 per application for materials and mailing costs.

Agency: Pension and Welfare Benefits Administration, Department of Labor.

Title: Voluntary Fiduciary Correction Program.

OMB Number: 1210–0118.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Frequency of Response: On occasion.

Total Respondents: 700.

Total Responses: 700.

Estimated Burden Hours: 5,600 for existing ICR.

Estimated Annual Costs (Operating and Maintenance): $246,400.

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Regulatory Flexibility Act

This document reflects an enforcement policy of the Department and is not being issued as a general notice of proposed rulemaking. Therefore, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) does not apply. However, PWBA considered the potential costs and benefits of this action for small plans and their Plan Officials in developing the VFC Program.

PWBA generally considers a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans, which cover fewer than 100 participants. However, because the VFC Program specifically prohibits the cost of participation from being borne by the plan and participants, this Program will impose no costs on the plans, which realize the benefits of the correction of potential violations. Costs will be borne instead by the Plan Officials of an estimated 700-employee benefit plans each year. Plan Officials may include both individual fiduciaries, plan sponsors, or parties in interest, and businesses in their roles as fiduciaries, plan sponsors, or parties in interest.

Although the number of Plan Officials of small plans that will elect to avail themselves of the opportunity to correct potential breaches of fiduciary duty under the terms of the VFC Program is not known, the potential costs and benefits to each Plan Official are summarized below, on the basis of the assumption that each of the participating Plan Officials will itself be a small entity.

Participation in the VFC Program is entirely voluntary, and as such, it is assumed that Plan Officials will elect to participate only when the potential benefits to a Plan Official are expected to exceed the cost of participation. Benefits may include the reduction of exposure to the risk of investigation and subsequent litigation, the potential cost of which cannot be specifically

quantified, and the saving of penalties under section 502(l) of ERISA which would otherwise be payable on amounts required to be restored to plans by fiduciaries pursuant to a settlement agreement with the Department or court order.

As described in detail above, to the extent that the per small Plan Official costs and benefits of participation in the VFC Program can be quantified, assuming all participating Plan Officials are small entities, administrative costs of participation are estimated to amount to an average of $2,600 per Plan Official, while savings of section 502(l) penalties are estimated at $7,754 per Plan Official. While the average value of assets estimated to be restored to a plan as a result of participation in the VFC Program ($114,300 per plan) may be viewed as an expense by Plan Officials, the Department believes that this expense arises from a previously occurring breach of fiduciary duty rather than from participation in the VFC Program. The fiduciary's potential liability for a breach of fiduciary duty and the cost of remedial relief are expected to be comparable regardless of whether a violation is corrected under the terms of the VFC Program or as a result of an investigation and any subsequent litigation.

On this basis, Plan Officials of small plans electing to correct previously occurring fiduciary breaches through participation in the VFC Program are expected to derive a net benefit, even without consideration of the potential savings associated with the reduction of risk of exposure of its resources in connection with an investigation or litigation. Because penalties and additional resource demands are often relatively more burdensome for small entities than large, the Department views the VFC Program as offering a flexible and economically advantageous alternative to currently available methods of correcting potential breaches of fiduciary duty.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this regulatory action does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, and will not impose an annual burden of $100 million or more on the private sector.

Federalism

The Department has reviewed this rule in accordance with Executive Order 13132 regarding Federalism. The order requires that agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any action, which would restrict state policy options or impose substantial direct compliance costs on state and local governments, and take such action only when there is clear constitutional authority and the presence of a problem of national significance. Since this rule does not limit state policy options or impose costs on state and local governments, it does not have federalism implications, and thus Executive Order 13132 does not require a certification that the VFC Program complies with the order.

Congressional Review Act

The VFC Program is subject to the provisions of the Congressional Review Act (5 U.S.C. 801 *et seq.*) and will be transmitted to Congress and the Controller General for review. The program is not a "major rule" as that term is defined in 5 U.S.C. 804 because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Voluntary Fiduciary Correction Program

Section 1. Purpose and Overview of the VFC Program

The purpose of the VFC Program is to protect the financial security of workers by encouraging identification and correction of transactions that violate Part 4 of Title I of ERISA. Part 4 of Title I of ERISA sets out the responsibilities of employee benefit plan fiduciaries. Section 409 of ERISA provides that a fiduciary who breaches any of these responsibilities shall be personally liable to make good to the plan any losses to the plan resulting from each breach and to restore to the plan any profits the fiduciary made through the use of the plan's assets. Section 405 of ERISA provides that a fiduciary may be liable, under certain circumstances, for a co-fiduciary's breach of his or her fiduciary responsibilities. In addition, under certain circumstances, there may be liability for knowing participation in a fiduciary breach. In order to assist all affected persons in understanding the requirements of ERISA and meeting their legal responsibilities, PWBA is providing guidance on what constitutes adequate correction under Title I of ERISA for the breaches described in this Program.

Section 2. Effect of the VFC Program

(a) *In general.* PWBA generally will issue to the applicant a no action letter [4]

[4] See Appendix A.

with respect to a breach identified in the application if the eligibility requirements of Section 4 are satisfied and a Plan Official corrects a breach, as defined in Section 3, in accordance with the requirements of Sections 5, 6 and 7. Pursuant to the no action letter it issues, PWBA will not initiate a civil investigation under Title I of ERISA regarding the applicant's responsibility for any transaction described in the no action letter, or assess a civil penalty under section 502(l) of ERISA on the correction amount paid to the plan or its participants.

(b) *Verification.* PWBA reserves the right to conduct an investigation at any time to determine (1) the truthfulness and completeness of the factual statements set forth in the application and (2) that the corrective action was, in fact, taken.

(c) *Limits on the effect of the VFC Program.* (1) *In general.* Any no action letter issued under the VFC Program is limited to the breach and applicants identified therein. Moreover, the method of calculating the correction amount described in this Program is only intended to correct the specific breach described in the application. Methods of calculating losses other than, or in addition to, those set forth in the Program may be more appropriate, depending on the facts and circumstances, if the transaction violates provisions of ERISA other than those that can be corrected under the Program. In this regard, the Program assumes, for example, that the transaction is otherwise an appropriate investment decision for the plan. If a transaction gave rise to violations not addressed in the Program, such as imprudence not addressed in the Program or a failure to diversify plan assets, the relief afforded by the Program would not extend to such additional violations.

(2) *No implied approval of other matters.* A no action letter does not imply Departmental approval of matters not included therein, including steps that the fiduciaries take to prevent recurrence of the breach described in the application and to ensure the plan's future compliance with Title I of ERISA.

(3) *Material misrepresentation.* Any no action letter issued under the VFC Program is conditioned on the truthfulness, completeness and accuracy of the statements made in the application and of any subsequent oral and written statements or submissions. Any material misrepresentations or omissions will void the no action letter, retroactive to the date that the letter was issued by PWBA, with respect to the transaction that was materially misrepresented.

(4) *Applicant fails to satisfy terms of the VFC Program.* If an application fails to satisfy the terms of the VFC Program, as determined by PWBA, PWBA reserves the right to investigate and take any other action with respect to the transaction and/or plan that is the subject of the application, including refusing to issue a no action letter.

(5) *Criminal investigations not precluded.* Compliance with the terms of the VFC Program will not preclude:

(i) PWBA or any other governmental agency from conducting a criminal investigation of the transaction identified in the application;

(ii) PWBA's assistance to such other agency; or

(iii) PWBA making the appropriate referrals of criminal violations as required by section 506(b) of ERISA.[5]

(6) *Other actions not precluded.* Compliance with the terms of the VFC Program will not preclude PWBA from taking any of the following actions:

(i) Seeking removal from positions of responsibility with respect to a plan or other non-monetary injunctive relief against any person responsible for the transaction at issue;

(ii) referring information regarding the transaction to the IRS as required by section 3003(c) of ERISA; [6] or

(iii) imposing civil penalties under section 502(c)(2) of ERISA based on the failure or refusal to file a timely, complete and accurate annual report Form 5500. Applicants should be aware that amended annual report filings may be required if possible breaches of ERISA have been identified, or if action is taken to correct possible breaches in accordance with the VFC Program.

(7) *Not binding on others.* The issuance of a no action letter does not affect the ability of any other government agency, or any other person, to enforce any rights or carry out any authority they may have, with respect to matters described in the no action letter.

(8) *Example.* A plan fiduciary causes the plan to purchase real estate from the plan sponsor under circumstances to which no prohibited transaction exemption applies. In connection with this transaction, the purchase causes the plan assets to be no longer diversified, in violation of ERISA section 404(a)(1)(C). If the application reflects full compliance with the requirements of the Program, the Department's no action letter would apply to the violation of ERISA section 406(a)(1)(A), but would not apply to the violation of section 404(a)(1)(C).

(d) *Correction.* The correction criteria listed in the VFC Program represent PWBA enforcement policy and are provided for informational purposes to the public, but are not intended to confer enforceable rights on any person who purports to correct a violation. Applicants are advised that the term "correction" as used in the VFC Program is not necessarily the same as "correction" pursuant to section 4975 of the Code.[7] Correction may not be achieved under the Program by engaging in a new prohibited transaction.

(e) *PWBA's authority to investigate.* PWBA reserves the right to conduct an investigation and take any other enforcement action relating to the transaction identified in a VFC Program application in certain circumstances, such as prejudice to the Department that may be caused by the expiration of the statute of limitations period, material misrepresentations, or significant harm to the plan or its participants that is not cured by the correction provided under the VFC Program. PWBA may also conduct a civil investigation and take any other enforcement action relating to matters not covered by the VFC Program application or relating to other plans sponsored by the same plan sponsor, while a VFC Program application involving the plan or the plan sponsor is pending.

(f) *Confidentiality.* PWBA will maintain the confidentiality of any documents submitted under the VFC Program, to the extent permitted by law. However, as noted in (c)(5) and (6) of this section, PWBA has an obligation to make referrals to the IRS and to refer to other agencies evidence of criminality and other information for law enforcement purposes.

Section 3. Definitions

(a) The terms used in this document have the same meaning as provided in section 3 of ERISA, 29 U.S.C. section 1002, unless separately defined herein.

[5] Section 506(b) provides that the Secretary of Labor shall have the responsibility and authority to detect and investigate and refer, where appropriate, civil and criminal violations related to the provisions of Title I of ERISA and other related Federal laws, including the detection, investigation, and appropriate referrals of related violations of Title 18 of the United States Code.

[6] Section 3003(c) provides that, whenever the Secretary of Labor obtains information indicating that a party in interest or disqualified person is violating section 406 of ERISA, she shall transmit such information to the Secretary of the Treasury.

[7] *See* section 4975(f)(5) of the Internal Revenue Code (IRC); section 141.4975–13 of the temporary Treasury Regulations and section 53.4941(e)–1(c) of the Treasury Regulations. The Internal Revenue Service has indicated that except in those instances where the fiduciary breach or its correction result in a tax abuse situation or a plan qualification failure, a correction under this Program generally will be acceptable under the Internal Revenue Code.

(b) The following definitions apply for purposes of the VFC Program:

(1) *Breach.* The term "Breach" means any transaction which is or may be a breach of the fiduciary responsibilities contained in Part 4 of Title I of ERISA.

(2) *Plan Official.* The term "Plan Official" means a plan fiduciary, plan sponsor, party in interest with respect to a plan, or other person who is in a position to correct a Breach.

(3) *Under Investigation.* The term "Under Investigation" means a plan or person that is being investigated pursuant to ERISA section 504(a) or any criminal statute involving a transaction which affects an employee benefit plan. A plan that is Under Investigation by PWBA includes any plan for which a Plan Official, or a plan representative, has received oral or written notification from PWBA of a PWBA investigation of the plan. A plan is not considered to be Under Investigation by PWBA merely because PWBA staff have contacted a Plan Official or representative in connection with a participant complaint, unless the participant complaint concerns the transaction described in the application. A plan also is not considered to be Under Investigation where it is undergoing a work paper review by PWBA's Office of the Chief Accountant under the authority of ERISA section 504(a).

Section 4. VFC Program Eligibility

Eligibility for the VFC Program is conditioned on the following:

(a) Neither the plan nor the applicant is Under Investigation.

(b) The application contains no evidence of potential criminal violations as determined by PWBA.

Section 5. General Rules for Acceptable Corrections

(a) *Fair Market Value Determinations.* Many corrections require that the current or fair market value of an asset be determined as of a particular date, usually either the date the plan originally acquired the asset or the date of the correction, or both. In order to be acceptable as part of a VFC Program correction, the valuation must meet the following conditions:

(1) If there is a generally recognized market for the property (*e.g.*, the New York Stock Exchange), the fair market value of the asset is the average value of the asset on such market on the applicable date, unless the plan document specifies another objectively determined value (*e.g.*, the closing price).

(2) If there is no generally recognized market for the asset, the fair market value of that asset must be determined in accordance with generally accepted appraisal standards by a qualified, independent appraiser and reflected in a written appraisal report signed by the appraiser.

