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11–20–01 Tuesday
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Presidential Documents

Title 3—

The President

Proclamation 7503 of November 15, 2001

America Recycles Day, 2001

By the President of the United States of America

A Proclamation

We must preserve our natural heritage by serving as good stewards of our land. Recycling helps to serve this important function by conserving our natural resources as we reuse them where we can. Recycling safeguards our environment and helps keep America beautiful for present and future generations.

The United States generates more than 230 million tons of municipal solid waste every year, which amounts to four and a half pounds of trash per person per day. However, thanks to the efforts of the American people, we are now recovering more than 64 million tons of usable material annually, and that rate has doubled since 1990.

Successful recycling includes not only the collection of materials, but also the manufacture of new products and the purchase of recycled content products. Buying products made of recycled materials contributes to domestic energy conservation and ultimately, a cleaner environment. For example, recycling one aluminum can saves enough energy to run a television set for three hours. Recycling a ton of glass saves the equivalent of 9 gallons of fuel oil, and recycling solid waste prevents the release of 37 million tons of carbon into the air—roughly the amount emitted annually by 28 million cars.

As more products made with recycled materials reach the marketplace, individual consumers, corporations, and Federal agencies are purchasing these goods as cost-effective and responsible business solutions. Such items may range from recycled content paper, retread tires, and re-refined oil, to concrete and insulation containing recycled materials.

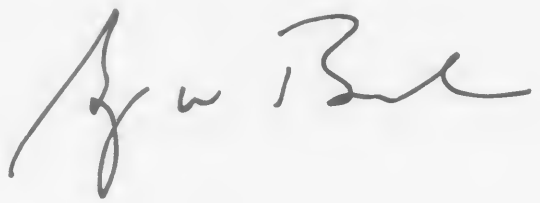
Our Nation is making great progress by recycling, but we can and must do better. America Recycles Day 2001 represents a partnership among Government, industry, and environmental organizations to promote recycling and to encourage the participation of all our citizens. As part of the event, the Federal Government hosted a poster contest for the children of Federal employees to help raise awareness in the Government, and across the Nation, of the need to continue protecting the environment by recycling. All Americans can help "Close the Recycling Circle," by recycling products in our homes, schools, offices, and communities, and also by purchasing products made from recycled materials. These recycling and remanufacturing activities help conserve resources and also stimulate our economy by creating jobs and revenue.

Last year, more than 3 million people in all 50 States and 2 U.S. territories committed to reduce, reuse, and recycle more and to buy recycled products. For America Recycles Day 2001, I encourage all Americans to build on these achievements by recycling and by purchasing and using products made from recycled materials. These responsible actions can help protect our environment and conserve natural resources for the benefit of all.

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 November 15, 2001,

as America Recycles Day. I call upon the people of the United States to observe this day with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of November, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 01–29158
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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[CN–01–001]

2001 Amendment to Cotton Board Rules and Regulations Adjusting Supplemental Assessment on Imports

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is amending the Cotton Board Rules and Regulations by raising the value assigned to imported cotton for the purpose of calculating supplemental assessments collected for use by the Cotton Research and Promotion Program. An adjustment is required on an annual basis to ensure that the assessments collected on imported cotton and the cotton content of imported products remain similar to those paid on domestically produced cotton.

EFFECTIVE DATE: December 20, 2001.

FOR FURTHER INFORMATION CONTACT: Whitney Rick, (202) 720–2259.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12988

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

The Cotton Research and Promotion Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 12 of the Act, any person subject to an order may file with the Secretary a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of ruling.

Regulatory Flexibility Act

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

There are an estimated 10,000 importers who are presently subject to rules and regulations issued pursuant to the Cotton Research and Promotion Order. This rule will affect importers of cotton and cotton-containing products. The majority of these importers are small businesses under the criteria established by the Small Business Administration. This rule will raise the assessments paid by the importers under the Cotton Research and Promotion Order. Even though the assessment would be raised, the increase is small and will not significantly affect small businesses. The current assessment on imported cotton is $0.009833 per kilogram of imported cotton. The new assessment is $0.009965, an increase of $0.000132 or a 1.34 percent increase. From January through December 2000 approximately $20 million was collected at the $0.009833 per kilogram rate. Should the volume of cotton products imported into the U.S. remain at the same level in 2001, one could expect the increased assessment to generate approximately $20.2 million or a 1.34 percent increase from 2000.

Paperwork Reduction

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.) the information collection requirements contained in the regulation to be amended have been previously approved by OMB and were assigned control number 0581–0093.

Background

The Cotton Research and Promotion Act Amendments of 1990 enacted by Congress under Subtitle G of Title XIX of the Food, Agriculture, Conservation and Trade Act of 1990 on November 28, 1990, contained two provisions that authorized changes in the funding procedures for the Cotton Research and Promotion Program.

These provisions are: (1) The assessment of imported cotton and cotton products; and (2) termination of the right of cotton producers to demand a refund of assessments.

An amended Cotton Research and Promotion Order was approved by producers and importers voting in a referendum held July 17–26, 1991, and the amended Order was published in the **Federal Register** on December 10, 1991, (56 FR 64470). A proposed rule implementing the amended Order was published in the **Federal Register** on December 17, 1991, (56 FR 65450). Implementing rules were published on July 1 and 2, 1992, (57 FR 29181) and (57 FR 29431), respectively.

This rule will increase the value assigned to imported cotton in the Cotton Board Rules and Regulations (7 CFR 1205.510(b)(2)). This value is used to calculate supplemental assessments on imported cotton and the cotton content of imported products. Supplemental assessments are the second part of a two-part assessment. The first part of the assessment is levied on the weight of cotton produced or imported at a rate of $1 per bale of cotton which is equivalent to 500 pounds or $1 per 226.8 kilograms of cotton.

Supplemental assessments are levied at a rate of five-tenths of one percent of the value of domestically produced cotton, imported cotton, and the cotton content of imported products. The agency has adopted the practice of assigning the calendar year weighted

average price received by U.S. farmers for Upland cotton to represent the value of imported cotton. This is done so that the assessment on domestically produced cotton and the assessment on imported cotton and the cotton content of imported products remain similar. The source for the average price statistic is "Agricultural Prices", a publication of the National Agricultural Statistics Service (NASS) of the Department of Agriculture. Use of the weighted average price figure in the calculation of supplemental assessments on imported cotton and the cotton content of imported products yields an assessment that approximates assessments paid on domestically produced cotton in the prior calendar year.

The current value of imported cotton as published in the **Federal Register** (65 FR 25236) on May 1, 2000, for the purpose of calculating supplemental assessments on imported cotton is $1.0847 per kilogram. This number was calculated using the annual weighted average price received by farmers for Upland cotton during the calendar year 1999 which was $0.492 per pound and multiplying by the conversion factor 2.2046. Using the Average Weighted Price Received by U.S. farmers for Upland cotton for the calendar year 2000, which is $0.504 per pound, the new value of imported cotton is $1.1111 per kilogram. The amended value is $.0264 per kilogram more than the previous value.

An example of the complete assessment formula and how the various figures are obtained is as follows:

One bale is equal to 500 pounds.

One kilogram equals 2.2046 pounds.

One pound equals 0.453597 kilograms.

One Dollar Per Bale Assessment Converted to Kilograms

A 500 pound bale equals 226.8 kg. (500 x .453597).

$1 per bale assessment equals $0.002000 per pound (1/500) or $0.004409 per kg. (1/226.8).

Supplemental Assessment of \5/10\ of One Percent of the Value of the Cotton Converted to Kilograms

The 2000 calendar year weighted average price received by producers for Upland cotton is $0.504 per pound or $1.1111 per kg. (0.504 × 2.2046) = 1.1111.

Five tenths of one percent of the average price in kg. equals $0.005556 per kg. (1.1111 × .005).

Total Assessment

The total assessment per kilogram of raw cotton is obtained by adding the $1 per bale equivalent assessment of $0.004409 per kg. and the supplemental assessment $0.005556 per kg. which equals $0.009965 per kg.

The current assessment on imported cotton is $0.009833 per kilogram of imported cotton. The amended assessment is $0.009965, an increase of $0.000132 per kilogram. This increase reflects the increase in the Average Weighted Price of Upland Cotton Received by U.S. Farmers during the period January through December 2000.

Since the value of cotton is the basis of the supplemental assessment calculation and the figures shown in the right hand column of the Import Assessment Table 1205.510(b)(3) are a result of such a calculation, the figures in this table have been revised. These figures indicate the total assessment per kilogram due for each Harmonized Tariff Schedule (HTS) number subject to assessment.

One HTS number subject to assessment pursuant to this regulation and found in the assessment table has been changed. In order to maintain consistency between HTS and the assessment table, the changes to this one number have been incorporated into the assessment table. The last two digits of this number were changed to provide for statistical reporting purposes and involve no physical change to the products they represent. The assessment rate for the one number has been applied to each of the new replacement numbers in the assessment table. The following table represents the changes:

Old No.	New No.	Conversion Factor	Assessment cents/kg.
6303910000	6303910010	0.6249	0.6406
	6303910020	0.6249	0.6406

A proposed rule with a request for comments was published in the **Federal Register** (66 FR 42464) on August 13, 2001. No comments were received during the period (August 13 through September 12, 2001).

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1205 is amended as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

1. The authority citation for Part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118.

2. In § 1205.510, paragraph (b)(2) and the table in paragraph (b)(3)(ii) are revised to read as follows:

§ 1205.510 Levy of assessments.

* * * * *

(b) * * *

(2) The 12-month average of monthly weighted average prices received by U.S. farmers will be calculated annually. Such weighted average will be used as the value of imported cotton for the purpose of levying the supplemental assessment on imported cotton and will be expressed in kilograms. The value of imported cotton for the purpose of levying this supplemental assessment is $0.9965 per kilogram.

(3) * * *

(II) * * *

IMPORT ASSESSMENT TABLE

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
5201000500	0	0.9965
5201001200	0	0.9965
5201001400	0	0.9965
5201001800	0	0.9965
5201002200	0	0.9965
5201002400	0	0.9965
5201002800	0	0.9965
5201003400	0	0.9965
5201003800	0	0.9965
5204110000	1.1111	1.1072
5204200000	1 1111	1.1072
5205111000	1.1111	1.1072
5205112000	1.1111	1.1072
5205121000	1.1111	1.1072
5205122000	1.1111	1 1072
5205131000	1.1111	1.1072
5205132000	1.1111	1.1072
5205141000	1.1111	1.1072
5205210020	1.1111	1.1072
5205210090	1.1111	1.1072
5205220020	1.1111	1.1072
5205220090	1.1111	1.1072
5205230020	1.1111	1.1072
5205230090	1.1111	1.1072
5205240020	1.1111	1.1072

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
5205240090	1.1111	1.1072
5205310000	1.1111	1.1072
5205320000	1.1111	1.1072
5205330000	1.1111	1.1072
5205340000	1.1111	1.1072
5205410020	1.1111	1.1072
5205410090	1.1111	1.1072
5205420020	1.1111	1.1072
5205420090	1.1111	1.1072
5205440020	1.1111	1.1072
5205440090	1.1111	1.1072
5206120000	0.5556	0.5537
5206130000	0.5556	0.5537
5206140000	0.5556	0.5537
5206220000	0.5556	0.5537
5206230000	0.5556	0.5537
5206240000	0.5556	0.5537
5206310000	0.5556	0.5537
5207100000	1.1111	1.1072
5207900000	0.5556	0.5537
5208112020	1.1455	1.1415
5208112040	1.1455	1.1415
5208112090	1.1455	1.1415
5208114020	1.1455	1.1415
5208114060	1.1455	1.1415
5208114090	1.1455	1.1415
5208118090	1.1455	1.1415
5208124020	1.1455	1.1415
5208124040	1.1455	1.1415
5208124090	1.1455	1.1415
5208126020	1.1455	1.1415
5208126040	1.1455	1.1415
5208126060	1.1455	1.1415
5208126090	1.1455	1.1415
5208128020	1.1455	1.1415
5208128090	1.1455	1.1415
5208130000	1.1455	1.1415
5208192020	1.1455	1.1415
5208192090	1.1455	1.1415
5208194020	1.1455	1.1415
5208194090	1.1455	1.1415
5208196020	1.1455	1.1415
5208196090	1.1455	1.1415
5208224040	1.1455	1.1415
5208224090	1.1455	1.1415
5208226020	1.1455	1.1415
5208226060	1.1455	1.1415
5208228020	1.1455	1.1415
5208230000	1.1455	1.1415
5208292020	1.1455	1.1415
5208292090	1.1455	1.1415
5208294090	1.1455	1.1415
5208296090	1.1455	1.1415
5208298020	1.1455	1.1415
5208312000	1.1455	1.1415
5208321000	1.1455	1.1415
5208323020	1.1455	1.1415
5208323040	1.1455	1.1415
5208323090	1.1455	1.1415
5208324020	1.1455	1.1415
5208324040	1.1455	1.1415
5208325020	1.1455	1.1415
5208330000	1.1455	1.1415
5208392020	1.1455	1.1415
5208392090	1.1455	1.1415
5208394090	1.1455	1.1415
5208396090	1.1455	1.1415
5208398020	1.1455	1.1415
5208412000	1.1455	1.1415

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
5208416000	1.1455	1.1415
5208418000	1.1455	1.1415
5208421000	1.1455	1.1415
5208423000	1.1455	1.1415
5208424000	1.1455	1.1415
5208425000	1.1455	1.1415
5208430000	1.1455	1.1415
5208492000	1.1455	1.1415
5208494020	1.1455	1.1415
5208494090	1.1455	1.1415
5208496010	1.1455	1.1415
5208496090	1.1455	1.1415
5208498090	1.1455	1.1415
5208512000	1.1455	1.1415
5208516060	1.1455	1.1415
5208518090	1.1455	1.1415
5208523020	1.1455	1.1415
5208523045	1.1455	1.1415
5208523090	1.1455	1.1415
5208524020	1.1455	1.1415
5208524045	1.1455	1.1415
5208524065	1.1455	1.1415
5208525020	1.1455	1.1415
5208530000	1.1455	1.1415
5208592025	1.1455	1.1415
5208592095	1.1455	1.1415
5208594090	1.1455	1.1415
5208596090	1.1455	1.1415
5209110020	1.1455	1.1415
5209110035	1.1455	1.1415
5209110090	1.1455	1.1415
5209120020	1.1455	1.1415
5209120040	1.1455	1.1415
5209190020	1.1455	1.1415
5209190040	1.1455	1.1415
5209190060	1.1455	1.1415
5209190090	1.1455	1.1415
5209210090	1.1455	1.1415
5209220020	1.1455	1.1415
5209220040	1.1455	1.1415
5209290040	1.1455	1.1415
5209290090	1.1455	1.1415
5209313000	1.1455	1.1415
5209316020	1.1455	1.1415
5209316035	1.1455	1.1415
5209316050	1.1455	1.1415
5209316090	1.1455	1.1415
5209320020	1.1455	1.1415
5209320040	1.1455	1.1415
5209390020	1.1455	1.1415
5209390040	1.1455	1.1415
5209390060	1.1455	1.1415
5209390080	1.1455	1.1415
5209390090	1.1455	1.1415
5209413000	1.1455	1.1415
5209416020	1.1455	1.1415
5209416040	1.1455	1.1415
5209420020	1.0309	1.0273
5209420040	1.0309	1.0273
5209430030	1.1455	1.1415
5209430050	1.1455	1.1415
5209490020	1.1455	1.1415
5209490090	1.1455	1.1415
5209516035	1.1455	1.1415
5209516050	1.1455	1.1415
5209520020	1.1455	1.1415
5209590025	1.1455	1.1415
5209590040	1.1455	1.1415
5209590090	1.1455	1.1415

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
5210114020	0.6873	0.6849
5210114040	0.6873	0.6849
5210116020	0.6873	0.6849
5210116040	0.6873	0.6849
5210116060	0.6873	0.6849
5210118020	0.6873	0.6849
5210120000	0.6873	0.6849
5210192090	0.6873	0.6849
5210214040	0.6873	0.6849
5210216020	0.6873	0.6849
5210216060	0.6873	0.6849
5210218020	0.6873	0.6849
5210314020	0.6873	0.6849
5210314040	0.6873	0.6849
5210316020	0.6873	0.6849
5210318020	0.6873	0.6849
5210414000	0.6873	0.6849
5210416000	0.6873	0.6849
5210418000	0.6873	0.6849
5210498090	0.6873	0.6849
5210514040	0.6873	0.6849
5210516020	0.6873	0.6849
5210516040	0.6873	0.6849
5210516060	0.6873	0.6849
5211110090	0.6873	0.6849
5211120020	0.6873	0.6849
5211190020	0.6873	0.6849
5211190060	0.6873	0.6849
5211210025	0.6873	0.6849
5211210035	0.4165	0.4150
5211210050	0.6873	0.6849
5211290090	0.6873	0.6849
5211320020	0.6873	0.6849
5211390040	0.6873	0.6849
5211390060	0.6873	0.6849
5211490020	0.6873	0.6849
5211490090	0.6873	0.6849
5211590025	0.6873	0.6849
5212146090	0.9164	0.9132
5212156020	0.9164	0.9132
5212216090	0.9164	0.9132
5509530030	0.5556	0.5537
5509530060	0.5556	0.5537
5513110020	0.4009	0.3995
5513110040	0.4009	0.3995
5513110060	0.4009	0.3995
5513110090	0.4009	0.3995
5513120000	0.4009	0.3995
5513130020	0.4009	0.3995
5513210020	0.4009	0.3995
5513310000	0.4009	0.3995
5514120020	0.4009	0.3995
5516420060	0.4009	0.3995
5516910060	0.4009	0.3995
5516930090	0.4009	0.3995
5601210010	1.1455	1.1415
5601210090	1.1455	1.1415
5601300000	1.1455	1.1415
5602109090	0.5727	0.5707
5602290000	1.1455	1.1415
5602906000	0.526	0.5242
5604900000	0.5556	0.5537
5607902000	0.8889	0.8858
5608901000	1.1111	1.1072
5608902300	1.1111	1.1072
5609001000	1.1111	1.1072
5609004000	0.5556	0.5537
5701104000	0.0556	0.0554
5701109000	0.1111	0.1107

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
5701901010	1.0444	1.0407
5702109020	1.1	1.0962
5702312000	0.0778	0.0775
5702411000	0.0722	0.0719
5702412000	0.0778	0.0775
5702421000	0.0778	0.0775
5702913000	0.0889	0.0886
5702991010	1.1111	1.1072
5702991090	1.1111	1.1072
5703900000	0.4489	0.4473
5801210000	1.1455	1.1415
5801230000	1.1455	1.1415
5801250010	1.1455	1.1415
5801250020	1.1455	1.1415
5801260020	1.1455	1.1415
5802190000	1.1455	1.1415
5802300030	0.5727	0.5707
5804291000	1.1455	1.1415
5806200010	0.3534	0.3522
5806200090	0.3534	0.3522
5806310000	1.1455	1.1415
5806400000	0.4296	0.4281
5808107000	0.5727	0.5707
5808900010	0.5727	0.5707
5811002000	1.1455	1.1415
6001106000	1.1455	1.1415
6001210000	0.8591	0.8561
6001220000	0.2864	0.2854
6001910010	0.8591	0.8561
6001910020	0.8591	0.8561
6001920020	0.2864	0.2854
6001920030	0.2864	0.2854
6001920040	0.2864	0.2854
6002203000	0.8681	0.8651
6002206000	0.2894	0.2884
6002420000	0.8681	0.8651
6002430010	0.2894	0.2884
6002430080	0.2894	0.2884
6002921000	1.1574	1.1533
6002930040	0.1157	0.1153
6002930080	0.1157	0.1153
6101200010	1.0094	1.0059
6101200020	1.0094	1.0059
6102200010	1.0094	1.0059
6102200020	1.0094	1.0059
6103421020	0.8806	0.8775
6103421040	0.8806	0.8775
6103421050	0.8806	0.8775
6103421070	0.8806	0.8775
6103431520	0.2516	0.2507
6103431540	0.2516	0.2507
6103431550	0.2516	0.2507
6103431570	0.2516	0.2507
6104220040	0.9002	0.8970
6104220060	0.9002	0.8970
6104320000	0.9207	0.9175
6104420010	0.9002	0.8970
6104420020	0.9002	0.8970
6104520010	0.9312	0.9279
6104520020	0.9312	0.9279
6104622006	0.8806	0.8775
6104622011	0.8806	0.8775
6104622016	0.8806	0.8775
6104622021	0.8806	0.8775
6104622026	0.8806	0.8775
6104622028	0.8806	0.8775
6104622030	0.8806	0.8775
6104622060	0.8806	0.8775
6104632006	0.3774	0.3761

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6104632011	0.3774	0.3761
6104632026	0.3774	0.3761
6104632028	0.3774	0.3761
6104632030	0.3774	0.3761
6104632060	0.3774	0.3761
6104692030	0.3858	0.3844
6105100010	0.985	0.9816
6105100020	0.985	0.9816
6105100030	0.985	0.9816
6105202010	0.3078	0.3067
6105202030	0.3078	0.3067
6106100010	0.985	0.9816
6106100020	0.985	0.9816
6106100030	0.985	0.9816
6106202010	0.3078	0.3067
6106202030	0.3078	0.3067
6107110010	1.1322	1.1282
6107110020	1.1322	1.1282
6107120010	0.5032	0.5014
6107210010	0.8806	0.8775
6107220015	0.3774	0.3761
6107220025	0.3774	0.3761
6107910040	1.2581	1.2537
6108210010	1.2445	1.2401
6108210020	1.2445	1.2401
6108310010	1.1201	1.1162
6108310020	1.1201	1.1162
6108320010	0.2489	0.2480
6108320015	0.2489	0.2480
6108320025	0.2489	0.2480
6108910005	1.2445	1.2401
6108910015	1.2445	1.2401
6108910025	1.2445	1.2401
6108910030	1.2445	1.2401
6108920030	0.2489	0.2480
6109100005	0.9956	0.9921
6109100007	0.9956	0.9921
6109100009	0.9956	0.9921
6109100012	0.9956	0.9921
6109100014	0.9956	0.9921
6109100018	0.9956	0.9921
6109100023	0.9956	0.9921
6109100027	0.9956	0.9921
6109100037	0.9956	0.9921
6109100040	0.9956	0.9921
6109100045	0.9956	0.9921
6109100060	0.9956	0.9921
6109100065	0.9956	0.9921
6109100070	0.9956	0.9921
6109901007	0.3111	0.3100
6109901009	0.3111	0.3100
6109901049	0.3111	0.3100
6109901050	0 3111	0.3100
6109901060	0.3111	0.3100
6109901065	0.3111	0.3100
6109901090	0.3111	0.3100
6110202005	1.1837	1.1796
6110202010	1.1837	1.1796
6110202015	1.1837	1.1796
6110202020	1.1837	1.1796
6110202025	1.1837	1.1796
6110202030	1.1837	1.1796
6110202035	1.1837	1.1796
6110202040	1.1574	1.1533
6110202045	1.1574	1.1533
6110202065	1.1574	1.1533
6110202075	1.1574	1.1533
6110909022	0.263	0.2621
6110909024	0.263	0.2621

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg
6110909030	0.3946	0.3932
6110909040	0.263	0.2621
6110909042	0.263	0.2621
6111201000	1.2581	1.2537
6111202000	1.2581	1.2537
6111203000	1.0064	1.0029
6111205000	1.0064	1.0029
6111206010	1.0064	1.0029
6111206020	1.0064	1.0029
6111206030	1.0064	1.0029
6111206040	1.0064	1.0029
6111305020	0.2516	0.2507
6111305040	0.2516	0.2507
6112110050	0.7548	0.7522
6112120010	0.2516	0.2507
6112120030	0.2516	0.2507
6112120040	0.2516	0.2507
6112120050	0.2516	0.2507
6112120060	0.2516	0.2507
6112390010	1.1322	1.1282
6112490010	0.9435	0.9402
6114200005	0.9002	0.8970
6114200010	0.9002	0.8970
6114200015	0.9002	0.8970
6114200020	1.286	1.2815
6114200040	0.9002	0.8970
6114200046	0.9002	0.8970
6114200052	0.9002	0.8970
6114200060	0.9002	0.8970
6114301010	0.2572	0.2563
6114301020	0.2572	0.2563
6114303030	0.2572	0.2563
6115198010	1.0417	1.0381
6115929000	1.0417	1.0381
6115936020	0.2315	0.2307
6116101300	0.3655	0.3642
6116101720	0.8528	0.8498
6116926420	1.0965	1.0927
6116926430	1.2183	1.2140
6116926440	1.0965	1.0927
6116928800	1.0965	1.0927
6117809510	0.9747	0.9713
6117809540	0.3655	0.3642
6201121000	0.948	0.9447
6201122010	0.8953	0.8922
6201122050	0.6847	0.6823
6201122060	0.6847	0.6823
6201134030	0.2633	0.2624
6201921000	0.9267	0.9235
6201921500	1.1583	1.1542
6201922010	1.0296	1.0260
6201922021	1.2871	1.2826
6201922031	1.2871	1.2826
6201922041	1.2871	1.2826
6201922051	1.0296	1.0260
6201922061	1.0296	1.0260
6201931000	0.3089	0.3078
6201933511	0.2574	0.2565
6201933521	0.2574	0.2565
6201999060	0.2574	0.2565
6202121000	0.9372	0.9339
6202122010	1.1064	1.1025
6202122025	1.3017	1.2971
6202122050	0.8461	0.8431
6202122060	0.8461	0.8431
6202134005	0.2664	0.2655
6202134020	0.333	0.3318
6202921000	1.0413	1.0377
6202921500	1.0413	1.0377

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6202922026	1.3017	1.2971
6202922061	1.0413	1.0377
6202922071	1.0413	1.0377
6202931000	0.3124	0.3113
6202935011	0.2603	0.2594
6202935021	0.2603	0.2594
6203122010	0.1302	0.1297
6203221000	1.3017	1.2971
6203322010	1.2366	1.2323
6203322040	1.2366	1.2323
6203332010	0.1302	0.1297
6203392010	1.1715	1.1674
6203399060	0.2603	0.2594
6203422010	0.9961	0.9926
6203422025	0.9961	0.9926
6203422050	0.9961	0.9926
6203422090	0.9961	0.9926
6203424005	1.2451	1.2407
6203424010	1.2451	1.2407
6203424015	0.9961	0.9926
6203424020	1.2451	1.2407
6203424025	1.2451	1.2407
6203424030	1.2451	1.2407
6203424035	1.2451	1.2407
6203424040	0.9961	0.9926
6203424045	0.9961	0.9926
6203424050	0.9238	0.9206
6203424055	0.9238	0.9206
6203424060	0.9238	0.9206
6203431500	0.1245	0.1241
6203434010	0.1232	0.1228
6203434020	0.1232	0.1228
6203434030	0.1232	0.1228
6203434040	0.1232	0.1228
6203498045	0.249	0.2481
6204132010	0.1302	0.1297
6204192000	0.1302	0.1297
6204198090	0.2603	0.2594
6204221000	1.3017	1.2971
6204223030	1.0413	1.0377
6204223040	1.0413	1.0377
6204223050	1.0413	1.0377
6204223060	1.0413	1.0377
6204223065	1.0413	1.0377
6204292040	0.3254	0.3243
6204322010	1.2366	1.2323
6204322030	1.0413	1.0377
6204322040	1.0413	1.0377
6204423010	1.2728	1.2683
6204423030	0.9546	0.9513
6204423040	0.9546	0.9513
6204423050	0.9546	0.9513
6204423060	0.9546	0.9513
6204522010	1.2654	1.2610
6204522030	1.2654	1.2610
6204522040	1.2654	1.2610
6204522070	1.0656	1.0619
6204522080	1.0656	1.0619
6204533010	0.2664	0.2655
6204594060	0.2664	0.2655
6204622010	0.9961	0.9926
6204622025	0.9961	0.9926
6204622050	0.9961	0.9926
6204624005	1.2451	1.2407
6204624010	1.2451	1.2407
6204624020	0.9961	0.9926
6204624025	1.2451	1.2407
6204624030	1.2451	1.2407
6204624035	1.2451	1.2407

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6204624040	1.2451	1.2407
6204624045	0.9961	0.9926
6204624050	0.9961	0.9926
6204624055	0.9854	0.9820
6204624060	0.9854	0.9820
6204624065	0.9854	0.9820
6204633510	0.2546	0.2537
6204633530	0.2546	0.2537
6204633532	0.2437	0.2428
6204633540	0.2437	0.2428
6204692510	0.249	0.2481
6204692540	0.2437	0.2428
6204699044	0.249	0.2481
6204699046	0.249	0.2481
6204699050	0.249	0.2481
6205202015	0.9961	0.9926
6205202020	0.9961	0.9926
6205202025	0.9961	0.9926
6205202030	0.9961	0.9926
6205202035	1.1206	1.1167
6205202046	0.9961	0.9926
6205202050	0.9961	0.9926
6205202060	0.9961	0.9926
6205202065	0.9961	0.9926
6205202070	0.9961	0.9926
6205202075	0.9961	0.9926
6205302010	0.3113	0.3102
6205302030	0.3113	0.3102
6205302040	0.3113	0.3102
6205302050	0.3113	0.3102
6505302070	0.3113	0.3102
6205302080	0.3113	0.3102
6206100040	0.1245	0.1241
6206303010	0.9961	0.9926
6206303020	0.9961	0.9926
6206303030	0.9961	0.9926
6206303040	0.9961	0.9926
6206303050	0.9961	0.9926
6206303060	0.9961	0.9926
6206403010	0.3113	0.3102
6206403030	0.3113	0.3102
6206900040	0.249	0.2481
6207110000	1.0852	1.0814
6207199010	0.3617	0.3604
6207210030	1.1085	1.1046
6207220000	0.3695	0.3682
6207911000	1.1455	1.1415
6207913010	1.1455	1.1415
6207913020	1.1455	1.1415
6208210010	1.0583	1.0546
6208210020	1.0583	1.0546
6208220000	0.1245	0.1241
6208911010	1.1455	1.1415
6208911020	1.1455	1.1415
6208913010	1.1455	1.1415
6209201000	1.1577	1.1536
6209203000	0.9749	0.9715
6209205030	0.9749	0.9715
6209205035	0.9749	0.9715
6209205040	1.2186	1.2143
6209205045	0.9749	0.9715
6209205050	0.9749	0.9715
6209303020	0.2463	0.2454
6209303040	0.2463	0.2454
6210109010	0.2291	0.2283
6210403000	0.0391	0.0390
6210405020	0.4556	0.4540
6211111010	0.1273	0.1269
6211111020	0.1273	0.1269

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6211118010	1.1455	1.1415
6211118020	1.1455	1.1415
6211320007	0.8461	0.8431
6211320010	1.0413	1.0377
6211320015	1.0413	1.0377
6211320030	0.9763	0.9729
6211320060	0.9763	0.9729
6211320070	0.9763	0.9729
6211330010	0.3254	0.3243
6211330030	0.3905	0.3891
6211330035	0.3905	0.3891
6211330040	0.3905	0.3891
6211420010	1.0413	1.0377
6211420020	1.0413	1.0377
6211420025	1.1715	1.1674
6211420060	1.0413	1.0377
6211420070	1.1715	1.1674
6211430010	0.2603	0.2594
6211430030	0.2603	0.2594
6211430040	0.2603	0.2594
6211430050	0.2603	0.2594
6211430060	0.2603	0.2594
6211430066	0.2603	0.2594
6212105020	0.2412	0.2404
6212109010	0.9646	0.9612
6212109020	0.2412	0.2404
6212200020	0.3014	0.3003
6212900030	0.1929	0.1922
6213201000	1.1809	1.1768
6213202000	1.0628	1.0591
6213901000	0.4724	0.4707
6214900010	0.9043	0.9011
6216000800	0.2351	0.2343
6216001720	0.6752	0.6728
6216003800	1.2058	1.2016
6216004100	1.2058	1.2016
6217109510	1.0182	1.0146
6217109530	0.2546	0.2537
6301300010	0.8766	0.8735
6301300020	0.8766	0.8735
6302100005	1.1689	1.1648
6302100008	1.1689	1.1648
6302100015	1.1689	1.1648
6302215010	0.8182	0.8153
6302215020	0.8182	0.8153
6302217010	1.1689	1.1648
6302217020	1.1689	1.1648
6302217050	1.1689	1.1648
6302219010	0.8182	0.8153
6302219020	0.8182	0.8153
6302219050	0.8182	0.8153
6302222010	0.4091	0.4077
6302222020	0.4091	0.4077
6302313010	0.8182	0.8153
6302313050	1.1689	1.1648
6302315050	0.8182	0.8153
6302317010	1.1689	1.1648
6302317020	1.1689	1.1648
6302317040	1.1689	1.1648
6302317050	1.1689	1.1648
6302319010	0.8182	0.8153
6302319040	0.8182	0.8153
6302319050	0.8182	0.8153
6302322020	0.4091	0.4077
6302322040	0.4091	0.4077
6302402010	0.9935	0.9900
6302511000	0.5844	0.5824
6302512000	0.8766	0.8735
6302513000	0.5844	0.5824

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6302514000	0.8182	0.8153
6302600010	1.1689	1.1648
6302600020	1.052	1.0483
6302600030	1.052	1.0483
6302910005	1.052	1.0483
6302910015	1.1689	1.1648
6302910025	1.052	1.0483
6302910035	1.052	1.0483
6302910045	1.052	1.0483
6302910050	1.052	1.0483
6302910060	1.052	1.0483
6303110000	0.9448	0.9415
6303910010	0.6429	0.6406
6303910020	0.6429	0.6406
6304111000	1.0629	1.0592
6304190500	1.052	1.0483
6304191000	1.1689	1.1648
6304191500	0.4091	0.4077
6304192000	0.4091	0.4077
6304910020	0.9351	0.9318
6304920000	0.9351	0.9318
6505901540	0.181	0.1804
6505902060	0.9935	0.9900
6505902545	0.5844	0.5824

* * * * *

Dated: November 14, 2001.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 01–28891 Filed 11–19–01; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG83

List of Approved Spent Fuel Storage Casks: NAC–MPC Revision; Confirmation of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is confirming the effective date of November 13, 2001, for the direct final rule that appeared in the **Federal Register** of August 30, 2001 (66 FR 45749). This direct final rule amended the NRC's regulations by revising the NAC–MPC cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 1 to Certificate of Compliance No. 1025. This document confirms the effective date.