(3) An appraiser is "qualified" if he or she has met the education, experience, and licensing requirements that are generally recognized for appraisal of the type of asset being appraised.

(4) An appraiser is "independent" if he or she is not one of the following, does not own or control any of the following, and is not owned or controlled by, or affiliated with, any of the following:

(i) The prior owner of the asset, if the asset was purchased by the plan;

(ii) The purchaser of the asset, if the asset was, or is now being sold, by the plan;

(iii) Any other owner of the asset, if the plan is not the sole owner;

(iv) A fiduciary of the plan;

(v) A party in interest with respect to the plan (except to the extent the appraiser becomes a party in interest when retained to perform this appraisal for the plan); or

(vi) The VFC Program applicant.

(b) *Correction Amount.* (1) *In general.* Many of the transactions described in the VFC Program result in a loss to the plan or a profit to some party to the transaction. Determining the amount of the loss to the plan requires calculating how much money the plan would have now if a particular transaction had not occurred. In general, the VFC Program requires the fiduciary or other Plan Official to restore to the employee benefit plan the Principal Amount, plus the greater of (i) Lost Earnings from the Loss Date to the Recovery Date or (ii) Restoration of Profits resulting from the use of the Principal Amount for the same period.

(2) *Principal Amount.* "Principal Amount" is the amount that would have been available to the plan for investment or distribution on the date of the Breach, had the Breach not occurred. What constitutes the Principal Amount is identified for each transaction set forth in Section 7 of the VFC Program. The generic term "Principal Amount" is the base on which Lost Earnings are calculated. The Principal Amount shall also include, where appropriate, any transaction costs, such as closing costs, associated with entering into the transaction that constitutes the Breach.

(3) *Loss Date.* "Loss Date" is the date that the plan lost the use of the Principal Amount.

(4) *Recovery Date.* "Recovery Date" is the date that the Principal Amount is restored to the plan.

(5) *Lost Earnings.* For purposes of the VFC Program, Lost Earnings to be restored to a plan is the greater of (i) the amount that otherwise would have been earned on the Principal Amount from the Loss Date to the Recovery Date had the Principal Amount been invested during such period in accordance with applicable plan provisions and Title I of ERISA, less actual net earnings or realized net appreciation (or, if applicable, plus any net loss to the plan as a result of the transaction), or (ii) the amount that would have been earned on the Principal Amount at an interest rate equal to the underpayment rate defined in section 6621(a)(2) of the Code, less actual net earnings or realized net appreciation (or, if applicable, plus any net loss to the plan as a result of the transaction). In addition, if the date on which the Lost Earnings is paid to the plan is a date after the Recovery Date, payment must include an additional amount that is the greater of (i) the amount that would have been earned by the plan on the Lost Earnings if it had been paid on the Recovery Date, or (ii) the amount that would have been earned on the Lost Earnings at an interest rate equal to the underpayment rate defined in section 6621(a)(2) of the Code. For a participant-directed defined contribution plan, the Lost Earnings to be restored to the plan is the amount that each participant would have earned on the Principal Amount from the Loss Date to the Recovery Date. However, for administrative convenience, the Lost Earnings amount for a participant-directed defined contribution plan may be calculated using the rate of return of the investment alternative that earned the highest rate of return among the designated broad range of investment alternatives available under the plan during the applicable period. For participants who have not made any participant directions, plan officials may use the plan's average of the rates of return earned by all the designated investment alternatives weighted by the portion of plan assets invested in these alternatives.

(6) *Restoration of Profits.* "Restoration of Profits" is the amount of profit made on the use of the Principal Amount, or the property purchased with the Principal Amount, by the fiduciary or party in interest who engaged in the Breach, or by a knowing participant in the Breach. If the Principal Amount was used for a specific purpose such that the actual profit can be determined, that actual profit must be calculated from the Loss Date to the Recovery Date and returned to the plan. If the Principal Amount was commingled with other

funds so that the actual profit cannot be determined, the Restoration of Profits will be calculated as interest on the Principal Amount at an interest rate equal to the underpayment rate defined in section 6621(a)(2) of the Code. In addition, if the date on which the Restoration of Profits is paid to the plan is a date after the Recovery Date, payment must include an additional amount that is the greater of (i) the amount that would have been earned by the plan on the Restoration of Profits if it had been paid on the Recovery Date, or (ii) the amount that would have been earned on the Restoration of Profits at an interest rate equal to the underpayment rate defined in section 6621(a)(2) of the Code.

(7) The principles of this paragraph (b) are illustrated by the following examples:

Example 1. An employer who sponsors a plan with a qualified cash or deferred arrangement within the meaning of section 401(k)(2) of the Code ("401(k) plan") could have reasonably paid participant contributions into the plan's trust account within two business days of each pay day. For this employer, the second business day after pay day was therefore the date on which the participant contributions become plan assets, because it is the earliest date on which this employer reasonably could have segregated the participant contributions from the employer's general assets.[8] However, for the pay period ending January 31, a Monday, participant contributions totaling $10,000 were not deposited until March 2.

The Principal Amount is $10,000. The Loss Date is February 2, the date on which the participant contributions became plan assets and should have been deposited in the plan's trust account. The Recovery Date is March 2, the date that the participant contributions were deposited in the plan's trust account.

The 401(k) plan offers five investment alternatives representing a broad range of investment alternatives. During the month of February, one of the plan's mutual funds had a one percent return, including all reinvestment earnings. This was the highest return earned by any of the five investment alternatives in this period. The employer elects to use this rate of return for the loss calculations. Accordingly, the Lost Earnings amount is $100 ($10,000 multiplied by one percent).

The employer had the use of $10,000 of the 401(k) plan's assets between February 2 and March 2, while the participant contributions remained commingled with the employer's general assets. The employer's cost of funds (the actual profit from the use of the participant contributions) cannot readily be determined; therefore, the Restoration of Profits amount is calculated using the underpayment rate defined in Code section 6621(a)(2). Assuming the section 6621 rate was 9% (annualized yield for the relevant quarter), the Restoration of Profits amount is $75 ($10,000 multiplied by 9% per annum times one-twelfth of a year).

In this example, the Lost Earnings amount ($100) is greater than the Restoration of Profits amount ($75). Since the Principal Amount of $10,000 was paid to the plan on March 2, the total correction amount to be paid to the plan is the Lost Earnings of $100.

Assume further, in this example, that although the Principal Amount of $10,000 was paid to the plan on March 2, the Lost Earnings of $100 were not paid to the plan until a year later. The plan's annual yield for the highest earning fund was 12 percent. The employer elects to use the highest yielding fund for administrative convenience. Accordingly, an additional $12 ($100 multiplied by 12 percent—the annual yield), must be paid to the plan along with the $100 Lost Earnings amount.

Example 2. On March 15, a plan's trustees authorized the purchase of 1,000 shares of stock. The plan paid $75 per share when the fair market value was $70 per share.[9] The Principal Amount is $5,000 (1,000 shares multiplied by the $5 per share overpayment). The Loss Date is March 15, the date of the overpayment. The Recovery Date will be the date on which the fiduciary or other person repays to the plan the correction amount.

Assume that the plan recoups the $5,000 overpayment a year after the original purchase. During this year, the plan's other investments earned 9%, including all reinvestment earnings. The Lost Earnings amount is $450 ($5,000 multiplied by 9% annual yield for one year). If the Restoration of Profit amount is less than $450, the total amount to be paid to the plan is $5,450 (the Principal Amount of $5,000 plus Lost Earnings of $450).

Example 3. Assume the same facts as in Example 2, except that the proceeds of the sale were used to make another investment, which yielded a 15% annual rate of return. The Restoration of Profits amount is $750 ($5,000 multiplied by 15% per annum times one year). In this example, the Restoration of Profits amount ($750) is greater than the Lost Earnings amount ($450). The total amount to be paid to the plan is $5,750 (the Principal Amount of $5,000 plus Restoration of Profits of $750).

Example 4. On April 20, a plan paid $6,000 in legal fees for legal services that the plan sponsor, not the plan, was obligated to pay. The Principal Amount is $6,000. The Loss Date is April 20, the date the plan improperly paid the plan sponsor's legal expenses. The Recovery Date will be the date on which the plan sponsor reimburses the plan $6,000. Assume that the plan sponsor reimburses the plan on October 20, six months after the Loss Date. During this period, the plan's investment earnings totaled five percent, including all reinvestment earnings. The Lost Earnings amount is $300 ($6,000 multiplied by five percent).

The plan sponsor had constructive use of $6,000 from April 20 until October 20. The plan sponsor's cost of funds (the actual profit from the use of the money) cannot readily be determined; therefore, the Restoration of Profits amount is calculated using the underpayment rate defined in Code section 6621(a)(2). Assuming the published section 6621 rate was 8% per annum for the duration of the period April 20 to October 20, the Restoration of Profits amount is $240 ($6,000 times 8% per annum multiplied by one-half).

In this example, the Lost Earnings amount ($300) is greater than the Restoration of Profits amount ($240). The total amount to be paid to the plan is $6,300 (the Principal Amount of $6,000 plus Lost Earnings of $300).

(c) *Costs of Correction.* (1) The fiduciary, plan sponsor or other Plan Official, not the plan, shall pay the costs of correction.

(2) The costs of correction include, where appropriate, such expenses as closing costs, prepayment penalties, or sale or purchase costs associated with correcting the transaction.

(3) The principle of paragraph (c)(1) is illustrated in the following example and in (d) below:

Example: The plan fiduciaries did not obtain a required independent appraisal in connection with a transaction described in Section 7. In connection with correcting the transaction, the plan fiduciaries now propose to have the appraisal performed as of the date of purchase. The plan document permits the plan to pay reasonable and necessary expenses; the fiduciaries have objectively determined that the cost of the proposed appraisal is reasonable and is not more expensive than the cost of an appraisal contemporaneous with the purchase. The plan may therefore pay for this appraisal. However, the plan may not pay any costs associated with recalculating participant account balances to take into account the new valuation. There would be no need for these additional calculations or any increased appraisal cost if the plan's assets had been valued properly at the time of the purchase. Therefore, the cost of recalculating the plan participants' account balances is not a reasonable plan expense, but is part of the Costs of Correction.

(d) *Distributions.* Plans will have to make supplemental distributions to former employees, beneficiaries receiving benefits, or alternate payees, if the original distributions were too low because of the Breach. In these situations, the Plan Official or plan administrator must determine who received distributions from the plan during the time period affected by the Breach, recalculate the account balances, and determine the amount of the underpayment to each affected individual. The applicant must demonstrate proof of payment to participants and beneficiaries whose current location is known to the plan

[8] *See* 29 CFR 2510.3–102.

[9] If a plan's fiduciaries authorized the purchase of a specific dollar amount of stock rather than the purchase of a specific number of shares, and the plan acquired fewer shares than it should have as a result of paying too much per share, the amount lost equals the number of additional shares that the plan should have acquired, plus any appreciation, dividends, or stock splits associated with those additional shares.

and/or applicant. For individuals whose location is unknown, applicants must demonstrate that they have segregated adequate funds to pay the missing individuals and that the applicant has commenced the process of locating the missing individuals using either the IRS and Social Security Administration locator services, or other comparable means. The costs of such efforts are part of the Costs of Correction.

(e) *De Minimus Exception.* Where correction under the Program requires distributions in amounts less than $20 to former employees, their beneficiaries and alternate payees, who neither have account balances with, nor have a right to future benefits from the plan, and the applicant demonstrates in its submission that the cost of making the distribution to each such individual exceeds the amount of the payment to which such individual is entitled in connection with the correction of the transaction that is the subject of the application, the applicant need not make distributions to such individuals who would receive less than $20 each as part of the correction. However, the applicant must pay to the plan as a whole the total of such *de minimus* amounts not distributed to such individuals.

Example. Employer X sponsors Plan Y. Employer X submits an application under the VFC Program to correct a failure to forward timely participant contributions to the Plan Y. Employer X had paid the delinquent contributions six months late, but had not paid lost earnings on the delinquency. The correction under the VFC Program, therefore, required only payment of Lost Earnings for the six-month delinquency. During the six-month period 25 employees separated from service and rolled over their plan accounts to individual retirement accounts. The amount of lost earnings due to 20 of those former employees is less than $20, and Employer X demonstrates that the cost of making the distribution to those former employees is $27 per individual. Employer X need not make distributions to those 20 former employees. However, the total amount of distributions that would have been due to those former employees must be paid to Plan Y. The payment to Plan Y may be used for any purpose that payments or credits to Plan Y that are not allocated directly to participant accounts are used. Employer X must make distributions to the five former employees who are entitled to receive distributions of more than $20.

Section 6. Application Procedures

(a) *In general.* Each application must adhere to the requirements set forth below. Failure to do so may render the application invalid.

(b) *Preparer.* The application must be prepared by a Plan Official or his or her authorized representative (*e.g.*, attorney, accountant, or other service provider). If a representative of the Plan Official is submitting the application, the application must include a statement signed by the Plan Official that the representative is authorized to represent the Plan Official.

(c) *Contact person.* Each application must include the name, address and telephone number of a contact person. The contact person must be familiar with the contents of the application, and have authority to respond to inquiries from PWBA.

(d) *Detailed narrative.* The applicant must provide to PWBA a detailed narrative describing the Breach and the corrective action. The narrative must include:

(i) a list of all persons materially involved in the Breach and its correction (*e.g.*, fiduciaries, service providers, borrowers);

(ii) the EIN number and address of the plan sponsor and administrator;

(iii) the date the plan's most recent Form 5500 was filed;

(iv) an explanation of the Breach, including the date it occurred;

(v) an explanation of how the Breach was corrected, by whom and when; and

(vi) specific calculations demonstrating how Principal Amount and Lost Earnings or Restoration of Profits were computed and an explanation of why payment of Lost Earnings or Restoration of Profits was chosen to correct the Breach.

(e) *Supporting documentation.* The applicant must also include:

(i) a statement that the plan has a current fidelity bond that meets the requirements of section 412 of ERISA and the name of the company providing the bond and the policy number;

(ii) copies of the relevant portions of the plan document and any other pertinent documents (such as the adoption agreement, trust agreement, or insurance contract);[10]

(iii) documentation that supports the narrative description of the transaction and correction;

(iv) documentation establishing the Lost Earnings amount, including documentation of the return on the plan's other investments during the time period on which the Lost Earnings is calculated with respect to the transaction described in the VFC Program application;

(v) documentation establishing the amount of Restoration of Profits;

(vi) all documents described in Section 7 with respect to the transaction involved; and

(vii) proof of payment of Principal Amount and Lost Earnings or Restoration of Profits.

(5) *Examples of supporting documentation.* (i) Examples of documentation supporting the description of the transaction and correction are leases, appraisals, notes and loan documents, service provider contracts, invoices, settlement documents, deeds, perfected security interests, and amended annual reports.

(ii) Examples of acceptable proof of payment include copies of canceled checks, executed wire transfers, a signed, dated receipt from the recipient of funds transferred to the plan (such as a financial institution), and bank statements for the plan's account.

(g) *Penalty of Perjury Statement.* Each application must also include a Penalty of Perjury statement. The statement shall be signed and dated by a plan fiduciary with knowledge of the transaction that is the subject of the application and the authorized representative of the applicant, if any. In addition, all Plan Officials applying under the VFC Program must execute the Penalty of Perjury statement in order to be covered by the No Action Letter. The statement must accompany the application and any subsequent additions to the application. The statement shall read as follows:

I certify under penalty of perjury that I have reviewed this application and all supporting documents and that to the best of my belief the contents are true and complete and comply with all terms and conditions of the VFC Program. I further certify under penalty of perjury that at the date of this certification neither the Department nor any other Federal agency has informed me of an intention to investigate or examine the plan or otherwise made inquiry with respect to the transaction described in this application. I further certify under penalty of perjury that neither I nor any person acting under my supervision or control with respect to the operation of an ERISA-covered employee benefit plan:

(1) Is the subject of any criminal investigation or prosecution involving any offense against the United States;[11]

[10] Applicants must supply complete copies of the plan documents and other pertinent documents if requested by PWBA during its review of the application.

[11] For purposes of this paragraph, an "offense" includes criminal activity for which the Department of Justice may seek civil injunctive relief under the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. 1964(b)). A "subject" is any individual or entity whose conduct is within the scope of any ongoing inquiry being conducted by a Federal investigator(s) who is authorized to investigate criminal offense against the United States.

(2) Has been convicted of a criminal offense involving employee benefit plans at any time or any other offense involving financial misconduct which was punishable by imprisonment exceeding one year for which sentence was imposed during the preceding thirteen years or which resulted in actual imprisonment ending within the last thirteen years, nor has such person entered into a consent decree with the Department or been found by a court of competent jurisdiction to have violated any fiduciary responsibility provisions of ERISA during such period; or

(3) Has sought to assist or conceal the transaction described in this application by means of bribery, or graft payments to persons with fiduciary responsibility for this plan or with the knowing assistance of persons engaged in ongoing criminal activity.

(h) *Checklist.* The checklist in Appendix B must be completed, signed, and submitted with the application.

(i) *Where to apply.* The application shall be mailed to the appropriate regional PWBA office listed in Appendix C.

(j) *Record keeping.* The applicant must maintain copies of the application and any subsequent correspondence with PWBA for the period required by section 107 of ERISA.

Section 7. Description of Eligible Transactions and Corrections Under the VFC Program

PWBA has identified certain Breaches and methods of correction that are suitable for the VFC Program. Any Plan Official may correct a Breach listed in this Section in accordance with Section 5 and the applicable correction method. The correction methods set forth are strictly construed and are the only acceptable correction methods under the VFC Program for the transactions described in this Section. PWBA will not accept applications concerning correction of breaches not described in this Section.

A. Contributions

1. Delinquent Participant Contributions to Pension Plans

(a) *Description of Transaction.* An employer receives directly from participants, or withholds from employees' paychecks, certain amounts for contribution to a pension plan. Instead of forwarding the contributions for investment in accordance with the provisions of the plan and within the time frames described in the Department's regulation at 29 CFR 2510.3–102, the employer retains the contributions for a longer period of time.

(b) *Correction of Transaction.* (1) *Unpaid Contributions.* Pay to the plan the Principal Amount plus the greater of (i) Lost Earnings on the Principal Amount or (ii) Restoration of Profits resulting from the employer's use of the Principal Amount, as described in Section 5(b). The Principal Amount is the amount of the unpaid participant contributions and the Loss Date for each contribution is the earliest date on which the contributions reasonably could have been segregated from the employer's general assets. In no event shall the Loss Date be later than the applicable maximum time period described in 29 CFR 2510.3–102.

(2) *Late Contributions.* If participant contributions were remitted to the plan outside of the time period provided by the regulation, the only correction required is to pay to the plan the greater of (i) Lost Earnings or (ii) Restoration of Profits resulting from the employer's use of the Principal Amount as described in Section 5(b).

(3) *Examples.* The principles of this paragraph (b) are illustrated in the following examples:

Example 1. See Example 1 under Section 5(b).

Example 2. Employer X is a large national corporation, which sponsors a section 401(k) plan. X reasonably is able to segregate participant contributions no later than 10 business days after the end of the month in which participant contributions were withheld from employees' paychecks. For the pay period ending June 15, participant contributions totaling $900,000 were not deposited until August 14.

The Principal Amount is $900,000. The Loss Date is July 14 (the tenth business day in July), the date on which the participant contributions became plan assets and should have been deposited in the plan's trust account. The Recovery Date is August 14, the date that the participant contributions were deposited in the plan's trust account.

The 401(k) plan offers eight investment alternatives with daily asset valuation. From July 14 through August 14, most of the plan participants experienced a decrease in their account balances due to a decline in the stock market; however, some participants had a net investment gain. The Code section 6621(a)(2) rate during this period was 8% (annual yield for all quarters) and was greater than the profit to the employer from the use of the funds during the pertinent time period.

For the participants whose account balances declined, the employer pays the Principal Amount plus the Restoration of Profits amount, calculated at 8% (annual yield). For the other participants, the employer pays the Principal Amount plus the higher of each participant's actual investment earnings between July 14 and August 14 or the Restoration of Profits amount calculated at 8%. Since the Principal Amount of $900,000 has already been paid to the plan, the correction amount to be paid to the plan is no less than the Restoration of Profits of $6,000 ($900,000 times 8% per annum multiplied by one-twelfth of a year).

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) For participant contributions received from participants, a copy of the accounting records which identify the date and amount of each contribution received;

(2) For participant contributions withheld from employees' paychecks, a copy of the payroll documents showing the date and amount of each withholding; and

(3) A statement from a Plan Official identifying the earliest date on which the participant contributions reasonably could have been segregated from the employer's general assets, along with the supporting documentation on which the Plan Official relied in reaching this conclusion.

2. Delinquent Participant Contributions to an Insured Welfare Plan

(a) *Description of Transaction.* Benefits are provided exclusively through insurance contracts issued by an insurance company or similar organization qualified to do business in any state or through a health maintenance organization (HMO) defined in section 1310(d) of the Public Heath Service Act, 42 U.S.C. 3000e–9(d). An employer receives directly from participants or withholds from employees' paychecks certain amounts that the employer forwards to an insurance provider for the purpose of providing group health or other welfare benefits. The employer fails to forward such amounts in accordance with the terms of the plan (including the provisions of any insurance contract) or the requirements of the Department's regulation at 29 CFR 2510.3–102. There are no instances in which claims have been denied under the plan, nor has there been any lapse in coverage, due to the failure to transmit participant contributions on a timely basis.

(b) *Correction of Transaction.* Pay to the insurance provider or HMO the Principal Amount, as well as any penalties, late fees or other charges necessary to prevent a lapse in coverage due to such failure. Any penalties, late fees or other such charges shall be paid

by the employer and not from participant contributions.

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) For participant contributions received directly from participants, a copy of the accounting records which identify the date and amount of each contribution received;

(2) For participant contributions withheld from employees' paychecks, a copy of the payroll documents showing the date and amount of each withholding;

(3) A statement from a Plan Official identifying the earliest date on which the participant contributions reasonably could have been segregated from the employer's general assets, along with the supporting documentation on which the Plan Official relied in reaching this conclusion;

(4) Copies of the insurance contract or contracts for the group health or other welfare benefits for the plan;

(5) A statement from a Plan Official attesting that there are no instances in which claims have been denied under the plan for nonpayment, nor has there been any lapse in coverage; and

(6) A statement from a Plan Official attesting that any penalties, late fees or other such charges have been paid by the employer and not from participant contributions.

3. Delinquent Participant Contributions to a Welfare Plan Trust

(a) *Description of Transaction.* An employer receives directly from participants or withholds from employees' paychecks certain amounts that the employer forwards to a trust maintained to provide, through insurance or otherwise, group health or other welfare benefits. The employer fails to forward such amounts in accordance with the terms of the plan or the requirements of the Department's regulation at 29 CFR 2510.3–102. There are no instances in which claims have been denied under the plan, nor has there been any lapse in coverage, due to the failure to transmit participant contributions on a timely basis.

(b) *Correction of Transaction.* (1) *Unpaid Contributions.* Pay to the trust (1) the Principal Amount, and, where applicable, pay any penalties, late fees or other charges necessary to prevent a lapse in coverage due to the failure to make timely payments, and (2) pay to the trust the greater of (i) Lost Earnings on the Principal Amount or (ii) Restoration of Profits resulting from the employer's use of the Principal Amount as described in Section 5(b). The Principal Amount is the amount of delinquent participant contributions. The Loss Date for such contributions is the date on which each contribution would become plan assets under 29 CFR 2510.3–102. Any penalties, late fees or other charges shall be paid by the employer and not from participant contributions.

(2) *Late Contributions.* If participant contributions were remitted to the trust outside of the time period required by the regulation, the only correction required is to pay to the trust the greater of (i) Lost Earnings or (ii) Restoration of Profits resulting from the employer's use of the Principal Amount as described in Section 5(b). Any penalties, late fees or other such charges shall be paid by the employer and not from participant contributions.

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) For participant contributions received directly from participants, a copy of the accounting records which identify the date and amount of each contribution received;

(2) For participant contributions withheld from employees' paychecks, a copy of the payroll documents showing the date and amount of each withholding;

(3) A statement from a Plan Official identifying the earliest date on which the participant contributions reasonably could have been segregated from the employer's general assets, along with the supporting documentation on which the Plan Official relied in reaching this conclusion; and

(4) A statement from a Plan Official attesting that there are no instances in which claims have been denied under the plan for nonpayment, nor has there been any lapse in coverage.

B. Loans

1. Loan at Fair Market Interest Rate to a Party in Interest With Respect to the Plan

(a) *Description of Transaction.* A plan made a loan to a party in interest at an interest rate no less than that for loans with similar terms (for example, the amount of the loan, amount and type of security, repayment schedule, and duration of loan) to a borrower of similar creditworthiness. The loan was not exempt from the prohibited transaction provisions of Title I of ERISA.

(b) *Correction of Transaction.* Pay off the loan in full, including any prepayment penalties. An independent commercial lender must also confirm in writing that the loan was made at a fair market interest rate for a loan with similar terms to a borrower of similar creditworthiness.

(c) *Documentation.* In addition to the documentation required by Section 6, submit a narrative describing the process used to determine the fair market interest rate at the time the loan was made, validated in writing by an independent commercial lender.