DATES: The effective date of November 13, 2001, is confirmed for this direct final rule.

ADDRESSES: Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. These same documents may also be viewed and downloaded electronically via the rulemaking website (http://ruleforum.llnl.gov). For information about the interactive rulemaking website, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 415–6219 (E-mail: *jmm2@nrc.gov*).

SUPPLEMENTARY INFORMATION: On August 30, 2001 (66 FR 45749), the NRC published in the **Federal Register** a direct final rule amending its regulations in 10 CFR part 72 by revising the NAC–MPC cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 1 to Certificate of Compliance No. 1025. Amendment No. 1 modifies the present cask system design to permit a licensee to use an alternate fuel basket design with enlarged fuel tubes in corner locations; increase the operational time limits provided in the Technical Specifications for canister loading, closure, and transfer when canister heat loads are lower than design basis heat loads; revise the canister surface contamination limits in Technical Specifications to maintain worker dose as low as is reasonably achievable; and revise some drawings to reflect changes identified during cask and component fabrication under a general license. In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on the date noted above. The NRC did not receive any comments that warranted withdrawal of the direct final rule. Therefore, this rule will become effective as scheduled.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 14th day of November, 2001.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 01–28922 Filed 11–19–01; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 513

RIN 3141–AA25

Debt Collection

AGENCY: National Indian Gaming Commission.

ACTION: Interim rule with request for comments.

SUMMARY: The National Indian Gaming Commission (Commission) is issuing interim regulations that set forth procedures for collecting debts. The Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996, requires agencies to issue regulations on their debt collection procedures. The interim rule outlines procedures mandated by statutes and regulations promulgated jointly by the departments of the Treasury and Justice and by the Office of Personnel Management. The rule includes procedures for collection of debts through administrative, tax, and salary offset and administrative wage garnishment. The Commission requests comments on these regulations.

DATES: These regulations are effective on November 20, 2001. Written comments on these regulations must be received by January 4, 2002.

ADDRESSES: Send comments to: Debt Collection Standards, National Indian Gaming Commission, Suite 9100, 1441 L St., NW., Washington, DC 20005; telefax number (202) 632–7066 (not a toll-free number). Public comments may be read or delivered between 9 a.m. and 12 p.m. and 2 p.m. and 5 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Cynthia Omberg, at (202) 632–7003 (not a toll-free number) or by fax at (202) 632–7066 (not a toll-free number).

SUPPLEMENTARY INFORMATION: These regulations implement the requirements of the Federal Claims Collection Act of 1966 (Pub. L. 89–508, 80 Stat. 308) as amended by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, 110 Stat. 1321). These regulations are issued in conformity with the Federal Claims Collection Standards (31 CFR Ch. IX). Under these regulations, the Commission may collect debts owed to it through various methods, including administrative offset, tax refund offset, or salary offset.

Subpart A of the regulation addresses the collection of debts in general and incorporates the debt collection

procedures of the Federal Claims Collection Standards (FCCS) at 31 CFR parts 900 to 904. It provides, as mandated by law, that the Commission will transfer debts that are delinquent for over 180 days to Treasury for collection or other appropriate action. It also provides that debts that are delinquent for fewer than 180 days may be referred to Treasury.

Subpart B sets forth the due process procedures the Commission will use to collect by administrative and tax refund offset pursuant to 31 U.S.C. 3716 and 3720A, and 31 CFR 285.2.

Subpart C sets forth the due process procedures that the Commission will use for debts that are to be collected by salary offset. This method of debt collection is used when a Federal employee is indebted to the Federal Government. The procedures for salary offset are governed by: 5 U.S.C. 5514; 31 U.S.C. 3716; Office of Personnel Management (OPM) regulations at 5 CFR part 550, subpart K; and 31 CFR 285.7. Agencies are required to promulgate their own salary offset regulations, 5 U.S.C. 5514(b)(1), that must conform to OPM regulations and be approved by OPM before they become effective. 5 CFR 550.1105(a)(1). The Commission's salary offset provisions have been reviewed and approved by OPM.

Subpart D provides for administrative wage garnishment pursuant to 31 U.S.C. 3720D and 25 CFR 285.11.

Because these interim rules are merely procedural in nature and implement already enacted laws on debt collection, the Commission is providing only a 30-day comment period.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small business, or small organizations include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis is not necessary, however, if the agency certifies that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

The Commission has considered the impact of this interim regulation under the Regulatory Flexibility Act. The debts owed to the Commission are typically those of tribes or contractors. While these are small entities, the economic impact on them is not significant because the regulations do not create a new duty to pay debts, but only provide a mechanism for collecting debts that are already due.

Paperwork Reduction Act

The Commission certifies that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Waiver of Notice of Proposed Rulemaking and 30-Day Delay of Effective Date

The Commission has determined that this regulation pertains to agency practice and procedure and is interpretative in nature. The procedures contained in the interim regulation for administrative offset, salary offset, and tax refund offset are mandated by law and by regulations promulgated jointly by the Department of the Treasury and the Department of Justice, and by the IRS. Therefore, the interim regulation is not subject to the Administrative Procedure Act (APA) and the requirements of the APA for a notice and comment period and for a delayed effective date. 5 U.S.C. 553(b) and (c). Nonetheless, the Commission requests comments from the public and will take all comments into consideration before promulgating the final regulation.

Unfunded Mandates Reform Act of 1995

Assessment statements in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) are not required for regulations that incorporate requirements specifically set forth in law. These regulations implement specific statutory requirements. In addition, they do not include a Federal mandate that may result in the expenditure by the private sector or by State, local, and tribal governments of, in the aggregate, $100 million or more in any one year. A statement under 2 U.S.C. 1532 is therefore not required.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), Agencies must submit rules to each House of Congress and the Comptroller General of the United States before publication of this interim regulation in the **Federal Register**. This interim regulation is not a major rule as defined at 5 U.S.C. 804(3)(c) and is not a major rule as defined at 5 U.S.C. 804(2).

List of Subjects in 25 CFR Part 513

Claims, Gambling, Government employees, Income taxes, Wages.

Dated: November 6, 2001.

Montie R. Deer,

Chairman National Indian Gaming Commission.

Accordingly 25 CFR part 513 is added to read as follows:

PART 513—DEBT COLLECTION

Subpart A—General Provisions

Sec.

Subpart B—Administrative and Tax Refund Offset

Subpart C—Salary Offset

Subpart D—Administrative Wage Garnishment

Authority: 31 U.S.C. 3711, 3716–3718, 3720A, 3720D; 5 U.S.C. 5514; 25 U.S.C. 2713(a)(1).

Subpart A—General Provisions

513.1 What definitions apply to the regulations in this part?

As used in this part:

(a) *Administrative offset* means the withholding of funds payable by the United States (including funds payable by the United States on behalf of a State government) to any person, or the withholding of funds held by the United States for any person, in order to satisfy a debt owed to the United States.

(b) *Agency* means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of government, including a government corporation.

(c) *Chairman* means the Chairman of the Commission, or his or her designee.

(d) *Commission* means the National Indian Gaming Commission.

(e) *Creditor agency* means a Federal agency that is owed a debt.

(f) *Day* means calendar day. To count days, include the last day of the period unless it is a Saturday, Sunday, or Federal legal holiday.

(g) *Debt and claim* are synonymous and interchangeable. They refer to, among other things, fines, fees, and penalties that a Federal agency has determined are due the United States from any person, organization, or entity, except another Federal agency. For the purposes of administrative offset under 31 U.S.C. 3716 and subpart B of this part, the terms "debt" and "claims" include money, funds, or property owed to a State, the District of Columbia, American Samoa, Guam, the U.S. Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico.

(h) *Debtor* means a person, contractor, Tribe, or other entity that owes a debt to the Commission.

(i) *Delinquent debt* means a debt that has not been paid within the time limit prescribed by the applicable Act, law, or contract.

(j) *Disposable pay* means the part of an employee's pay that remains after deductions that must be withheld by law have been made (other than deductions to execute garnishment orders for child support and/or alimony, in accordance with 5 CFR part 581, and for commercial garnishment of federal employees' pay, in accordance with 5 CFR part 582). "Pay" includes current basic pay, special pay, incentive pay, retired pay, and retainer pay.

(k) *Employee* means a current employee of an agency, including a current member of the Armed Forces or Reserve of the Armed Forces of the United States.

(l) *DOJ* means the U.S. Department of Justice.

(m) *FCCS* means the Federal Claims Collection Standards, which are published at 31 CFR parts 900–904.

(n) *FMS* means the Federal Management Service, a bureau of the U.S. Department of the Treasury.

(o) *Paying agency* means the agency that makes payment to an individual who owes a debt to the United States.

(p) *Payroll office* means the office in an agency that is primarily responsible for payroll records and the coordination of pay matters with the appropriate personnel office.

(q) *Person* includes a natural person or persons, profit or non-profit corporation, partnership, association, trust, estate, consortium, tribe, or other entity that owes a debt to the United States, excluding the United States.

(r) *Salary offset* means a payroll procedure to collect debt under 5 U.S.C. 5514 and 31 U.S.C. 3716 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee, without the employee's consent.

(s) *Tax refund offset* means the reduction of a tax refund by the amount of a past-due legally enforceable debt.

§ 513.2 What is the Commission's authority to issue these regulations?

(a) The Commission has authority to issue these regulations under 25 U.S.C. 2713(a)(1) of the Indian Gaming Regulatory Act. The Commission is issuing the regulations in this part under the authority of: The FCCS, the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996, 31 U.S.C. 3711, 3716–3718, and 3720A. In addition, the salary offset provisions are issued in conformity with 5 U.S.C. 5514 and its implementing regulations published at 5 CFR part 550, subpart K.

(b) The Commission hereby adopts the provisions of the FCCS (31 CFR parts 900–904). The Commission's regulations supplement the FCCS as necessary.

§ 513.3 What happens to delinquent debts owed to the Commission?

(a) The Commission will collect debts in accordance with these regulations in this part.

(b) The Commission will transfer to the Department of the Treasury any past due, legally enforceable nontax debt that has been delinquent for 180 days or more so that Treasury may take appropriate action to collect the debt or terminate collection action in accordance with 5 U.S.C. 5514, 26 U.S.C. 6402, 31 U.S.C. 3711 and 3716, the FCCS, 5 CFR 550.1108, and 31 CFR part 285.

(c) The Commission may transfer any past due, legally enforceable nontax debt that has been delinquent for fewer than 180 days to the Department of Treasury for collection in accordance with 5 U.S.C. 5514, 26 U.S.C. 6402, 31 U.S.C. 3711 and 3716, the FFCS, 5 CFR 550.1108, and 31 CFR part 285.

§ 513.4 What notice will the Commission give to a debtor of the Commission's intent to collect debts?

(a) When the Chairman determines that a debt is owed to the Commission, the Chairman will send a written notice (Notice), also known as a demand letter. The Notice will be sent by facsimile or mail to the most current address known to the Commission. The Notice will inform the debtor of the following:

(1) The amount, nature, and basis of the debt;

(2) The methods of offset that may be employed;

(3) The debtor's opportunity to inspect and copy agency records related to the debt;

(4) The debtor's opportunity to enter into a written agreement with the Commission to repay the debt;

(5) The Commission's policy concerning interest, penalty charges, and administrative costs, as set out in § 513.5, including a statement that such assessments must be made against the debtor unless excused in accordance with the FCCS and this part;

(6) The date by which payment should be made to avoid late charges and enforced collection;

(7) The name, address, and telephone number of a contact person or office at the Commission that is available to discuss the debt; and

(8) The debtor's opportunity for review.

(b) A debtor whose debt arises from a notice of violation and/or civil fine assessment that has become a final order and that was subject to the Commission's appeal procedures at 25 CFR part 577 may not re-litigate matters that were the subject of the final order.

§ 513.5 What is the Commission's policy on interest, penalty charges, and administrative costs?

(a) Interest.

(1) The Commission will assess interest on all delinquent debts unless prohibited by statute, regulation, or contract.

(2) Interest begins to accrue on all debts from the date that the debt becomes delinquent. The Commission will assess interest at the rate established annually by the Secretary of the Treasury under 31 U.S.C. 3717.

(b) Penalties. The Commission will assess a penalty charge of 6 percent a year on any portion of a delinquent debt.

(c) Administrative costs. The Commission will assess charges to cover administrative costs incurred as a result of the debtor's failure to pay a debt before it becomes delinquent. Administrative costs include the cost of providing a copy of the file to the debtor and costs incurred in processing and handling the debt because it became delinquent, such as costs incurred in obtaining a credit report or in using a private collection contractor, or service fees charged by a Federal agency for collection activities undertaken on behalf of the Commission.

(d) Interest, penalties, and administrative costs will continue to accrue throughout any appeal process.

(e) Allocation of payments. A partial or installment payment by a debtor will be applied first to outstanding penalty assessments, second to administrative costs, third to accrued interest, and fourth to the outstanding debt principal.

(f) Additional authority. The Commission may assess interest, penalty charges, and administrative costs on debts that are not subject to 31 U.S.C. 3717 to the extent authorized under common law or other applicable statutory authority.

(g) Waiver. (1) Regardless of the amount of the debt, the Chairman may decide to waive collection of all or part of the accrued interest, penalty charges, or administrative costs if collection of these charges would be against equity and good conscience or not in the Commission's best interest.

(2) A decision to waive interest, penalty charges, or administrative costs may be made at any time before a debt is paid. However, when charges have been collected before the waiver decision; they will not be refunded. The Chairman's decision whether to waive collection of these charges is final and not subject to further review.

§ 513.6 What are the requirements for offset review?

(a) The Commission will provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt and the Commission determines that the question of indebtedness cannot be resolved by review of the documentary evidence.

(b) Unless otherwise required by law, an oral hearing is not required to be a formal evidentiary hearing, although the Commission will carefully document all significant matters discussed at the hearing.

(c) When an oral hearing is not required, the Commission will review the request for reconsideration based on the written record.

§ 513.7 What is the Commission's policy on revoking a debtor's ability to engage in Indian gaming for failure to pay a debt?

The Chairman of the Commission may revoke a debtor's ability to operate, manage, or otherwise participate in the operation of an Indian gaming facility if the debtor inexcusably or willfully fails to pay a debt. The revocation of ability to engage in gaming may last only as long as the debtor's indebtedness.

Subpart B—Administrative and Tax Refund Offset

§ 513.20 What debts can the Commission refer to Treasury for collection by administrative and tax refund offset?

(a) The Commission may refer any past due, legally enforceable nonjudgment debt of a person to the Treasury for administrative and tax refund offset if the debt:

(1) Has been delinquent for at least three months and will not have been delinquent more than 10 years at the time the offset is made;

(2) Is at least $25.00 or another amount established by Treasury.

(b) Debts reduced to judgment may be referred to Treasury for tax refund offset at any time.

§ 513.21 What notice will a debtor be given of the Commission's intent to collect a debt through administrative and tax refund offset?

(a) The Commission will give the debtor written notice of its intent to offset before initiating the offset. Notice will be mailed to the debtor at the debtor's last known address as determined by the Commission.

(b) The notice will state the amount of the debt and notify the debtor that:

(1) The debt is past due and, unless repaid within 60 days after the date of the notice, the Commission will refer the debt to Treasury for administrative and tax refund offset;

(2) The debtor has 60 calendar days to present evidence that all or part of the debt is not past-due or legally enforceable; and

(3) The debfor has an opportunity to make a written agreement to repay the debt.

Subpart C—Salary Offset

§ 513.30 When may the Commission use salary offset to collect debts?

(a) The Commission collects debts owed by employees to the Federal Government by means of salary offset under the authority of: 5 U.S.C. 5514; 31 U.S.C. 3716; 5 CFR part 550, subpart K; 31 CFR 285.7; and this subpart. Salary offset is applicable when the Commission is attempting to collect a debt owed by an individual employed by the Commission or another agency.

(b) Nothing in the regulations in this subpart precludes the compromise, suspension, or termination of collection actions under the Federal Claims Collection Act of 1966, as amended, or the Federal Claims Collection Standards.

(c) A levy pursuant to the Internal Revenue Code takes precedence over a salary offset under this subpart, as provided in 5 U.S.C. 5514(d) and 31 U.S.C. 3716.

(d) The regulations in this subpart do not apply to any case where collection of a debt by salary offset is explicitly prohibited by another statute.

(e) This subpart's regulations covering notice, hearing, written responses, and final decisions do not apply to:

(1) Any routine intra-agency adjustment in pay that is attributable to clerical or administrative error or delay in processing pay documents that have occurred within the four pay periods preceding the adjustment, or any adjustment to collect a debt amounting to $50 or less. However, at the time of any adjustment, or as soon thereafter as possible, the Commission's payroll agency will provide the employee with a written notice of the nature and amount of the adjustment and a contact point for appealing the adjustment.

(2) Any negative adjustment to pay that arises from the debtor's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four or fewer pay periods. However, at the time of the adjustment, the Commission's payroll agent will provide in the debtor's earnings statement a clear statement informing the debtor of the previous overpayment.

(f) An employee's involuntary payment of all or any of the debt through salary offset will not be construed as a waiver of any rights that the employee may have under the law, unless there are statutory or contractual provisions to the contrary.

§ 513.31 What notice will the Commission, as the creditor agency, give a debtor that salary offset will occur?

(a) Deductions from a debtor's salary will not be made unless the Commission sends the debtor a written Notice of Intent at least 30 calendar days before the salary offset is initiated.

(b) The Notice of Intent will include the following:

(1) Notice that the Commission has reviewed the records relating to the debt and has determined that the employee owes the debt;

(2) Notice that, after a 30-day period, the Commission will begin to collect the debt by deductions from the employee's current disposable pay account and the date on which deductions from salary will start;

(3) The amount of the debt and the facts giving rise to it;

(4) The frequency and the amount of the intended deduction stated as a fixed dollar amount or as a percentage of pay not to exceed 15 percent of the disposable pay, and the intention to continue the deductions until the debt and all accumulated interest are paid in full or resolved;

(5) The name, address, and telephone number of the person to whom the debtor may propose a written alternative schedule for voluntary repayment in lieu of salary offset. The debtor must include a justification for the alternative schedule in the proposal;

(6) The Commission's policy concerning interest, penalties, and administrative costs, set out at § 513.5, and a statement that assessments will be made unless excused in accordance with the FCCS;

(7) Notice of the employee's right to inspect and copy all Commission records pertaining to the debt and the name, address, and telephone number of the Commission employee to whom requests for access must be made;

(8) Notice of the employee's opportunity to a hearing conducted by an individual who does not work for the Commission on the Commission's determination of the existence or amount of the debt and the terms of the repayment schedule;

(9) Notice that filing a request for a hearing on or before the 15th calendar day following the debtor's receiving the Notice of Intent will stay collection proceedings and that a final decision will be issued at the earliest practical date, but not later than 60 days after the filing of the petition for hearing, unless the employee requests, and a hearing official grants, a delay in proceedings;

(10) An explanation of the effect of submitting knowingly false or frivolous statements; and

(11) Notice that amounts paid on or deducted from debts that are later waived or found not to be owed will be promptly refunded to the employee.

§ 513.32 What are the hearing procedures when the Commission is the creditor agency?

(a) To request a hearing, the debtor must file, within 15 days of receiving the Commission's notice of intent to offset, a written petition signed by the debtor and addressed to the Commission stating why the debtor believes the Commission's determination of the existence or amount of the debt is in error. The Commission may waive the 15-day time limit for filing a request for hearing if the employee shows that the delay was due to circumstances beyond his or her control or because the employee did not receive notice of the 15-day time limit. A debtor who has previously obtained a hearing to contest a debt that arose from a notice of violation or proposed civil fine assessment matters under 25 CFR part 577 may not re-litigate matters that were at issue in that hearing.

(b) Regardless of whether the debtor is a Commission employee, the Commission will provide a prompt and appropriate hearing before a hearing official who is not from the Commission.

(c) The hearing will be conducted according to the FCCS review requirements at 31 CFR 901.3(e).

(d) Unless the employee requests, and a hearing official grants, a delay in proceedings, within 60 days after the petition for hearing the hearing official will issue a written decision on:

(1) The determination of the creditor agency concerning the existence or amount of the debt; and

(2) The repayment schedule, if a schedule was not established by written agreement between the employee and the creditor agency.

(e) If the hearing official determines that a debt may not be collected by salary offset but the Commission has determined that the debt is valid, the Commission may seek collection of the debt through other means in accordance with applicable law and regulations.

(f) The form of hearings, written responses, and final decisions will be according to the Commission's review requirements at § 513.7. Written decisions regarding salary offset that are provided after a request for hearing must state: The facts purported to evidence the nature and origin of the alleged debt; the hearing official's analysis, findings, and conclusions as to the employee's or creditor agency's grounds; the amount and validity of the alleged debt; and, where applicable, the repayment schedule.

§ 513.33 Will the Commission issue a certification when the Commission is the creditor agency?

Yes. Upon completion of the procedures established in this subpart and pursuant to 5 U.S.C. 5514, the Commission will submit a certification to Treasury or to a paying agency in the form prescribed by the paying agency.

§ 513.34 What opportunity is there for a voluntary repayment agreement when the Commission is the creditor agency?

(a) In response to a Notice of Intent, an employee may propose to repay the debt voluntarily in lieu of salary offset by submitting a written proposed repayment schedule to the Commission. A proposal must be received by the Commission within 15 calendar days after the employee is sent the Notice of Intent.

(b) The Commission will notify the employee whether, within the Commission's discretion, the proposed repayment schedule is acceptable.

(c) If the proposed repayment schedule is unacceptable, the employee will have 15 calendar days from the date the notice of the decision is received in which to file a request for a hearing.

(d) If the proposed repayment schedule is acceptable or the employee agrees to a modification proposed by the Commission, the agreement will be put in writing and signed by the employee and the Commission.

§ 513.35 What special review is available when the Commission is the creditor agency?

(a) (1) An employee subject to salary offset or a voluntary repayment agreement may, at any time, request a special review by the Commission of the amount of the salary offset or voluntary repayment, based on materially changed circumstances, including, but not limited to, catastrophic illness, divorce, death, or disability.

(2) The request for special review must include an alternative proposed offset or payment schedule and a detailed statement, with supporting documents, that shows why the current salary offset or payment results in extreme financial hardship to the employee, spouse, or dependents. The statement must indicate:

(i) Income from all sources;

(ii) Assets;

(iii) Liabilities;

(iv) Number of dependents;

(v) Expenses for food, housing, clothing, and transportation;

(vi) Medical expenses; and

(vii) Exceptional expenses, if any.

(b) The Commission will evaluate the statement and documentation and determine whether the current offset or

repayment schedule imposes extreme financial hardship on the employee. The Commission will notify the employee in writing within 30 calendar days of its determination, including, if appropriate, a revised offset or payment schedule. If the special review results in a revised offset or repayment schedule, the Commission will provide a new certification to the paying agency.

§ 513.36 Under what conditions will the Commission refund amounts collected by salary offset?

(a) As the creditor agency, the Commission will promptly refund any amount deducted under the authority of 5 U.S.C. 5514, when:

(1) The Commission determines that the debt is not owed; or

(2) An administrative or judicial order directs the Commission to make a refund.

(b) Unless required or permitted by law or contract, refunds under this section will not bear interest.

§ 513.37 What will the Commission do as the paying agency?

(a) When the Commission receives a certification from a creditor agency that has complied with the Office of Personnel Management's requirements set out at 5 CFR 550.1109, the Commission will send the employee a written notice of salary offset.

(b) If the Commission receives an incomplete certification from a creditor agency, the Commission will return the certification with notice that the procedures under 5 U.S.C. 5514 and 5 CFR 550.1104 must be followed and a properly certified claim submitted before the Commission will take action to collect the debt from the employee's current pay account.

(c) Notice to a debtor will include:

(1) The Commission's receipt of a certification from a creditor agency;

(2) The amount of the debt and the deductions to be made, which may be stated as a percentage of disposable pay; and

(3) The date and pay period when the salary offset will begin.

(d) The Commission will provide a copy of the notice of salary offset to a creditor agency.

(e) The Commission will coordinate salary deductions under this subpart as appropriate.

(f) The Commission's payroll officer will determine the amount of the debtor's disposable pay and will implement the salary offset.

(g) The Commission may use the following types of salary debt collection:

(1) Lump sum offset. If the amount of the debt is equal to or less than 15 percent of disposable pay, the debt generally will be collected through one lump sum offset.

(2) Installment deductions. The amount deducted from any period will not exceed 15 percent of the disposable pay from which the deduction is made unless the debtor has agreed in writing to the deduction of a greater amount. If possible, installment payments will liquidate the debt in three years or less.

(3) Deductions from final check. A deduction exceeding the 15 percent of disposable pay limitation may be made from any final salary payment under 31 U.S.C. 3716 and the Federal Claims Collection Standards, in order to liquidate the debt, whether the employee is leaving voluntarily or involuntarily.

(4) Deductions from other sources. If an employee subject to salary offset is leaving the Commission and the balance of the debt cannot be liquidated by offset of the final salary check, then the Commission may offset later payments of any kind against the balance of the debt, as allowed by 31 U.S.C. 3716 and the Federal Claims Collection Standards.

(h) When two or more creditor agencies are seeking salary offsets, the Commission's payroll office may, in its discretion, determine whether one or more debts should be offset simultaneously within the 15 percent limitation.

(i) The Commission is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

Subpart D—Administrative Wage Garnishment

§ 513.40 How will the Commission handle debt collection through administrative wage garnishment?

This part adopts all the provisions of the administrative wage garnishment regulations contained in 31 CFR 285.11, promulgated by Treasury, which allow Federal agencies to collect debts from a debtor's non-Federal pay by means of administrative wage garnishment authorized by 31 U.S.C. 3720D, and in 5 CFR parts 581 and 582, promulgated by the Office of Personnel Management, which provides for garnishment orders for child support and/or alimony and commercial garnishment of federal employees' pay.

[FR Doc. 01–28693 Filed 11–19–01; 8:45 am]

BILLING CODE 7565–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8967]

RIN 1545–AY88

Definition of Private Business Use

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document amends the final regulations on the definition of private business use applicable to tax-exempt bonds issued by State and local governments. The amendments provide that certain arrangements do not result in private business use if the term of the use does not exceed 50, 100 or 200 days, as applicable.

DATES: *Effective Date:* These regulations are effective November 20, 2001.

Applicability Date: For dates of applicability, see § 1.141–15.

FOR FURTHER INFORMATION CONTACT: Michael P. Brewer at (202) 622–3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 103(a) of the Internal Revenue Code (Code) provides that, generally, interest on any State or local bond is not included in gross income. However, this exclusion does not apply to any private activity bond that is not a qualified bond.

Under section 141, a bond is a private activity bond if it is issued as part of an issue that meets either the private business use test and the private security or payment test, or the private loan financing test.

The private business use test is met if more than 10 percent of the proceeds of an issue are to be used for any private business use. Section 141(b)(6)(A) defines the term *private business use* as use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit. For this purpose, use as a member of the general public is not taken into account.

Section 1.141–3 provides guidance regarding the private business use test. Generally, the private business use test is met only if a nongovernmental person has special legal entitlements to use the financed property under an arrangement with the issuer. The existing regulations provide the following three special rules for use by nongovernmental persons under short-term arrangements:

1. Section 1.141–3(c)(3) states that an arrangement is not treated as general

public use if the term of the use under the arrangement, including all renewal options, is greater than 180 days.

2. Section 1.141–3(d)(3)(i) provides that certain arrangements are not private business use if the term of the use under the arrangement, including all renewal options, is not longer than 90 days.

3. Section 1.141–3(d)(3)(ii) provides that certain arrangements are not private business use if the term of the use under the arrangement, including all renewal options, is not longer than 30 days.

Section 1.141–3(f) contains examples that illustrate these special rules.

Explanation of Provisions

Comments have been received requesting that the regulations provide for additional flexibility in structuring short-term arrangements with nongovernmental persons. For example, commentators have requested that the 180-day, 90-day, and 30-day rules of § 1.141–3 be changed to accommodate six-month, three-month, and one-month arrangements, respectively (i.e., arrangements with terms of use based on months that exceed 30 days). This Treasury decision adopts this suggested modification by amending § 1.141–3(c)(3), (d)(3) and (f) to change all references to 180 days, 90 days, and 30 days to 200 days, 100 days, and 50 days, respectively.

Effective Dates

The changes made by this Treasury decision apply to any bond sold on or after November 20, 2001. The changes made by this Treasury decision may be applied by issuers to any bond outstanding on November 20, 2001 to which § 1.141–3 applies.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because no notice of proposed rulemaking is required, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this final regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these final regulations are Bruce M. Serchuk and Michael P. Brewer, Office of Chief Counsel (TE/GE), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

§ 1.141–3 [Amended]

Par. 2. In the list below, for each paragraph indicated in the left column, remove the words indicated in the middle column from wherever they appear in the paragraph, and add the words indicated in the right column:

Paragraph	Remove (days)	Add (days)
1.141–3(c)(3), first sentence of introductory text	180	200
1.141–3(d)(3)(i)(A)	90	100
1.141–3(d)(3)(ii)(A)	30	50
1.141–3(f) *Example 10*, penultimate sentence	180	200
1.141–3(f) *Example 12*, third sentence (twice)	180	200
1.141–3(f) *Example 13*, fifth sentence	180	200
1.141–3(f) *Example 15*, fourth sentence	90	100
1.141–3(f) *Example 16(i)*, last sentence	30	50

Par. 3. Section 1.141–15 is amended as follows:

1. Paragraph (b) is redesignated (b)(1).

2. A paragraph heading for newly designated paragraph (b)(1) is added.

3. Paragraph (b)(2) is added.

The additions read as follows:

§ 1.141–15 Effective dates.