2. Loan at Below-Market Interest Rate to a Party in Interest With Respect to the Plan

(a) *Description of Transaction.* A plan made a loan to a party in interest with respect to the plan at an interest rate which, at the time the loan was made, was less than the fair market interest rate for loans with similar terms (for example, the amount of loan, amount and type of security, repayment schedule, and duration of the loan) to a borrower of similar creditworthiness. The loan was not exempt from the prohibited transaction provisions of Title I of ERISA.

(b) *Correction of Transaction.* Pay off the loan in full, including any prepayment penalties. (1) Pay to the plan the Principal Amount, plus the greater of (i) the Lost Earnings as described in Section 5(b), or (ii) the Restoration of Profits, if any, as described in Section 5(b).

(2) For purposes of this transaction, the Principal Amount is equal to the excess of the interest payments that would have been received if the loan had been made at the fair market interest rate (from the beginning of the loan until the Recovery Date) over interest payments actually received under the loan terms during such period. For purposes of the VFC Program, the fair market interest rate must be determined by an independent commercial lender.

Example: The plan made to a party in interest a $150,000 mortgage loan, secured by a first Deed of Trust, at a fixed interest rate of 4% per annum. The loan was to be fully amortized over 30 years. The fair market interest rate for comparable loans, at the time this loan was made, was 7% per annum. The party in interest or Plan Official must repay the loan in full plus any applicable prepayment penalties. The party in interest or Plan Official also must pay the difference between what the plan would have received through the Recovery Date had the loan been made at 7% and what, in fact, the plan did receive from the commencement of the loan to the Recovery Date, plus lost earnings on that amount as described in Section 5(b).

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) a narrative describing the process used to determine the fair market

interest rate at the time the loan was made;

(2) a copy of the independent commercial lender's fair market interest rate determination(s); and

(3) a copy of the independent fiduciary's dated, written approval of the fair market interest rate determination(s).

3. Loan at Below-Market Interest Rate to a Person Who Is Not a Party in Interest With Respect to the Plan

(a) *Description of Transaction.* A plan made a loan to a person who is not a party in interest with respect to the plan at an interest rate which, at the time the loan was made, was less than the fair market interest rate for loans with similar terms (for example, the amount of loan, amount and type of security, repayment schedule, and duration of the loan) to a borrower of similar creditworthiness.

(b) *Correction of Transaction.* (1) Pay to the plan the Principal Amount, plus Lost Earnings through the Recovery Date, as described in Section 5(b).

(2) Each loan payment has a Principal Amount equal to the excess of (a) interest payments that would have been received until the Recovery Date if the loan had been made at the fair market interest rate over (b) the interest actually received under the loan terms. The fair market interest rate must be determined by an independent commercial lender.

(3) From the inception of the loan to the Recovery Date, the amount to be paid to the plan is the Lost Earnings on the series of Principal Amounts, calculated in accordance with Section 5(b).

(4) From the Recovery Date to the maturity date of the loan, the amount to be paid to the plan is the present value of the remaining Principal Amounts, as determined by an independent commercial lender. Instead of calculating the present value, it is acceptable for administrative convenience to pay the sum of the remaining Principal Amounts.

(5) The principles of this paragraph (b) are illustrated in the following example:

Example: The plan made a $150,000 mortgage loan, secured by a first Deed of Trust, at a fixed interest rate of 4% per annum. The loan was to be fully amortized over 30 years. The fair market interest rate for comparable loans, at the time this loan was made, was 7% per annum. The borrower or the Plan Official must pay the excess of what the plan would have received through the Recovery Date had the loan been made at 7% over what, in fact, the plan did receive from the commencement of the loan to the Recovery Date, plus Lost Earnings on that amount as described in Section 5(b). The Plan Official must also pay on the Recovery Date the difference in the value of the remaining payments on the loan between the 7% and the 4% for the duration of the time the plan is owed repayments on the loan.

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) A narrative describing the process used to determine the fair market interest rate at the time the loan was made; and

(2) A copy of the independent commercial lender's fair market interest rate determination(s).

4. Loan at Below-Market Interest Rate Solely Due to a Delay in Perfecting the Plan's Security Interest

(a) *Description of Transaction.* For purposes of the VFC Program, if a plan made a purportedly secured loan to a person who is not a party in interest with respect to the plan, but there was a delay in recording or otherwise perfecting the plan's interest in the loan collateral, the loan will be treated as an unsecured loan until the plan's security interest was perfected.

(b) *Correction of Transaction.* (1) Pay to the plan the Principal Amount, plus Lost Earnings as described in Section 5(b), through the date the loan became fully secured.

(2) The Principal Amount is equal to the difference between (a) interest payments actually received under the loan terms and (b) the interest payments that would have been received if the loan had been made at the fair market interest rate for an unsecured loan. The fair market interest rate must be determined by an independent commercial lender.

(3) In addition, if the delay in perfecting the loan's security caused a permanent change in the risk characteristics of the loan, the fair market interest rate for the remaining term of the loan must be determined by an independent commercial lender. In that case, the correction amount includes an additional payment to the plan. The amount to be paid to the plan is the present value of the remaining Principal Amounts from the date the loan is fully secured to the maturity date of the loan. Instead of calculating the present value, it is acceptable for administrative convenience to pay the sum of the remaining Principal Amounts.

(4) The principles of this paragraph (b) are illustrated in the following examples:

Example 1: The plan made a mortgage loan, which was supposed to be secured by a Deed of Trust. The plan's Deed was not recorded for six months, but, when it was recorded, the Deed was in first position. The interest rate on the loan was the fair market interest rate for a mortgage loan secured by a first-position Deed of Trust. The loan is treated as an unsecured, below-market loan for the six months prior to the recording of the Deed of Trust.

Example 2: Assume the same facts as in Example 1, except that, as a result of the delay in recording the Deed, the plan ended up in second position behind another lender. The risk to the plan is higher and the interest rate on the note is no longer commensurate with that risk. The loan is treated as a below-market loan (based on the lack of security) for the six months prior to the recording of the Deed of Trust and as a below-market loan (based on secondary status security) from the time the Deed is recorded until the end of the loan.

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) A narrative describing the process used to determine the fair market interest rate for the period that the loan was unsecured and, if applicable, for the remaining term of the loan; and

(2) A copy of the independent commercial lender's fair market interest rate determination(s).

C. Purchases, Sales and Exchanges

1. Purchase of an Asset (Including Real Property) by a Plan From a Party in Interest

(a) *Description of Transaction.* A plan purchased an asset with cash from a party in interest with respect to the plan, and under the circumstances, no prohibited transaction exemption applies.

(b) *Correction of Transaction.* (1) The transaction must be corrected by the sale of the asset back to the party in interest who originally sold the asset to the plan or to a person who is not a party in interest. Whether the asset is sold to a person who is not a party in interest with respect to the plan or is sold back to the original seller, the plan must receive the higher of (i) the fair market value (FMV) of the asset at the time of resale, without a reduction for the costs of sale; or (ii) the Principal Amount, plus the greater of (A) Lost Earnings on the Principal Amount as described in Section 5(b), or (B) the Restoration of Profits, if any, as described in Section 5(b).

(2) For this transaction, the Principal Amount is the plan's original purchase price.

(3) The principles of this paragraph (b) are illustrated in the following example:

Example: A plan purchased from the plan sponsor a parcel of real property. The plan does not lease the property to any person. Instead, the plan uses the property as an

office. The Plan Official obtains from a qualified, independent appraiser an appraisal of the property reflecting the FMV of the property at the time of purchase. The appraiser values the property at $100,000, although the plan paid the plan sponsor $120,000 for the property. As of the Recovery Date the property is valued at $110,000. To correct the transaction, the plan sponsor repurchases the property for $120,000 with no reduction for the costs of sale and reimburses the plan for the initial costs of sale. The plan sponsor also must pay the plan the greater of the plan's Lost Earnings or the sponsor's profits on this amount. This example assumes that the plan sponsor did not make a profit on the $120,000 proceeds from the original sale of the property to the plan.

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) Documentation of the plan's purchase of the real property, including the date of the purchase, the plan's purchase price, and the identity of the seller;

(2) A narrative describing the relationship between the original seller of the asset and the plan; and

(3) The qualified, independent appraiser's report addressing the FMV of the asset purchased by the plan, both at the time of the original purchase and at the recovery date.

2. Sale of an Asset (Including Real Property) by a Plan to a Party in Interest

(a) *Description of Transaction.* A plan sold an asset for cash to a party in interest with respect to the plan, in a transaction that is not exempt from the prohibited transaction provisions of Title I of ERISA.

(b) *Correction of Transaction.* (1) The plan must receive the Principal Amount plus the greater of (i) Lost Earnings as described in Section 5(b), or (ii) the Restoration of Profits, if any, as described in Section 5(b). As an alternative to repayment of the Principal Amount, if it is determined that the plan will realize a greater benefit by repurchasing the asset, the plan may repurchase the asset from the party in interest [12] at the lower of the price for which it sold the property or the FMV of the property as of the Recovery Date plus restoration to the plan of the party in interest's net profits from owning the property, to the extent they exceed the plan's investment return from the proceeds of the sale. The determination as to which correction alternative the plan chooses must be made by an independent fiduciary.

(2) For this transaction, the Principal Amount is the amount by which the FMV of the asset (at the time of the original sale) exceeds the sale price.

(3) The principles of this paragraph (b) are illustrated in the following example:

Example: A plan sold a parcel of unimproved real property to the plan sponsor. The sponsor did not make any profit on the use of the property. The Plan Official obtains from a qualified, independent appraiser an appraisal of the property reflecting the FMV of the property as of the date of sale. The appraiser valued the property at $130,000, although the plan sold the property to the plan sponsor for $120,000. However, the plan fiduciaries have reason to believe that the property will substantially increase in the near future based on the anticipated building of a shopping mall adjacent to the property in question and, as of the Recovery Date, the appraiser values the property at $140,000. An independent fiduciary determines that the property is a prudent investment for the plan, and will not result in any liquidity or diversification problems. The plan corrects by repurchasing the property at the original sale price, with the party in interest assuming the costs of the reversal of the sale transaction.

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) Documentation of the plan's sale of the asset, including the date of the sale, the sales price, and the identity of the original purchaser;

(2) A narrative describing the relationship of the purchaser to the asset and the relationship of the purchaser to the plan;

(3) The qualified, independent appraiser's report addressing the FMV of the property at the time of the sale from the plan and as of the Recovery Date; and

(4) The independent fiduciary's report that the property is a prudent investment for the plan.

3. Sale and Leaseback of Real Property to Employer

(a) *Description of Transaction.* The plan sponsor sold a parcel of real property to the plan, which then was leased back to the sponsor, in a transaction that is not otherwise exempt.

(b) *Correction of Transaction.* (1) The transaction must be corrected by the sale of the parcel of real property back to the plan sponsor or to a person who is not a party in interest with respect to the plan.[13] The plan must receive the higher of (i) FMV of the asset at the time of resale, without a reduction for the costs of sale; or (ii) the Principal Amount, plus the greater of (A) Lost Earnings on the Principal Amount as described in Section 5(b), or (B) the Restoration of Profits, if any, as described in Section 5(b).

(2) If the plan has not been receiving rent at FMV, as determined by a qualified, independent appraisal, the sale price of the real property should not be based on the historic below-market rent that was paid to the plan.

(3) In addition to the correction amount in subparagraph (1), if the plan was not receiving rent at FMV, as determined by a qualified, independent appraiser, the Principal Amount also includes the difference between the rent actually paid and the rent that should have been paid at FMV. The plan sponsor must pay to the plan this additional Principal Amount, plus the greater of (i) Lost Earnings or (ii) Restoration of Profits resulting from the plan sponsor's use of the Principal Amount, as described in Section 5(b).

(4) The principles of this paragraph (b) are illustrated in the following example:

Example: The plan purchased at FMV from the plan sponsor an office building that served as the sponsor's primary business site. Simultaneously, the plan sponsor leased the building from the plan at below the market rental rate. The Plan Official obtains from a qualified, independent appraiser an appraisal of the property reflecting the FMV of the property and rent. To correct the transaction, the plan sponsor purchases the property from the plan at the higher of the appraised value at the time of the resale or the original sales price and also pays the Lost Earnings. Because the rent paid to the plan was below the market rate, the sponsof must also make up the difference between the rent paid under the terms of the lease and the amount that should have been paid, plus Lost Earnings on this amount, as described in Section 5(b).

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) Documentation of the plan's purchase of the real property, including the date of the purchase, the plan's purchase price, and the identity of the original seller;

(2) Documentation of the plan's sale of the asset, including the date of sale, the sales price, and the identity of the purchaser;

[12] The repurchase of the same property from the party in interest to whom the asset was sold is a reversal of the original prohibited transaction. The sale is not a new prohibited transaction and therefore does not require an exemption.

[13] If the plan purchased the property from the plan sponsor, the sale of the same property back to the plan sponsor is a reversal of the prohibited transaction. The sale is not a new prohibited transaction and therefore does not require an individual prohibited transaction exemption, as long as the plan did not make improvements while it owned the property.