* * * * *

(b) *Effective Dates*—(1) *In general.*

* * *

(2) *Certain short-term arrangements.* The provisions of § 1.141–3 that refer to arrangements for 200 days, 100 days, or 50 days apply to any bond sold on or after November 20, 2001 and may be applied to any bond outstanding on November 20, 2001 to which § 1.141–3 applies.

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

Approved: November 14, 2001.

Mark Weinberger,

Assistant Secretary of the Treasury.

[FR Doc. 01–28998 Filed 11–19–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–01–203]

RIN 2115–AE47

Drawbridge Operation Regulations: Neponset River, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary final rule governing the operation of the Granite Avenue Bridge, mile 2.5, across the Neponset River between Boston and Milton, Massachusetts. This temporary rule will allow the bridge to remain in the closed position from November 19, 2001 through February 22, 2002. This

temporary rule is necessary to facilitate necessary structural repairs at the bridge.

DATES: This temporary rule is effective from November 19, 2001 through February 22, 2002.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the First Coast Guard District Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364.

FOR FURTHER INFORMATION CONTACT: Mr. John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM and for making this regulation effective in less than 30 days after publication in the **Federal Register**.

This closure is not expected to have any impact on navigation because there have been no requests to open this bridge during the effective date of this closure for the past five years. Vessel traffic that uses this bridge is comprised of recreational vessels that are normally in storage during the winter months. Accordingly, an NPRM was considered unnecessary and any delay in the rule's effective date is considered contrary to the public interest because this work is necessary maintenance that must be performed without undue delay to assure safe, reliable operation of the bridge.

Background and Purpose

The Granite Avenue Bridge has a vertical clearance in the closed position of 6 feet at mean high water and 16 feet at mean low water. The existing drawbridge operating regulations listed at 33 CFR 117.611 require the bridge to open on signal, from May 1 through October 31, 6 a.m. to 12 midnight. At all other times the bridge shall open on signal if at least a one-hour notice is given.

The bridge owner, Massachusetts Highway Department, requested a temporary rule change to facilitate structural maintenance and replacement of the bridge roadway deck at the bridge.

This temporary rule will allow the bridge to remain in the closed position from November 19, 2001 through February 22, 2002. The Coast Guard believes this rulemaking is reasonable because navigation should not be impacted since there have been no requests to open the Granite Avenue Bridge November through February during the past five years.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; Feb. 26, 1979). The Coast Guard expects the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the bridge has not received any requests to open during the requested closure period for the past five years.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612) we considered whether this temporary final rule would have a significant economic impact on a substantial number of small entities. "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 less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This conclusion is based on the fact that the bridge has not received any requests to open during the requested closure period for the past five years.

Collection of Information

This temporary final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this temporary final rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this temporary final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this temporary final rule and concluded that, under Section 2.B.2., Figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this temporary final rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found not to have a significant effect on the environment. A written "Categorical Exclusion Determination" is not required for this temporary final rule.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have 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.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out 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. 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 November 19, 2001 through February 22, 2002, in § 117.611, paragraph (a) is temporarily suspended and a new paragraph (c) is added to read as follows:

§ 117.611 Neponset River.

* * * * *

(c) The Granite Avenue Bridge need not open for the passage of vessel traffic.

Dated: November 8, 2001.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 01–28966 Filed 11–19–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–192]

RIN 2115–AA97

Safety and Security Zones; LPG Transits, Portland, Maine Marine Inspection Zone and Captain of the Port Zone

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing safety and security zones in the Captain of the Port, Portland, Maine zone, 1 mile ahead, 1/2 mile astern, and 1000-yards on either side of any vessel capable of carrying Liquefied Petroleum Gas (LPG). This rulemaking also establishes safety and security zones of 500 yards around any LPG vessel while it is moored at the LPG receiving facility located on the Piscataqua River in Newington, New Hampshire. Entry or movement within these zones by any vessel of any description, without the express permission of the Captain of the Port, Portland, Maine or his authorized patrol representative, is strictly prohibited.

DATES: This rule is effective from November 9, 2001 through June 21, 2002.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Marine Safety Office Portland, Maine, 103 Commercial Street, Portland, Maine between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) W. W. Gough, Chief, Ports and Waterways Safety Branch, Port Operations Department, Captain of the Port, Portland, Maine at (207) 780–3251.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Due to the catastrophic nature and extent of damage realized from terrorist attacks on the World Trade Center and Pentagon on September 11, 2001 this rulemaking is urgently necessary to protect the national security interests of the United States against future potential terrorist strikes against civilian targets. National security and intelligence officials warn that future terrorist attacks against civilian targets are possible. Due to the flammable nature of Liquefied Petroleum Gas (LPG) and the potential impact the explosion of an LPG vessel would have on Portsmouth Harbor and the surrounding area, the delay inherent in the NPRM process is contrary to public interest insofar as it would render LPG vessels in the Captain of the Port, Portland, Maine zone vulnerable to subversive activity, sabotage or attack. The delay inherent in the NPRM process is also unnecessary since this rulemaking is needed to protect the safety of the vessels, persons and others in the maritime community from the hazards associated with the transit and limited maneuverability of a large tank vessel.

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**. The measures contemplated by the rule are intended to prevent possible terrorist attacks against LPG vessels, and to protect other vessels, waterfront facilities, the public and the Portsmouth Harbor and surrounding areas on the Piscataqua River from potential sabotage or other subversive acts, accidents or other causes of a similar nature. In addition, the zones protect persons, vessels and others in the maritime community from the hazards associated with the transit and limited maneuverability of a large tank vessel. Immediate action is required to accomplish these objectives. Any delay in the effective date of this rule is impracticable and contrary to the public interest. These zones should have minimal impact on the users of the Captain of the Port, Portland, Maine zone, Bigelow Bight, Portsmouth Harbor and the Piscataqua River, as LPG vessel transits are infrequent. Vessels have ample water to transit around the zones while vessels are transiting in Bigelow Bight, Portsmouth Harbor and the Piscataqua River. The zones established while the vessel is transiting are moving safety and security zones, allowing vessels to transit ahead, behind, or after passage of an LPG vessel. Public notifications will be made prior to an LPG transit via local notice to mariners and marine information broadcasts.

Background and Purpose

On September 11, 2001, two commercial aircraft were hijacked from Logan Airport in Boston, Massachusetts, and flown into the World Trade Center in New York, New York, inflicting catastrophic human casualties and property damage. A similar attack was conducted on the Pentagon on the same day. National security and intelligence officials warn that future terrorist attacks are likely. Due to these heightened security concerns, safety and security zones are prudent for LPG tank vessels, which may be likely targets of terrorist attacks due to the flammable nature of LPG and the serious impact on the Port of Portsmouth, New Hampshire and surrounding areas that may be incurred if an LPG vessel was subjected to a terrorist attack.

This rulemaking establishes safety and security zones in a radius around LPG vessels while the vessels are moored at the SEA–3, Inc. LPG receiving facility on the Piscataqua River in Newington, New Hampshire. It also creates a moving safety and security zone any time an LPG vessel is within Captain of the Port, Portland, Maine zone, as defined in 33 CFR 3.05–15, in the internal waters of the United States and the navigable waters of the United States. Under the Ports and Waterways Safety Act, navigable waters of the United States includes all waters of the territorial sea of the United States as described in Presidential Proclamation No. 5928 of December 27, 1988. This Presidential Proclamation declared that the territorial sea of the United States extends to 12 nautical miles from the baselines of the United States determined in accordance with international law. This regulation establishes safety and security zones with identical boundaries covering the following areas of the Portland, Maine Marine Inspection Zone and Captain of the Port, Zone: (a) All waters of the Piscataqua River within a 500-yard radius of any Liquefied Petroleum Gas vessel while it is moored at the SEA 3, Inc. LPG receiving facility on the Piscataqua River, Newington, New Hampshire; and (b) except as provided in paragraph (a) of this section, in the waters of the Portland, Maine Marine Inspection Zone and Captain of the Port, Zone, all waters one mile ahead, one half mile astern, and 1000-yards on either side of any Liquefied Petroleum Gas vessel.

This rulemaking also temporarily suspends a safety zone for transits of tank vessels carrying Liquefied Petroleum Gas in Portsmouth Harbor, Portsmouth, New Hampshire. Title 33

CFR 165.103 currently provides for safety zones during the transit of loaded LPG vessels as follows: the waters bounded by the limits of the Piscataqua River Channel and extending 1000-yards ahead and 500-yards astern of tank vessels carrying LPG vessel Liquefied Petroleum Gas while the vessel transits Bigelow Bight, Portsmouth Harbor, and the Piscataqua River to the LPG receiving facility at Newington New Hampshire until the vessel is safely moored and while the vessel transits outbound from the receiving facility through the Piscataqua River, Portsmouth Harbor and Bigelow Bight until the vessel passes the Gunboat Shoal Lighted Bell Buoy "1" (LLNR 185). This safety zone recognizes the safety concerns with transits of large tank vessels, but is inadequate to protect LPG vessels from possible terrorist attack, sabotage or other subversive acts. National security and intelligence officials warn that future terrorist attacks against civilian targets may be anticipated. Due to the flammable nature of LPG vessels and impact the ignition of this cargo would have on Portsmouth Harbor, areas along the Piscataqua River and surrounding areas, increased protection of these vessels is necessary. In comparison to 33 CFR § 165.103, this rulemaking provides increased protection for LPG vessels as follows: it establishes 500-yard safety and security zones around LPG vessels while moored at the LPG receiving facility on the Piscataqua River, Newington, New Hampshire; and it provides continuous protection for LPG vessels 1 mile ahead, ½ mile astern, and 1000-yards on each side of LPG vessels anytime a vessel is within the waters of the Portland, Maine Marine Inspection Zone and Captain of the Port Zone rather than limiting the protection to vessels carrying LPG and which are transiting to and from the facility. It also extends the zones to 1000 yards on either side of the vessel rather than limiting the zone to the limits of the Piscataqua River Channel. The increased protection provided in this rulemaking also recognizes the safety concerns associated with an unloaded LPG vessel. 33 CFR § 165.103 only establishes safety zones around loaded LPG tank vessels or while the vessel is transferring its cargo. This rulemaking establishes safety and security zones around any LPG vessels, loaded or unloaded, any time a LPG vessel is located in the Portland Marine Inspection Zone and Captain of the Port Zone, including the internal waters and out to 12 nautical miles from the baseline of the United States. These zones provide necessary protection to unloaded vessels, which continue to pose a safety/security hazard. This rulemaking also recognizes the continued need for safety zones around LPG vessels, which are necessary to protect persons, facilities, vessels and others in the maritime community, from the hazards associated with the transit and limited maneuverability of a large tank vessel.

No person or vessel may enter or remain in the prescribed safety and security zones at any time without the permission of the Captain of the Port, Portland, Maine. Each person or vessel in a safety and security zone shall obey any direction or order of the Captain of the Port, Portland, Maine. The Captain of the Port, Portland, Maine may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port, Portland, Maine. These regulations are issued under authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225 and 1226.

Any violation of any safety or security zone described herein, is punishable by, among others, civil penalties (not to exceed $25,000 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than $100,000), in rem liability against the offending vessel, and license sanctions. In addition, this rulemaking provides for increased protection on each side of the vessel, extending the protection from the limits of the navigable channel, to 1000 yards on each side of any LPG vessel. This safety and security zone also protects vessels which are not loaded but which may continue to present a safety concern due to ignition of the vapor material.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary for the following reasons: This Security zone encompasses only a portion of the Portland Maine Marine Inspection Zone and Captain of the Port, Zone around the transiting LPG carrier, allowing vessels to safely navigate around the zones without delay and maritime advisories will be made to advise the maritime community of the Security zone when in effect.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons addressed under the Regulatory Evaluation above, the Coast Guard expects the impact of this regulation to be minimal and certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 13132 and have determined that this rule does not have sufficient federalism implications for Federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An Unfunded Mandate is a regulation that requires a state, local or tribal government or the private sector to incur costs without the Federal government's having first provided the funds to pay those costs. This rule will not impose an Unfunded Mandate.

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 section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity and reduce burden.

Protection of Children

The Coast Guard has 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. A rule with tribal implications has a substantial direct effect on one or more Indian tribe, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that, under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation.

Energy Effects

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

List of Subjects in 33 CFR Part 165

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

Regulation

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Suspend 33 CFR 165.103 from November 9, 2001 through June 21, 2002.

3. From November 9, 2001 through June 21, 2002, add temporary § 165.T01–192 to read as follows:

§ 165.T01–192 Safety and Security Zones: LPG Carriers transits in Portland Marine Inspection Zone and Captain of the Port Zone, Portsmouth Harbor, Portsmouth New Hampshire.

(a) *Location.* The following areas are safety and security zones: (1) All waters of the Piscataqua River within a 500-yard radius of any Liquefied Petroleum Gas vessel while it is moored at the SEA 3, Inc. LPG receiving facility on the Piscataqua River, Newington, New Hampshire.

(2) Except as provided in paragraph (a)(1) of this section, in the internal waters of the United States and the navigable waters of the United States, as defined by 33 U.S.C. 1222(5), that are within the of the Portland, Maine, Marine Inspection Zone and Captain of the Port Zone, all waters one mile ahead, one half mile astern, and 1000-yards on either side of any Liquefied Petroleum Gas vessel.

(b) *Regulations.* (1) In accordance with the general regulations in §§ 165.23 and 165.33 of this part, entry into or movement within this zone is prohibited unless previously authorized by the Captain of the Port (COTP), Portland, Maine.

(2) All persons and vessels shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels. Emergency response vessels are authorized to move within the zone, but must abide by restrictions imposed by the Captain of the Port, Portland, Maine.

Dated: November 8, 2001.

M. P. O'Malley,

Commander, U.S. Coast Guard, Captain of the Port, Portland, ME.

[FR Doc. 01–28967 Filed 11–19–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 169

[USCG–1999–5525]

RIN 2115–AF82

Mandatory Ship Reporting Systems

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard adopts, as final, with changes, its interim rule published on June 1, 1999. The interim rule implemented two mandatory ship reporting systems in an effort to reduce the threat of ship collisions to endangered northern right whales (also known as North Atlantic right whales). The final rule clarifies reporting requirements.

DATES: This final rule is effective December 20, 2001.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–1999–5525 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions regarding this rule, contact Lieutenant Alan Blume, Office of Vessel Traffic Management (G–MWV), Coast Guard, telephone 202–267–0550623. For questions on viewing or submitting material to the docket, contact Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Regulatory History

On June 1, 1999, the Coast Guard published an interim rule entitled Mandatory Ship Reporting Systems in the **Federal Register**. In that publication we solicited comments (64 FR 29229). On June 9, 1999, we corrected the end date of the comment period to read August 2, 1999. (64 FR 31037). We received four letters commenting on the interim rule. No public hearing was requested, and none was held.

Background and Purpose

In response to the endangered status of northern right whales (also known as

North Atlantic right whales), the United States and the International Maritime Organization (IMO) have taken steps to identify and implement measures to reduce the likelihood of collisions between ships and whales. These steps have addressed the problem on three fronts: mariner awareness, identification of whale movements, and efforts to promote recovery of the whale species.

In spite of these efforts, ship collisions with endangered right whales continue to occur. Mandatory ship reporting systems help protect these endangered whales by providing direct communication of current sighting information to ships and their operators in high risk areas.

Because right whales frequent two distinct areas off the Atlantic coast of the United States, we established two reporting systems. The northeastern reporting system is located mainly off the coast of Massachusetts and comprises the right whale's main feeding grounds. The southeastern reporting system is located off the coasts of Florida and Georgia, and encompasses the only known calving grounds for the right whale.

Right whales aggregate to feed and calve in five seasonal habitats along the eastern seaboard from Florida to Nova Scotia: (a) Off the southeastern United States; (b) in the Great South Channel, Massachusetts; (c) in Massachusetts and Cape Cod Bays, Massachusetts; (d) in the lower Bay of Fundy, Canada; and (e) over the southern Nova Scotian shelf, Canada (notably those areas referred to as Browns Bank and Roseway Basin). Portions of these areas have been designated "critical habitats" for northern right whales or as national marine sanctuaries under United States domestic law and as conservation areas under Canadian law. Northern right whale sightings also occur outside these areas as the whales migrate from one area to the other area. However, there is not enough information about the migratory corridor to establish additional reporting systems for these areas.

The interim rule created a new part 169 in Title 33 of the Code of Federal Regulations (CFR) entitled "Ship Reporting Systems." Subpart A established general requirements for all ship reporting systems. Subpart B established specific requirements for two mandatory ship reporting systems. The statutory authority for this rule is 33 U.S.C. 1230(d), which is an amendment to Section 11 of the Ports and Waterways Safety Act (PWSA)(33 U.S.C. 1230(d)). Violators are subject to the penalties authorized under the PWSA.

These mandatory ship reporting systems were adopted by the IMO, and the Maritime Safety Committee (MSC) at its 70th session December 7, 1998, (Resolution MSC.85(70)), it was agreed that these systems would come into force no sooner than six months after adoption. The effective date agreed to by the IMO was July 1, 1999. It was expected that the United States' actions to put a reporting program in place would be completed by that date.

Discussion of Comments and Changes

The Coast Guard received four letters in response to the rule. One comment did not call for any change in the interim rule. It stated that the mandatory ship reporting systems should help decrease the probability of vessel-related right whale deaths and commended the Coast Guard for its efforts to develop and support these systems. The other comments are summarized below under two headings:

Comments Resulting in a Change to the Rule

One comment stated that the interim rule is not clear on whether this rule is based on a vessel's U.S. regulatory tonnage or international tonnage. The Coast Guard agrees and has added a definition of gross tons to § 169.5 to make it clear that the regulations are based on the tonnage assigned by the flag state administrator.

Two comments indicated that the interim rule is not clear as to whether or not a barge would be required to report. The comments contend that a barge exceeding 300 gross tons may be towed by a tug of less than 300 gross tons. Only self-propelled ships greater than 300 gross tons need to report. In response to this comment, the Coast Guard has added a definition of "self-propelled" to § 169.5 and inserted self-propelled in § 169.125 for clarification.

Comments Addressed Without a Change to the Rule

One comment raised an objection to the regulatory process used for this rulemaking. It stated that the Coast Guard circumvented the regulatory process by engaging in rulemaking with the International Maritime Organization without giving proper notice to the public, that the public was denied an opportunity to comment before the interim rule become effective because no notice of proposed rulemaking (NPRM) was published, and that prior notice did not appear in the Regulatory Agenda.

As authorized by 5 U.S.C. 553(b)(B) and as discussed in the interim rule, the Coast Guard found good cause for not publishing an NPRM. The delay associated with an NPRM made it impracticable and contrary to the public interest in protecting these whales, so the Coast Guard proceeded directly to an interim rule with request for comments. Furthermore, the Coast Guard conducted a public Shipping Coordinating Committee meeting before and after the sessions of the IMO. The Department of State published notices of these public meetings in the **Federal Register**. (62 FR 62396, November 21, 1997; 63 FR 33122, June 17, 1998). Because internal clearance procedures were not completed in time to include this rulemaking in the 1999 spring issue of the Regulatory Agenda, the first notice in the Agenda appeared after the interim rule had been published (64 FR 64739, November 22, 1999).

Two comments stated that the interim rule is not clear as to whether or not a report is required by a ship leaving a port within one of the areas. One comment was concerned about the need for a report if a vessel moved within a reporting area. Section 169.130 clearly states a vessel is required to report "upon entering the area" covered by a ship reporting system. A vessel leaving a port within a reporting area is not "entering the area" and no report is required.

One comment referred to the mandatory use of INMARSAT C and the charges associated with use of that system. This rule does not require a ship to install or use INMARSAT C. While the Coast Guard prefers that vessels use INMARSAT C, the rule provides several options for reporting. Operators may choose the appropriate option for their ship. For commercial ships, the system options are already available, and in most cases required so the vessel can meet its obligations under other regulations. The Coast Guard will assume the costs associated with the INMARSAT transmissions.

One comment recommended the Coast Guard access data already available in the Automated Mutual Assistance Vessel Rescue (AMVER) database rather than require reporting. The AMVER database contains proprietary information, which is only accessible for search and rescue purposes. The Coast Guard cannot legally access that database to replace this report. In addition, such use fails to meet the intent of this rulemaking. First, the Coast Guard needs notification at the time a vessel enters the area. Second, the Coast Guard wants to use that notice to exchange information. Projected arrival times or intended routes cannot take the place of real-time notifications.

One comment stated that the ship's officers were very aware of the possibility of ship collisions with northern right whales and are already vigilant to avoid striking whales and that further awareness could be better accomplished by identifying the two special areas on the applicable nautical charts. The Coast Guard agrees with the spirit of this comment. While many bridge-watch personnel are alert to avoid striking whales, others need to be made aware of this issue. This is the purpose of the information we provide in response to the required reports. Since the publication of the interim rule, National Oceanic and Atmospheric Administration (NOAA) nautical charts have been updated to reflect these ship reporting system areas through either notices to mariners corrections or the issuance of new chart editions.

One comment indicated that since this rule is written to meet the requirements in an IMO resolution, it should only apply to vessels certified under the International Convention for Safety of Life at Sea (SOLAS). The Coast Guard disagrees. The United States made the initial proposal applying the reporting requirement to vessels of 300 gross tons or greater, with no distinction made with regard to SOLAS or non-SOLAS vessels. IMO adopted the resolution, which was necessary to have the areas we established recognized by the international community. The IMO resolution also recognized the reporting requirement adopted by this regulation. This action by the Maritime Safety Committee reflected the international community's concern for protecting right whales.

One comment stated that there is no practicable benefit for non-seagoing vessels to report. The Coast Guard disagrees because any self-propelled ship of 300 gross tons or greater that is entering one of the reporting areas, benefits from the information exchanged. They are large enough to harm a whale and can use the information to plan their route. Also, both reporting areas include waters transited by non-seagoing vessels.

One comment recommends a ship be allowed to make a report before entering the area, rather than when entering. For example, a ship departing a loading dock in New York City should be able to make a report before getting underway. The Coast Guard disagrees with this comment because the intent of the rulemaking is to exchange information when the ship enters the reporting area. As noted, if the port is within a reporting area, no report is required under § 169.130.

One comment suggested that reports required by 33 CFR 160, subpart C, should be accepted as meeting the requirements of this rule. The Coast Guard disagrees with this comment. The report mentioned is an advance notice that is required for certain cargoes bound for a U.S. port. Not all ships make that report and it will not meet the intent of exchanging information when the ship enters the reporting area.

One comment expressed concern regarding the equipment and logistics of using either voice radio communication or telephone communication. The comment recommends allowing the use of a fax (facsimile machine) for this report. The Coast Guard disagrees because ships' operators use all of the methods allowed by this rulemaking on a routine basis, including email messages by INMARSAT.

Other Changes

We made a few technical and clarification changes to the rule that were not based on comments. The authority citation was amended to include CFR authority and to limit statutory authority to the U.S.C. citation. The note for § 169.110 was amended to incorporate the section number and to reflect the removal of 50 CFR 223.32. The wording in § 169.120 was changed to clarify the annual, consecutive November through April dates of the reporting period. In § 169.135, the order of the reference to the table in § 169.140 was changed. Finally, a reference to the section number for the table in § 169.140 was added, along with a reference to the email addresses and telex numbers, and the table was amended to include an entry for the INMARSAT number and to clarify the wording of the information required.

Regulatory Evaluation

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

For the following reasons, the Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary:

Benefits. Generally, mandatory ship reporting systems enhance mariners' awareness of the presence of northern right whales and provide them with pertinent information to avoid collisions. The increased awareness may reduce the risk of ship collisions with endangered northern right whales.

Private industry costs. The reporting requirement uses the mariner's existing equipment and will not add to the expenses of the owner/operator. The Coast Guard has assumed the cost associated with INMARSAT C calls to the email or telex numbers provided. (Current email addresses and telex numbers are published annually in the U.S. Coast Pilot.) The average communications process (transmission/reception) is five minutes. Existing personnel will be utilized to make this communication. Consequently, the use of INMARSAT C to report will not mean any additional financial costs to the impacted companies. The cost of the issuing advisory information will be borne by the Coast Guard and the National Marine Fisheries Service (NMFS). Minimal ship maneuvers are expected in the avoidance of whales.

Government costs. The Coast Guard and NMFS estimated the cost of this program to be approximately $208,000 for Fiscal Year 1999 and $176,000 annually for future years. The burden of this regulation will be split equally between the Coast Guard and NMFS. Therefore, it is estimated that the cost to the Coast Guard would be $104,000 for the first year and $88,000 annually thereafter. Coast Guard personnel are not utilized; a private contractor has been hired to operate and maintain facilities.

The Coast Guard will bear the burden associated with relaying non-INMARSAT–C reports through Coast Guard radio stations. Ships not equipped with INMARSAT–C are required to report in standard format to the shore-based authority, either through narrow band direct printing (SITOR) or HF, MF, or VHF-voice communication systems.

This will add to the workload of staff currently assigned to the Coast Guard unit, but will not create an additional billet. Therefore, there is no additional expense.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard 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.

This rulemaking will not impose a significant cost on any entity, large or small. Existing personnel will make the required communications in the course of their normal responsibilities. Consequently, companies will not incur additional financial costs.

The nature of the reports that are made is not such that a significant burden will be imposed on anyone. The Coast Guard will incur the cost with INMARSAT–C transmissions under this program. Reports will be accepted in many different forms to allow for the flexibility that many small entities require. It is anticipated very few small entities operate ships of 300 gross tons or greater. The Coast Guard has attempted to make compliance with this requirement as simple as possible.

Therefore, the Coast Guard still 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.

Collection of Information

This rule provides for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). No comments regarding the collection of information were received during the interim rule comment period.

The collection involves ships reporting by radio to a shore-based authority when entering the area covered by the reporting system. The ships will receive, in return, an advisory on protection of whales and sources of additional information.

The northern right whale is an endangered species. Mortality rates attributed to ship strikes account for up to 50 percent of recorded fatalities. The purpose of establishing mandatory ship reporting systems is to reduce the likelihood of collisions between ships and northern right whales in the areas established with critical habitat designation.

Reports will be used to record ship traffic in the reporting systems and provide information to minimize interaction with northern right whales.

All ships of 300 gross tons or greater that transit the reporting systems are required to participate in the reporting systems, except government vessels exempted from reporting by regulation V/8–1(c) of the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS).

We estimate that this information collection would affect approximately 367 respondents annually.

The frequency of response is on occasion. Owners or operators are required to respond only when entering a mandatory reporting area.

The cost burden of response is $8,448 per year.

Number of transmissions: 4,400.

Hour burden per transmission: .08 hours.

Estimated salary rate for affected personnel $24 per hour.

4,400 transmissions per year X .08 hours per transmission X

$24 per hour = $8,448 per year.

The reporting burden is 352 hours to industry.

As required by 44 U.S.C. 3507(d), the Coast Guard submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information. OMB has approved the collection; the corresponding approval number from OMB is OMB Control Number 2115–0640. You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Federalism

The Coast Guard has analyzed this rule under Executive Order 13132 and has determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

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 regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, the Coast Guard does discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that under figure 2–1, paragraphs (34)(i) of Commandant Instruction M16475.lC, this rule establishes two mandatory ship reporting systems and is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 169

Endangered and threatened species, Environmental protection, Mandatory ship reporting, Marine mammals, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Telecommunications, Vessels.

Accordingly, the interim rule amending 33 CFR chapter I by adding a new part 169 to subchapter P which was published at 64 FR 29234–35 on June 1, 1999, is adopted as a final rule with the following changes:

PART 169—SHIP REPORTING SYSTEMS

1. The authority citation for part 169 is revised to read as follows:

Authority: 33 U.S.C. 1230(d). 49 CFR 1.46.

2. Revise § 169.5 to read as follows:

§ 169.5 What terms are defined?

Gross tons means vessel tonnage measured in accordance with the method utilized by the flag state administration of that vessel.

Mandatory ship reporting system means a ship reporting system that requires the participation of specified vessels or classes of vessels, and that is established by a government or governments after adoption of a proposed system by the International Maritime Organization (IMO) as complying with all requirements of regulation V/8–1 of the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS), except paragraph (e) thereof.

Self-propelled ships means ships propelled by mechanical means.

Shore-based authority means the government appointed office or offices that will receive the reports made by ships entering each of the mandatory ship reporting systems. The office or offices will be responsible for the management and coordination of the system, interaction with participating ships, and the safe and effective operation of the system. Such an authority may or may not be an authority in charge of a vessel traffic service.

3. In § 169.100, revise the note at the end of the section to read as follows:

§ 169.100 What mandatory ship reporting systems are established by this subpart?

* * * * *

Note to § 169.100: 50 CFR 224.103(c) contains requirements and procedures concerning northern right whale approach limitations and avoidance procedures.

4. Revise § 169.120 to read as follows:

§ 169.120 When is the southeastern reporting system in effect?

The mandatory ship reporting system in the southeastern United States operates during the period beginning on November 15 each year through April 16 of the following year.

5. Revise § 169.125 to read as follows:

§ 169.125 What classes of ships are required to make reports?

Each self-propelled ship of 300 gross tons or greater must participate in the reporting systems, except government ships exempted from reporting by regulation V/8–1(c) of SOLAS. However, exempt ships are encouraged to participate in the reporting systems.

6. Revise § 169.135(a) to read as follows:

§ 169.135 How must the reports be made?

(a) A ship equipped with INMARSAT C must report in IMO standard format as provided in § 169.140 in table 169.140.

* * * * *

7. Revise § 169.140 to read as follows:

§ 169.140 What information must be included in the report?

Each ship report made to the shore-based authority must follow the standard reporting and format requirements listed in this section in table 169.140. Current email addresses and telex numbers are published annually in the US Coast Pilot.

TABLE 169.140—REQUIREMENTS FOR SHIP REPORTS

Telegraphy	Function	Information required
Name of system	System identifier	Ship reporting system WHALESNORTH or WHALESSOUTH.
M	INMARSAT Number	Vessel INMARSAT number
A	Ship	The name, call sign or ship station identity, IMO number, and flag of the vessel.
B	Date and time of event	A 6-digit group giving day of month (first two digits), hours and minutes (last four digits).
E	True course	A 3-digit group indicating true course.
F	Speed in knots and tenths of knots	A 3-digit group.
H	Date, time and point of entry into system	Entry time expressed as in (B) and entry position expressed as-(1) a 4-digit group giving latitude in degrees and minutes suffixed with N(north) or S (south) and a 5-digit group giving longitude in degrees and minutes suffixed with E (east) or W (west); or (2) True bearing (first 3 digits) and distance (state distance) in nautical miles from a clearly identified landmark (state landmark)
I	Destination and expected time of arrival	Name of port and date time group expressed as in (B)
L	Route information	Intended track.

Dated: September 7, 2001.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard. Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 01–28964 Filed 11–19–01; 8:45 am]

BILLING CODE 4910–75–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–7105–6]

Availability of Federally-Enforceable State Implementation Plans for All States

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Section 110(h) of the Clean Air Act, as amended in 1990 (the "Act"), requires EPA by November 15, 1995, and every three years thereafter, to assemble the requirements of the Federally-enforceable State Implementation Plans (SIPs) in each State and to publish notice in the **Federal Register** of the availability of such documents. This notice of availability fulfills the three-year requirement of making these SIP compilations for each State available to the public.

EFFECTIVE DATE: November 20, 2001.

ADDRESSES: You may contact the appropriate EPA Regional Office regarding requirements of applicable implementation plans for each State in

that region. The list below identifies the appropriate regional office for each state. The SIP compilations are available for public inspection during normal business hours at the appropriate EPA Regional Office. If you want to view these documents, you should make an appointment with the appropriate EPA office and arrange to review the SIP at a mutually agreeable time.

Region 1: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Regional Contact: Donald Cooke (617/918–1668) EPA, Office of Ecosystem Protection (CAQ), Suite 1100, One Congress Street, Boston, MA 02114–2023.

See also: *http://www.epa.gov/region1/topics/air/sips.html.*

Region 2: New Jersey, New York, Puerto Rico, and Virgin Islands.

Regional Contact: Paul Truchan (212/637–3711) EPA, Air Programs Branch, 290 Broadway, New York, NY 10007–1866.

Region 3: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.

Regional Contact: Harold A. Frankford (215/814–2108) EPA, Office of Air Programs (3AP20), Air Protection Division, 1650 Arch Street, Philadelphia, PA 19103.

See also: *http://www.epa.gov/reg3artd/airregulations/sip.htm.*

Region 4: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

Regional Contact: Sean Lakeman (404/562–9043) EPA, Air Planning Branch, 61 Forsyth Street, S.W., Atlanta, GA 30303.

See also: *http://www.epa.gov/region4/air/sips/index.html.*

Region 5: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Regional Contacts: Charles Hatten for the States of Michigan, Minnesota and Wisconsin (312/886–6031); Jeremiah Hall (312/353–3503) for the States of Illinois, Indiana, and Ohio EPA, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, IL 60604–3507.

See also: *http://www.epa.gov/ARD-R5/sips/index.html.*

Region 6: Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

Regional Contact: Bill Deese (214/665–7253) EPA, Multimedia Planning and Permitting Division, Air Planning Section, (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, TX 75202–2733.

See also: *http://www.epa.gov/earth1r6/6pd/air/sip/sip.htm.*

Region 7: Iowa, Kansas, Missouri, and Nebraska.

Regional Contact: Evelyn VanGoethem (913–551–7659) EPA, Air, RCRA and Toxics Division, Air Planning and Development Branch, 901 N. 5th Street, Kansas City, KS 66101.

See also: *http://www.epa.gov/region07/program/artd/air/rules/fedapprv.htm.*

Region 8: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

Regional Contact: Laurie Ostrand (303/312–6437) EPA, Air and Radiation Program, Office of Partnership and Regulatory Assistance, 999 18th Street, Suite 300, Denver, CO 80202–2466.

Region 9: Arizona, California, Hawaii, Nevada, American Samoa, and Guam.

Regional Contact: Julie Rose (415/744–1184), and Cynthia Allen (415/744–1189) EPA, Air Division, AIR–4, 75 Hawthorne Street, San Francisco, CA 94105.

See also: *http://www.epa.gov/region9/air/sips/.*

Region 10: Alaska, Idaho, Oregon, and Washington.

Regional Contacts: Donna Deneen (206/553–6706) and Debra Suzuki (206) 553–0985) EPA, Office of Air Quality (OAQ 107), 1200 6th Avenue, Seattle, WA 98101.

See also: *http://www.epa.gov/r10earth/sips.htm.*

FOR FURTHER INFORMATION CONTACT: Donald Cooke, (617) 918–1668.

SUPPLEMENTARY INFORMATION:

Table of Contents

Availability of SIP Compilations

This notice identifies the appropriate EPA Regional Offices to which you may address questions of SIP availability and SIP requirements. In response to the 110(h) requirement following the 1990 Clean Air Act Amendments, the first notice of availability was published in the **Federal Register** on November 1, 1995 at 60 FR 55459. The second notice of availability was published in the **Federal Register** on November 18, 1998 at 63 FR 63986. This is the third notice of availability of the compilations of Federally-enforceable state implementation plans for each state.

In addition, for certain states, information on the content of EPA-approved SIPs is available on the Internet through the EPA Regional Web site. For those regions where such information is available, an address for this information is provided in the regional contacts list above.

What Is the Basis for This Notice

Section 110(h)(1) of the Clean Air Act mandates that not later than 5 years after the date of enactment of the Clean Air Act Amendments of 1990, and every three years thereafter, the Administrator shall assemble and publish a comprehensive document for each State setting forth all requirements of the applicable implementation plan for such State and shall publish notice in the **Federal Register** of the availability of such documents.

Section 110(h) recognizes the fluidity of a given State SIP. The SIP is a living document which can be revised by the State with EPA approval as necessary to address the unique air pollution problems in the State. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations. On May 31, 1972 (37 FR 10842), EPA approved, with certain exceptions, the initial SIPs for 50 states, four territories and the District of Columbia. [Note: EPA approved an additional SIP—for the Northern Mariana Islands—on November 10, 1986 (51 FR 40799)]. Since 1972, each State and territory has submitted numerous SIP revisions, either on their own initiative, or because they were required to as a result of various amendments to the Clean Air Act. This notice of availability informs the public that the SIP compilation has been updated to include the most recent requirements approved into the SIP. These approved requirements are Federally-enforceable.

What Is Being Made Available Under This Notice

The federally-enforceable SIP is indeed a complex document, containing both many regulatory requirements and non-regulatory items such as plans and inventories. Regulatory requirements include State-adopted rules and regulations, source-specific requirements reflected in consent orders, and in some cases, provisions in the enabling statutes. Following the 1990 Clean Air Act Amendments, the first section 110(h) SIP compilation availability notice was published on November 1, 1995 (61 FR 55459). At that time EPA announced the SIP compilations, comprised of the regulatory portion of each State SIP, were available at the EPA Regional Office serving that particular State. In general, the compilations made available in 1995 did not include the source-specific requirements or other documents and materials associated

with the SIP. With the second notice of availability in 1998, the source-specific requirements and the "non-regulatory" documents [*e.g.*, attainment plans, rate of progress plans, emission inventories, transportation control measures, statutes demonstrating legal authority, monitoring networks, etc.] were made available and will remain available for public inspection at the respective regional office listed in the **ADDRESSES** section above. If you want to view these documents, please make an appointment with the appropriate EPA Regional Office and arrange for a mutually agreeable time.

What Are the Documents and Materials Associated With the SIP

EPA-approved non-regulatory control measures, include control strategies (such as transportation control measures, local ordinances, state statutes, and emission inventories, or may include regulations provided on other sections of the State-specific subpart of part 52), which have been submitted for inclusion in the SIP by the state. These control measures must have gone through state rulemaking process and the public was given an opportunity to participate in the rulemaking. EPA also took rulemaking action on these control measures and those which have been EPA-approved or conditionally approved are listed along with any limitations on their approval, if any. Examples of EPA-approved documents and materials associated with the SIP include, but are not limited to, the following subject matter: SIP Narratives; PM_{10} Plans; CO Plans; Ozone Plans; Maintenance plans; Inspection and Maintenance (I/M) SIP's; Emissions Inventories; Monitoring Networks; State Statutes submitted for the purposes of demonstrating legal authority; Part D plans; Attainment demonstrations; Transportation control measures (TCM's); Committal measures; Contingency Measures; Non-regulatory & Non-TCM ControlMeasures; 15% Rate of Progress Plans; Emergency episode plans; Visibility plans. As stated above, the "non-regulatory" documents are available for public inspection at the appropriate EPA Regional Office.

Background

Relationship of National Ambient Air Quality Standards (NAAQS) to SIPs

EPA has established National Ambient Air Quality Standards (NAAQS) for six criteria pollutants, which are widespread common pollutants known to be harmful to human health and welfare. The present criteria pollutants are: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur oxides. See 40 CFR part 50 for a technical description of how the levels of these standards are measured and attained. State Implementation Plans provide for implementation, maintenance, and enforcement of the NAAQS in each state. Areas within each state that are designated nonattainment are subject to additional planning and control requirements. Accordingly, different regulations or programs in the SIP will apply to different areas. EPA lists the designation of each area at 40 CFR part 81.

What is a State Implementation Plan

The State Implementation Plan (SIP) is a plan for each State which identifies how that State will attain and/or maintain the primary and secondary National Ambient Air Quality Standards (NAAQS) set forth in section 109 of the Clean Air Act and 40 Code of Federal Regulations 50.4 through 50.12 and which includes federally-enforceable requirements. Each State is required to have a SIP which contains control measures and strategies which demonstrate how each area will attain and maintain the NAAQS. These plans are developed through a public process, formally adopted by the State, and submitted by the Governor's designee to EPA. The Clean Air Act requires EPA to review each plan and any plan revisions and to approve the plan or plan revisions if consistent with the Clean Air Act.

SIP requirements applicable to all areas are provided in section 110. Part D of title I of the Clean Air Act specifies additional requirements applicable to nonattainment areas. Section 110 and part D describe the elements of a SIP and include, among other things, emission inventories, a monitoring network, an air quality analysis, modeling, attainment demonstrations, enforcement mechanisms, and regulations which have been adopted by the State to attain or maintain NAAQS. EPA has adopted regulatory requirements which spell out the procedures for preparing, adopting and submitting SIP's and SIP revisions that are codified in 40 CFR part 51.

EPA's action on each State's SIP is promulgated in 40 CFR part 52. The first section in the subpart in 40 CFR part 52 for each State is generally the "Identification of plan" section which provides chronological development of the State SIP. Or if the state has undergone the new Incorporation by Reference format process (see 62 FR 27968, May 22, 1997), the identification of plan section identifies the State-submitted rules and plan elements which have been Federally approved. The goal of the State-by-State SIP compilation is to identify those rules under the "Identification of plan" section which are currently Federally-enforceable. In addition, some of the SIP compilations may include control strategies, such as transportation control measures, local ordinances, State statutes, and emission inventories, or may include regulations provided in other sections of the State-specific subpart of part 52. Some of the SIP compilations may not identify these other Federally-enforceable elements.

The contents of a typical SIP fall into three categories: (1) State-adopted control measures which consists of either rules/regulations or source-specific requirements (e.g., orders and consent decrees); (2) State-submitted "non-regulatory" components (e.g., attainment plans, rate of progress plans, emission inventories, transportation control measures, statutes demonstrating legal authority, monitoring networks, etc.); (3) additional requirements promulgated by EPA (in the absence of a commensurate State provision) to satisfy a mandatory section 110 or part D (Clean Air Act) requirement.

What Is Federally-Enforceable

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

You should note that, when States have submitted their most current State regulations for inclusion into Federally-enforceable SIPs, EPA will begin its review process of submittals as soon as possible. Until EPA approves a submittal by rulemaking action, State-submitted regulations will be State-enforceable only; therefore, State-enforceable SIPs may exist which differ from Federally-enforceable SIPs. As EPA approves these State-submitted regulations, the regional offices will continue to update the SIP compilations to include these applicable requirements.

Dated: November 14, 2001.

Christine Todd Whitman,

U.S. EPA Administrator.

[FR Doc. 01–28970 Filed 11–19–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[I.D. 110701C]

Notification of U.S. Shrimp Quota 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. shrimp quota allocation.

SUMMARY: NMFS announces that the 67–metric ton shrimp quota available for harvest by the United States in Division 3L of the NAFO Regulatory Area has been allocated.

DATES: The quota allocation is effective through December 31, 2001.

ADDRESSES: Information relating to NAFO fish quotas and the NAFO Conservation and Enforcement Measures is available from Jennifer L. Anderson at the NMFS Northeast Regional Office, One Blackburn Drive, Gloucester, Massachusetts 01930 (phone: 978–281–9226, fax: 978–281–9135, e-mail: jennifer.anderson@noaa.gov) and from NAFO on the World Wide Web at <http://www.nafo.ca≤.

FOR FURTHER INFORMATION CONTACT: Jennifer L. Anderson, 978–281–9226, or 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 and member nation quota allocations. At the 2000 NAFO Annual Meeting, the United States received allocations for several NAFO stocks, including an effort allocation for shrimp in NAFO Division 3M (only 1 vessel may fish for 100 days) and 67 metric tons of shrimp in NAFO Division 3L. NMFS published a notice summarizing the availability and procedures for harvesting these stocks (65 FR 71270, November 30, 2000), and that information is not repeated here.

U.S. Allocations

Expressions of interest in harvesting the U.S. allocation for 3M shrimp from the NAFO Regulatory Area were accepted from U.S. vessel owners in possession of a valid High Seas Fishing Compliance Act permit and from U.S. fishing interests intending to make use of vessels of other NAFO Contracting Parties under chartering arrangements. U.S. vessels were given first consideration and the 3M shrimp allocation was initially awarded to a U.S. vessel. However, the vessel subsequently chose to forgo the use of the allocation and no other expressions of interest were made on behalf of U.S. vessels.

NAFO regulations permit NAFO Contracting Parties to enter into chartering arrangements with other Contracting Parties to utilize shrimp fishing days and quotas. Because no additional expressions of interest were received from U.S. vessels, on June 22, 2001, Mayflower International, Ltd., was authorized by NMFS to make use of a chartering arrangement with the Republic of Estonia to fish the 2001 U.S. effort allocation for 3M shrimp. Due to the success of this operation, Mayflower International, Ltd., has requested a continuation of the chartering arrangement with the Republic of Estonia in order to harvest the U.S. 3L shrimp quota allocation.

NMFS did not announce that the U.S. 3L shrimp allocation was available to chartering arrangements in the **Federal Register** notice published on November 30, 2000. However, the NAFO Conservation and Enforcement Measures stipulate that charter arrangements are available to only one vessel per year. Because no U.S. vessels have expressed interest in this fishery, and because the NAFO regulations prohibit additional chartering arrangements for the 2001 fishing year, NMFS has awarded the U.S. 3L shrimp quota allocation to Mayflower International, Ltd. Final approval of this transfer is contingent upon a favorable vote from the NAFO Contracting Parties and strict adherence to the NAFO Conservation and Enforcement Measures by the chartering operation and the Government of the Republic of Estonia.

This arrangement will continue to provide an economic benefit to Mayflower International Ltd., and its employees, while at the same time maximizing the opportunity for the United States to enhance its fishing history for the 3L and 3M shrimp stocks. Mayflower International, Ltd., has also agreed to provide further information on the characteristics and economics of this fishery. This information may prove useful to future U.S. vessels interested in participating NAFO fisheries.

Dated: November 14, 2001.

John Oliver,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 01–28927 Filed 11–19–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 001121328-1041-02; I.D. 110801E]

Fisheries of the Northeastern United States; Scup Fishery; Commercial Quota Harvested for Winter II Period

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

ACTION: Commercial quota harvested for Winter II period.

SUMMARY: NMFS announces that the scup commercial quota available in the Winter II period to the coastal states from Maine to North Carolina has been harvested. Federally permitted commercial vessels may not land scup in these states for the remainder of the 2001 Winter II quota period (through December 31, 2001). Regulations governing the scup fishery require publication of this notification to advise the coastal states from Maine through North Carolina that the quota has been harvested and to advise Federal vessel permit holders and Federal dealer permit holders.

DATES: Effective 0001 hrs local time, November 20, 2001, through 2400 hrs local time, December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Jennifer L. Anderson, Fishery Management Specialist, (978) 281-9344.

SUPPLEMENTARY INFORMATION: Regulations governing the scup fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is allocated into three quota periods. The Winter II commercial quota (November through December) is distributed to the coastal states from Maine through North Carolina. The process to set the annual commercial quota and the seasonal allocation is described in § 648.120.

The total commercial quota for scup for the 2001 calendar year was initially set at 4,444,600 lb (2,016,037 kg)(66 FR 12902; March 1, 2001) and subsequently adjusted downward to 3,495,261 lb (1,585,424 kg) (66 FR 47413; September

12, 2001), to account for 2002 period overages. The Winter II period quota is set at 708,469 lb (321,356 kg). Because there were no commercial overages from the 2000 Winter II period, it was not necessary to adjust the 2001 Winter II period quota.

Section 648.121 requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor the commercial scup quota for each quota period and, based upon dealer reports, state data, and other available information, to determine when the commercial quota has been harvested. NMFS is required to publish notification in the **Federal Register** advising and notifying federally permitted commercial vessels and federally permitted dealers that, effective upon a specific date, the scup commercial quota has been harvested. The Regional Administrator has determined, based upon dealer reports and other available information, that the scup commercial quota for the 2001 Winter II period has been harvested.

The regulations at § 648.4(b) provide that Federal scup moratorium permit holders agree as a condition of the permit not to land scup in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for the period has been harvested and that no commercial quota for scup is available. Therefore, effective 0001 hours, November 20, 2001, further landings of scup by vessels holding Federal scup moratorium permits are prohibited through December 31, 2001. The Winter I period for commercial scup harvest will open on January 1, 2002. Effective 0001 hours, November 20, 2001, federally permitted dealers are also advised that they may not purchase scup from federally permitted vessels that land in coastal states from Maine through North Carolina for the remainder of the Winter II period (through December 31, 2001).

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: November 14, 2001.

Valerie L. Chambers,

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

[FR Doc. 01–28918 Filed 11–15–01; 1:06 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 010319071-1103-02; I.D. 111401C]

Fisheries of the Northeastern United States; Spiny Dogfish Fishery; Commercial Quota Harvested for Period 2

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

ACTION: Closure; commercial quota for period 2.

SUMMARY: NMFS announces that the period 2 spiny dogfish commercial quota available to the coastal states from Maine through Florida has been harvested. Federally permitted commercial vessels may no longer land spiny dogfish for the duration of period 2 (through April 30, 2002). Regulations governing the spiny dogfish fishery require publication of this notification to advise the coastal states from Maine through Florida that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing spiny dogfish in these states.

DATES: Effective 0001 hrs local time, November 21, 2001, through 2400 hrs local time, April 30, 2002.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, at (978) 281-9104.

SUPPLEMENTARY INFORMATION: Regulations governing the spiny dogfish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota, which is allocated into two quota periods based upon percentages of the annual quota. The period 2 commercial quota (November through April) is distributed to the coastal states from Maine through Florida as described in § 648.230.

The initial total commercial quota for spiny dogfish for the 2001 fishing year was 4,000,000 lb (1,814 mt) (66 FR 22473, May 4, 2001). The commercial quota is allocated into two periods (May 1 through October 31, and November 1 through April 30), with trip limits intended to preclude directed fishing. Quota period 1 was allocated 2,316,000 lb (1,050 mt) and quota period 2 was allocated 1,684,000 lb (764 mt) of the commercial quota, respectively.

The Administrator, Northeast Region, NMFS (Regional Administrator) monitors the commercial spiny dogfish quota for each quota period and, based upon dealer reports, state data and other available information, determines when the commercial quota has been harvested. NMFS is required to publish a notice in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the spiny dogfish commercial quota has been harvested and no commercial quota is available for landing spiny dogfish for the remainder of a given quota period. The Regional Administrator has determined, based upon dealer reports and other available information, that the 2001 commercial period 2 quota for spiny dogfish has been harvested.

Section 648.4(b) provides that Federal spiny dogfish permit holders agree, as a condition of the permit, not to land spiny dogfish in any state after NMFS has published notification in the **Federal Register** that the commercial quota for the period has been harvested and that no commercial quota for the spiny dogfish fishery is available. The Regional Administrator has determined that period 2 for spiny dogfish no longer has commercial quota available. Therefore, effective 0001 hrs local time, November 21, 2001, landings of spiny dogfish in coastal states from Maine through Florida by vessels holding commercial Federal fisheries permits are prohibited through 2400 hrs local time, April 30, 2001. The fishing year 2002 quota period 1 for commercial spiny dogfish harvest will open on May 1, 2002. Effective November 21, 2001, federally permitted dealers are also advised that they may not purchase spiny dogfish from vessels issued federal spiny dogfish permits that land in coastal states from Maine through Florida.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: November 14, 2001.

Valeria L. Chambers,

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

[FR Doc. 01--28919 Filed 11–15–01; 1:06 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 224
Tuesday, November 20, 2001

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 39

[Docket No. 98–ANE–47–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This action revises an earlier proposed airworthiness directive (AD), applicable to certain Pratt & Whitney JT9D series turbofan engines, that would supersede an existing airworthiness directive (AD) by adding additional critical life-limited parts for enhanced inspection. That proposal was prompted by an FAA study of in-service events involving uncontained failures of critical rotating engine parts. This action revises the proposed rule by adding rear compressor drive turbine shafts to the parts to be included in the revision to the manufacturer's Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness (ICA), and the approved continuous airworthiness maintenance program for air carrier operations. The actions specified by this proposed AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by December 20, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–47–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.

FOR FURTHER INFORMATION CONTACT: Tara Goodman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7130, fax (781) 238–7199.

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 98–ANE–47–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. 98–ANE–47–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Pratt & Whitney JT9D series turbofan engines, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on October 10, 2001 (66 FR 51609). That NPRM would have modified the airworthiness limitations section of the manufacturer's manual and air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements. That NPRM was prompted by an FAA study of in-service events involving uncontained failures of critical rotating engine parts. That condition, if not corrected, could result in an uncontained engine failure and damage to the airplane.

Since the issuance of that NPRM, the FAA has become aware that rear compressor drive turbine shafts were inadvertantly omitted from the list of parts for enhanced inspection, and must be added. This proposal would add to that NPRM, modification of the airworthiness limitations section of the manufacturer's manual and air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements.

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Economic Analysis

The FAA estimates that 837 engines installed on airplanes of US registry would be affected by this proposed AD, that it would take approximately 1 work hour per engine to do the proposed actions. The average labor rate is $60 per work hour. Based on these figures the total cost impact of the proposed AD on U.S. operators is estimated to be $954,180.

Regulatory Analysis

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 action does not have federalism implications under Executive Order (EO) 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 effect, 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:

Pratt & Whitney: Docket No. 98–ANE–47–AD. Supersedes AD 2000–01–13, Amendment 39–11511.

Applicability

This airworthiness directive (AD) is applicable to Pratt & Whitney (PW) JT9D–3A, –7, –7A, –7H, –7AH, –7F, –7J, –20J, –59A, –70A, –7Q, –7Q3, –7R4D, –7R4D1, –7R4E, –7R4E1, –7R4E4, –7R4G2, and –7R4H1 series turbofan engines, installed on but not limited to Boeing 747 and 767 series, McDonnell Douglas DC–10 series, and Airbus Industrie A300 and A310 airplanes.

Note 1: This airworthiness directive (AD) applies to each engine 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 engines 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

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

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, do the following:

Inspections

(a) Within the next 30 days after the effective date of this AD, revise the manufacturer's Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness (ICA), and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

"MANDATORY INSPECTIONS

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the instructions provided in the applicable manual provisions:

Engine model	Engine manual part number	Part nomenclature	FPI per manual section	Inspection
7/7A/7AH/7F, 7H/7J/20/20J	646028 (or the equivalent customized versions, 770407 and 770408).	All Fan Hubs	72–31–04	02
		All HPC Stage 5–15 Disks and Rear Compressor Drive Turbine Shafts.	72–35–00	03
		All HPT Stage 1–2 Disks and Hubs.	72–51–00	03
		All LPT Stage 3–6 Disks	72–52–00	03
59A/70A	754459	All Fan Hubs	72–31–00	Heavy Maintenance Check.
		All HPC Stage 5–15 Disks and Rear Compressor Drive Turbine Shafts.	72–35–00	Heavy Maintenance Check.
		All HPT Stage 1–2 Disks and Hubs.	72–51–00	Heavy Maintenance Check-3.
		All LPT Stage 3–6 Disks	72–52–00	Heavy Maintenance Check-3.
7Q/7Q3	777210	All Fan Hubs	72–31–00	03
		All HPC Stage 5–15 Disks and Rear Compressor Drive Turbine Shafts.	72–35–00	03
		All HPT Stage 1–2 Disks and Hubs.	72–51–00	03
		All LPT State 3–6	72–52–00	03
7R4	785058, 785059, and 789328.	All Fan Hubs	72–31–00	03
		All HPC Stage 5–15 Disks and Rear Compressor Drive Turbine Shafts.	72–35–00	03
		All HPT Stage 1–2 Disks and Hubs.	72–51–00	03

Engine model	Engine manual part number	Part nomenclature	FPI per manual section	Inspection
		All LPT Stage 3–6	72–52–00	03

* P/N 770407 and 770408 are customized versions of P/N 646028 engine manual.

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is considered completely disassembled when done in accordance with the disassembly instructions in the manufacturer's engine manual; and

(ii) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine."

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections must be performed only in accordance with the ALS of the manufacturer's ICA.

Alternative Method 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, Engine Certification Office (ECO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(d) 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.

Continuous Airworthiness Maintenance Program

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369(c)) of this chapter must maintain records of the mandatory inspections that result from revising the Time Limits section of the Instructions for Continuous Airworthiness (ICA) and the air carrier's continuous airworthiness program. Alternatively, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369 (c)); however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations (14 CFR 121.380 (a)(2)(vi). All other operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the Engine Manuals.

Issued in Burlington, Massachusetts, on November 8, 2001.

Diane S. Romanosky,

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

[FR Doc. 01–28707 Filed 11–19–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–08–AD]

RIN 2120–AA64

Airworthiness Directives; Hartzell Propeller, Inc. Compact Series Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to supersede an existing airworthiness directive (AD) that is applicable to Hartzell models ( )HC–( )( )Y( )–( )( )( ) compact series, constant speed or feathering propellers with Hartzell manufactured "Y" shank blades. That AD currently requires initial and repetitive blade inspections; rework of all "Y" shank blades including cold rolling of the blade shank retention radius; blade replacement and modification of pitch change mechanisms for certain propeller models; and changing the airplane operating limitations with specific models of propellers installed. These inspections and modifications are required to detect and prevent fatigue cracks that might result in blade separation. This proposal would require initial blade inspections, with no repetitive inspections; rework of all "Y" shank blades including cold rolling of the blade shank retention radius, blade replacement and modification of pitch change mechanisms for certain propeller models; and changing the airplane operating limitations with specific models of propellers installed. This proposal is prompted by FAA reviews of propeller service histories since the issuance of AD 77–12–06 R2. The actions specified by the proposed AD are intended to prevent failure of the propeller blade from fatigue cracks in the blade shank radius, which can result in damage to the airplane and loss of airplane control.

DATES: Comments must be received by January 22, 2002.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–08–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 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 this AD may be obtained from Hartzell Propeller, Inc., One Propeller Place, Piqua, Ohio 45356–2634; telephone (937) 778–4200; fax (937) 778–4365. 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: Tomaso DiPaolo, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 E. Devon Ave., Des Plaines, IL 60018; telephone (847) 294–7031; fax (847) 294–7834.

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 send a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NE–08–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. 2000–NE–08–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On December 15, 1977, AD 77–12–06 R2, Amendment 39–3097 (42 FR 63165, 1977), was published to mandate initial and repetitive inspections and rework of all Hartzell models ( )HC–( )( )Y( )–( )( )( ) compact series, constant speed or feathering propellers with Hartzell manufactured "Y" shank blades, including cold rolling of the blade shank retention radius, and, change of the airplane operating limitations with specific models of propellers installed, to detect and prevent fatigue cracks that might result in blade separation. In addition, that AD mandates inspection requirements for propellers that have experienced overspeed or ground or object strike. This proposed action would remove the repetitive inspection intervals to require the cold rolling of the blade shank retention radius to be a one-time final action, and remove the reference to propellers that have experienced overspeed or ground or object strikes.

During inspections performed to comply with AD 77–12–06 R2, some corroded parts were found, and several reports of corrosion were submitted to the FAA. The FAA has carefully considered these reports and has determined that this action need not include any action regarding corrosion. This action, and the current AD, are intended to prevent failure of the blade shank retention radius due to cracks.

Some operators have perceived AD 77–12–06 R2 as mandating an overhaul. While the FAA encourages owners and operators to have their propellers overhauled using the manufacturer's recommended overhaul schedules, AD 77–12–06 R2 does not mandate a propeller overhaul. This proposal also does not propose to mandate a propeller overhaul.

Review of Propeller Service Histories

The current AD, AD 77–12–06 R2, requires an initial inspection and cold rolling of the blade shank retention radius, then repetitive inspections and, if necessary, rework of the blade shank at intervals specified in Hartzell Service Letter (SL) 61B. In 1992, the FAA approved as an alternative method of compliance to the current AD, Hartzell SL 61R, dated February 28, 1992, which expanded the inspection interval to every 12,000 hours. Since the issuance of Hartzell SL 61R, there have been no reports of cracked blades in the blade shank retention radius (when the propeller complied with AD 77–12–06 R2). Therefore, the FAA has determined that the cold rolling of the blade shank retention radius can act as a final action to address the fatigue crack problem of the blade shank. Accordingly, this proposal removes the repetitive inspection requirement found in the current AD.

In addition, this proposal will eliminate the existing AD's mandatory inspection requirements for propellers that have experienced an overspeed or ground or object strike. The FAA reviewed propeller service histories and found no overspeed or ground strike events to have caused a fatigue failure in the blade shank retention radius when the propeller is inspected in accordance with Hartzell's service instructions for overspeed or ground strike events. These service instructions are published in the Hartzell Standard Practices Manual 202A, and in the current revisions of the propeller owner's manuals.

However, the mandatory airplane operating limitations changes will remain unchanged from the existing AD and these limitations consist of restricted propeller revolutions per minute (rpm), placarding the airplane instrument panel, and revising the engine tachometer markings in accordance with Hartzell Service Bulletin (SB) No. 118A, dated February 15, 1977. This proposal will maintain the existing AD's modification of certain propeller models in accordance with Hartzell Propeller, Inc. Service Letter (SL) No. 69, dated November 30, 1971. and Hartzell Propeller, Inc. SB No. 101D, dated December 19, 1974. This proposal would not require operators to reinspect propellers that have already been inspected to comply with the current AD.

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 propellers of the same type design used on airplanes registered in the United States, the proposed AD would require, if not already accomplished, initial inspections and rework of all "Y" shank blades, including cold rolling of the retention radius, blade replacement and modification of pitch change mechanisms for certain propeller models, and change of the airplane operating limitations, to detect and prevent fatigue cracks that can result in blade separation and possible loss of airplane control. The actions would be required to be accomplished in accordance with Hartzell SB 118A, dated February 15, 1977, Hartzell SL 69, dated November 30, 1971, and Hartzell SB 101D, dated December 19, 1974.

Requirement Removed for Hartzell Service Letter 61B

Hartzell Service Letter 61B, dated September 10, 1976 was initially incorporated by reference in AD 77–12–06 R2 to specify the inspection interval. Revisions to this service letter have been approved up to Revision V. Since the proposed AD removes the repetitive inspection, there will be no further need to reference any revision of SL 61.

Economic Analysis

At the time the existing AD was issued, there were about 55,000 propellers of the affected design in the worldwide fleet. The FAA estimated that there were 35,750 propellers installed on airplanes of U.S. registry. The FAA expects that all of the affected propellers should have already been inspected to comply with the existing AD's requirements to inspect, and rework or replace the blades. If these actions have not already been accomplished, then the total cost to comply with this proposal is estimated to be $700 per propeller.

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 Code of Federal Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–2922 (42 FR 31152, June 20, 1977), Amendment 39–3018 (42 FR 42191, dated August 22, 1977), and Amendment 39–3097 (42 FR 63165, dated December 15, 1977), and by adding a new airworthiness directive (AD), to read as follows:

Hartzell Propellers, Inc.: Docket No. 2000–NE–08–AD, Supersedes AD 77–12–06 R2, Amendment 39–3097.

Applicability

This airworthiness directive (AD) is applicable to Hartzell Propellers, Inc. Models ( )HC–( )( )Y( )–( )( )( ) compact series constant speed or feathering propellers with Hartzell manufactured "Y" shank blades. These propellers are used on but not limited to the following airplanes:

Aermacchi S.pA. (formerly Siai-Marchetti) S–208
Aero Commander 200B and 200D
Aerostar 600
Beech 24, 35, 36, 45, 55, 56TC, 58, 60, and 95
Bellanca 14 and 17 series
Cessna 182 and 188
Embraer EMB–200A
Maule M5
Mooney M20 and M22
Pilatus Britten Norman, or Britten Norman BN–2, BN–2A, and BN–2A–6
Piper PA–23, PA–24, PA–28, PA–30, PA–31, PA–32, PA–34, PA–36, and PA–39
Pitts S–1T and S–2A
Rockwell 112, 114, 200, 500, and 685 series

Note 1: This AD applies to each propeller 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 propellers 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

Compliance with this AD is required as indicated, unless already done. Propeller maintenance records showing compliance with AD 77–12–06 R2 is an indication that compliance was previously done.

To prevent failure of the propeller blade from fatigue cracks in the blade shank radius, which can result in damage to the airplane and loss of airplane control, do the following:

(a) Propellers are considered in compliance with the one-time inspection and rework requirements only, of this AD if:

(1) All blades are serial number D47534 and above, or

(2) All blades are identified with the letters "PR" or "R" or "SP–P" ink-stamped on the camber side, or the letters "SP", "RD" or "SP–P" metal-stamped on the blade butt.