(3) A narrative describing the relationship of the original seller to the plan and the relationship of the purchaser to the plan;

(4) A copy of the lease;

(5) Documentation of the date and amount of each lease payment received by the plan; and

(6) The qualified, independent appraiser's report addressing both the FMV of the property at the time of the original sale and at the Recovery Date, and the FMV of the lease payments.

4. Purchase of an Asset (Including Real Property) by a Plan From a Person Who Is Not a Party in Interest With Respect to the Plan at a Price Other Than Fair Market Value

(a) *Description of Transaction.* A plan acquired an asset from a person who is not a party in interest with respect to the plan, without determining the asset's FMV. As a result, the plan paid more than it should have for the asset.

(b) *Correction of Transaction.* The Principal Amount is the difference between the actual purchase price and the asset's FMV at the time of purchase. The plan must receive the Principal Amount plus the Lost Earnings, as described in Section 5(b).

(1) The principles of this paragraph (b) are illustrated in the following example:

Example: A plan bought unimproved land without obtaining a qualified, independent appraisal. Upon discovering that the purchase price was $10,000 more than the appraised FMV, the Plan Official pays the plan the Principal Amount of $10,000, plus Lost Earnings as described in Section 5(b).

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) Documentation of the plan's original purchase of the asset, including the date of the purchase, the purchase price, and the identity of the seller;

(2) A narrative describing the relationship of the seller to the plan; and

(3) A copy of the qualified, independent appraiser's report addressing the FMV at the time of the plan's purchase.

5. Sale of an Asset (Including Real Property) By a Plan to a Person Who Is Not a Party in Interest With Respect to the Plan at a Price Less Than Fair Market Value

(a) *Description of Transaction.* A plan sold an asset to a person who is not a party in interest with respect to the plan, without determining the asset's FMV. As a result, the plan received less than it should have from the sale.

(b) *Correction of Transaction.* The Principal Amount is the amount by which the FMV of the asset as of the Recovery Date exceeds the price at which the plan sold the property. The plan must receive the Principal Amount plus Lost Earnings as described in Section 5(b).

(1) The principles of this paragraph (b) are illustrated in the following example:

Example: A plan sold unimproved land without taking steps to ensure that the plan received FMV. Upon discovering that the sale price was $10,000 less than the FMV, the Plan Official pays the plan the Principal Amount of $10,000 plus Lost Earnings as described in Section 5(b).

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) Documentation of the plan's original sale of the asset, including the date of the sale, the sale price, and the identity of the buyer;

(2) A narrative describing the relationship of the buyer to the plan; and

(3) A copy of the qualified, independent appraiser's report addressing the FMV at the time of the plan's sale.

D. Benefits

1. Payment of Benefits Without Properly Valuing Plan Assets on Which Payment is Based

(a) *Description of Transaction.* A defined contribution pension plan pays benefits based on the value of the plan's assets. If one or more of the plan's assets are not valued at current value, the benefit payments are not correct. If the plan's assets are overvalued, the current benefit payments will be too high. If the plan's assets are undervalued, the current benefit payments will be too low.

(b) *Correction of Transaction.* (1) Establish the correct value of the improperly valued asset for each plan year, starting with the first plan year in which the asset was improperly valued. Restore to the plan for distribution to the affected plan participants, or restore directly to the plan participants, the amount by which all affected participants were underpaid distributions to which they were entitled under the terms of the plan, plus the higher of Lost Earnings or the underpayment rate defined in Section 6621(a)(2) of the Code on the underpaid distributions. File amended Annual Report Forms 5500, as detailed below.

(2) To correct the valuation defect, a Plan Official must determine the FMV of the improperly valued asset per Section 5(a) for each year in which the asset was valued improperly.

(3) Once the FMV has been determined, the participant account balances for each year must be adjusted accordingly.

(4) The Annual Report Forms 5500 must be amended and refiled for (i) the last three plan years or (ii) all plan years in which the value of the asset was reported improperly, whichever is less.

(5) The Plan Official or plan administrator must determine who received distributions from the plan during the time the asset was valued improperly. For distributions that were too low, the amount of the underpayment is treated as a Principal Amount for each individual who received a distribution. The Principal Amount and Lost Earnings must be paid to the affected individuals. For distributions that were too high, the total of the overpayments constitutes the Principal Amount for the plan. The Principal Amount plus the Lost Earnings, as described in Section 5(b), must be restored to the plan or to any participants who received distributions that were too low.

(6) The principles of this paragraph (b) are illustrated in the following examples:

Example 1. On December 31, 1995, a profit sharing plan purchased a 20-acre parcel of real property for $500,000, which represented a portion of the plan's assets. The plan has carried the property on its books at cost, rather than at FMV. One participant left the company on January 1, 1997, and received a distribution, which included her portion of the value of the property. The separated participant's account balance represented 2% of the plan's assets. As part of correction for the VFC Program, a qualified, independent appraiser has determined the FMV of the property for 1996, 1997, and 1998. The FMV as of December 31, 1996, was $400,000. Therefore, this participant was overpaid by $2,000 (($500,000–$400,000) multiplied by 2%). The Plan Officials corrected the transaction by paying to the plan $2,500, consisting of $2,000 Principal Amount and $500 Lost Earnings. The Lost Earnings were based on a return of 25%, which represents the total return on the plan's investments from the date of the distribution to the participant until the date of correction.

The plan administrator also filed an amended Form 5500 for plan years 1996 and 1997, to reflect the proper values. The plan administrator will include the correct asset valuation in the 1998 Form 5500 when that form is filed.

Example 2. Assume the same facts as in Example 1, except that the property had appreciated in value to $600,000 as of December 31, 1996. The separated participant would have been underpaid by $2,000. The correction consists of locating

the participant and distributing $2,500 to her ($2,000 Principal Amount and $500 Lost Earnings), as well as filing the amended Forms 5500.

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) A copy of the qualified, independent appraiser's report for each plan year in which the asset was revalued;

(2) A written statement confirming the date that amended Annual Report Forms 5500 with correct valuation data were filed;

(3) If losses are restored to the plan, proof of payment to the plan and copies of the adjusted participant account balances; and

(4) If supplemental distributions are made, proof of payment to the individuals entitled to receive the supplemental distributions.

E. Plan Expenses

1. Duplicative, Excessive, or Unnecessary Compensation Paid by a Plan

(a) *Description of Transaction.* A plan paid excessive compensation, including commissions or fees, to a service provider (such as an attorney, accountant, actuary, financial advisor, or insurance agent); a plan paid two or more persons to provide the same services to the plan; or a plan paid a service provider for services that were not necessary for the operation of the plan.

(b) *Correction of Transaction.* (1) Restore to the plan the Principal Amount, plus the greater of (i) Lost Earnings or (ii) Restoration of Profits resulting from the use of the Principal Amount, as described in Section 5(b).

(2) The Principal Amount is the difference between (a) the amount actually paid by the plan to the service provider during the six years prior to the discontinuation of the payment of the excessive, duplicative, or unnecessary compensation and (b) the reasonable market value of the non-duplicative services.

(3) The principles of this paragraph (b) are illustrated in the following example:

Example. Excessive compensation. A plan hired an investment advisor who advised the plan's trustees about how to invest the plan's entire portfolio. In accordance with the plan document, the trustees instructed the advisor to limit the plan's investments to equities and bonds. In exchange for his services, the plan paid the investment advisor 3% of the value of the portfolio's assets. If the trustees had inquired they would have learned that comparable investment advisors charged 1% of the value of the assets for the type of portfolio that the plan maintained. To correct the transaction, the plan must be paid the Principal Amount of 2% of the value of the plan's assets, plus Lost Earnings, as described in Section 5(b).

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) A written estimate of the reasonable market value of the services;

(2) The estimator's qualifications; and

(3) The cost of the services at issue during the period that such services were provided to the plan.

2. Payment of Dual Compensation to a Plan Fiduciary

(a) *Description of Transaction.* A plan pays a fiduciary for services rendered to the plan when the fiduciary already receives full-time pay from an employer or an association of employers, whose employees are participants in the plan, or from an employee organization whose members are participants in the plan. The plan's payments to the plan fiduciary are not mere reimbursements of expenses properly and actually incurred by the fiduciary.

(b) *Correction of Transaction.* (1) Restore to the plan the Principal Amount, plus the greater of (i) Lost Earnings or (ii) Restoration of Profits resulting from the fiduciary's use of the Principal Amount for the same period.

(2) The Principal Amount is the difference between (a) the amount actually paid by the plan during the six years prior to the discontinuation of the payments to the fiduciary and (b) the amount that represents reimbursements of expenses properly and actually incurred by the fiduciary.

(3) The principles of this paragraph (b) are illustrated in the following example:

Example. A union sponsored a health plan funded through contributions by employers. The union president receives $50,000 per year from the union in compensation for his services as union president. He is appointed as a trustee of the health plan while retaining his position as union president. In exchange for acting as plan trustee, the union president is paid a salary of $200 per week by the plan while still receiving the $50,000 salary from the union. Since $50,000 is full-time pay, the plan's weekly salary payments are improper. To correct the transaction, the plan must be paid the Principal Amount, which is the $200 weekly salary amount for each week that the salary was paid, plus the higher of Lost Earnings or Restoration of Profits, as described in Section 5(b).

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) Copies of the plan's accounting records which show the date and amount of compensation paid by the plan to the identified fiduciary; and

(2) If any of the amounts paid by the plan to the fiduciary represent reimbursements of expenses properly and actually incurred by the fiduciary, include copies of the plan records which indicate the date, amount, and character of these payments.

Signed at Washington, DC this 25th day of March, 2002.

Ann L. Combs,

Assistant Secretary for Pension and Welfare Benefits Administration, U.S. Department of Labor.

Appendix A.—Sample VFC Program No Action Letter

Applicant (Plan Official)

Address

Dear Applicant (Plan Official):

Re: VFC Program Application No. xx–xxxxxx

The Department of Labor, Pension and Welfare Benefits Administration (PWBA), has responsibility for administration and enforcement of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). PWBA has established a Voluntary Fiduciary Correction Program to encourage the correction of breaches of fiduciary responsibility and the restoration of losses to the plan participants and beneficiaries.

In accordance with the requirements of the VFC Program, you have identified the following transactions as breaches, or potential breaches, of Part 4 of Title I of ERISA, and you have submitted documentation to PWBA that demonstrates that you have taken the corrective action indicated.

[Briefly recap the violation and correction. *Example:* Failure to deposit participant contributions to the XYZ Corp. 401(k) plan within the time frames required by ERISA, from _____ (date) to _____ (date). All participant contributions were deposited by _____ (date) and lost earnings on the delinquent contributions were deposited and allocated to participants' plan accounts on _____ (date).]

Because you have taken the above-described corrective action that is consistent with the requirements of the VFC Program, PWBA will take no civil enforcement action against you with respect to this breach. Specifically, PWBA will not recommend that the Solicitor of Labor initiate legal action against you, and PWBA will not impose the penalty in section 502(l) of ERISA on the amount you have repaid to the plan.

PWBA's decision to take no further action is conditioned on the completeness and accuracy of the representations made in your application. You should note that this decision will not preclude PWBA from conducting an investigation of any potential violations of criminal law in connection with the transaction identified in the application or investigating the transaction identified in the application with a view toward seeking appropriate relief from any other person.

[*If the transaction is a prohibited transaction for which no exemptive relief is available, add the following language: Please also be*

advised that pursuant to section 3003(c) of ERISA, 29 U.S.C. section 1203(c), the Secretary of Labor is required to transmit to the Secretary of the Treasury information indicating that a prohibited transaction has occurred. Accordingly, this matter will be referred to the Internal Revenue Service.]

In addition, you are cautioned that PWBA's decision to take no further action is binding on PWBA only. Any other governmental agency, and participants and beneficiaries, remain free to take whatever action they deem necessary.

If you have any questions about this letter, you may contact the Regional VFC Program Coordinator at *applicable address and telephone number.*

Appendix B.—VFC Program Checklist

Use this checklist to ensure that you are submitting a complete application. The applicant must sign and date the checklist and include it with the application. Indicate "Yes", "No" or "N/A" next to each item. A "No" answer or the failure to include a completed checklist will delay review of the application until all required items are received.

_____1. Have you reviewed the eligibility, definitions, transaction and correction, and documentation sections of the VFC Program?

_____ 2. Have you included the name, address and telephone number of a contact person familiar with the contents of the application?

_____ 3. Have you provided the EIN # and address of the plan sponsor and plan administrator?

_____ 4. Have you provided the date that the most recent Form 5500 was filed by the plan?

_____ 5. Have you enclosed a signed and dated certification under penalty of perjury for each applicant and the applicant's representative, if any?

_____ 6. Have you enclosed relevant portions of the plan document and any other pertinent documents (such as the adoption agreement, trust agreement, or insurance contract) with the relevant sections identified?

_____ 7. Have you enclosed a statement identifying the current fidelity bond for the plan?

_____ 8. Where applicable, have you enclosed a copy of an appraiser's report?

_____ 9. Have you enclosed other documents as specified by the individual transactions and corrections?

_____ a. A detailed narrative of the Breach, including the date it occurred;

_____ b. Documentation that supports the narrative description of the transaction;

_____ c. An explanation of how the Breach was corrected, by whom and when, with supporting documentation;

_____ d. A list of all persons materially involved in the Breach and its correction (*e.g.*, fiduciaries, service providers, borrowers, lenders);

_____ e. Documentation establishing the return on the plan's other investments during the time period the plan engaged in the transaction described in the VFC Program application;

_____ f. Specific calculations demonstrating how Principal Amount and Lost Earnings or Restoration of Profits were computed; and

_____ g. Proof of payment of Principal Amount and Lost Earnings or Restoration of Profits.

_____ 10. If you are an eligible applicant and wish to avail yourself of excise tax relief under the Proposed Class Exemption, have you made proper arrangements to provide within 60 calendar days following the date of this application a copy of the Class Exemption's required notice to all interested persons and to the PWBA regional office to which the application is filed?

_____ 11. Where applicable, have you enclosed a description demonstrating proof of payment to participants and beneficiaries whose current location is known to the plan and/or applicant, and for participants who need to be located, have you described how adequate funds have been segregated to pay missing participants and commenced the process of locating the missing participants using either the IRS and Social Security Administration locator services, or other comparable means?

_____ 12. Has the plan implemented measures to ensure that the transactions specified in the application do not recur? (Do not include this with the application. The Department will not opine on the adequacy of these measures.)

Signature of Applicant and Date Signed

_____

Name of Applicant (Typed):
Title/Relationship to the Plan (Typed):
Name of Plan, EIN and Plan Number (Typed):

Appendix C.—List of PWBA Regional Offices

Atlanta Regional Office, 61 Forsyth Street, SW, Suite 7B54, Atlanta, GA 30303, telephone (404) 562–2156, fax (404) 562–2168; jurisdiction: Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico.

Boston Regional Office, J.F.K. Building, Room 575, Boston, MA 02203, telephone: (617) 565–9600, fax: (617) 565–9666; jurisdiction: Connecticut, Maine, Massachusetts, New Hampshire, central and western New York, Rhode Island, Vermont.

Chicago Regional Office, 200 West Adams Street, Suite 1600, Chicago, IL 60606, telephone (312) 353–0900, fax (312) 353–1023; jurisdiction: northern Illinois, northern Indiana, Wisconsin.

Cincinnati Regional Office, 1885 Dixie Highway, Suite 210, Ft. Wright, KY 41011–2664, telephone (859) 578–4680, fax (859) 578–4688; jurisdiction: southern Indiana, Kentucky, Michigan, Ohio.

Dallas Regional Office, 525 Griffin Street, Rm. 707, Dallas, TX 75202–5025, telephone (214) 767–6831, fax (214) 767–1055; jurisdiction: Arkansas, Louisiana, New Mexico, Oklahoma, Texas.

Kansas City Regional Office, 1100 Main Street, Suite 1200, Kansas City, MO 64105–2112, telephone (816) 426–5131, fax (816) 426–5511; jurisdiction: Colorado, southern Illinois, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, North Dakota, South Dakota, Wyoming.

Los Angeles Regional Office, 790 E. Colorado Boulevard, Suite 514, Pasadena, CA 91101, telephone (626) 583–7862, fax (626) 583–7845; jurisdiction: 10 southern counties of California, Arizona, Hawaii, American Samoa, Guam, Wake Island.

New York Regional Office, temporarily located at 201 Varick Street, New York, NY 10014, telephone (212) 337–2228, fax (212) 337–2112; jurisdiction: southeastern New York, northern New Jersey.

Philadelphia Regional Office, The Curtis Center, 170 S. Independence Mall West, Suite 870 West, Philadelphia, PA 19106–3317, telephone 215–861–5300, fax 215–861–5347; jurisdiction: Delaware, Maryland, southern New Jersey, Pennsylvania, Virginia, Washington, D.C., West Virginia.

San Francisco Regional Office, 71 Stevenson St., Suite 915, San Francisco, CA 94105, telephone (415) 975–4600, fax (415) 975–4589; jurisdiction: Alaska, 48 northern counties of California, Idaho, Nevada, Oregon, Utah, Washington.

**Please verify current telephone numbers and addresses on PWBA's website.

[FR Doc. 02–7516 Filed 3–27–02; 8:45 am]

BILLING CODE 4510–29–P

PENSION AND WELFARE BENEFITS ADMINISTRATION

[Application No. D–10933]

Proposed Class Exemption To Permit Certain Transactions Identified in the Voluntary Fiduciary Correction Program

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed class exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed class exemption from certain prohibited transaction restrictions of the Internal Revenue Code of 1986 (the Code). This exemption is being proposed in conjunction with the Department's Voluntary Fiduciary Correction (VFC) Program, the final version of which is being published simultaneously in this issue of the **Federal Register**, which allows certain persons to avoid potential civil actions under the Employee Retirement Income Security Act of 1974 (ERISA) initiated by the Department and the assessment of civil penalties under section 502(l) of ERISA in connection with investigation or civil action by the Department. If granted, the proposed exemption would affect plans, participants and beneficiaries of such plans and certain other persons engaging in such transactions.

DATES: Written comments and requests for a public hearing must be received by

the Department on or before May 13, 2002.

ADDRESSES: All written comments (at least three copies) and requests for a public hearing should be sent to: Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (attn: D–10933). Written comments may also be sent by e-mail to *moffittb@pwba.dol.gov* or by FAX to (202) 219–0204. Comments received from interested persons will be available for public inspection in the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karen Lloyd, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5649, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–8540 (not a toll free number) or Cynthia Weglicki, Plan Benefits Security Division, Office of the Solicitor, (202) 693–5600 (not a toll free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed class exemption from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The Department is proposing the class exemption on its own motion pursuant to section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR 2570, subpart B (55 FR 32836, August 10, 1990).[1]

Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether a regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it was determined that this action is "significant" under Section 3(f)(4) of the Executive Order. Accordingly, this action has been reviewed by OMB.

Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Pension and Welfare Benefits Administration (PWBA) is soliciting comments concerning the information collection request (ICR) included in the proposed Class Exemption to Permit Certain Transactions Identified in the Voluntary Fiduciary Correction Program. The information collection provisions of the proposed Class Exemption would revise the currently approved collection of information included in PWBA's Voluntary Fiduciary Correction Program, which is published simultaneously in the **Federal Register**. A copy of the ICR may be obtained by contacting the Pension and Welfare Benefits Administration office listed below.

Comments pertaining to the ICR should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Pension and Welfare Benefits Administration. Although comments may be submitted through May 28, 2002, OMB requests that comments be received within 30 days of publication of the Notice of Proposed Class Exemption to ensure their consideration.

Address requests for copies of the ICR to Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone (202) 693–8410; fax: (202) 219–4745. These are not toll-free numbers.

The Department has submitted a copy of the proposed revision of the information collection request to OMB in accordance with 44 U.S.C. 3507(d) for review and clearance. The Department and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

On March 15, 2000, the Department of Labor published a Notice in the **Federal Register** (65 FR 14164), announcing the adoption of a Voluntary Fiduciary Correction Program (VFC Program). The purpose of the VFC Program is to encourage plan fiduciaries to make full correction of certain eligible transactions without fear of civil investigation or litigation. The VFC Program, upon proper application, correction, and receipt of a "no action" letter from the Department, provided relief to Plan Officials from civil penalties under section 502(l) of ERISA for breaches of fiduciary responsibility. The Notice requested comments from the public on all aspects of the Program. Responses indicate that the Program was generally well received by the public. Several commenters, however, while acknowledging the importance of Program relief from section 502(l) of ERISA, also requested additional relief from the tax on prohibited transactions under section 4975 of the Code. Section 4975(a) of the Code imposes a tax on each prohibited transaction at a rate of

[1] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978, 5 U.S.C. App. 1 [1995]) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975 of the Code to the Secretary of Labor.

15 percent of the amount involved with respect to the prohibited transaction for each year (or part thereof) in the taxable period. The commenters suggested that providing excise tax relief would benefit employee benefit plans, participants, and beneficiaries by further encouraging Plan Officials to protect plan assets through correction of eligible transactions under the VFC Program. Moreover, the lack of protection from the sanctions of section 4975 of the Code was considered a disincentive to participation in the VFC Program. Because the goal of the Department in establishing the VFC Program was to encourage correction of fiduciary breaches and restoration of losses to participants and beneficiaries, the Department concluded that it would be appropriate to provide limited relief in the form of a Prohibited Transaction Class Exemption from the sanctions of section 4975 of the Code. This proposed exemption describes four prohibited transactions from among those transactions eligible for correction under the VFC Program as transactions suitable for relief from the tax obligations of sections 4975(a) and (b) of the Code. Plan Officials intending to take advantage of the exemption must comply with the requirements of the VFC Program. In addition, in order to appropriately protect the interests of participants and beneficiaries, the Department has elected to require Plan Officials intending to take advantage of the exemption to notify interested persons such as participants and beneficiaries of the plan. Plan Officials also will be required to send a copy of the notice to the appropriate Regional Office of the Pension and Welfare Benefits Administration. The notice must include an objective description of the transaction and the steps taken to correct it. Because section 4975(c)(2) of the Code requires an exemption to be in the interests of a plan as well as protective of its participants and beneficiaries before it can be granted, interested persons must be given adequate notice of the pending exemption and an opportunity to comment. Comments from participants and beneficiaries will contribute to the Department's understanding of the facts as described in the VFC Program application. Interested persons and the Department must receive the notice within 60 days following the date of submission of an application under the VFC Program. Beginning on the date of distribution of the notice, recipients will have 30 calendar days to provide comments to a Regional Office; the notice must include the address and telephone number of such Regional Office. Notification may be given in any manner that is reasonably calculated to result in the receipt of such notice by interested persons, including but not limited to posting, regular mail, or electronic mail. The use of the exemption is not required for participation in the Program. The relief provided by the class exemption is not available without participation in the VFC Program, and, as such, the exemption's notice requirement is treated as a revision of the existing VFC Program ICR.

The VFC Program describes certain transactions that are breaches of fiduciary duty under Part 4 of Title I of ERISA and that may be corrected under the Program. Because the VFC Program is new, there is as yet insufficient data on the type or the number of eligible transactions that will be corrected under the Program to support a revision of the original estimates of participation. Based on the Department's experience with the Pension Payback Program, which dealt only with employee contributions and realized corrections by 0.1 per cent of all eligible plans, and allowing for the inclusion of additional transactions for correction under the VFC Program, the Department estimates that there will be 700 applicants to the VFC Program. All Plan Officials that apply to the VFC Program will not necessarily take advantage of the excise tax relief provided under this exemption, either by choice or because the corrected transaction is not an eligible transaction to which this exemption applies. For the purpose of computing the hour and cost burdens under the PRA, therefore, the Department has assumed that one half of all Plan Officials that choose to take advantage of the opportunity to correct a breach under the VFC Program, or 350 Plan Officials, will also choose to avail themselves of the opportunity for excise tax relief.

Because the information to be provided to interested persons in the notice is readily available in the documentation previously submitted as part of the application to the VFC Program, it is likely that a Plan Official that used the services of a professional to apply to the VFC Program will use the same professional to prepare the notice under the exemption. The Department estimates that it will take approximately one hour of a professional's time, or 350 total hours, to produce the notice to interested persons. At $70 an hour for a professional's time, the cost to Plan Officials is $24,500.

Plan officials must distribute the notice in a manner that is reasonably calculated to result in the receipt of such notice by interested persons. Notices are commonly distributed in one of three ways—posting, electronic mail, or regular mail. The Department assumes that only 10% of the applicants availing themselves of the exemption, or 35 Plan Officials, will choose to distribute the notice by regular mail. Based on an estimate of 88,000 participants in plans affected by the VFC Program, 44,000 of which will be in plans assumed to make use of the exemption, 4,400 participants and beneficiaries will receive a notice by regular mail. The cost of mailing 4,400 notices, at $.34 per mailing, results in an additional cost of $1,496. Because of the cost savings, most applicants will likely choose to use either posting or electronic mail as a means of distribution. Applying these methods of distribution, the time required to transfer the notice electronically or to post it in an appropriate place is minimal; the Department has therefore not accounted for a cost burden for notification under either of these choices. Distributing the notice by posting or electronic mail would therefore represent a cost savings of $13,500. The total cost of preparing and distributing the notice under the exemption is $25,996 ($24,500 for a service provider's time and $1,496 for distribution by regular mail).