Models ( )HC–( )( )Y( ) Compact Series "Y" Shank Propellers

(b) If propellers models ( )HC–( )( )Y( ) have not been inspected and reworked in accordance with AD 77–12–06 R2, then before further flight, do a one-time action to remove, inspect, rework or replace blades if necessary in accordance with Hartzell Service Bulletin (SB) 118A, dated February 15, 1977.

Note 2: One requirement in SB 118A is the cold rolling of the propeller blade shank. This is a critical requirement in the prevention of cracks in the blade. Propeller repair shops must obtain and maintain proper certification to perform the cold rolling procedure. For a current list of propeller overhaul facilities approved to perform the blade shank cold rolling procedure, contact Hartzell Product Support, telephone: (937) 778–4379. Not all propeller repair facilities have the equipment to properly perform a cold roll of the blade shanks. In addition, any rework in the blade shank area will also necessitate the cold rolling of the blade shank area, apart from the one-time cold rolling requirement of this AD.

Instrument Panel Modifications

(c) If airplanes with propeller models ( )HC–C2YK–( )( ) / ( )( )7666A–( ), installed on (undampered) 200 horsepower Lycoming IO–360 series engines, have not been modified in accordance with AD 77–12–06 R2, then modify the airplane instrument panel according to the following subparagraphs before further flight. Airplanes include, but are not limited to, Mooney M20E and M20F (normal category), Piper PA–28R–200 (normal category), and Pitts S–1T and S–2A (acrobatic category).

(1) For normal category airplanes, before further flight, remove the present vibration placard and affix a new placard near the engine tachometer that states:

"Avoid continuous operation:
Between 2000 and 2350 rpm."

(2) For utility and acrobatic category airplanes, before further flight, remove the present vibration placard and affix a new placard near the engine tachometer that states:

"Avoid continuous operation:
Between 2000 and 2350 rpm.
Above 2600 rpm in acrobatic flight."

(3) For normal category airplanes, re-mark the engine tachometer face or bezel with a red arc for the restricted engine speed range, between 2000 and 2350 rpm.

(4) For acrobatic and utility airplanes, re-mark the engine tachometer face or bezel with a red arc for each restricted engine speed range, i.e., between 2000 and 2350 rpm and between 2600 and 2700 rpm (red line).

Models ( )HC–C2YK–( )( ) ( ) / ( )( )8475( )–( ) or ( )( )8477( )–( ) Propellers

(d) If propeller models ( )HC–C2YK-( )( ) ( ) / ( )( )8475( )-( ) or ( )( )8477( )-( ) have not been inspected and reworked in accordance with AD 74–15–02, then do the following maintenance before further flight.

(1) Remove propeller from airplane.

(2) Modify pitch change mechanism, and replace blades with equivalent model blades prefixed with letter "F" in accordance with Hartzell Service Letter No. 69, dated November 30, 1971 and Hartzell SB No. 101D, dated December 19, 1974.

(3) Inspect and repair or replace, if necessary, in accordance with Hartzell SB No. 118A, dated February 15, 1977.

Alternative Methods of Compliance

(e) Alternative methods of compliance to Hartzell Service Bulletin 118A are Hartzell Service Bulletins 118B, 118C, 118D, and Hartzell Manual 133C. Alternative method of compliance to Hartzell SB101D is Hartzell Manual 133C. No adjustment in the compliance time is allowed. Any requests for an alternative method of compliance that provides an acceptable level of safety may be

used if approved by the Manager, Chicago 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, Chicago ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Manager, Chicago ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of part 21 of the Code of Federal Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Issued in Burlington, Massachusetts, on November 8, 2001.

Diane S. Romanosky,

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

[FR Doc. 01–28792 Filed 11–19–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ASO–15]

Proposed Amendment to Class E5 Airspace; Andrews—Murphy, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend Class E5 airspace at Andrews—Murphy Airport, NC. A Area Navigation (RNAV), Global Positioning System (GPS), Runway (RWY) 8 Standard Instrument Approach Procedure (SIAP) has been developed for Andrews—Murphy Airport, NC. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP.

DATES: Comments must be received on or before December 20, 2001.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 01–ASO–15, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 01–ASO–15." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Andrews—Murphy, NC. A RNAV (GPS) RWY 8 SIAP has been developed for Andrews—Murphy Airport, NC. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in paragraph 6005 of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that the proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (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) does not warrant preparation of a regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS.

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp. p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO NC E5 Andrews—Murphy, NC [REVISED]

Andrews—Murphy, Airport, NC
(Lat. 35°11'42" N, long. 83°51'50" W)
RUGIE Waypoint
(Lat. 35°08'57" N, long. 83°57'29" W)
Andrews—Murphy, NC, Point in Space Coordinates
(Lat. 35°11'10" N, long. 83°52'57" W)

That airspace extending upward from 700 feet or more above the surface within a 6.5-mile radius of the Andrews—Murphy Airport and within 3.2 miles each side of the 237° course from the RUGIE Waypoint, extending from the 6.5-mile radius to 8.1 miles southwest of the airport and that airspace with a 6—mile radius of the point in space (lat. 35°11'10" N, long. 83°52'57" W) serving Andrews—Murphy NC; excluding that airspace with the Knoxville, TN, Class E airspace.

* * * * *

Issued in College Park, Georgia, on November 6, 2001.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 01–28496 Filed 11–19–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ASO–14]

Proposed Establishment of Class E5 Airspace; Union, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E5 airspace at Union, SC. A Non-Directional Beacon (NDB) Runway (RWY) 5 Standard Instrument Approach Procedrue (SIAP) has been developed for Union County, Troy Shelton Field, Union, SC. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP and other Instrument Flight Rules (IFR) operations at Union County, Troy Shelton Field. The operating status of the airport would change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

DATES: Comments must be received on or before December 20, 2001.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 01–ASO–14, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 01–ASO–14." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E5 airspace at Union, SC. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (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) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO SC E5 Union, SC [NEW]

Union County, Troy Shelton Field, SC
(Lat 34°41'11" N, long. 81°38'30" 7W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Union County, Troy Shelton Field and within 4 miles north and 8 miles south of the 241° bearing from the Union NDB extending from the 6.3-mile radius to 16 miles southwest of the airport.

* * * * *

Issued in College Park, Georgia, on November 6, 2001.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 01–28495 Filed 11–19–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ASO–17]

Proposed Establishment of Class E5 Airspace; Wauchula, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E5 airspace at Wauchula, FL. A Non-Directional Beacon (NDB) Runway (RWY) 36 Standard Instrument Approach Procedure (SIAP) has been developed for Wauchula Municipal Airport, Wauchula, FL. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP and other Instrument Flight Rules (IFR) operations at Wauchula Municipal Airport. The operating status of the airport would change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

DATES: Comments must be received on or before December 20, 2001.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 01–ASO–17, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 01–ASO–17." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E5 airspace at Wauchula, FL. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It. therefore, (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) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO FL E5 Wauchula, FL [NEW]

Wauchula Municipal Airport, FL
(Lat. 27°30'49" N, long. 81°52'50" W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Wauchula Municipal Airport and within 4 miles east and 8 miles west of the 176° bearing from the Wauchula NDB extending from the 6.4-mile radius to 16 miles south of the airport.

* * * * *

Issued in College Park, Georgia, on November 6, 2001.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 01–28494 Filed 11–19–01; 8:45 am]

BILLING CODE 4910–13–M

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

28 CFR Part 801

[CSOSA–0004–P]

RIN 3225–AA02

Federal Tort Claims Act Procedures

AGENCY: Court Services and Offender Supervision Agency for the District of Columbia.

ACTION: Proposed rule.

SUMMARY: In this document, the Court Services and Offender Supervision Agency for the District of Columbia ("CSOSA" or "Agency") is proposing to adopt regulations to supplement Department of Justice regulations for processing administrative claims under the Federal Tort Claims Act ("FTCA"). These supplemental regulations state in plain language what members of the public need to do to file a claim for money damages under the FTCA with CSOSA or with the District of Columbia Pretrial Services Agency ("PSA" or "Agency"). These regulations are necessary to help ensure that persons who suffer proven monetary loss, personal injury, or wrongful death due to a negligent or otherwise wrongful act or omission of an Agency employee committed while acting within the scope of his or her employment will be properly compensated.

DATES: Comments due by January 22, 2002.

ADDRESSES: Office of the General Counsel, CSOSA, Room 1253, 633 Indiana Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Records Manager (telephone: (202) 220–5359; e-mail: roy.nanovic@csosa.gov).

SUPPLEMENTARY INFORMATION: The Court Services and Offender Supervision Agency for the District of Columbia ("CSOSA") is proposing to adopt regulations (28 CFR part 801) supplementing Department of Justice regulations (28 CFR part 14) for processing administrative claims under the Federal Tort Claims Act ("FTCA"). CSOSA previously published its organizational regulations (28 CFR part 800) in the **Federal Register** on January 8, 2001 (66 FR 1259). As noted in these organizational regulations, the District of Columbia Pretrial Services Agency ("PSA" or "Agency") is an independent entity within CSOSA. CSOSA's supplemental regulations will be applicable for claims involving CSOSA and/or PSA.

The FTCA essentially waives the federal government's sovereign immunity to damage actions arising out of the negligent or otherwise wrongful acts committed by federal employees while acting within the scope of their employment. General regulations issued by the Department of Justice for processing FTCA claims authorize federal agencies to issue supplementing regulations. Accordingly, CSOSA has prepared these supplemental regulations to state in plain language what members of the public need to do to file a claim for money damages under the FTCA due to a negligent or otherwise wrongful act of a CSOSA or PSA employee committed while acting within the scope of his or her employment. Separate administrative procedures exist for claims by employees of CSOSA or PSA for loss or damage to property incident to their own service.

Directions for filing the claim are contained in § 801.2. The directions are presented in a question and answer format. The easiest way to make sure that a person with a claim includes all information necessary for processing the claim is to submit a completed Standard Form 95 ("SF 95"). The SF 95 is available both online and from CSOSA's Office of the General Counsel. Other means of written notification, however, may be acceptable as noted in the regulations.

Section 801.3 explains how claims are processed. All claims, whether against CSOSA or PSA, are forwarded to CSOSA's Office of the General Counsel for intake, investigation, and final determination. Section 801.4 covers the claim's final disposition (acceptance of settlement or denial of claim). If you accept a settlement offer, you give up your right to bring a lawsuit against the United States or against the employee whose action or lack of action gave rise to your claim. If your claim is denied or you reject the settlement offer, you have 6 months to file a civil action in the appropriate U.S. District Court.

Matters of Regulatory Procedure

Administrative Procedure Act

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing or by e-mailing the agency at the addresses given above in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** captions. Comments received during the comment period will be considered before final action is taken. Comments received after the expiration of the comment period will be considered to the extent practicable. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. We will not be holding oral hearings on this proceeding.

Executive Order 12866

This proposed rule has been determined to be significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the Director of CSOSA has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of CSOSA, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule and by approving it certifies that this rule will not have a significant

economic impact upon a substantial number of small entities. This rule pertains to agency management, and its economic impact is limited to the agency's appropriated funds.

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 it will not significantly or uniquely affect small governments. Therefore, the Director of CSOSA has determined that no actions are 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 sec. 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.

Plain Language Instructions

We want to make CSOSA's documents easy to read and understand. If you have suggestions on how to improve the clarity of these regulations, write, e-mail, or call CSOSA's Records Manager (Roy Nanovic) at the address or telephone number given above in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** captions.

List of Subjects in 28 CFR Part 801

Claims, Probation and parole.

Jasper Ormond,
Interim Director.

Accordingly, we propose to amend chapter VIII, Title 28 of the Code of Federal Regulations by adding a new part 801 to read as follows:

PART 801—FEDERAL TORT CLAIMS ACT PROCEDURES

Sec.
801.1 Claims filed under the Federal Tort Claims Act.
801.2 Filing a claim.
801.3 Processing the claim.
801.4 Final disposition of claim.

Authority: 5 U.S.C. 301; Pub. L. 105–33, 111 Stat. 251, 712 (D.C. Code 24–1233); 28 CFR 14.11.

§ 801.1 Claims filed under the Federal Tort Claims Act.

If an agency employee is acting within the scope of his or her employment and causes injury to a member of the public, any claim for money damages for personal injury, death, damage to property, or loss of property caused by the employee's negligent or wrongful act or omission is a claim against the United States and must first be presented by the injured party to the appropriate federal agency for administrative action under the Federal Tort Claims Act. General provisions for processing such administrative claims are contained in 28 CFR part 14. The provisions in this part supplement the general provisions in order to describe specific procedures to follow when filing a claim with the Court Services and Offender Supervision Agency for the District of Columbia ("CSOSA") or the District of Columbia Pretrial Services Agency ("PSA").

§ 801.2 Filing a claim.

(a) *Who may file the claim?* You may file a claim for money damages against CSOSA or PSA if you believe that a CSOSA or PSA employee has injured you or has damaged or lost property that you own. You may file a claim on behalf of an injured or deceased person or owner of damaged or lost property if you are acting as agent, executor, administrator, parent, guardian, legal or other representative provided you submit evidence of your authority to act on behalf of the claimant.

(b) *What information do you need to submit in your claim?* (1) The easiest way to ensure that you will include all necessary information for your claim is to submit a completed Standard Form 95 ("SF 95"). The SF 95 is available from the Office of the General Counsel, CSOSA, (see address in paragraph (c) of this section) and on the Internet at http://www.usdoj.gov/civil/forms/forms.htm.

(2) If you do not use the SF 95, you must submit written notification of the incident that resulted in the injury, loss, or damage. Along with this notification, you must present a claim for money damages in a sum certain (that is, a precise dollar amount) for injury to or loss of property, personal injury, or death alleged to have occurred on the basis of the incident. Failure to include the precise dollar amount for your claim may mean that you will have difficulty with pursuing your claim in court.

(c) *Where do you submit the claim?* You should submit the claim (whether against CSOSA or PSA) directly to the Office of the General Counsel, CSOSA, 633 Indiana Avenue NW., Washington, DC 20004. Claims submitted to any other office of CSOSA or PSA are forwarded to the Office of the General Counsel.

(d) *When must you submit the claim?* You must submit the claim so that CSOSA/PSA receives the claim within 2 years after the claim accrues. Mailing the claim by that date is not sufficient if CSOSA/PSA does not receive the claim by that date. Generally speaking, a claim accrues at the time of the injury. In those instances where neither the injury nor its cause is immediately apparent, the claim accrues when you discover (or reasonably should discover) the injury and its cause.

(e) *May you amend your claim?* Yes, you may amend your claim at any time prior to final agency action or prior to your filing suit in court.

§ 801.3 Processing the claim.

(a) *Will CSOSA/PSA contact you about your claim?* (1) If you have provided all necessary information to process your claim, you will receive an acknowledgement indicating the filing date (that is, the date CSOSA/PSA received your claim) and the assigned claim number. Refer to the claim number in any further correspondence you may have with CSOSA/PSA on the claim.

(2) If you have failed to include all necessary information, CSOSA/PSA will return your claim to you with a request for the necessary additional information.

(3) If your claim should have been filed with another agency, CSOSA/PSA will forward the claim to the appropriate agency and notify you of the transfer, or return the claim to you if the appropriate agency cannot be determined or if the transfer is otherwise not feasible.

(b) *Who is responsible for offering settlement or denial on the claim?* The General Counsel is responsible for investigating the claim and, after consultation with PSA (if the claim is against PSA) and the Department of Justice when appropriate, determining whether the claim should be settled or denied.

(c) *How long does CSOSA/PSA have to consider your claim?* CSOSA/PSA has 6 months from the date of filing to make a settlement offer or to deny your claim. If you amend your claim (see § 801.2(e)) or request that your claim be reconsidered (see § 801.4(b)(1)), CSOSA/PSA has an additional 6 months from the date of the amendment or the filing of the request for reconsideration to make a final disposition of the claim.

(d) *Will appreciation or depreciation be considered?* Yes, appreciation or

depreciation is considered in settling a claim for lost or damaged property.

§ 801.4 Final disposition of claim.

(a) *What if you accept the settlement offer?* If you accept a settlement offer, you give up your right to bring a lawsuit against the United States or against any employee of the government whose action or lack of action gave rise to your claim.

(b) *What if your claim is denied?* (1) If your claim is denied, you have 30 days from the date of CSOSA/PSA's written notification to make a written request that the agency reconsider the denial.

(2) If your claim is denied or you reject the settlement offer, you have 6 months from the date of mailing of CSOSA/PSA's notice of denial to file a civil action in the appropriate U.S. District Court.

(c) *What if you do not hear from CSOSA/PSA within 6 months of the filing date?* If you do not hear from CSOSA/PSA within 6 months of the filing date for the claim, you may consider your claim denied. You may then proceed with filing a civil action in the appropriate U.S. District Court.

[FR Doc. 01–28944 Filed 11–19–01; 8:45 am]
BILLING CODE 3129–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 89

[AMS–FRL–7104–9]

Nonroad Diesel Emissions Standards Staff Technical Paper

AGENCY: Environmental Protection Agency (EPA).

ACTION: Availability of Staff Technical Paper.

SUMMARY: When we set the Tier 3 emission standards in 1998, available information indicated that the cooled exhaust gas recirculation (EGR) technology developed for highway diesel engines would be the primary means of compliance with these standards. In conducting our technology review, we have surveyed the recent engineering and scientific literature on advances in diesel emissions control. We have also reviewed information provided by engine manufacturers in support of our 2004 highway standards program, showing the considerable progress they have made in the design of robust EGR systems for use in highway engines. In addition, we have gathered information from engine manufacturers on their design plans for Tier 3 and their testing and development experience with control technologies they are likely to employ. This information shows that cooled EGR is but one of several technologies available to diesel engine manufacturers to meet the Tier 3 emission standards. This widening of technology options comes from the progress of development since 1998, but is also due to the fact that the 1998 final rule envisioned a Tier 3 program more closely aligned with future highway standards, in particular including comparable control of particulate matter (PM), rather than the less demanding set of Tier 3 standards that were actually adopted at the time, and that are the subject of this feasibility assessment. Based on the information we have gathered, we believe that the Tier 3 standards in the regulations on control of emissions from new and in-use nonroad compression-ignition engines are feasible in the timeframe established in the rule. We also believe that the Tier 2 standards for engines under 50 horsepower are likewise feasible, based on certification test data from Tier 1 engines in this power range showing that many of these engines are already meeting the Tier 2 standards. Additionally we stated that as a part of the 2001 Technology Review process, PM standards would be addressed. Given the need for further PM reductions, those will be addressed in a subsequent regulatory action.

DATES: EPA is requesting public review and comment on the Staff Technical Paper on or before January 4, 2002.

ADDRESSES: You may send written comments (in duplicate if possible) to Margaret Borushko, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105. The Staff Technical Paper and supporting documents are available in the public docket A–2001–28. The docket is located at U.S. Environmental Protection Agency, 401 M St., SW, Room 1500, Washington, DC 20460 (on the ground floor in Waterside Mall) and is open from 8 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. You can reach the docket office by telephone at (202) 260–7548 and by facsimile at (202) 260–4400. We may charge a reasonable fee for copying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Margaret Borushko, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; Telephone (734) 214–4334; FAX: (734) 214–4816; E-mail: *borushko.margaret@epa.gov*. EPA comments hotline: 734–214–4370.

SUPPLEMENTARY INFORMATION: The Nonroad Diesel Emissions Standards Staff Technical Paper is available at the url: *http://www.epa.gov/otaq/equip-hd.htm* starting October 30, 2001. This serves as the Notice of Availability. The document discusses nonroad diesel engine technology for heavy duty applications, as well as the under 37 kW (50 hp) nonroad diesel engines within the context of the 2001 Nonroad Diesel Technology Review.

Readers should also note a new telephone number that will serve as a hotline for updated information related to the public comment period. People should call 734–214–4370.

Access to Technical Documents Through the Internet

Today's action is available electronically on the day of publication from the Office of the Federal Register Internet Web site listed below. Electronic copies of this technical staff paper and other documents associated with today's action are available from the EPA Office of Transportation and Air Quality Web site listed below. This service is free of charge, except any cost that you already incur for connecting to the Internet.

EPA **Federal Register** Web Site: *http://www.epa.gov/docs/fedrgstr/epa-air/* (Either select a desired date or use the Search feature.)

Nonroad Diesel home page: *http://www.epa.gov/otaq/equip-hd.htm*

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc., may occur.

Dated: November 9, 2001.

Robert Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 01–28856 Filed 11–19–01; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 264

[FRL–7105–7]

RIN 2050 AE77

Supplemental Proposal to the Corrective Action Management Unit Rule

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: In today's action, the Agency is proposing a regulatory change suggested by commenters on the Environmental Protection Agency's (EPA's) proposed "Amendments to the Corrective Action Management Unit Rule" (August 22, 2000). In that notice, EPA proposed amendments to the corrective action management unit (CAMU) regulations to tighten standards for wastes managed in CAMUs during cleanup. The comment period on the August 2000 proposal closed on October 23, 2000. EPA is now proposing additional regulations that would allow CAMU-eligible hazardous waste, treated in accordance with the treatment standard in the proposed CAMU amendment in lieu of otherwise applicable land disposal restriction standards, to be placed in hazardous waste landfills, under limited circumstances. We believe that allowing hazardous remediation waste generated during clean-up to be placed in hazardous waste landfills will promote more aggressive remediation.

In this document, EPA is soliciting comment only on the issue of placement of CAMU-eligible wastes in hazardous waste landfills under the terms of today's supplemental proposal; we are not requesting comment on any aspect of the August 2000 proposal. If EPA goes forward with today's proposal, it intends to do so when it takes final action on the August 2000 proposal.

DATES: EPA will accept public comment until December 5, 2001.

ADDRESSES: Those persons wishing to submit public comments must send an original and two copies of their comments referencing EPA docket number F–2001–AC2P–FFFFF to: RCRA Docket Information Center (5305W), U.S. Environmental Protection Agency Headquarters (EPA)(5305G), Ariel Rios Building, 1200 Pennsylvania Avenue NW., Washington, DC, 20460. Hand deliveries of comments, including courier, postal and non-postal express deliveries, should be made to the Arlington, VA address below.

Comments may also be submitted electronically through the Internet to: rcra-docket@epa.gov. Comments in electronic format should also identify the docket number F–2001–AC2P–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue N.W., Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Docket Information Center (RIC), located at Crystal Gateway I Building, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15 per page. The Proposed Rule is also available electronically. See the **SUPPLEMENTARY INFORMATION** section below for information on electronic access.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (hearing impaired) (800) 553–7672. In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of today's action, contact Bill Schoenborn, U.S. Environmental Protection Agency (5303W), Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, at (703) 308–8483, or e-mail: schoenborn.william@epa.gov.

SUPPLEMENTARY INFORMATION: In developing this document, we tried to address the concerns of all our stakeholders. Your comments will help us improve this proposed regulatory action. We invite you to provide views on options we propose, new approaches we have not considered, new data, information on how this regulatory action may affect you, or other relevant information. Your comments will be most effective if you follow the suggestions below:

- Explain your views as clearly as possible and provide a summary of the reasoning you used to arrive at your conclusions.
- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Tell us which parts of this proposal you support, as well as those you disagree with.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Reference your comments to specific sections of this notice.
- Make sure to submit your comments by the deadline in this notice.
- Be sure to include the proposal name, date, and docket number with your comments.

Copies of today's proposal, titled Supplemental Proposal to the Corrective Action Management Unit Rule (EPA publication number [Insert]), are available for review and copying at the EPA Headquarters library, at the RCRA Docket (RIC) office identified in **ADDRESSES** above, at all EPA Regional Office libraries, and in electronic format at the following EPA Web site: *http://www.epa.gov/epaoswer/hazwaste/ca/resource/guidance/remwaste/camu*. Printed copies of the final rule and related documents can also be obtained by calling the RCRA/Superfund Hotline at (800) 424–9346 or (703) 412–9810.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

EPA responses to comments, whether the comments are written or electronic, will be published in a notice in the **Federal Register** or in a response to comments document placed in the official record for this proposed rulemaking. We may, however seek clarification of electronic comments that become garbled in transmission or during conversion to paper form.

Outline

The contents of today's document are listed in the following outline:

I. Authority

These regulations are proposed under the authority of §§ 1006, 2002(a), 3004, 3005, 3007, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984.

II. Summary of Today's Proposal

EPA is proposing additional regulations that would allow CAMU-eligible hazardous wastes to be placed in hazardous waste landfills under limited circumstances. Under today's proposal, principal hazardous constituents in the waste would have to be treated to the same (or in some cases higher) standards than would hazardous wastes going to CAMUs at a remediation site. The receiving hazardous waste landfill would be required to meet the Resource Conservation and Recovery Act (RCRA) minimum technology requirements for new landfills and to have a RCRA permit; and the public at the location of the landfill would have an opportunity to comment on disposal of the waste at that landfill.

Today's proposal assumes that readers are familiar with EPA's August 22, 2000 proposal to amend the CAMU regulations (65 FR 51080). Readers who are unfamiliar with that proposal should refer to it to help them better understand both the context of today's proposal and the specific concepts discussed today.

III. Background and General Proposal Requirements

On August 22, 2000, EPA issued a proposal to amend the Resource Conservation and Recovery Act (RCRA) Corrective Action Management Unit (CAMU) regulations (65 FR 51080). The CAMU regulations (originally promulgated in February 1993) establish flexible standards for the on-site management of hazardous remediation waste during cleanups. Under the 1993 regulations, primarily found at 40 CFR 264.552, management of hazardous remediation wastes (including soil and debris) in CAMUs does not trigger the RCRA land disposal restrictions (LDRs) or RCRA's minimum technological requirements. Instead, management standards are set by the Regional Administrator on a site-specific basis, generally as part of the overall remedy selection process. EPA proposed to amend these regulations in August 2000. The proposed revisions would tighten the current CAMU requirements by establishing minimum design standards for CAMUs and minimum treatment requirements for hazardous remediation wastes placed in CAMUs.

The CAMU rule currently limits wastes that might be placed in CAMUs to those found on or originating from the facility where the cleanup occurred. See 40 CFR 260.10 (definition of corrective action management unit) and § 264.552(a). Under the current rule, CAMUs must be located on that facility, and may not receive remediation wastes from other locations. Hazardous remediation wastes sent to other locations generally must be managed in accordance with full RCRA Subtitle C standards for "as-generated" hazardous waste—that is, hazardous waste derived from on-going industrial processes.[1] EPA's proposed revisions to the CAMU rule in August 2000 did not address the issue of CAMU-eligible wastes shipped off-site.[2]

Although EPA did not seek comment on off-site issues in the CAMU-amendment proposal, in response to EPA's proposal, several commenters argued for off-site management of CAMU-eligible waste. One commenter—a trade association representing the waste treatment industry—offered a detailed recommendation. According to this commenter, EPA should allow off-site management of CAMU-eligible wastes if they have been treated in accordance with the proposed CAMU treatment requirements, they go to a permitted RCRA Subtitle C landfill, and the landfill has been through public participation procedures to modify its permit to accept the wastes. Another commenter argued that continuing to limit CAMU-eligible waste to management on-site would act as a disincentive to remediation. In some cases, the commenter said, redeposition of remediation waste on-site may not be the most desirable cleanup scenario (e.g., because of lack of a suitable on-site disposal facility, or of the ability to assure long-term management of such a facility on-site, or "other economic or policy choices"). Under the right circumstances (e.g., a combination of initial concentration levels, limited process, and sufficiently protective final disposal units), the commenter argued, it may make sense to remove the material to a "secure landfill elsewhere." The commenter specifically asked EPA "to develop a way to provide the key elements of the CAMU concept in off-site applications," and in particular suggested allowing "disposal of remediation waste without further treatment in an off-site facility meeting Subtitle C design requirements."

A third commenter recommended that EPA develop a "nation-wide LDR variance for remediation wastes disposed of in Subtitle C units." The commenter argued that this approach would improve the pace and quality of remediations, and that it would be attractive for sites in residential neighborhoods, or geologically sensitive areas, or where land-use potential would be improved through removal.

After the close of the public comment period on the CAMU proposal, representatives of the waste treatment industry and the waste generating industry (including the commenters who had made specific suggestions on the issue) met with EPA to present a proposal for allowing disposal of CAMU-eligible wastes in off-site Subtitle C landfills. The approach this group suggested was similar to the approach suggested earlier in comments by the waste treatment trade association, but it included greater detail. Under the group's suggested approach, CAMU-eligible wastes could be shipped off-site and placed in an off-site permitted RCRA hazardous waste landfill, if they met the proposed CAMU minimum treatment requirements (instead of the RCRA land disposal restriction treatment requirements which would otherwise apply). Use of the proposed treatment adjustment factors would generally be allowed, but, if the overseeing regulatory agency adjusted treatment levels because of the protection offered by the design of the disposal unit, the waste would have to be treated through a cost-effective technology.[3] Also, the Subtitle C landfill would have to be authorized to receive such waste after public notice, and an opportunity for a hearing. EPA has placed a copy of the industry group's

[1] EPA subsequently promulgated a treatability variance from the land disposal restrictions for remediation waste to promote more aggressive cleanups (see the "environmentally inappropriate" variance, § 268.44(h)(2)(ii), 62 FR 64504–64506, December 5, 1997). EPA also developed special treatment standards for soils contaminated with hazardous waste (see the Land Disposal Restrictions Phase IV rule, 63 FR 28556, May 26, 1998).

[2] In the August 2000 proposal, EPA limited wastes that could be placed in a CAMU to a subset of remediation wastes, which it identified as "CAMU-eligible" wastes. For more detail, see p. 51084–51088 of the August 2000 proposal and section IV.A of today's notice.

[3] Under the August 2000 proposal, treatment of principal hazardous constituents in waste placed in a CAMU might not be required, based on the protection offered by the CAMU's design, where the Regional Administrator determined that "cost-effective treatment" is not reasonably available (proposed § 264.552(e)(4)(E)(2)). This option would not be available under the industry recommended approach.

submission on off-site disposal of CAMU-eligible waste in the docket for today's rulemaking.

After carefully reviewing industry's suggestion, EPA believes that it has merit, and the Agency provides proposed language for comment in today's notice.

In EPA's view, expanding options for management of CAMU-eligible wastes in hazardous waste landfills (under the right conditions) will promote more aggressive remediation. See, *Louisiana Environmental Action Network* v. *USEPA*, 172 F. 3d 65, 69 (D.C. Cir. 1999) (upholding EPA LDR treatment variance regulation allowing reduction in treatment requirements where necessary to encourage aggressive remediation). For example, there will be situations where on-site redisposal of wastes will not be viable, or will not be the preferred option (e.g., where the cleanup site is located in or near a residential neighborhood); in these cases, however, the disincentives associated with off-site management of the waste under full Subtitle C would act as a disincentive to cleanup at all, or might delay cleanup or encourage less-than-optimal containment remedies. (See the preamble to the August 2000 proposal for further discussion of the disincentives created by the application of RCRA Subtitle C requirements to cleanup wastes, especially 65 FR 51082.) In other cases, the regulator, the facility owner/operator, or the local community may prefer removal of a source of contamination, but costs for off-site management in accordance with otherwise applicable LDR treatment requirements might be prohibitive. In such situations, today's proposal would provide remedial managers and facility owner/operators with an additional option, which might enhance cleanup results, and would provide equal or greater protection than an on-site CAMU.[4] EPA more generally believes that, by including an option that makes removal of all hazardous wastes from a site more feasible, this approach would allow more sites to achieve cleanup levels appropriate for reuse, including unrestricted uses. The need for long-term controls at these sites would be reduced or eliminated, and their potential for redevelopment would significantly increase. EPA believes that this result would serve both local communities and the environment well, and that it will contribute to the Agency's goal of promoting cleanup and redevelopment of the nation's brownfields.