Preparation of the mailing is likely to be done in-house by clerical staff. For 4,400 interested persons, 1½ minutes of a clerical worker's time per interested person results in a total hour burden of 110 hours.

Type of Review: Revision of a currently approved collection of information.

Agency: Pension and Welfare Benefits Administration, Department of Labor.

Title: Voluntary Fiduciary Correction Program.

OMB Number: 1210–0118.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Respondents: 700.

Frequency of Response: On occasion.

Responses: 700.

Estimated Total Burden Hours: 5,600 for existing ICR; 110 for proposed exemption; total of 5,710 hours.

Total Burden Cost (Operating and Maintenance): $246,400 for existing ICR; $25,996 for proposed exemption; total of $272,396.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection

request; they will also become a matter of public record.

Economic Analysis

Establishing a class exemption to be used in conjunction with the Voluntary Fiduciary Correction Program (VFC Program) will have positive economic effects for employee benefit plans by promoting increased participation in the VFC Program. The purpose of the VFC Program is to encourage the correction of breaches of fiduciary duty under ERISA, resulting in the restoration of plan assets to the benefit of participants and beneficiaries. Under the VFC Program, fiduciaries are relieved of the possibility of civil action and the assessment of civil penalties under Section 502(l) of ERISA. The proposed exemption would enhance the benefits of participation in the VFC Program by granting relief from excise taxes under Section 4975 of the Internal Revenue Code for breaches of duty that are prohibited transactions.

Although plans have benefitted from the Interim VFC Program, we believe that fewer plans have taken advantage of the Interim VFC Program than might have with the inclusion of the proposed exemption. Comments received in response to the publication of the Interim VFC Program support this conclusion. Commenters indicate that, because participation in the VFC Program is voluntary, the lack of Section 4975 tax relief has been a disincentive to participation. This is borne out by information from the earlier Pension Payback Program (61 FR 9203, March 7, 1996) that experienced a .1% rate of participation among pension plans. (The Pension Payback Program was limited to the correction of delinquent participant contributions only.) A significant difference between the Interim VFC Program and the Pension Payback Program is the inclusion of excise tax relief under the latter. Allowing for the inclusion of three more categories of transactions for correction than were included in the Pension Payback Program, it is expected that participation in the VFC Program will increase because of the proposed exemption.

The benefits to plans outweigh any additional cost created by the proposed exemption. Department projections indicate that an average of $114,000 per plan, or approximately $80 million for all plans expected to participate in the VFC Program, will be restored to employee benefit plans. The Department estimates that 350 plans, or one half the number of anticipated participants in the VFC Program, will apply as a result of the relief offered by the proposed exemption. Approximately $40 million in assets will therefore be restored to plans as a result of the proposed exemption. The assets are then available for distribution to participants and beneficiaries or for additional investment opportunities. (The costs and benefits of the VFC Program have been described in more detail in the preamble for the Adoption of the VFC Program.) The economic benefit of the proposed exemption, in addition to the tax relief permitted fiduciaries, is therefore realized through increased participation in the VFC Program.

Fiduciaries that participate in the VFC Program will experience savings in civil penalties under section 502(l) of ERISA. For the 350 plans that participate in the VFC Program as a result of the proposed exemption, the elimination of 502(l) penalties for fiduciaries accounts for $2.7 million. The civil penalty savings are in addition to excise tax savings under section 4975 of the Internal Revenue Code that fiduciaries may realize after satisfying certain conditions of the proposed exemption.

The cost for the proposed exemption is minimal—the result of notifying interested persons and the Department that a fiduciary intends to take advantage of the exemption, or approximately $70–$130 per plan ($24,500–$45,500 for 350 plans), depending on the method of notification selected.

In consideration of the comments received and the Department's experience with the Pension Payback Program, the Department believes that the proposed exemption will have a positive effect on applications to the VFC Program resulting in an economic benefit to plans and fiduciaries that exceeds the cost of the exemption.

Background

Title I of ERISA establishes certain standards of conduct for fiduciaries of employee benefit plans covered by ERISA, including provisions prohibiting fiduciaries from causing a plan to engage in certain classes of transactions with persons defined as parties in interest. In addition, prohibited transactions that involve plans described in section 4975(e)(1) of the Code are generally subject to taxation under section 4975 of the Code.

Section 409 of ERISA provides that a fiduciary who breaches any of the fiduciary responsibility provisions of Part 4 of Title I of ERISA shall be personally liable to the plan for any losses. Section 502(a)(2) and (a)(5) of ERISA authorizes the Secretary of Labor (the Secretary) to bring civil actions to enforce the provisions of Title I of ERISA. Section 502(l) of ERISA requires the assessment of a civil penalty in an amount equal to 20% of the amount recovered under any settlement agreement with the Secretary or ordered by a court in an action initiated by the Secretary with respect to any breach of fiduciary responsibility under (or other violation of) Part 4 by a fiduciary.

Based on its experience with the Pension Payback Program (61 FR 9203, March 7, 1996) (Pension Payback Program) and continued interest in such programs, PWBA decided to establish the VFC Program. Under the VFC Program, persons who are potentially liable for a breach can avoid the possibility of civil investigation and/or civil actions initiated by the Department for that breach and the imposition of civil penalties under section 502(l) of ERISA, if they satisfy the conditions for correcting the breach, as described in the VFC Program. The Department believes that the VFC Program will encourage the full correction of certain breaches of fiduciary responsibility and the restoration to participants and beneficiaries of losses resulting from those breaches. In connection with the publication of the VFC Program, the Department sought comments from the public on all aspects of the Program. The VFC Program, as modified in response to the comments received, is being published simultaneously in this issue of the **Federal Register**.

A number of those who commented on the VFC Program requested that the Department amend the VFC Program to provide relief from the excise taxes imposed under section 4975 of the Code for prohibited transactions. The commenters noted that the Department granted similar relief from the taxes imposed by section 4975 of the Code as part of the Pension Payback Program. According to the commenters, the absence of relief from the excise taxes, as well as the possibility of referral by the Secretary to the Internal Revenue Service as mandated by section 3003 of ERISA, create a significant disincentive for Plan Officials to participate in the VFC Program.

Upon consideration of the comments received in connection with the VFC Program, the Department has determined that it would be appropriate to propose limited exemptive relief in this area without impairing the interests of plan participants and beneficiaries. Accordingly, the class exemption, as proposed, would provide relief from the excise taxes imposed by section 4975 of the Code for certain eligible transactions identified in the VFC Program. The Internal Revenue Service has advised the Department that it will not seek to

impose the sanctions of section 4975(a) and (b) of the Internal Revenue Code with respect to any prohibited transaction that is covered by the proposed class exemption, notwithstanding any subsequent changes to the proposed class exemption when it is finalized, provided that all of the requirements specified in the proposed class exemption have been met.

Description of the Proposed Exemption

1. Scope

The proposed exemption would provide relief from the sanctions imposed under section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, for certain eligible transactions identified in the VFC Program. The proposed exemption does not provide relief for any transactions identified in the VFC Program that are not specifically described as eligible transactions under Section I of the proposal. The Department believes that it is appropriate to limit relief to those transactions for which the requisite findings under section 4975(c)(2) of the Code can be made. The Department is proposing prohibited transaction relief from the excise taxes under section 4975 of the Code in order to encourage plan fiduciaries to make full correction of certain eligible transactions which are violations of the prohibited transaction provisions of the Code.

The four eligible transactions described in the proposed exemption are as follows:

(A) The failure to transmit participant contributions to a pension plan within the time frames described in the Department's regulations at 29 CFR section 2510.3–102.

(B) The making of a loan by a plan at a fair market interest rate to a party in interest with respect to the plan.

(C) The purchase or sale of an asset (including real property) between a plan and a party in interest at fair market value.

(D) The sale of real property to a plan by the employer and the leaseback of such property to the employer, at fair market value and fair market rental value, respectively.

The eligible transactions may be illustrated by the following examples:

Example (1): Corporation A sponsors a pension plan for its employees. Corporation A borrowed $100,000 from the plan. The loan was made at an interest rate no less than that available for a loan with similar terms (for example, the amount of the loan, amount and type of security, repayment schedule, and duration of loan) obtainable in an arm's-length transaction between unrelated parties.

Example (2): Corporation B sponsors a pension plan for its employees. The plan sold a parcel of real property to Corporation B. The price Corporation B paid to the plan was the fair market value of the property, as determined by a qualified independent appraiser as of the date of the transaction and reflected in a qualified appraisal report. (If there is a generally recognized market for the property, such as the New York Stock Exchange, the fair market value of the property is the value objectively determined by reference to the price on such market on the date of the transaction, and a determination by a qualified independent appraiser is not required.)

Example (3): Corporation C sponsors a pension plan for its employees. Corporation C sold a parcel of real property to the plan which was simultaneously leased back to Corporation C. The price paid by the plan for the property was its fair market value, and the rent paid by Corporation C to the plan is the fair market rental value, as determined by a qualified independent appraiser and reflected in a qualified appraisal report. The terms of the lease (for example, rent, duration and allocation of expenses) are not less favorable to the plan than those obtained in an arm's-length transaction between unrelated parties.

2. Proposed General Conditions

Section II of the proposal contains general conditions, as discussed below, which the Department views as necessary to ensure that any transaction covered by the proposed exemption would be in the interests of plan participants and beneficiaries, and to support a finding that the proposed exemption meets the statutory requirements of section 4975(c)(2) of the Code.

With respect to a transaction involving delinquent transmittal of participant contributions to a pension plan, the proposal requires that the contributions be transmitted to the pension plan not more than 180 calendar days from the date the amounts were received by the employer (in the case of amounts that a participant or beneficiary pays to an employer) or the date the amount otherwise would have been payable to the participant in cash (in the case of amounts withheld by an employer from a participant's wages).

Second, the proposal requires that, with respect to the transactions described in Section I.B., I.C. and I.D., the amount of plan assets involved in the transaction did not exceed 10 percent of the fair market value of all the assets of the plan at the time of the transaction. For purposes of this requirement, the 10 percent limitation would apply after aggregating the value of a series of related transactions.

Third, under the proposed exemption, the fair market value of any plan asset involved in a transaction described in Sections I.C. or I.D. must have been determined in accordance with section 5 of the VFC Program. Section 5 of the VFC Program requires that the valuation must meet the following conditions: (1) If there is a generally recognized market for the property (*e.g.*, the New York Stock Exchange), the fair market value of the asset is the average value of the asset on such market on the applicable date, unless the plan document specifies another objectively determined value (*e.g.*, the closing price); and (2) if there is no generally recognized market for the asset, the fair market value of that asset must be determined in accordance with generally accepted appraisal standards by a qualified independent appraiser and reflected in a written appraisal report signed by the appraiser. For purposes of these requirements under the VFC Program, an appraiser is considered qualified if the appraiser has met the education, experience and licensing requirements that are generally recognized for appraisal of the type of asset being appraised. An appraiser is "independent" if the appraiser is not one of the following, does not own or control any of the following, and is not owned or controlled by, or affiliated with, any of the following: (i) The prior owner of the asset, if the asset was purchased by the plan; (ii) the purchaser of the asset, if the asset was or is now being sold by the plan; (iii) any other owner of the asset, if the plan is not the sole owner; (iv) a fiduciary of the plan; (v) a party in interest with respect to the plan (except to the extent the appraiser becomes a party in interest when retained to perform this appraisal for the plan); or (vi) the VFC Program applicant.

Fourth, under the proposed exemption, the terms of a transaction described in Sections I.B., I.C., or I.D., must have been at least as favorable to the plan as the terms generally available in arm's-length transactions between unrelated parties.

Fifth, with respect to all of the eligible transactions, the transaction may not have been part of an agreement, arrangement or understanding designed to benefit a party in interest. The Department notes that the intent of this condition is not to deny a direct benefit to the party in interest but, rather, to exclude relief for transactions that are part of a broader overall agreement, arrangement or understanding designed to benefit parties in interest.

Sixth, with respect to all of the eligible transactions, the applicant may not have taken advantage of the relief provided by the VFC Program and the proposed exemption for a similar type of transaction identified in the

application during the three-year period prior to the submission of the application.

3. Compliance With VFC Program

In addition to compliance with the general conditions set forth above, Section III of the proposed exemption requires that the applicant meet the requirements set forth in the VFC Program that are applicable to the particular transaction. The proposal also requires that the applicant must have received a no action letter issued by PWBA with respect to such transaction, which must be an eligible transaction otherwise described in Section I of the proposed exemption. However, the fact that an applicant receives a no action letter issued by PWBA should not be viewed as a determination by PWBA that the applicant has satisfied all of the conditions of the proposed exemption. Each applicant must determine whether the pertinent conditions of the proposed exemption have been met.