Critics of off-site management of remediation waste, when the issue is raised in other contexts, often argue that this approach merely transfers the risk from one community to another, particularly when waste treatment standards are less than they would be for as-generated wastes. EPA understands this concern. To address it, today's proposal would require additional protection in two areas that are particularly of concern. First, the proposal would require that the landfill receiving the CAMU-eligible waste meet Subtitle C design and operation requirements for new hazardous waste landfills, rather than the proposed minimum CAMU standards, which are based on EPA's less stringent standards for municipal solid waste landfills. And second, the proposal would require treatment in all cases where the Regional Administrator adjusted treatment standards because of the protection afforded by the receiving landfill. In addition, to ensure public participation at the receiving location, the Regional Administrator would be required, under the conditions of today's proposal, to provide the local public (in the vicinity of the landfill) with an opportunity for comment on any decision to approve placement of CAMU-eligible waste in the landfill. Finally, to ensure a high level of regulatory oversight at the receiving landfill, the landfill would be required to have a RCRA hazardous waste permit (i.e., it could not be operated under interim status). Today's proposal would require a permit modification at the receiving facility, incorporating management requirements for the CAMU-eligible waste into permit conditions. The modification would have to include public notice, and opportunity for public comment and a hearing.

While today's proposal focuses primarily on placement of CAMU-eligible waste in off-site hazardous waste landfills, it would not restrict placement to off-site landfills (as the option submitted by industry would); as suggested by one commenter, the proposal would allow placement of CAMU-eligible waste in any hazardous waste landfill, including on-site landfills-as long as the placement met the conditions of today's proposal. EPA recognizes that some facilities subject to cleanup already have permitted hazardous waste landfills on-site where CAMU-eligible wastes might be safely placed. EPA sees no reason to discourage placement of CAMU-eligible wastes in these landfills, as long as the placement met the same conditions that would be required for off-site placement. EPA believes that allowing on-site placement in landfills would promote more aggressive remediation at these sites—just as it would if wastes were sent to off-site locations. This approach would also promote consolidation of cleanup wastes in protective, lined Subtitle C landfills, and in many cases might free up portions of a facility for redevelopment. For these reasons, EPA is proposing to allow placement of CAMU-eligible wastes in on-site as well as off-site hazardous waste landfills.

Today's proposed requirements would set conditions for disposal of CAMU-eligible wastes in Subtitle C landfills. EPA, however, is soliciting comment only on the specific terms of this proposal. It is not asking for comment on any aspect of the August 2000 CAMU proposal. The conditions of today's supplemental proposal are discussed below.

IV. Section-by-Section Discussion

In today's notice, EPA is proposing to add a new section, 40 CFR 264.555, to RCRA's Subtitle C regulations. This new section would allow the Regional Administrator to approve placement of CAMU-eligible wastes in permitted hazardous waste landfills, without the wastes meeting otherwise applicable land disposal restrictions of RCRA, as codified in 40 CFR Part 268. Proposed § 264.555 sets out the basic conditions of approval, described below.

A. Conditions for Landfill Placement

Proposed § 264.555(a)(1)–(3) would establish the basic conditions that must be met for the Regional Administrator to approve placement of CAMU-eligible waste in a hazardous waste landfill unit.

1. *Limitation to CAMU-Eligible Wastes.* Under proposed § 264.555(a)(1), hazardous waste placed in a hazardous waste landfill under the conditions described in today's proposal would be limited to CAMU-eligible waste, as defined in proposed § 264.552(a)(1) and (2), in EPA's August 2000 CAMU proposal—that is, only wastes eligible for placement in a CAMU in the August 2000 proposal would be eligible for placement in a hazardous waste landfill under today's proposal. Readers should refer to the August 2000 proposal for the definition of "CAMU-eligible" and a discussion of the term (p. 51084–51089). Generally, CAMU-eligible wastes would be limited to solid or hazardous waste,

[4] Today's proposal would require CAMU-eligible wastes to be placed in landfills meeting Subtitle C standards for new hazardous waste landfills, and the treatment requirements would be the same as, or in some cases greater than, they would be for wastes placed in CAMUs on-site. Therefore, the landfill disposal option will in most cases be more protective overall.

or environmental media and debris, managed for implementing cleanup. They do not include as-generated wastes from on-going industrial operations.[5]

In addition, the "discretionary kickout" of the CAMU proposal (§ 264.552(a)(2)) would also apply—that is, the Regional Administrator could deny approval for waste that had not been managed (prior to cleanup) in compliance with the land disposal treatment requirements of Part 268 Subpart D or applicable RCRA design requirements, or if non-compliance with other applicable RCRA hazardous waste requirements likely contributed to the release of the waste. EPA included these requirements in the proposed amendments to the CAMU to ensure that CAMUs do not provide an incentive to mismanage as-generated wastes, and that persons who violated RCRA requirements in significant ways would not be automatically eligible to benefit from the flexibility provided by the CAMU. The discretionary kickout is discussed in detail in the preamble to the CAMU proposal at p. 51088–9. EPA believes it is appropriate to retain the "kickout" here, because the incentives would work in the same way for CAMU-eligible waste (treated in accordance with today's proposed standards) disposed of in hazardous waste landfills under today's proposal as they would for remediation waste disposed of in CAMUs.

The August 2000 proposal identified certain circumstances where non-hazardous as-generated wastes might be CAMU-eligible, and it banned liquid wastes except in certain circumstances (see proposed § 264.552(a)(1)(iii) and (a)(3), p. 51087–8, 51090–1). Specifically, as-generated wastes might be allowed where they facilitated treatment or performance of the CAMU, and liquids might be allowed where they facilitated the remedy selected for the waste. EPA has not proposed to include these provisions in the definition of hazardous wastes eligible for off-site disposal under today's proposal. In the case of "as-generated" wastes, a special exception is unnecessary, because there is no current regulatory constraint on placement of non-hazardous as-generated wastes in RCRA permitted landfills (except of course in cases of waste incompatibility, or similar situations). As for liquids, EPA sees no reason why the current RCRA ban on liquids in landfills should not continue to apply to hazardous waste landfills receiving CAMU-eligible wastes. The circumstances EPA identified where RCRA ban on liquids might be inappropriate for CAMUs were specific to remediation (see p. 51091). Therefore, EPA is proposing not to extend the exceptions to the liquids-in-landfills ban to disposal of CAMU-eligible wastes in hazardous waste landfills.

2. *Treatment Requirements.* Proposed § 264.555(a)(2) establishes treatment requirements for CAMU-eligible wastes placed, in accordance with today's proposal, in permitted hazardous waste landfills. As explained earlier in today's notice, these requirements largely track the August 2000 proposed treatment requirements for remediation wastes placed in CAMUs (with certain key differences). EPA's August 2000 proposed CAMU standards would require treatment of "principal hazardous constituents" in CAMU-eligible wastes to certain specified national minimum standards, or to adjusted standards, based on any of five specific "adjustment factors" (see proposed § 264.552(e) in the August 2000 notice) approved by the Regional Administrator. The adjusted level would have to be protective of human health and the environment (proposed § 264.552(e)(4)(v)).

In today's proposal, treatment of CAMU-eligible wastes disposed in hazardous waste landfills would similarly be limited to principal hazardous constituents (PHCs), as identified by the Regional Administrator. For details on the definition and identification of PHCs, readers should refer to the August 2000 proposed rule language, and the preamble discussion at p. 51096–9. Briefly, PHCs are "constituents that the Regional Administrator determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals" at the cleanup site (see proposed § 264.552(e)(4)(i)).

Today's proposal would also use the same structure for treatment requirements—that is, it would retain the national minimum treatment standards, with an opportunity for the Regional Administrator to adjust them based on specific enumerated factors (see discussion beginning at 51095 of the August 2000 proposal, and proposed § 264.252(c)(4)). Today's proposal, however, would eliminate one adjustment factor from the August 2000 proposal (Adjustment Factor B, which considers cleanup levels or goals at the remediation site), and it would also reduce the scope of another (Adjustment Factor E(2), which in the August 2000 proposal might allow for no treatment, under limited circumstances). Today's proposal would require treatment of principal hazardous constituents under Adjustment Factor E(2) in all cases of disposal in a hazardous waste landfill. These treatment standards would apply in lieu of otherwise applicable RCRA land disposal restrictions, and adjusted standards would have to be protective of human health and the environment (proposed § 264.552(e)(4)(v)).

Under proposed § 264.555(a)(2), the treatment requirements of today's proposal could be met in three ways, described below.

First, under proposed § 264.555(a)(2)(i), PHCs in the CAMU-eligible waste could be treated to the proposed minimum national treatment standards for CAMUs in proposed § 264.552(e)(4)(iv): that is, their concentration in the waste would have to be reduced by 90%, but in any case treatment would not be required below 10 times the universal treatment standard.[6] These levels, which EPA proposed in August 2000 for wastes placed in CAMUs, are based on EPA's treatment standards for contaminated soils, promulgated in the Phase IV land disposal restrictions rule (63 FR 28556, May 26, 1998). Since these treatment levels are the current standards for contaminated soils, the level of treatment required for soils would be the same without today's proposal, except that under today's proposal treatment would only be required for principal hazardous constituents. As the August 2000 proposal does for wastes being disposed of in CAMUs, today's proposal would apply these minimum national treatment standards to principal hazardous constituents in non-soil CAMU-eligible wastes being disposed of in Subtitle C landfills; these wastes, for example, might include sludges or wastes in old landfills undergoing remediation. For a detailed discussion of the national minimum treatment standards, in the context of CAMUs, see the preamble to the August 2000 proposal (p. 51099–51101).[7]

[5] The definition of CAMU-eligible wastes includes non-hazardous solid wastes. Non-hazardous cleanup wastes, of course, would not be affected by today's proposal, because they would not need special approval under § 264.555 to be placed in a hazardous waste landfill. Similarly, non-hazardous as-generated wastes would also be unaffected. The regulation of these wastes would generally be a matter of state law.

[6] Universal treatment standards (UTS) appear in 40 CFR 268.40.

[7] Section 264.552(e)(4)(iv)(E) of the August 2000 proposal would establish special treatment standards for debris placed in CAMUs debris may be treated to the current land disposal restriction standards of)268.45. the national minimum standards (i.e., 90% capped by 10XUTS)s. or atreatment standards established through one of the Adjustment Factors A through E, "whichever the regional Administrator determines is appropriate."

Continued

Second, under proposed § 264.555(a)(2)(ii), the Regional Administrator may adjust the minimum treatment standards by applying several of the adjustment factors allowed for CAMUs in the August 2000 proposal. These are adjustment factors § 264.552(e)(4)(A), (C), (D), and (E)(1).[8] The factors are discussed in detail in the preamble to the August 2000 proposal (p. 51102–8). To summarize briefly, the basis for adjustments under these factors are: Adjustment Factor A: the technical impracticability of treatment to the national minimum levels; Adjustment Factor C: the views of the affected community (in this case, particularly, at the site of the hazardous waste landfill receiving the waste, when it is different from the cleanup site); Adjustment Factor D: the short-term risks of treatment needed to meet the national minimum standards; and Adjustment Factor E(1): the long-term protection offered by the engineering design (and related engineering controls) of the hazardous waste landfill in which the CAMU-eligible waste would be placed, when the national minimum treatment standards have been substantially met, and the PHCs in the waste are of very low mobility.

EPA believes the application of Adjustment Factors A, C, and D in the context of today's proposal would be straightforward, and they need no further explanation here (although readers are referred to relevant discussions in the August 2000 CAMU proposal at p. 51102–4.) Adjustment Factor (E)(1), however, deserves further discussion. In the CAMU proposal, EPA included Adjustment Factor E among the adjustment factors so that the Regional Administrator might take into account the design of the CAMU in determining treatment levels. EPA believed that this consideration was appropriate (in clearly defined circumstances), both to remove disincentives to more aggressive cleanup and in acknowledgment of the important role of engineering design in ensuring protective remedies. EPA believes that these same principles apply when CAMU-eligible wastes are sent to permitted hazardous waste landfills—particularly since these landfills will meet the rigorous Subtitle C hazardous waste standards for new landfills. See, *Louisiana Environmental Action Network* v *USEPA* 172 F. 3d 65, 70 (D.C. Cir. 1999) (finding that RCRA allows the Agency to consider the protective effect of the disposal unit when setting treatment requirements).

Adjustment Factor (E)(1), in the August 2000 CAMU proposal, would allow the Regional Administrator to adjust treatment levels because of the protection offered by the design of the CAMU in adjusting treatment levels, but only if PHCs "substantially met" the national treatment standards, and the PHCs were of "very low mobility." For more discussion of these terms, see the preamble to the proposal at p. 51105–6. EPA would interpret these terms in the same way, for the purposes of today's proposal, except of course in the context of today's proposal, the Regional Administrator's analysis would be based on the environmental setting and the engineering design of the permitted hazardous waste landfill that was to receive the CAMU-eligible waste (see § 264.555(f) in today's proposed regulatory language). EPA expects that the analysis would be identical to the one anticipated for an on-site CAMU—although the unit would be designed to meet RCRA hazardous waste landfill design standards (see 65 FR 51104).

Third, proposed § 264.555(a)(2)(iii) would allow the Regional Administrator to adjust the minimum national treatment standards based on the design of the landfill[9] in accordance with proposed § 264.552(e)(4)(v)(E)(2), but with an important limitation—in all cases, treatment of PHCs would be required,[10] and that treatment would be required to significantly reduce "the toxicity or mobility of the principal hazardous constituents in the waste, minimizing the short-term and long-term threat posed by the waste, including the threat at the remediation site."

To assist the reader in understanding this proposed requirement, EPA repeats here, for context, the original language for Adjustment Factor E(2) in the August 2000 proposal:

> (E) The long-term protection offered by the engineering design of the CAMU and related engineering controls: * * *
>
> (2) Where cost-effective treatment has been used, or where, after review of the appropriate treatment technologies, the Regional Administrator determines that such treatment is not reasonably available, and:
>
> (i) The CAMU meets the Subtitle C liner and leachate collection requirements for new land disposal units at § 264.301(c) and (d), or
>
> (ii) The principal hazardous constituents are of very low mobility, or
>
> (iii) Where wastes have not been treated and the principal hazardous constituents in the wastes are of very low mobility, and either the CAMU meets or exceeds the liner standards for new, replacement, or laterally expanded CAMUs in paragraphs (e)(3)(i) and (ii) of this section, or the CAMU provides substantially greater protection.

(For further discussion of this proposed requirement, commenters should consult the preamble to the August 2000 proposal (p. 51106–7).) Under the proposed CAMU amendments, Adjustment Factor (E)(2) would allow a facility owner/operator, under certain circumstances, to forgo treatment of PHCs in CAMU-eligible waste where "cost-effective treatment * * * is not reasonably available." Under today's proposed § 264.555(b)(2)(iii), this option would not be available for CAMU-eligible hazardous waste being placed in a hazardous waste landfill. Not only would treatment of PHCs be explicitly required, but that treatment would have to significantly reduce "the toxicity or mobility of the principal hazardous constituents in the waste, minimizing the short-term and long-term threat posed by the waste, including the threat at the remediation site."

Requiring treatment under this adjustment factor, therefore, means that the option described in proposed paragraph (E)(2)(iii) would not be available for placement of CAMU-eligible waste in a hazardous waste landfill—because this option assumes no treatment. Instead, because permitted hazardous waste landfills must meet the Subtitle C standards for new landfills, paragraph (E)(2)(i) (where treatment is conducted) will govern placement under this adjustment factor. The proposed language also requires that treatment of the PHCs would minimize the threat at the remediation site as well as at the landfill (where the landfill is at a different location). EPA expects that threats at the remediation site would typically be minimized, because the treated waste would be sent off-site, but this provision would ensure that any cross-media issues raised by on-site

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These same standards would apply to debris disposed of in hazardous waste landfills under today's proposal. However, since EPA believes that Adjustment Factor B is inappropriate for wastes placed in hazardous waste landfills, under today's proposal, the Regional Administrator would not be able to adjust the treatment standard for debris based on this factor. Similarly, the limitations on Adjustment Factor E(2) in today's proposal would also apply to debris.

[8] Adjustment Factor B in the August 2000 proposal would allow treatment levels to be adjusted, based on "cleanup standards applicable to the [remediation] site." Since, under today's proposal, the CAMU-eligible waste would be disposed of in permitted hazardous waste landfills, EPA concluded that the cleanup goals at the site were not relevant and, therefore, has not included this adjustment factor.

[9] Note that, under proposed § 264.555(f), the "design of the CAMU" in § 264.552(e)(4)(v)(E) means the design of the permitted Subtitle C landfill.

[10] Although the industry proposal would have required that the treatment in this case be "cost-effective," EPA sees no reason to limit the treatment in this way. As long as the treatment meets the performance standard of this section, EPA believes that it is immaterial whether the treatment is "cost-effective" or not.

treatment were addressed, and that any threats from non-hazardous treatment residues left on-site were minimized.

Thus, today's proposal would significantly tighten the conditions of Adjustment Factor (E)(2) for CAMU-eligible wastes being placed in hazardous waste landfills. EPA is proposing to add these limitations to Adjustment Factor (E)(2)—particularly requiring treatment of PHCs in all cases under this factor—to ensure that any potential transfer of risk to the off-site location is minimized when the Regional Administrator relies on the protection afforded by the disposal unit to adjust the treatment standards. Merely requiring treatment for off-site placement would not provide much certainty on the degree of treatment, and therefore today's proposal includes a performance standard for the treatment: it would have to be "treatment that substantially reduces the toxicity or mobility of the principal hazardous constituents in the waste, minimizing the short-term and long-term threat posed by the waste * * *" EPA notes that this standard (except in its limitation to PHCs) is essentially the same as the statutory treatment standard underlying the hazardous waste land disposal restrictions. By requiring, under this adjustment factor, that the risk drivers during the cleanup (that is, the principal hazardous constituents) be "substantially" treated to "minimize threat," EPA believes that the proposal minimizes any potential for risk transfer in situations where the degree of treatment is predicated on the condition of the receiving landfill.

EPA notes that this proposed requirement for "substantial" treatment minimizing threat would apply only to adjustment factor E(2). EPA does not believe a comparable standard is needed for the other adjustment factors, which do not allow the Regional Administrator to base the decision solely on the engineering design of the receiving unit (*see e.g.*, RCRA Section 1002(b)(7), recognizing the uncertainties associated with land disposal of hazardous wastes).

3. *Disposal Unit Requirements.* Proposed § 264.555(a)(3) would limit hazardous waste landfills receiving CAMU-eligible wastes to those with RCRA permits. This section would also require that the landfill meet the technical design and operating requirements for new landfills in 40 CFR Part 264, Subpart N. This requirement will ensure that the landfill meets the double synthetic liner and detailed leachate collection requirements of § 264.301(c). In addition, the landfill will be subject to the specific ground-water monitoring requirements of subpart F of Part 264 and the closure requirements of subpart G. EPA notes that design and operating requirements for CAMUs in the August 2000 proposal are largely based on standards for municipal solid waste landfills, rather than the more stringent hazardous waste requirements of today's proposal. As with the treatment requirement under Adjustment Factor (E)(2), EPA is proposing to take a more stringent approach for placement of CAMU-eligible wastes in hazardous waste landfills to minimize any potential for transfer of risk.

Today's proposal would not allow CAMU-eligible wastes to be placed in "interim status" hazardous waste landfills; placement is limited to units with RCRA hazardous waste permits. Under the RCRA regulations, existing facilities are grandfathered into the permit system under "interim status," if they are in existence at the time they become subject to RCRA hazardous waste requirements. Eventually, EPA or the appropriate state must issue these facilities a RCRA permit, through a public process. The permit applies the RCRA hazardous waste requirements directly, through detailed conditions, to the waste management units covered in the permit.

EPA is proposing to limit placement of CAMU-eligible wastes, under the terms of today's proposal, to landfills with a RCRA hazardous waste permit because the part 264 standards provide a higher level of specificity than do comparable standards for interim status landfills in part 265—for example, in the area of ground-water monitoring. EPA also believes a permit contributes to minimizing risk transfer, because permits ensure close regulatory oversight of general facility operations (e.g., waste analysis plan, contingency plan, etc.) and financial assurance. For this reason, EPA believes the permitting standards and the permit process are important elements of the proposed approach.

Today's rule would not specify who had to hold the permit for the landfill. For example, the landfills accepting CAMU-eligible wastes might be off-site commercial units, or they might be at facilities controlled by the owner/operator of the remediation site.

B. Approval Procedures

The Regional Administrator (or the authorized state program) at the location of the hazardous waste landfill would be responsible for approving placement of CAMU-eligible waste in the landfill. Under today's proposal, approval procedures for placement of CAMU-eligible waste in the hazardous waste landfill would be identical to the CAMU approval procedures in the August 2000 proposal. Under today's proposed § 264.555(b), facility owner/operators wishing to place CAMU-eligible waste in a RCRA landfill must meet the same information requirements as apply to CAMU applications. That is, they would be required to provide information sufficient to enable the Regional Administator to approve placement, in accordance with proposed § 264.555(b). In addition, the person applying for approval must provide information on the waste required in proposed § 264.552(d)(1)–(3), unless it is not reasonably available. The Regional Administrator would use this information—which relates to waste origins and past management—to determine that the waste is indeed "CAMU-eligible" and to support use of the "discretionary kickout," where appropriate. Before approving placement of the CAMU-eligible waste in the RCRA landfill, the Regional Administrator would have to provide public notice and a reasonable opportunity for public comment. These standards are identical to those for approval of CAMUs at the remediation site, and EPA believes they are equally appropriate for placement in a hazardous waste landfill, including off-site placement—where the Regional Administrator will be addressing the same questions (e.g., is the waste "CAMU-eligible" or should the discretionary kickout be exercised). For further discussion of these standards, see p. 51089–51090 of the August 2000 proposal. Finally, under today's proposal, approval procedures (including public notice and comment) for placement in a hazardous waste landfill would be specific to individual cleanups. EPA believes that this approach is appropriate, given the likely variation of CAMU-eligible wastes from cleanup to cleanup site, and the waste-specific nature of many aspects of the approval (e.g., identification of PHCs, choice of adjustment factors, etc.).

Proposed § 264.555(d) would require that the permit for the landfill be modified to incorporate CAMU-eligible waste into the permit, ensuring that its management is covered by appropriate part 264 hazardous waste requirements. In some cases, a permit modification would already be required by state or federal regulations, but in others—for example, where the waste met the waste acceptance criteria in the permit—it might not. In any case, proposed § 264.555(d) would ensure that the permit was modified to incorporate CAMU-eligible waste. The modification

would follow permit modification procedures specified in § 270.42 or comparable state regulations, but at a minimum it would include public notice, opportunity for comment, and an opportunity for a hearing. This process would ensure that the local public has the opportunity to comment on the specifics of how the waste is managed under the facility permit.

As part of the permit modification process, EPA expects that the Regional Administrator would include any requirements he or she determined were necessary to protect human health or the environment through the RCRA "omnibus" provision.[11] These requirements might include special management standards to address potential risks from hazardous constituents in the waste, including principal hazardous constituents. As specified in proposed § 264.555(d), the permit would also include recordkeeping requirements to demonstrate compliance with treatment standards approved for the waste. Under the current permitting requirements at § 264.13(a)(1), the facility owner/operator would be required to conduct an analysis of the waste that, "at a minimum" contains "all the information which must be known to treat, store, or dispose of the waste in accordance with this part" (which would include information to show that treatment levels approved by the Regional Administrator were met). The plans for this analysis would be incorporated into the facility waste analysis plan (see § 264.13(b)), and the results of the analysis kept in the facility operating records in accordance with § 264.73(b)(3).

In most cases, EPA expects that the process for approving placement of the waste (in § 264.552(c)) and the permit modification step (in § 264.555(d)) would take place as part of the same process, and EPA certainly encourages this approach. At the same time, however, today's proposal identifies these processes as separate requirements, because they reflect different regulatory events—the Regional Administrator's approval of the CAMU-eligible placement reflects a determination that the standards of § 264.555(b) are met in the context of waste from a particular cleanup, while the permit modification integrates the management of that waste into an already existing regulatory mechanism, that is, the facility permit.[12]

C. Other Requirements

EPA emphasizes that today's proposal is narrow in scope. Under today's proposal, the Regional Administrator may approve placement of CAMU-eligible waste in hazardous waste landfills under only limited circumstances. Meanwhile, the waste would remain a RCRA hazardous waste, subject to all applicable RCRA hazardous waste requirements. For example, the manifest, recordkeeping, and reporting requirements of part 262 and part 264 subpart E would apply. In other words, the waste would require a manifest when shipped to an off-site facility, and standard RCRA waste-management requirements would apply (e.g., waste analysis, storage requirements prior to placement, etc.).

In addition, when the waste is sent off-site, the proposed rule (§ 264.555(e)) specifies that the generator of the waste (i.e., the owner/operator of the remediation site) would be subject to the current reporting, recordkeeping, and tracking requirements of § 268.7(a)(4). This section establishes requirements that apply "when exceptions allow certain wastes or contaminated soil that do not meet the [land disposal restriction] treatment standards to be land disposed." With the initial shipment of waste, the generator would be required to send a one-time written notice to the land disposal facility providing specific information, such as the EPA waste identification numbers, the manifest number of the first shipment, and waste analysis data.

In addition, today's rule does not in any way restrict remediation waste management options that already exist. For example, the land disposal restriction variances of § 268.44(h) would remain available as an alternative (or complementary) approach for CAMU-eligible wastes sent for disposal. Furthermore, as described above, non-hazardous wastes would also be unaffected, because their management and disposal are generally not regulated under the federal RCRA hazardous waste program, and they would not need special approval under today's rule to allow placement in a landfill.

V. How Would Today's Proposed Regulatory Changes Be Administered and Enforced in the States?

Under § 3006 of RCRA, EPA may authorize qualified states to administer their own programs in lieu of the federal hazardous waste program and to issue and enforce permits within the state. A state may receive authorization by following the approval process described under Part 271. See 40 CFR part 271 for the overall standards and requirements for authorization. Following authorization, the state requirements authorized by EPA apply in lieu of equivalent federal requirements and become federally enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. Authorized states also have independent authority to bring enforcement actions under state law.

After a state receives initial authorization, new federal requirements promulgated under RCRA authority existing prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that state until the state adopts and receives authorization for equivalent state requirements. In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new federal requirements and prohibitions promulgated pursuant to HSWA provisions take effect in authorized states at the same time that they take effect in unauthorized states. As such, EPA carries out HSWA requirements and prohibitions in authorized states, including the issuance of new permits implementing those requirements, until EPA authorizes the state to do so.

Authorized states are required to modify their programs when EPA promulgates federal requirements that are more stringent or broader in scope than existing federal requirements. RCRA section 3009 allows the states to impose standards more stringent than those in the federal program. See also § 271.1(i). Therefore, authorized states are not required to adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than existing federal requirements. Today's supplemental proposal is considered to be less stringent than the existing federal program. Although states would not be required to adopt these provisions, EPA would strongly encourage them to do so.

The provisions in today's notice are a supplement to the CAMU amendments that were proposed on August 22, 2000

[11] Under the RCRA "omnibus" provision, "each permit * * * shall contain such terms and conditions as the Administrator (or the State) determines necessary to protect human health and the environment." RCRA 3005(c)(3).

[12] This dual requirement is similar to the current situation with land disposal restriction treatment variances. For example, an LDR variance under § 268.44(h) might allow wastes to be disposed of in a hazardous waste landfill. Yet this variance would be independent of whether the landfill's permit needed to be modified to allow it to receive the waste. Similarly, no-migration variances under § 268.6 are issued for facilities under a separate process from permit modifications allowing the facility to receive the waste.

(65 FR 51080). The provisions in today's notice address the application of LDRs to cleanup wastes and would therefore also be promulgated under HSWA authority. Because these provisions are less stringent than the existing regulations, they will become effective only in those states which are not authorized for these parts of the hazardous waste program. Further, because the issues addressed by the provisions in today's notice have no counterpart in the existing CAMU regulations (or any other RCRA regulation), they would not be substantially equivalent to those regulations. Thus, states which are authorized for the 1993 CAMU rule would not be able to gain interim authorization-by-rule for the provisions in today's notice. The final CAMU amendments rule would not include the provisions in today's notice in the interim authorization-by-rule sections in proposed §§ 271.24(c) and 271.27 (see 65 FR 51115).

However, if a state were, through implementation of state waiver authorities or other state laws, to allow compliance with the provisions of today's notice in advance of adoption or authorization, EPA would not generally consider such implementation a concern for purposes of enforcement or state authorization. (This is similar to the approach the Agency took in promulgation of the 1993 CAMU rule. See 58 FR 8677, February 16, 1993.)

VI. Effective Date

Regulations promulgated pursuant to RCRA Subtitle C generally become effective six months after promulgation. RCRA section 3010(b) provides, however, for an earlier effective date in three circumstances: (1) Where industry regulated by the rule at issue does not need six months to come into compliance; (2) the regulation is in response to an emergency situation; or (3) for other good cause.

EPA is proposing that today's rule become effective within 90 days after promulgation, at the same time as the proposed effective date for the CAMU amendments in the August 2000 proposal. EPA does not believe that industry needs a full six months to come into compliance with today's proposed requirements, because they do not directly impose any new requirements. Furthermore, if EPA finalizes today's proposal, it intends to do so at the same time as it finalizes the August 2000 proposal. The Agency believes that it will be simpler and less confusing if all the CAMU amendments become effective on the same date.

VII. Analytical and Regulatory Requirements

A. Planning and Regulatory Review (Executive Order 12866)

Under the Planning and Regulatory Review Executive Order 12866 (58 FR 51735 (October 4, 1993)), an agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(A) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(B) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(C) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866, and therefore OMB has exempted this regulatory action from Executive Order 12866 review.

The existing regulatory requirements for management of hazardous cleanup wastes (e.g., the otherwise applicable LDR treatment requirements and the minimum technology unit design standards) can present a significant disincentive to facilities considering remediation. This condition was one of the main factors behind the 1993 CAMU Rule and was discussed in the August 2000 preamble to the CAMU Amendments. Under these baseline conditions, facilities that manage their remediation waste in a Subtitle C landfill typically incur significant costs to meet the LDR requirements. However, under today's proposal these facilities would have the option of treating their cleanup wastes that meet the definition of CAMU-eligible waste to the national minimum treatment standards (or the adjusted standards as described earlier in today's proposal) and disposing of them in a RCRA hazardous waste landfill. Thus, these facilities would enjoy a cost savings as a result of the less stringent treatment requirements of today's proposal.

Despite the existence of various alternatives to full Subtitle C management of cleanup wastes under the baseline requirements (such as CAMU or treatability variances), there are still cases where facilities reduce the scope of their remedial efforts or do not perform remediation at all. In such cases, the less rigorous requirements provided in today's proposal for Subtitle C management of cleanup wastes meeting the definition of CAMU-eligibility may provide enough incentive for some facilities to increase their remedial efforts. For those facilities shifting from no remediation in the baseline to remediation under the less stringent requirements of today's proposed rule, there may actually be an increase in costs. However, these costs would be borne voluntarily and can therefore be expected to result in an overall gain for the facility. A good example of such a case would be a brownfields redevelopment site.

Thus, as discussed above, the Agency believes that today's proposal will result in an overall reduction in the costs to facilities through the reduction in treatment requirements when cleanup work is managed in Subtitle C landfills.

B. Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), 5 USC 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entities are defined as: (1) a small business meeting the RFA default definitions (based on SBA size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a

substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact on the proposed rule on small entities." 5 U.S.C. Sections 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all the small entities subject to the rule. As discussed in the economic analysis section, EPA believes that today's proposal will provide regulatory relief for facilities engaging in remediation through treatment of CAMU-eligible wastes to the national minimum standards (or the adjustment factors) and disposal in Subtitle C landfills. For facilities which manage their cleanup wastes in the baseline according to full Subtitle C requirements, today's proposal would provide relief through the less stringent requirements for treatment of CAMU-eligible waste prior to disposal in a Subtitle C landfill. Additionally, for facilities which currently do little or no remediation due to the rigor of the baseline requirements for management of cleanup waste, today's proposal would offer less stringent requirements within which remediation might be pursued. EPA therefore concludes that today's proposed rule will relieve regulatory burden for all small entities. EPA is interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No.) and a copy may be obtained from Sandy Farmer by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by email at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at *http://www.epa.gov/icr.*

Today's proposal would require persons seeking approval to send CAMU-eligible wastes to a permitted Subtitle C landfill under the reduced treatment standards to submit sufficient information to enable the Regional Administrator to approve placement of such wastes. Under proposed § 264.555(b), such persons would be required to submit the information required by § 264.552(d)(1) through (3) for CAMU applications, unless not reasonably available. Section 3007(b) of RCRA and 40 CFR part 2, Subpart B, which defines EPA's rules on public disclosure of information, contain provisions for confidentiality of business information. However, the Agency does not anticipate that businesses will assert a claim of confidentiality covering all or part of the information that will be requested pursuant to the final amended CAMU rule. If such a claim were asserted, EPA must treat the information in accordance with the regulations cited above. EPA also will assure that this information collection complies with the Privacy Act of 1974 and OMB Circular 108.

EPA estimates the total annual respondent burden and cost for the final new paperwork requirements to be approximately 235 hours and $63,120. The bottom line respondent burden over the three-year period covered by this ICR is 750 hours, at a total cost of approximately $189,360. The Agency burden or cost associated with this final rule is estimated to be approximately 39 hours and $1,860 per year. The bottom line Agency burden over the three-year period covered by this ICR is 117 hours, at a total cost of approximately $5,580. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after November 20, 2001, a comment to OMB is best assured of having its full effect if OMB receives it by December 20, 2001. EPA will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions by State, local, and tribal governments and the private sector. Under Section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed rules and final rules for which the Agency published a notice of proposed rulemaking if those rules contain "Federal mandates" that may result in the expenditure by State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. If a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives. Under Section 205, EPA must adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, unless the Administrator publishes with the final rule an explanation why that alternative was not adopted. The provisions of Section 205 do not apply when they are inconsistent with applicable law.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector. EPA has determined that this rule will not result in the expenditure of $100 million or more by State, local, and

tribal governments, in the aggregate, or by the private sector in any one year. No provision in today's proposal would require a facility to employ the off-site disposal option in remediation. Therefore, no facility would employ this option unless it provided some benefit over and above currently existing options. Thus, today's rule is not subject to the requirements of Sections 202, 204, and 205 of UMRA.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule will not significantly or uniquely affect small governments. Today's proposal provides a voluntary option for consideration by a facility undertaking remediation. Today's rule is not, therefore, subject to the requirements of Section 203 of UMRA.

E. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The regulatory changes proposed today would not involve the use of any technical standards not already addressed as part of the August 2000 proposal. As discussed in the August 2000 proposal, the Agency did not identify any potential applicable voluntary consensus standards during its development of the August 2000 proposal (e.g., during its discussion with Agency personnel and stakeholders who are experts in the areas addressed by the rulemaking).

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

F. Consultation and Coordination With Indian and Tribal Governments (Executive Order 13175)

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This proposed rule will not have tribal implications because tribal governments do not implement the RCRA regulations and the proposed rule is not anticipated to have significant impacts overall, nor on individual facilities.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Protection of Children From Environmental Health Risks and Safety Risks (Executive Order 13045)

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The Agency does not believe that the risks addressed by today's amendments—i.e., the risks from management of CAMU-eligible wastes in hazardous waste landfills—present a disproportionate risk to children. Today's proposed rule would continue to require that a decision concerning overall protectiveness of any specific decision to allow placement of CAMU-eligible waste in a Subtitle C landfill under the proposal be made by the Regional Administrator based on site-specific circumstances, including risks to children where appropriate. Furthermore, today's proposed rule would require public notice and a reasonable opportunity for public comment prior to approving placement of CAMU-eligible wastes in a hazardous waste landfill.

The public is invited to submit or identify peer-reviewed studies and data, of which the agency may not be aware.

H. Federalism (Executive Order 13132)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. As today's proposal offers a voluntary option of disposal of CAMU-eligible wastes in hazardous waste landfills, the Agency believes that it could result in a

reduction in costs. Therefore, the Agency believes that it will not result in substantial effects on States. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

I. Environmental Justice Strategy (Executive Order 12898)

To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands.

Federal Agency Responsibilities for Federal Programs: Each Federal agency shall conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such programs, policies, and activities, because of their race, color, or national origin.

EPA believes that the risks addressed by the proposed rule do not have environmental justice implications. Today's proposed rule would continue to require that a decision concerning overall protectiveness of any specific decision to allow placement of CAMU-eligible waste in a Subtitle C landfill under this proposal be made by the Regional Administrator based on site-specific circumstances. Furthermore, today's proposed rule would require public notice and a reasonable opportunity for public comment prior to approving placement of CAMU-eligible wastes in a hazardous waste landfill. Therefore, EPA believes that there are no environmental justice issues associated with the CAMU proposed amendments.

J. Energy Effects (Executive Order 13211)

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects.

List of Subjects in 40 CFR Part 264

Administrative practice and procedure, Air pollution control, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Insurance, Intergovernmental relations, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water pollution control, Water supply.

Dated: November 14, 2001.

Christine T. Whitman,

Administrator.

For the reasons set out in the preamble, 40 CFR Part 264 is proposed to be amended as follows.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

Subpart S—[Amended]

2. Section 264.555 is added to Subpart S to read as follows:

§ 264.555 Disposal of CAMU-eligible wastes in permitted hazardous waste landfills.

(a) The Regional Administrator may approve placement of wastes in landfills, including landfills not located at the site from which the waste originated, without the wastes meeting the requirements of RCRA 40 CFR part 268, if the conditions in paragraphs (a)(1) through (3) of this section are met:

(1) The waste meets the definition of CAMU-eligible waste in § 264.552(a)(1) and (2).

(2) The Regional Administrator identifies principal hazardous constitutes in such waste, in accordance with § 264.552(e)(4)(i) and (ii), and requires that such principal hazardous constituents are treated to any of the following standards specified for CAMU-eligible wastes:

(i) The treatment standards under § 264.552(e)(4)(iv); or

(ii) Treatment standards adjusted in accordance with § 264.552(e)(4)(v)(A), (C), (D) or (E)(1); or

(iii) Treatment standards adjusted in accordance with § 264.552(e)(4)(E)(2), where treatment has been used and that treatment significantly reduces the toxicity or mobility of the principal hazardous constituents in the waste, minimizing the short-term and long-term threat posed by the waste, including the threat at the remediation site.

(3) The landfill receiving the CAMU-eligible waste must have a RCRA hazardous waste permit, meet the requirements for new landfills in Subpart N of this part, and be authorized to accept such wastes; for the purposes of this requirement, "permit" does not include interim status.

(b) The person seeking approval shall provide sufficient information (including the location of the landfill) to enable the Regional Administrator to approve placement of CAMU-eligible waste in accordance with paragraph (a) of this section. Information required by § 264.552(d)(1) through (3) for CAMU applications must be provided, unless not reasonably available.

(c) The Regional Administrator shall provide public notice and a reasonable opportunity for public comment before approving placement of the CAMU eligible waste in the permitted hazardous waste landfill, consistent with the requirements for CAMU approval at § 264.552(h). The approval must be specific to a single remediation.

(d) Applicable hazardous waste management requirements in this part, including recordkeeping requirements to demonstrate compliance with treatment standards approved under this section, for the CAMU-eligible waste must be incorporated into the receiving facility permit through permit issuance or a permit modification, providing notice and an opportunity for comment and a hearing. Notwithstanding 40 CFR 270.4(a), a landfill may not receive hazardous CAMU-eligible waste under this section unless its permit specifically authorizes receipt of such waste.

(e) Generators of CAMU-eligible wastes sent off-site to a hazardous waste landfill under this section must comply with the requirements of 40 CFR 268.7(a)(4).

(f) For the purposes of this section only, the "design of the CAMU" in 40

CFR 264.552(e)(4)(v)(E) means design of the permitted Subtitle C landfill.

[FR Doc. 01–28935 Filed 11–19–01; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011109274–1274–01; I.D. 102501B]

RIN 0648–AP06

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2002 Specifications

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes specifications for the 2002 summer flounder, scup, and black sea bass fisheries. The implementing regulations for the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) require NMFS to publish specifications for the upcoming fishing year for each fishery and to provide an opportunity for public comment. NMFS requests comment on proposed management measures for the 2002 summer flounder, scup, and black sea bass fisheries. The intent of this action is to specify allowed harvest levels and other measures to address overfishing of the summer flounder, scup, and black sea bass resources.

DATES: Public comments must be received (see **ADDRESSES**) no later than 5 p.m. eastern standard time on December 5, 2001.

ADDRESSES: Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees; the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA); and the Essential Fish Habitat Assessment are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. The EA/RIR/IRFA is accessible via the Internet at *http:/www.nero.nmfs.gov/ro/doc/nero.html*.

Written comments on the proposed specifications should be sent to Patricia A. Kurkul at the same address. Mark on the outside of the envelope, "Comments—2002 Summer Flounder, Scup, and Black Sea Bass Specifications." Comments may also be sent via facsimile (fax) to (978) 281–9371. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, Fishery Policy Analyst, (978) 281–9279, fax (978) 281–9135, e-mail rick.a.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations implementing the FMP at 50 CFR part 648, subparts A, G, H, and I outline the process for specifying annually the catch limits for the summer flounder, scup and black sea bass commercial and recreational fisheries, as well as other management measures (e.g., mesh requirements, minimum fish sizes, gear restrictions and area restrictions) for these fisheries. These measures are intended to achieve the annual targets set forth for each species in the FMP, specified either as a fishing mortality rate (F) or an exploitation rate (the proportion of fish available at the beginning of the year that are removed by fishing during the year).

The fisheries are managed cooperatively by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission). A Monitoring Committee (MC) for each species, made up of members from NMFS, the Commission, and both the Mid-Atlantic and New England Fishery Management Councils, is required to review available information and to recommend catch limits and other management measures necessary to achieve the target F or exploitation rate for each fishery, as specified in the FMP. The Council's Demersal Species Committee and the Commission's Summer Flounder, Scup, and Black Sea Bass Board (Board) then consider the Monitoring Committee's recommendations and any public comment in making their recommendations. The Council and Board made their annual recommendations at a joint meeting held August 7–9, 2001. While the Board action is final, the Council recommendations must be reviewed by NMFS to assure that they comply with FMP objectives.

On August 10, 2001, regulations were implemented under Framework Adjustment 1 to the FMP to allow the specification of quota set-asides to be used for research purposes. For the 2002 specifications, the Council recommended that 2 percent of the Total Allowable Landings (TAL) for summer flounder, and 3 percent of the TAL for scup and black sea bass, be set aside for scientific research purposes. A Request for Proposals has been published to solicit research proposals for 2002 based on research priorities identified by the Council (66 FR 38636, July 25, 2001, and 66 FR 45668, August 29, 2001). The deadline for submission was September 14, 2001, and proposals are currently under review. For informational purposes, this proposed rule includes a statement indicating the amount of the research set-asides. The quota set-asides will be adjusted in the final rule establishing the annual specifications for the summer flounder, scup and black sea bass fisheries, consistent with projects forwarded to the NOAA Grants Office for award. If the total amount of the quota set-aside is not awarded, NMFS will publish a notice in the **Federal Register** to restore the unused set-aside amount to the TAL.

Summer Flounder

The FMP specifies a target F for 2002 of F_{MAX}—that is, the level of fishing that produces maximum yield per recruit. Best available data indicate that F_{MAX} is currently equal to 0.26 (equal to an exploitation rate of about a 22 percent from fishing). The total allowable landings (TAL) associated with the target F is allocated 60 percent to the commercial sector and 40 percent to the recreational sector. The commercial quota is allocated to the coastal states based upon percentage shares specified in the FMP.

The status of the summer flounder stock is re-evaluated annually. The most recent assessment, updated by the Northeast Fisheries Science Center (NEFSC) Southern Demersal Working Group in June, 2001, indicated that the summer flounder stock is overfished and overfishing, as those terms are defined in the FMP, is occurring. This conclusion was derived from the fact that, in 2000, the estimated total stock biomass of 46,400 mt was below the biomass threshold of 53,200 mt under which the stock is considered overfished ($\frac{1}{2}$ B_{msy}), and the estimated F rate of 0.30 was 15-percent above the FMP overfishing definition of 0.26 (F_{MAX}).

However, the F of 0.30 estimated for 2000 represents a significant decline since 1994, when F was estimated to be 1.31. Total stock biomass has increased substantially from 39.7 million lb (18 million kg) in 1991 to 102.3 mlb (46.4 million kg) in 2000. Spawning stock biomass (SSB) has also increased

steadily from 20.51 million lb (9.32 million kg) in 1993 to 81.68 million lb (37.05 million kg) in 2000, the highest value in the time series. Projections based on assumptions about future landings, discards, and recruitment to the stock, indicate that if the 2001 TAL is not exceeded, total stock biomass will exceed the biomass threshold (53,200 mt) under which the stock would be considered overfished in 2001. When the total stock biomass is above this overfishing definition threshold, the stock will no longer be considered overfished, although it will still be below the amount (106,400 mt) necessary to produce maximum sustainable yield (B_{msy}). Because the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that stocks be rebuilt to a level that produces maximum sustainable yield (MSY), additional rebuilding of the stock will still be required.

The Summer Flounder MC reviewed the stock status and projections based on these data and made a TAL recommendation to achieve the target F. The Summer Flounder MC recommended a TAL of 24.3 million lb (11.02 million kg), which would be allocated 14.58 million lb (6.61 million kg) to the commercial sector and 9.72 million lb (4.40 million kg) to the recreational sector. This TAL was determined to have a 50-percent probability of achieving an F target of 0.26; as specified in the FMP, if the 2001 TAL and assumed discard levels are not exceeded.

The Council and Board reviewed the Summer Flounder MC's recommendation and adopted it. The Council and Board also agreed to set aside 2 percent (485,943 lb (220,420 kg)) of the summer flounder TAL for research activities. After deducting the research set-aside, the TAL would be divided into a commercial quota of 14.29 million lb (6.48 million kg) and a recreational harvest limit of 9.52 million lb (4.32 million kg).

In addition, the Commission is expected to maintain the voluntary measures currently in place to reduce regulatory discards that occur as a result of landing limits established by the states. The Commission established a system whereby 15 percent of each state's quota would be voluntarily set aside each year to enable vessels to land an incidental catch allowance after the directed fishery has been closed. The intent of the incidental catch set-aside is to reduce discards by allowing fishermen to land summer flounder caught incidentally in other fisheries during the year, while also ensuring that the state's overall quota is not exceeded. These Commission set-asides are not included in any tables in this document because NMFS does not have authority to establish such subcategories.

NMFS proposes to implement the TAL recommended by the Council. The recreational harvest limit of 9.72 million lb (4.40 million kg) is allocated on a coastwide basis. The commercial quota of 14.58 million lb (6.61 million kg) is allocated to the states as shown in Table 1. Table 1 presents the allocations by state, with and without the 2-percent research set-aside deduction. These state quota allocations are preliminary and subject to a reduction if there are overages in a state's 2001 harvest. Any adjustments based upon known 2001 overages will be published in the **Federal Register** in the final rule implementing these specifications. These and additional adjustments will be necessary as 2001 landings data are finalized. NMFS will publish any such adjustments in the **Federal Register**.

TABLE 1.—2002 PROPOSED INITIAL SUMMER FLOUNDER STATE COMMERCIAL QUOTAS

State	Percent share	Commercial quota		Commercial quota with 2% research set-aside	
		lb	kg [1]	lb	kg [1]
ME	0.04756	6,933	3,145	6,795	3,082
NH	0.00046	67	30	66	30
MA	6.82046	994,306	451,010	974,420	441,989
RI	15.68298	2,286,310	1,037,053	2,240,583	1,016,311
CT	2.25708	329,044	149,258	322,463	146,267
NY	7.64699	1,114,800	505,665	1,092,504	495,551
NJ	16.72499	2,438,217	1,105,957	2,389,452	1,083,837
DE	0.01779	2,593	1,176	2,542	1,153
MD	2.03910	297,266	134,838	291,320	132,140
VA	21.31676	3,107,619	1,409,592	3,045,466	1,381,400
NC	27.44584	4,001,133	1,814,883	3,921,110	1,778,586
Total	100.00	14,578,288	6,612,600	14,286,721	6,480,348

[1] Kilograms are as converted from pounds and do not add to the converted total due to rounding.

Scup

Scup was most recently assessed at the 31st Northeast Regional Stock Assessment Review Committee (SARC 31) in June 2000. SARC 31 concluded that scup are overfished and that overfishing is occurring. Scup spawning stock biomass (SSB) is low. The Northeast Fisheries Science Center (NEFSC) spring survey 3-year average (1998 through 2000) for scup spawning stock biomass (SSB) was 0.10 SSB kg/tow, which is less than 5 percent of the index that defines the stock as overfished (2.77 kg/tow; the maximum NEFSC spring survey 3-year average of SSB). SARC 31 noted that the overall stock has a highly truncated age structure (i.e., there are fewer older fish than there would be in a healthy stock), which likely reflects prolonged high fishing mortality rates. SARC 31 also noted that F should be reduced substantially and immediately, and that a reduction in F from discards would have the most impact on rebuilding the stock, especially considering the importance of allowing recent year classes and all future good recruitment to contribute to rebuilding of the stock size and age structure.

Since the SARC 31 Report, the Commission's Technical Committee has updated the state and Federal survey indices for scup, as well as discard estimates from sea sample and Vessel Trip Report (VTR) data. The surveys indicate an increase in stock abundance in recent years. The NEFSC spring survey results indicate that spawning stock abundance has increased each year since 1998. In addition, the NEFSC

autumn survey results for 2000 are the highest in the time series since 1976. These survey results likely reflect the effects of a strong 1997 year class and moderate to strong 1999 and 2000 year classes.

The target exploitation rate for scup in 2001 was 33 percent. For 2002, the FMP established a target exploitation rate of 21 percent. The total allowable catch (TAC) associated with a given exploitation rate is allocated 78 percent to the commercial sector and 22 percent to the recreational sector by the FMP. Scup discard estimates are deducted from both sector's TACs to establish TALs for each sector (TAC less discards = TAL). The commercial TAL is then allocated on a percentage basis to three quota periods, as specified in the FMP—Winter I (January–April)—45.11 percent; Summer (May–October)—30.95 percent; and Winter II (Nov–December)—15.94 percent.

The proposed scup specifications for 2002 are based on the exploitation rate in the rebuilding schedule that was approved when scup was added to the FMP in 1996, prior to passage of the Sustainable Fisheries Act (SFA). Subsequently, to comply with the SFA amendments to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Council prepared Amendment 12, which proposed to maintain the existing rebuilding schedule for scup established by Amendment 8. On April 28, 1999, NMFS disapproved that rebuilding plan for scup because it did not comply with the Magnuson-Stevens Act. NMFS advised the Council that the exploitation rate portion of the overfishing definition (converted to an F) was conceptually sound, though somewhat risk-prone. However, given the abundance level of the stock, NMFS determined that the combination of the exploitation rates and the length of time to rebuilding made the degree of risk unacceptable that sufficient rebuilding would likely occur. Therefore, for the short term, the proposed scup specifications for 2002 are based on an exploitation rate that was found to be conceptually sound. NMFS believes that the long-term risks that were associated with the disapproved rebuilding plan do not apply to the proposed specifications since they apply only for 1 fishing year and will be reviewed, and modified as appropriate, by the Council and NMFS annually. Furthermore, setting the scup specifications using an exploitation rate of 21 percent is a much more risk averse approach to managing this resource than not setting any specifications until the Council submits, and NMFS approves, a revised rebuilding plan that meets all Magnuson-Stevens Act requirements.

In making its recommendation to the Council, the Scup MC reviewed the available data and concluded that scup abundance is likely to increase in 2002. Council staff made deterministic projections to estimate future expected NEFSC spring survey indices. This projection indicates that the spawning stock biomass (SSB) 3-year average index could increase from 0.25 in 1998–2000 to 0.457 in 1999–2001 (using a fully recruited F = 1, and partial recruitment and maturity vectors utilized in SAW 27). Assuming an average value in 2002 that is at least equal to the 2001 estimated average value of 0.457, then the target scup exploitation rate of 21 percent could be achieved with a 2002 TAL of 10.77 million lb (4.88 million kg), which is the level recommended by the Scup MC. Then, assuming the same level of discards as assumed for 2001 (2.15 million lb (0.97 million kg)), the Scup MC recommended a 2002 TAC of 12.92 million lb (5.86 million kg). Based on the sector allocation specified in the FMP (commercial—78 percent; recreational—22 percent), this results in a commercial TAC of 10.08 million lb (4.89 million kg) and a recreational TAC of 2.84 million lb (1.29 million kg). Using the same commercial and recreational discards used for the 2001 specifications (2.08 million lb (0.94 million kg) for the commercial sector, and 0.07 million lb (0.03 million kg) for the recreational sector), the Scup MC recommended a commercial TAL of 8.0 million lb (3.63 million kg) and a recreational harvest limit of 2.77 million lb (1.26 million kg).

The Council and Board reviewed the Scup MC's recommendation and adopted it. The Council and Board also agreed to set aside 3-percent (323,100 lb (146,556 kg)) of the scup TAL for research activities. The TAL, after deducting the 3-percent research set-aside, would result in a commercial quota of 7.76 million lb (3.52 million kg) and a recreational harvest limit of 2.69 million lb (1.22 million kg).

The 2002 commercial allocation recommended by the Council is shown, by period, in Table 2. Table 2 presents the allocations with, and without, the 3-percent research set-aside deduction. These 2002 allocations are preliminary and would be subject to downward adjustment, as required by the FMP, for any landings in excess of quota allocation in 2001 that are found when final 2001 data are available (a quota overage).

TABLE 2.—2002 PROPOSED INITIAL COMMERCIAL SCUP QUOTA AND POSSESSION LIMITS

Period	Percent	TAC [1]	Discards [2]	Commercial quota		Possession limits	
				W/O 3% set-aside	With 3% set-aside	Lb	Kg
Winter I	45.11	4,546,735 (2,062,364)	936,935 (424,987)	3,608,800 (1,636,924)	3,500,536 (1,587,816)	10,000 [3]	4,536
Summer	38.95	3,924,991 (1,780,346)	808,991	3,116,000 (1,413,394)	3,022,520 (1,370,992)	n/a*	
Winter II	15.94	1,606,274 (728,594)	331,074 (150,173)	1,275,200 (578,421)	1,236,944 (561,068)	2,000	907
Total [4]	100.00	10,077,600 (4,571,122)	2,077,600 (942,383)	8,000,000 (3,628,739)	7,760,000 (3,519,877)		

[1] Total allowable catch, in pounds (kilograms in parentheses).
[2] Discard estimates, in pounds (kilograms in parentheses).
[3] The Winter I landing limit will drop to 1,000 lb (454 kg) upon attainment of 80 percent of the seasonal allocation.
[4] Totals subject to rounding error.
* n/a—Not applicable

To achieve the commercial quotas, the Council and Board recommended maintaining the Winter I (January–April) possession limit at 10,000 lb (4,536 kg) and the Winter II period (November-December) possession limit at 2,000 lb (907 kg). The Council and Board further recommended that the Winter I possession limit would be reduced to 1,000 lb (453.6 kg) when 80 percent of the commercial quota is attained. The current regulations require a reduction of the Winter I possession limit when 75 percent of the quota is attained.

A modification of the existing minimum mesh size requirements for the directed scup trawl fishery was also recommended by the Council and the Board to protect recent strong scup year classes. The recommendation was as follows: For large nets, no more than 25 meshes of 4.5-inch (11.43-cm) mesh in the codend with at least 100 meshes of 5.0-inch (12.70-cm) mesh forward of the 4.5-inch (11.43-cm) mesh; and for small nets, 4.5-inch (11.43-cm) mesh or larger throughout. Small nets are defined as those having codends with less than 125 meshes.

Scup Disapproved Measure

As noted previously, SARC 31 emphasized the need to reduce scup fishing mortality that results from discards. Gear Restricted Areas (GRAs) were established in 2000 (65 FR 33486, May 24, 2000, and 65 FR 81761, Dec. 27, 2000) and 2001 (66 FR 12902, March 1, 2001) to reduce scup discard mortality in small-mesh fisheries. The GRAs prohibit trawl vessels from fishing for, or possessing, certain non-exempt species (*Loligo* squid, black sea bass and silver hake (whiting)) when fishing with mesh smaller than that required to fish for scup. For the 2002 fishing year, the Scup MC considered the results from a research project that developed and analyzed specially-modified trawls for the purpose of reducing scup bycatch in Mid-Atlantic small-mesh fisheries and, possibly, eliminating the need for GRAs in the Mid-Atlantic Bight. Upon reviewing the draft final report of the research project, the Scup MC passed a motion recommending that GRAs continue for another year, due to the preliminary nature of the gear research. However, based upon the preliminary results of the gear research and the need to gather additional information, the Scup MC recommended that trawl vessels be allowed into the GRAs, provided that vessels utilize the modified trawl nets (possessing an escapement extension of 45 meshes of 5.5-inch (13.97-cm) square mesh between the body of the net and the codend), and provided the vessels had a NMFS-certified observer onboard to collect data from tows using the modified net.

The Council and the Board did not accept the Scup MC's advice regarding the preliminary nature of the gear research and the recommendation to gather more information on the modified gear through use of observers. Instead, the Council and the Board recommended that vessels using small mesh be allowed into the GRAs without NMFS-certified observers, provided they use modified trawl nets with an escapement extension (as described above).

NMFS proposes to disapprove the Council and Board recommendation that would allow vessels to fish for non-exempt species with small mesh in the GRAs, provided they use the modified trawl gear, as described earlier. NMFS agrees with the Scup MC that the research upon which the Council's recommendation is based is too preliminary to simply exempt vessels fishing with the modified gear from the GRA requirements. Only 17 alternate hauls were analyzed using the 5.5-inch (13.97-cm) square mesh extension. The sample size is not large enough to draw a definitive conclusion regarding the effectiveness of the gear modifications. Also, the sea trials were conducted outside of the GRAs, primarily in water depths less than 25 fathoms, whereas the actual GRAs range in depth from approximately 60 fathoms to 120 fathoms. The draft report upon which the Council's recommendation is based acknowledges that although, "the results presented here indicate a strategy that may be useful in reducing scup bycatch, it does not necessarily follow that this solution will work for vessels of all sizes, in all areas or at all times." NMFS agrees. The research is too preliminary to universally exempt all vessels deploying the modified gear from the GRA requirements. Therefore, NMFS is disapproving the proposed exemption for the modified gear in the GRAs. However, NMFS believes that the gear modifications are a potential solution to the scup bycatch problem, and that additional work must be done to obtain information on the most appropriate gear modifications over a larger area and time.

Black Sea Bass

Black sea bass was last assessed by the 27th Northeast Regional Stock Assessment Review Committee (SARC 27), with results published December 1998. SARC 27 indicated that black sea bass are over-exploited and at a low biomass level. However, relative exploitation rates, based on the total commercial and recreational landings and the moving average of the log-transformed spring survey index (an index based on scientific sampling of the distribution and relative abundance), indicate a significant reduction in mortality from 1998 through 2000 relative to 1996 and 1997 levels.

Results of the spring trawl survey conducted by the NEFSC indicate that stock size of black sea bass has increased in recent years. The 3-year moving average of the log-transformed spring survey index for 1999 through 2001 is 45 percent higher than the value for 1998 through 2000. In addition, black sea bass recruitment indices (fish ≤ 14 cm) for 1999 and 2000 indicate that very large year classes were produced in those years. The 1999 recruitment index (0.700) is about three times the average for the period 1968 through 1998, and the fourth largest value in the time series. The 2000 index (2.782) is, by far, the highest in the time series. Preliminary results from the 2001 NEFSC spring survey indicate that the 2001 year class was poor.

The FMP specifies a target exploitation rate of 37 percent for 2002. Although the exploitation rate for 2001 is uncertain, relative exploitation indices since 1998 are significantly lower than in the years before 1998. Based on length frequencies from the spring survey, and assuming a length at full recruitment of 25 cm, the estimated F was 0.75 (48-percent exploitation rate) in 1998. If the 2002 NEFSC spring survey biomass index is at least equal to 0.3 kg/tow, and assuming an exploitation rate of 48 percent in 1998, the Black Sea Bass MC determined that the 2002 TAL could remain the same as the 2001 TAL (6.173 million lb (2.80 million kg)) and the exploitation rate could drop to 37 percent, the exploitation rate target specified in the FMP for 2002.

The Black Sea Bass MC recommended that the 2002 TAL remain the same as in 2001—6.173 million lb (2.80 million kg). Other MC recommendations included: A reduction of the threshold triggering the minimum mesh-size requirement from 1,000 lb (453.6 kg) to 500 lb (226.8 kg) for Quarter 1 (Jan. through March), and to 100 lb (45.3 kg) for Quarters 2 through 4 (April through Dec.); a change in the minimum black sea bass mesh size to be compatible with the scup minimum mesh size; and an increase in the minimum escape vent size for black sea bass pots and traps. In addition, the Black Sea Bass MC recommended that the black sea bass possession limits be reduced to 7,000 lb

(3,175 kg) in Quarter 1; 1,000 lb (453.6 kg) in Quarter 2; 500 lb (226.8 kg) in Quarter 3; and 750 lb (340.2 kg) in Quarter 4. The Black Sea Bass MC did not recommend an increase in the black sea bass minimum commercial fish size.

At their August 2001 meeting, the Council and Board adopted the MC's recommended change to the minimum mesh threshold catch level to 500 lb (226.8 kg) from January through March, and to 100 lb (45.3 kg) from April through December. The Council and the Board also adopted the MC's recommended escape vent sizes for pots (2 and 3/8-inch circular, 2-inch square), and traps (1 and 3/8-inch x 5 and 3/4-inch rectangle). The Council and Board recommended a slightly different trawl net minimum mesh size. The recommendation was that large trawl nets be required to have a minimum of 75 meshes of 4.5-inch (11.43-cm) diamond mesh in the codend, or that small nets possess at least 4.5-inch (11.43-cm) diamond mesh throughout. Importantly, the Council and Board also recommended an increase in the minimum commercial fish size from 10 inches (25.4 cm) to 11 inches (27.9 cm). These measures were recommended by the Council and the Board to protect the very strong 1999 and 2000 black sea bass year classes. The increase in minimum fish size will allow smaller fish to escape, grow, and reproduce. The increase in the minimum trawl net mesh size and in the size of escape vents in pots and traps will allow for greater escapement of sublegal fish from commercial gears.

The Council and Board did not adopt the Black Sea Bass MC's TAL recommendation. Rather, the Council and Board recommended a TAL of 6.8 million lb (3.08 million kg). Based upon this TAL, the commercial quota would be 3.33 million lb (1.51 million kg) and the recreational harvest limit would be 3.47 million lb (1.57 million kg). The rationale for this higher TAL is based upon the Council's and Board's recommendation to increase the black sea bass commercial minimum fish size from 10 inches (25.4 cm) to 11 inches (27.9 cm), and to increase the black sea bass trawl net minimum mesh size and the minimum escape vent size for pots and traps. Although unquantifiable, the Council and Board stated that this combination of an increased minimum fish size and minimum net mesh size in 2002 will provide additional protection to recent strong year classes and, therefore, provide for an increase in exploitable biomass (an increase in TAL) in 2002, and beyond.

The Council and Board recommended black sea bass possession limits of 7,000 lb (3175 kg) for Quarter 1, and 2,000 lb (907 kg) for Quarters 2 through 4. The Council and Board also recommended a black sea bass research TAL set-aside of 3 percent (204,000 lb (92,533 kg)).

The proposed initial 2002 black sea bass commercial quota and corresponding possession limits are shown in Table 3. Table 3 presents the allocations with, and without, the 3-percent research set-aside deduction. These allocations are preliminary and would be subject to downward adjustment, as required by the FMP, for any landings in excess of a period's quota allocation in 2001 that are found when final 2001 data are available (a quota overage).