4. Notice

Although the Department determined to eliminate the required notice from the final VFC Program (published simultaneously in this issue of the **Federal Register**), it believes that such a requirement is appropriate for those wishing to take advantage of the exemption in light of the additional relief provided. Consistent with the notice requirement of section 4975(c)(2) of the Code, the purpose of the notice requirement of this exemption is to afford interested persons the opportunity to provide the Department with relevant information concerning the transaction.

Notice under the proposed exemption must be given to interested persons within 60 calendar days following the date of the submission of an application under the VFC Program to the Department. Plan assets may not be used to pay for the notice. The exemption does not specify the format or specific content of the notice. However, the notice must include an objective description of the transaction and the steps taken to correct it, written in a manner reasonably calculated to be understood by the average Plan participant or beneficiary. The notice also must provide for a period of 30 calendar days, beginning on the date the notice is distributed, for interested persons to provide comments to the appropriate Regional Office of the United States Department of Labor, Pension and Welfare Benefits Administration. The notice must include the address and telephone number of such Regional Office.

A copy of the notice to interested persons, along with an indication of the date on which it was distributed, must be provided to the appropriate Regional Office within the same 60-day period following the date of the submission of the application. Accordingly, applicants under the VFC Program who intend to take advantage of the relief provided under this exemption would indicate on the checklist submitted as part of the VFC Program application that they will, within 60 calendar days following the date of the submission of the application, provide the Department's Regional Office with a copy of the notice to interested persons.

Notice may be given in any manner that is reasonably calculated, taking into consideration the particular circumstances of the plan, to result in the receipt of such notice by interested persons, including but not limited to posting, regular mail, or electronic mail, or any combination thereof.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply, the requirement that all assets of an employee benefit plan be held in trust by one or more trustees, and the general fiduciary responsibility provisions of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion; nor does it affect the requirement of section 401(a) of the Code tnat the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 4975(c)(1)(F) of the Code.

(3) Before this exemption may be granted under section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of plans and their participants and beneficiaries, and protective of the rights of participants and beneficiaries of such plans.

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(5) If granted, the proposed class exemption will be applicable to a transaction only if the conditions specified in the class exemption are satisfied.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a public hearing on the proposed exemption to the address above and within the time period set forth above. All comments received will be made part of the record and will be available for public inspection at the above address.

Proposed Exemption

The Department has under consideration the grant of the following class exemption, under the authority of section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR 2570, subpart B (55 FR 32836, August 10, 1990).

Section I: Eligible Transactions

The sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the following eligible transactions described in section 7 of the Voluntary Fiduciary Correction (VFC) Program, published simultaneously in this issue of the **Federal Register**, provided that the applicable conditions set forth in Sections II, III and IV are met:

A. Failure to transmit participant contributions to a pension plan within the time frames described in the Department's regulation at 29 CFR section 2510.3–102. (*See* VFC Program, section 7.A.1.).

B. Loan at a fair market interest rate to a party in interest with respect to a plan. (*See* VFC Program, section 7.B.1.).

C. Purchase or sale of an asset (including real property) between a plan and a party in interest at fair market value. (*See* VFC Program, sections 7.C.1. and 7.C.2.).

D. Sale of real property to a plan by the employer and the leaseback of the property to the employer, at fair market value and fair market rental value, respectively. (*See* VFC Program, section 7.C.3.).

Section II: Conditions

A. With respect to a transaction involving participant contributions to pension plans described in Section I.A., the contributions were transmitted to the pension plan not more than 180 calendar days from the date the amounts were received by the employer (in the case of amounts that a participant or beneficiary pays to an employer) or the date the amounts otherwise would have been payable to the participant in cash (in the case of amounts withheld by an employer from a participant's wages).

B. With respect to the transactions described in Sections I.B., I.C., or I.D., the plan assets involved in the transaction, or series of related transactions, did not, in the aggregate, exceed 10 percent of the fair market value of all the assets of the plan at the time of the transaction.

C. The fair market value of any plan asset involved in a transaction described in Sections I.C. or I.D. was determined in accordance with section 5 of the VFC Program.

D. The terms of a transaction described in Sections I.B., I.C., or I.D. were at least as favorable to the plan as the terms generally available in arm's-length transactions between unrelated parties.

E. With respect to any transaction described in Section I, the transaction was not part of an agreement, arrangement or understanding designed to benefit a party in interest.

F. With respect to any transaction described in Section I, the applicant has not taken advantage of the relief provided by the VFC Program and this exemption for a similar type of transaction(s) identified in the current application during the period which is 3 years prior to submission of the current application.

Section III: Compliance with VFC Program

A. The applicant has met all of the applicable requirements of the VFC Program.

B. PWBA has issued a no action letter to the applicant pursuant to the VFC Program with respect to a transaction described in Section I.

Section IV: Notice

A. Written notice of the transaction(s) for which the applicant is seeking relief pursuant to the VFC Program and this exemption, and the method of correcting the transaction, was provided to interested persons within 60 calendar days following the date of the submission of an application under the VFC Program. A copy of the notice was provided to the appropriate Regional Office of the United States Department of Labor, Pension and Welfare Benefits Administration within the same 60-day period, and the applicant indicated the date upon which notice was distributed to interested persons. Plan assets were not used to pay for the notice. The notice included an objective description of the transaction and the steps taken to correct it, written in a manner reasonably calculated to be understood by the average Plan participant or beneficiary. The notice provided for a period of 30 calendar days, beginning on the date the notice was distributed, for interested persons to provide comments to the appropriate Regional Office. The notice included the address and telephone number of such Regional Office.

B. Notice was given in a manner that was reasonably calculated, taking into consideration the particular circumstances of the plan, to result in the receipt of such notice by interested persons, including but not limited to posting, regular mail, or electronic mail, or any combination thereof. The notice informed interested persons of the applicant's participation in the VFC Program and intention of availing itself of relief under the exemption.

Signed at Washington, DC, this 25th day of March, 2002.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 02–7515 Filed 3–27–02; 8:45 am]

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Federal Register

Thursday,
March 28, 2002

Part VI

The President

Proclamation 7535—Greek Independence Day: A National Day of Celebration of Greek and American Democracy, 2002

Federal Register
Vol. 67, No. 60
Thursday, March 28, 2002

Presidential Documents

Title 3—

The President

Proclamation 7535 of March 25, 2002

Greek Independence Day: A National Day of Celebration of Greek and American Democracy, 2002

By the President of the United States of America

A Proclamation

Ancient Greece was the birthplace of the democratic principles and thought that fundamentally shaped the growth of democracy in world history. Societies aspiring toward more democratic forms of government have found inspiration in the Greek tradition of representative government and free political discourse. As modern Greece celebrates the anniversary of its independence, won 181 years ago, Greeks can be proud that its vibrant democracy continues and that it is based upon the beliefs in freedom and self-rule first forged in classical Greece over 2500 years ago.

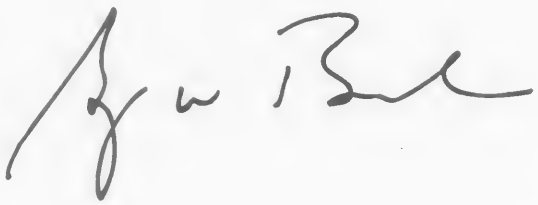
These ideals have been embraced by peoples of the world who aspire towards democracy, including the Founders of the United States; and they were tested by the attacks of September 11, 2001. The terrorists sought to destroy a political and economic system that promotes individual freedoms and tolerance, defends national liberty, and supports the full participation of its citizens in the democratic process. The terrorists failed; but rather than destroying us, their attacks strengthen our resolve to stand up to this evil. Along with the members of our worldwide coalition, including Greece, we are committed to defeating terrorism and protecting liberty.

The friendship between the United States and Greece continues to thrive and is based upon our common cultural bonds and our shared national values. Today, more than 3 million Americans proudly claim Greek heritage, representing a continuing link between our countries. From the arts and education to industry and science, Greek Americans have made significant contributions to the cultural, civic, and economic vitality of our land.

As we celebrate Greek independence, we remember the history of those who sacrificed their lives to preserve freedom and democracy. We value our friendship and continuing partnership with the government and people of Greece, and we commit to work together to provide greater opportunity and more freedoms for the citizens of the world. And we join the world in anticipating the momentous 2004 Summer Olympic Games, which will be held in Athens, the birthplace of Olympic competition.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 25, 2002, as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy." I encourage all Americans to take special note of Greece's rich history of democracy, the strong bonds of friendship and culture between our countries, and the important role that Greek Americans play in our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of March, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.



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H.R. 3986/P.L. 107–154

To extend the period of availability of unemployment assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act in

the case of victims of the terrorist attacks of September 11, 2001. (Mar. 25, 2002; 116 Stat. 80)

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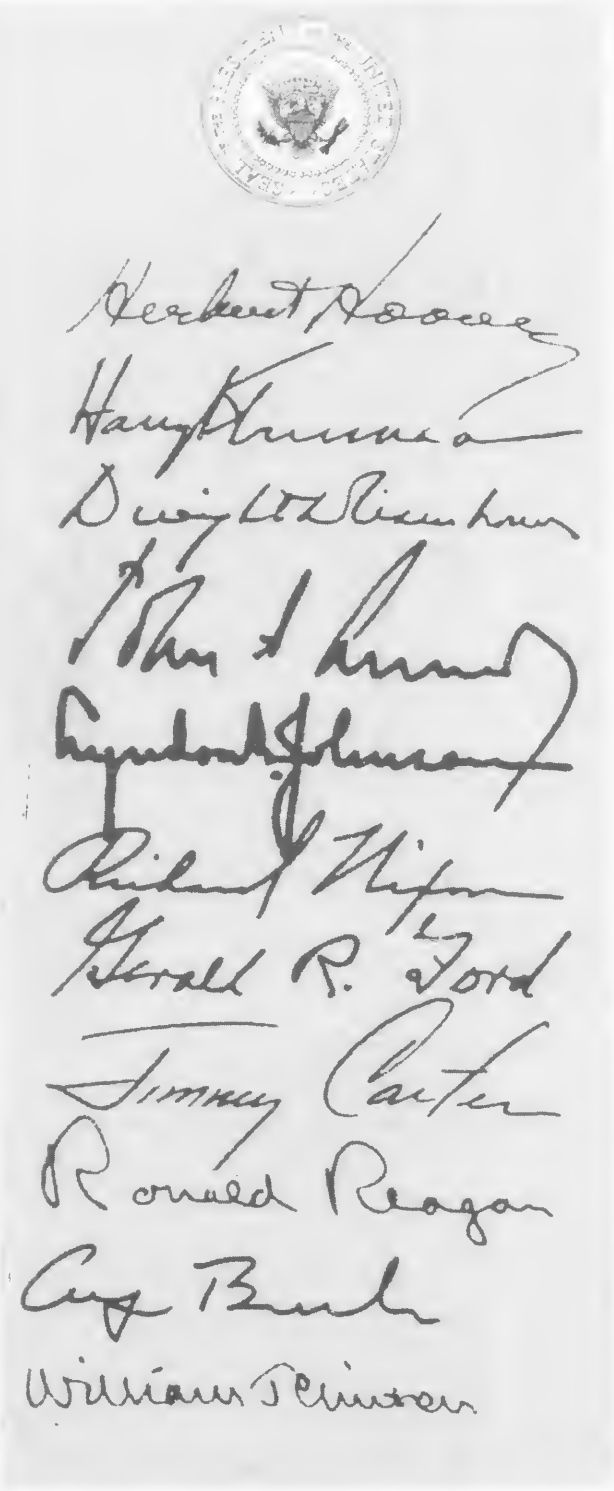

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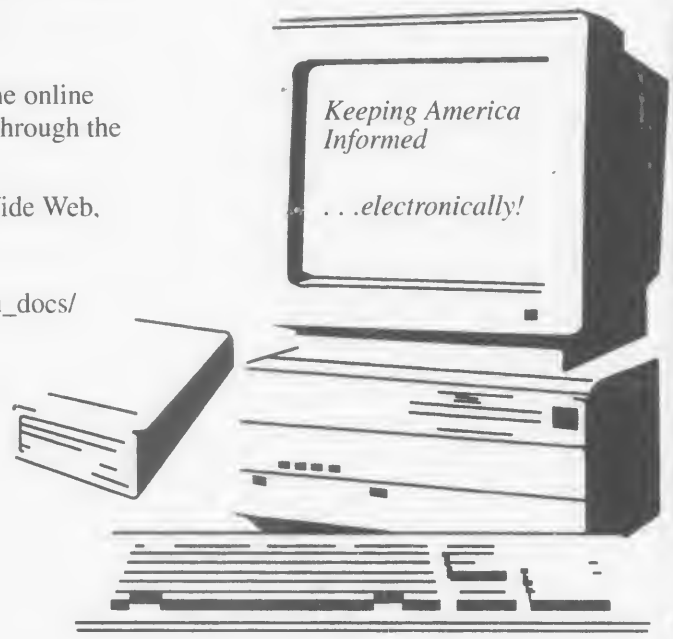

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