TABLE 3.—2002 PROPOSED INITIAL BLACK SEA BASS QUARTERLY COASTWIDE COMMERCIAL QUOTAS AND POSSESSION LIMITS

Quarter	Percent	W/O 3% Set-Aside [1]	With 3% Set-Aside [1]	Possession limits	
				Lb	kg
1 (Jan–Mar)	38.64	1,287,485 (583,993)	1,248,860 (566,473)	7,000 3,175	
2 (Apr–Jun)	29.26	974,943 (442,227)	945,695 (428,960)	2,000 907	
3 (Jul–Sep)	12.33	410,836 (186,352)	398,511 (180,761)	2,000 907	
4 (Oct–Dec)	19.77	658,736 (298,798)	638,974 (289,834)	2,000 907	
Total	100.00	3,332,000 (1,511,370)	3,232,040 (1,466,029)		

[1] Commercial Quotas in pounds (kilograms in parentheses).

Measure of Particular Concern

At the August, 2001 Council and board meeting, there was considerable debate about appropriate escape vent sizes for an 11-inch minimum black sea bass fish size. NMFS is specifically seeking industry comment on this subject through this proposed rule.

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an Initial Regulatory Flexibility Analysis (IRFA) that describes the economic impact this proposed rule, if adopted, would have on small entities.

A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this rule. This proposed rule does not duplicate, overlap, or conflict with other Federal rules. There are no new reporting or recordkeeping requirements contained in the Preferred Alternative or any of the alternatives considered for this action. A copy of the complete IRFA can be obtained from the Northeast Regional Office of NMFS (*see* **ADDRESSES**) or via the Internet at *http://www.nero.nmfs.gov*. A summary of the analysis follows.

Table 4 provides a summary of the unadjusted 2002 alternatives for the coastwide commercial quotas with the unadjusted 2001 quotas. Alternative 1 analyzed the economic impacts of the harvest limits proposed by the Council and Board for summer flounder, scup, and black sea bass on vessels that are permitted to catch any of these three species. Alternative 2 analyzed the economic impacts if the harvest limits remained the same as in 2001 (status quo)—this is the most restrictive alternative and would result in the greatest reductions in landings, relative to 2000 (the last year for which complete landing data is available), for all species. Alternative 3 analyzed the economic impacts of increased harvest levels—those that would result in the greatest increases in landings for all species. Alternative 3 resulted in the highest possible landings for 2002,

although it would likely exceed the biological targets specified in the FMP.

TABLE 4.—COMPARISON OF THE ALTERNATIVES OF COASTWIDE COMMERCIAL QUOTA COMBINATIONS REVIEWED—"FLK" IS SUMMER FLOUNDER

	Commercial quota	Quota specification as a proportion of the 2001 quotas (not adjusted)	Percent change
Quota Alternative 1 (Preferred Alternative)			
FLK Preferred Alternative	14,578,288	1.356	34.64
Scup Preferred Alternative	8,000,000	1.799	79.99
Black Sea Bass Preferred Alternative	3,332,000	1.101	10.15
Quota Alternative 2 (Status Quo, Most Restrictive)			
FLK Status Quo	10,747,535	1	0
Scup Status Quo	4,444,600	1	0
Black Sea Bass Status Quo	3,024,770	1	0
Quota Alternative 3 (Least Restrictive)			
FLK Non-Selected Alternative 3	20,878,658	1.942	94.26
Scup Non-Selected Alternative 3	9,530,000	2.144	114.41
Black Sea Bass Non-Selected Alternative 3	3,970,960	1.312	31.28

The categories of small entities likely to be affected by this action include commercial and charter/party vessel owners holding an active Federal permit for summer flounder, scup, or black sea bass, as well as owners of vessels that fish for any of these species in state waters. The Council estimates that the proposed 2002 quotas could affect 1,969 vessels with a Federal summer flounder, scup, and/or black sea bass permit, as of September 5, 2000. However, the more immediate impact of this rule will likely be felt by the 1,038 vessels that actively participated (*i.e.*, landed these species) in these fisheries in 2000, including vessels holding only state permits.

The Council's analysis of the harvest limits in Alternative 1 (Preferred Alternative) indicated that these harvest levels would produce a revenue increase for any of the 1,038 commercial vessels expected to be impacted by this rule. All 1,038 vessels expected to be impacted by this rule were projected to incur a revenue increase under Alternative 1.

The Council also analyzed changes in total gross revenue that would occur as a result of the quota alternatives. Assuming 2000 ex-vessel prices (summer flounder—$1.65/lb; scup—$1.25/lb; and black sea bass—$1.79/lb) and the effect of potential changes in prices due to changes in landings in 2002 versus 2001, the 2002 quotas in Preferred Alternative 1 (after overages have been applied) would increase summer flounder, scup, and black sea bass ex-vessel revenues by approximately $5.4 million, $6.2 million, and $0.9 million, respectively, relative to 2000 revenues for a total revenue increase of $12.5 million.

If the increase in summer flounder total gross revenue associated with the Preferred Alternative is distributed equally between the 795 vessels that landed summer flounder in 2000, the average increase in gross revenue associated with the summer flounder quota in the Preferred Alternative is $6,792 per vessel. If the increase in scup total gross revenue associated with the Preferred Alternative is distributed equally between the 425 vessels that landed scup in 2000, the average increase in gross revenue associated with the scup quota in the Preferred Alternative is $14,588 per vessel and, similarly, if the increase in black sea bass total gross revenue associated with the Preferred Alternative is distributed equally between the 723 vessels that landed black sea bass in 2000, the average increase in gross revenue associated with the black sea bass quota in the Preferred Alternative is $1,245 per vessel.

The Council's analysis of Alternative 2 (status quo—most restrictive harvest limits) indicated that these harvest limits would not produce a revenue loss for most of the 1,038 commercial vessels expected to be impacted by this rule. Twenty-nine of the 1,038 commercial vessels expected to be impacted by this rule would experience a minimal revenue loss. Twenty-seven of the vessels with projected revenue losses landed black sea bass only, one vessel landed black sea bass and summer flounder, and one vessel landed summer flounder, scup and black sea bass Five vessels would experience no change in revenue under Alternative 2, while 1,004 vessels would experience an increase in revenue.

An analysis of changes in total gross revenue associated with Alternative 2 indicated that the 2002 quotas would increase summer flounder, scup, and black sea bass ex-vessel revenues by approximately $0.9 million, $1.7 million, and $0.4 million, respectively, relative to 2000 revenues for a total revenue increase of $3.0 million.

If the increase in total gross revenue associated with the summer flounder quota in Alternative 2 is distributed equally between the 795 vessels that landed summer flounder in 2000, the average increase in gross revenue associated with the summer flounder quota in Alternative 2 is $1,132 per vessel. If the increase in total gross revenue associated the scup quota in Alternative 2 is distributed equally between the 425 vessels that landed scup in 2000, the average increase in gross revenue associated with the scup quota in Alternative 2 is $4,000 per vessel and, similarly, if the increase in black sea bass total gross revenue associated with Alternative 2 is distributed equally between the 723 vessels that landed black sea bass in

2000, the average increase in gross revenue associated with the black sea bass quota in Alternative 2 is $553 per vessel.

The Council's analysis of Alternative 3 (least restrictive harvest limits) indicated that these harvest levels would produce a revenue increase for any of the 1,038 commercial vessels expected to be impacted by this rule.

An analysis of changes in total gross revenue associated with Alternative 3 indicated that the 2002 quotas (after overages have been applied) would increase summer flounder, scup, and black sea bass ex-vessel revenues by approximately $15.8 million, $8.1 million, and $2.1 million, respectively, relative to 2000 revenues for a total revenue increase of $26.0 million.

If the increase in summer flounder total gross revenue associated with Alternative 3 is distributed equally between the 795 vessels that landed summer flounder in 2000, the average increase in gross revenue associated with the summer flounder quota in Alternative 3 is $19,874 per vessel. If the increase in scup total gross revenue is distributed equally between the 425 vessels that landed scup in 2000, the average increase in gross revenue associated with the scup quota in Alternative 3 is $19,059 per vessel. Similarly, if the increase in total gross revenue associated with the black sea bass quota in Alternative 3 is distributed equally between the 723 vessels that landed black sea bass in 2000, the average increase in gross revenue associated with the black sea bass quota in Alternative 3 is $2,905 per vessel.

The Council also prepared an analysis of the alternative recreational harvest limits. The 2002 recreational harvest limits were compared with previous years through 2000, the most recent year with complete recreational data.

Landing statistics from the last several years show that recreational summer flounder landings have generally exceeded the recreational harvest limits, ranging from 5 percent in 1993 to 221 percent in 2000. In 2000, the recreational landings were 15.82 million lb (7.17 million kg) compared to a harvest limit of 7.16 million lb.

For summer flounder, the 2002 preferred recreational harvest limit of 9.72 million lb (4.41 million kg) in Alternative 1 is greater than the recreational harvest limits for the years 1995 through 2001. However, the 2002 recreational harvest limit in Preferred Alternative 1 would be a decrease of about 38 percent from 2000 recreational landings. Alternative 2 recreational harvest limit of 7.16 million lb (3.25 million kg) in 2002 would be the same harvest level that was implemented in 2001. It is approximately 8.66 million lb (3.93 million kg) less than estimated recreational landings for 2000. Alternative 3 recreational harvest limit of 13.90 million lb (6.30 million kg) in 2002 is 1.92 million lb (0.87 million kg) below estimated 2000 recreational landings. If either Alternative 1, 2, or 3 is chosen, it is possible that more restrictive management measures may be required to prevent anglers from exceeding the 2002 recreational harvest limit, depending upon the effectiveness of the 2001 recreational management measures. More restrictive regulations could affect demand for party/charter boat trips. However, party/charter activity in the 1990s has remained relatively stable, so the effects may be minimal. The effect of greater recreational restrictions is not known at this time. The Council intends to recommend specific measures to attain the 2002 summer flounder recreational harvest limit in December 2001, and will provide additional analysis of the measures upon submission of its recommendations early in 2002.

Scup recreational landings declined over 89 percent for the period 1991 to 1998, then increased by 448 percent from 1998 to 2000. In 2000, recreational landings were 5.18 million lb (2.35 million kg). Under Preferred Alternative 1, the scup recreational harvest limit for 2002 would be 2.77 million lb (1.26 million kg). This is a 46 percent decrease from 2000 recreational landings. However, it is about 52 percent higher than the scup recreational harvest limit in 2001. Alternative 2 recreational harvest limit of 1.77 million lb (0.80 million kg) in 2002 would be the same harvest level that was implemented in 2001. It is a decrease of about 3.41 million lb (1.54 million kg) from 2000 estimated recreational landings. Alternative 3 scup recreational harvest limit of 3.2 million lb (1.45 million kg) in 2002 is 1.43 million lb (0.65 million kg) higher than the 2001 recreational harvest limit for 2001, and 1.98 million lb (0.90 million kg) below 2000 recreational landings. With either Alternative 1, 2 or 3, it is possible that more restrictive management measures may be required to prevent anglers from exceeding the 2002 recreational harvest limit, depending upon the effectiveness of the 2001 recreational management measures. The effect of greater restrictions on scup party/charter boats is unknown at this time. The Council intends to recommend specific measures to attain the 2002 scup recreational harvest limit in December 2001, and will provide additional analysis of the measures upon submission of its recommendations early in 2002.

Black sea bass recreational landings increased slightly from 1991 to 1995. Landings decreased considerably from 1996 to 1999, and then substantially increased in 2000. In 2000, recreational landings were 3.62 million lb. For the recreational fishery, the 2002 harvest limit under Alternative 1 is 3.47 million lb (1.57 million kg). This is nearly identical to the 2000 recreational landings estimate. Therefore, it is not expected to result in negative economic impacts on the recreational fishery. Under Alternative 2 (3.15 million lb (1.43 million kg)), recreational landings would be 0.5 million lb (0.23 million kg) lower than the 2000 landings estimate. As such, this alternative could cause some negative economic impacts, depending upon the effectiveness of the 2001 recreational black sea bass measures. The recreational harvest limit under Alternative 3 (4.13 million lb (1.87 million kg)) is 14-percent higher than the 2000 recreational landings estimate. Alternative 3 would likely result in positive economic impacts on the recreational fishery. The Council intends to recommend specific measures to attain the 2002 black sea bass recreational harvest limit in December 2001, and will provide additional analysis of the measures upon submission of its recommendations early in 2002.

The effects of the existing GRAs are fully described in the proposed rule (65 FR 71046, November 28, 2000) and the final rule (66 FR 12910, March 1, 2001) implementing the 2001 specifications. Those impacts are not repeated here. The impacts of the GRAs are expected to remain unchanged in 2002 with disapproval of the Council's recommendation to allow vessels using small-mesh to fish for non-exempt species in the GRAs provided the vessels use a 5.5-inch (13.97-cm) square mesh extension between the body and codend of the trawl net.

The 80-percent landing trigger proposed for the scup Winter I period would decrease the landing limit from 10,000 lb (4,536 kg) to 1,000 lb (453 kg) per trip. A 75-percent trigger was used in 2001. The 80-percent trigger is expected to decrease landings early enough in the period to allow for the equitable distribution of the quota over the Winter I period. This measure is not expected to have a major negative effect on landings during the period, because it is not a major change from the 2001 measure.

Current scup minimum mesh regulations require the use of 4.5-inch (11.43-cm) mesh in the codend of the net for vessels possessing more than the threshold amount of scup ((500 lbs (226.8 kg) from November through April; 100 lbs (45.3 kg) from May through October). For 2002, this action proposes that the threshold amount remain unchanged, but that the scup net provisions be modified to require large nets to have no more than 25 meshes of 4.5-inch (11.43-cm) mesh in the codend with at least 100 meshes of 5.0-inch (12.7-cm) mesh forward of the 4.5-inch (11.43-cm) mesh and small nets to have at least 4.5-inch (11.43-cm) mesh throughout. The 5.0-inch (12.7-cm) mesh forward of the 4.5-inch (11.43-cm) mesh is expected to allow for additional escapement of undersized scup, that would otherwise be discarded, to escape, and provide for a future increase in exploitable biomass. This measure is, therefore, not expected to reduce landings of scup or revenues derived from scup. The costs associated with gear conversion are expected to range from $775.00 to $1,354.00 per net.

In 2001, the black sea bass trip limits were 9,000 lb (4082.3 kg); 1,500 lb (680.4 kg); 1,000 lb (453.6 kg); and 2,000 lb (907.2 kg) for Quarters 1 through 4, respectively. For 2002, this action proposes to change the trip limits to 7,000 lb (3,175.1 kg) for Quarter 1; and 2,000 lb (907.2 kg) for Quarters 2, 3, and 4. The change proposed for Quarter 1 is the only change that lowers the possession limit from 2001. It is not expected to have a negative impact, because only one vessel is reported to have landed more than 7,000 lb in one trip during the 2000 fishing year. Raising the possession limit in Quarters 2 and 3 may cause the quarterly quota to be landed sooner, thereby closing the black sea bass fishery for a longer period of time. The possession limits were chosen as an appropriate balance between the economic concerns of the industry (e.g., landing enough fish to make the the trip economically viable) and the need to ensure an equitable distribution of the quota over the entire period.

This action proposes an increase of the minimum black sea bass fish size in the commercial fishery, from 10 inches (25.4 cm) to 11 inches (27.9 cm). The bulk of the black sea bass landed in 2000 corresponded to the medium and large size categories. A change in the black sea bass size limit would reduce landings of small fish, thus, shifting a portion of the black sea bass landings from small size category fish to medium size category. Price differentials in 2000 were substantial between small ($1.05) and medium ($1.47) black sea bass. Therefore, if 2000 price patterns continue in 2002, fishermen will benefit from this change.

This action also proposes changes in trawl minimum mesh size and escape vent sizes for pots and traps. In addition, a threshold of 500 pounds (226.8 kg) from January through March, and 100 pounds (45.3 kg) from April through December to trigger the minimum mesh size is proposed. The costs associated with black sea bass gear conversion are expected to range from $775.00 to $1,354.00 per net. The cost of replacing escape vents is expected to be minimal. According to anecdotal evidence, some commercial pot and trap black sea bass fishermen are already using these size escape vents.

The impacts of the summer flounder research set-aside in the Preferred Alternative are expected to be as follows. The set-aside could be worth as much as $801,900 dockside based on a 2000 price of $1.65 per pound. Assuming an equal reduction amongst all active vessels (i.e., 795 vessels that landed summer flounder in 2000), this could mean a reduction of about $1,000 per individual vessel. Changes in the summer flounder recreational harvest limit as a result of the 2-percent research set-aside are not expected to be significant. The research set-aside would reduce the recreational harvest limit from 9.718 million lb (4.41 million kg) to 9.524 million lb (4.32 million kg), representing a 2-percent decrease, if 2-percent of the TAL is used for research. It is unlikely that the recreational possession, size or seasonal limits would change as the result of the research set-aside Overall, long term benefits are expected as a result of the research set-aside due to improved summer flounder data.

The impacts of the scup research set-aside on the preferred Alternative are expected to be as follows. The set-aside could be worth as much as $403,875 dockside based on a 2000 price of $1.25 per pound. Assuming an equal reduction for all active commercial vessels (i.e., 425 vessels that landed scup in 2000), this could mean a reduction of about $950 per vessel. Changes in the scup recreational harvest limit would be insignificant. The 3-percent research set-aside would reduce the scup recreational harvest limit from 2.770 million lb (1.26 million kg) to 2.687 million lb (1.22 million kg), a 3-percent decrease, if 3-percent of the TAL is used for the research set-aside. It is unlikely that scup recreational possession, size or seasonal limits would change as the result of the research set-aside. Overall, long term benefits are expected as a result of the research set-aside due to improved scup data.

The impacts of the black sea bass research set-aside are expected to be as follows. The set-aside could be worth as much as $365,160 dockside based on a 2000 price of $1.79 per pound. Assuming an equal reduction for all active commercial vessels (i.e., 723 vessels that caught black sea bass in 2000), this could mean a reduction of about $505 per vessel. Changes in the black sea bass recreational harvest limit would be minimal. The 3-percent research set-aside would reduce the black sea bass recreational harvest limit from 3.468 million lb (1.57 million kg) to 3.364 million lb (1.52 million kg), a 3-percent decrease, if 3 percent of the TAL is used for research. It is unlikely that the black sea bass possession, size or seasonal limits would change as the result of this research set aside. Overall, long term benefits are expected as a result of the research set-aside due to improved black sea bass data.

Regarding the research set-asides for summer flounder, scup, and black sea bass, it should again be noted that if the total amount of quota set-aside is not awarded for any of the three fisheries, the unused set-aside amount will be restored to the appropriate fishery's TAL. Also, participants having access to the quota set asides will be able to sell their catch. Therefore, total revenues in any of the three given fisheries should be the same or nearly so, whether or not research set-asides are awarded.

In summary, the commercial quotas and recreational harvest limits contained in the Preferred Alternatives would result in increases in landings and revenues for each of the species, most notably for summer flounder and scup, yet still achieve the fishing mortality and exploitation targets specified in the FMP. While the commercial quotas and recreational harvest limits specified in Alternative 3 would provide for even larger increases in landings and revenues, they would not achieve the fishing mortality and exploitation targets specified in the FMP. The proposed possession limits for scup and black sea bass were chosen to balance the need to provide for economically viable fishing trips with the need to ensure an equitable distribution of the quota over the entire period. The proposed gear modifications in the black sea bass fishery (increased minimum trawl mesh size and pot/trap escape vents) will impose initial compliance costs, but they were deemed necessary to complement the increase in minimum commercial fish size and an increase in the black sea bass TAL.

Similarly, the proposed modification to scup trawl nets will impose initial compliance costs, but will allow for additional escapement of undersized fish and provide for future increases in exploitable biomass. The economic effects of the existing GRAs will not change as a result of this proposed rule. The alternative that would allow small-mesh vessels to fish for non-exempt species in the GRAs was not selected because the research supporting the alternative was deemed by NMFS to be too preliminary, and therefore, causative of an unacceptable risk to increased juvenile scup mortality. Finally, the revenue decreases associated with the research set-asides are expected to be minimal, and are expected to yield important long-term benefits associated with improved data. It should also be noted that fish harvested under the research set-asides would be sold. As such, total gross revenue to the industry would not decrease if the research set asides are utilized.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 14, 2001.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.14, paragraphs (a)(92) and (u)(1) are revised to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(92) Fish for, catch, possess, land, or retain black sea bass in or from the EEZ north of 35°15.3′ N. lat. (the latitude of Cape Hatteras Light, NC, to the U.S.-Canadian border) in excess of the amount specified in § 648.145(a).

* * * * *

(u) * * *

(1) Fish for, catch, possess, land, or retain black sea bass in excess of the amount specified in § 648.144(a)(1)(i) (i.e. 500 lb (226.8 kg) from January 1 through March 31, or 100 lb (45.4 kg) from April 1 through December 31), unless the vessel meets the minimum mesh requirement specified in § 648.144(a).

* * * * *

3. In § 648.123, paragraphs (a)(1) is revised to read as follows:

§ 648.123 Gear restrictions.

(a) * * *

(1) *Minimum mesh size.* The owners or operators of otter trawlers who are issued a scup moratorium permit and who possess 500 lb (226.8 kg) or more of scup from November 1 through April 30, or 100 lb (45.4 kg) or more of scup from May 1 through October 31, must fish with nets that have a minimum mesh size of 4.5 inches (11.43 cm) diamond mesh for no more than 25 continuous meshes forward of the terminus of the codend, and with at least 100 continuous meshes of 5.0-inch (12.7-cm) mesh forward of the 4.5-inch (11.43-cm) mesh. For trawl nets with codends (including an extension) less than 125 meshes, the entire trawl net must have a minimum mesh size of 4.5 inches (11.43 cm) throughout the net. Scup on board these vessels shall be stored separately and kept readily available for inspection.

* * * * *

4. In § 648.143, paragraph (a) is revised to read as follows:

§ 648.143 Minimum sizes.

(a) The minimum size for black sea bass is 11 inches (27.94 cm) total length for all vessels issued a moratorium permit under § 648.4(a)(7) that fish for, possess, land or retain black sea bass in or from U.S. waters of the western Atlantic Ocean from 35 deg. 15.3′ N. Lat., the latitude of Cape Hatteras Light, North Carolina, northward to the U.S.-Canadian border. The minimum size may be adjusted for commercial vessels pursuant to the procedures in § 648.140.

* * * * *

5. In § 648.144, paragraph (a)(1)(i) and (b)(2) are revised to read as follows:

§ 648.144 Gear restrictions.

(a) * * *

(1) * * *

(i) Otter trawlers whose owners are issued a black sea bass moratorium permit and that land or possess 500 lb (226.8 kg) or more of black sea bass from January 1 through March 31, or 100 lb (45.4 kg) or more of black sea bass from April 1 through December 31, must fish with nets that have a minimum mesh size of 4.5 inches (11.43 cm) diamond mesh applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or for codends with less than 75 meshes, the entire net must have a minimum mesh size of 4.5 inches (11.43 cm) diamond mesh throughout.

* * * * *

(b) * * *

(2) All black sea bass traps or pots must have an escape vent placed in a lower corner of the parlor portion of the pot or trap which complies with one of the following minimum sizes: 1.375 inches (3.49 cm) by 5.75 inches (14.61 cm); or a circular vent 2.375 inches (6.03 cm) in diameter; or a square vent with sides of 2 inches (5.08 cm), inside measure; however, black sea bass traps constructed or wooden lathes may have instead an escape vent constructed by leaving a space of at least 1.125 inches (2.86 cm) between one set of lathes in the parlor portion of the trap. These dimensions for escape vents and lathe spacing may be adjusted pursuant to the procedures in § 648.140.

* * * * *

6. In § 648.145, paragraph (d) is revised to read as follows:

§ 648.145 Possession limit.

* * * * *

(d) Owners or operators of otter trawl vessels issued a moratorium permit under § 648.4(a)(7) and fishing with, or possessing on board, nets or pieces of net that do not meet the minimum mesh requirements specified in § 648.144(a) and that are not stowed in accordance with § 648.144(a)(4), may not retain more than 500 lb (226.8 kg) of black sea bass from January 1 through March 31, or more than 100 lb (45.4 kg) of black sea bass from April 1 through December 31. Black sea bass on board these vessels shall be stored so as to be readily available for inspection in a standard 100-lb (45.4 kg) tote.

* * * * *

[FR Doc. 01–28920 Filed 11–15–01; 1:06 pm]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 66, No. 224
Tuesday, November 20, 2001

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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Extension of Comment Period for Draft Program Comment Regarding Historic Preservation Review Process for Projects Involving Historic Natural Gas Pipelines

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of extension of commenting period regarding proposed program comments on historic natural gas pipelines.

SUMMARY: The Advisory Council on Historic Preservation proposed a Program Comment to streamline the historic preservation review process for projects involving historic natural gas pipelines. The original comment period, November 9, 2001, is now extended to December 10, 2001.

DATES: Submit comments on or before December 10, 2001.

ADDRESSES: Address all comments concerning this proposed program comment to Don Klima, Director, Office of Planning and Review, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 809, Washington, DC 20004. Fax (202) 606–8672. You may submit electronic comments to *dklima@achp.gov*.

FOR FURTHER INFORMATION CONTACT: Don Klima, 202–606–8505.

SUPPLEMENTARY INFORMATION: On October 19, 2001, the Advisory Council on Historic Preservation ("Council") notified the public of its intent to issue Program Comments that would streamline the historic preservation review process for projects involving historic natural gas pipelines (see 66 FR 53198). That notice established the deadline for public comment as November 9, 2001.

In response to requests for extending that deadline, the Council hereby extends the deadline for public comment until December 10, 2001.

You can access the original notice, which includes the initial draft of the Program Comments, at the cited issue of the **Federal Register** (66 FR 53198) or at the Council's Web site at *www.achp.gov/news-pipelinecomment.html*.

Authority: 36 CFR 800.14(e).

Dated: November 14, 2001.

John M. Fowler,

Executive Director.

[FR Doc. 01–28908 Filed 11–19–01; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 14, 2001.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 10413. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Research Service

Title: Patent License Applications.

OMB Control Number: 0518–0003.

Summary of Collection: The U.S. Department of Agricultural patent licensing program grants patent licenses to qualified businesses and individuals who wish to commercialize inventions arising from federally supported research. The Agricultural Research Service (ARS) overseas licensing of federally owned inventions which must be done in accordance with terms, conditions, and procedures prescribed under 37 CFR part 404. Application information must be collected to identify the business or individual desiring the patent license along with a plan for the development and marketing of the invention and a description of the applicant's ability to fulfill the plan.

Need and use of the Information: Using form AD–761, ARS will collect a detailed description for development and/or marketing of the invention and identifying information on the applicant and the business. The information collected is used to determine whether the applicant has both a complete and sufficient plan for developing and marketing the invention and the necessary manufacturing, marketing, technical, and financial resources to carry out the submitted plan.

Description of Respondents: Business or other for profit; Not-for-profit institutions; Individuals or households; Farms; Federal Government; State, Local or Tribal Government.

Number of Respondents: 75.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 225.

Agricultural Research Service

Title: Use of Facilities or the Performance of Photography/ Cinematography at the U.S. National Arboretum.

OMB Control Number: 0518–0024.

Summary of Collection: The mission of the U.S. National Arboretum (USNA) is to conduct research, provide education, and conserve and display

trees, shrubs, flowers, and other plans to enhance the environment. The USNA is a 446-acres public facility and the grounds are available to the general public for purposes of education and passive recreation. The USNA has many spectacular feature and garden displays which are very popular to visitors and photographers. Section 890(b) of the Federal Agriculture Improvement and Reform Act of 1996, Pub. L. 104–107 ("FAIR ACT") provided statutory authorities regarding the USNA≤ These authorities include the ability to charge fees for temporary use by individuals or groups of USNA facilities and grounds for any purpose consistent with the mission of USNA. Also, the authority was provided to charge fees for the use of the USNA for commercial photography and cinematography.

Need and Use of the Information: USNA use the information to determine if the requestor's needs can be met and that the request is consistent with the mission and goals of the USNA. If the basic information is not collected USNA officials will not be able to determine if the requestor's needs can be met.

Description of Respondents: Not-for-profit institutions; Business or other for profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 220.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 53.

National Agricultural Statistics Service

Title: Cold Storage.

OMB Control Number: 0535–0001.

Summary of Collection: The primary objective of the National Agricultural Statistics Service (NASS) is to prepare and issue state and national estimates of crop and livestock production. The monthly Cold Storage Survey provides information on national supplies of food commodities in refrigerated storage facilities and is used as part of the country's preparedness in case of a national emergency. The data will be collected under the authority of 7 U.S.C. 2204(a). This statute specifies "The Secretary of Agriculture shall procure and preserve all information concerning agriculture which he can obtain * * *. by the collection of statics * * * and shall distribute them among agriculturists."

Need and use of the Information: USDA agencies such as the World Agricultural Outlook Board, Economic Research Service, and Agricultural Marketing Service use the information from the Cold Storage report in setting and administering government commodity programs and in supply and demand analysis. Included in the report are 100 food items and stocks figures that are used by food processors, food brokers, and farmers in making production, marketing and pricing decisions. The timing and frequency of the survey have evolved to meet the needs of producers, facilities, agribusinesses, and government agencies.

Description of Respondents: Business or other for-profit.

Number of Respondents: 4,367.

Frequency of Responses: Reporting: Monthy; Annually; Biennially.

Total Burden Hours: 4,362.

National Agricultural Statistics Service

Title: Field Crops Production.

OMB Control Number: 0535–0002.

Summary of Collection: One of the National Agricultural Statistics Services' (NASS) primary functions is to prepare and issue current State and national estimates of crop and livestock production. To help set these estimates, field crops production data is collected. NASS will collect information through the use of mail, telephone, and personnel interview surveys.

Need and use of the Information: NASS collects information on field crops to monitor agricultural developments across the country that may impact on the nation's food supply. The Secretary of Agriculture uses estimates of crop production to administer farm program legislation and to make decisions relative to the export-import programs. Collecting this information less frequently would eliminate the data needed to keep the Department abreast of changes at the State and national level.

Description of Respondents: Farms; Business or other for-profits.

Number of Respondents: 600,951.

Frequency of Responses: Reporting: Weekly, Monthly, Quarterly, Annually.

Total Burden Hours: 122,344.

National Agricultural Statistics Service

Title: Agricultural Prices.

OMB Control Number: 0535–0003.

Summary of Collection: Estimates of prices received by farmers and prices paid for production goods and services are needed by the U.S. Department of Agriculture, National Agriculture Statistics Service (NASS), to compute parity prices in accordance with requirements of the Agricutural Adjustment act of 1938 as amended (Title III, subtitle A, section 301a) and estimate value of production, inventory values, and cash receipts from farming. Determine the level for farmer owned reserves and provide guidelines for Risk Management Agency price selection options and determine Federal disaster prices to be paid and the grazing fee on Federal lands. General authority for these data collection activities is granted under U.S.C. Title 7, section 2204. This statute specifies "The Secretary of Agriculture shall procure and preserve all information concerning agriculture which he can obtain * * * by the collection of statistics and shall distribute them among agriculturalists."

Need and use of the Information: The NASS price program computes annual U.S. weighted average prices received by farmers for wheat, barley, corn, oats, grain sorghum, rice, and cotton based on monthly marketing. The indexes are used in computing the parity prices that NASS is required by statute to publish monthly. Parity prices are used to establish and maintain Federal Market Orders. The Agricultural Marketing Service uses various State milk-marketing orders, prices paid indexes, and import prices for determining State or local support milk prices.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 26,748.

Frequency of Responses: Reporting: On occasion; Monthly; Annually; Biennially.

Total Burden Hours: 9,564.

National Agricultural Statistics Service

Title: Fruits, Nut, and Specialty Crops.

OMB Control Number: 0535–0039.

Summary of Collection: U.S.C. Title 7, section 2204, specifies that "The Secretary of Agriculture shall procure and preserve all information concerning agriculture which he can obtain by the collection of statistics * * * and shall distribute them among agriculturists." The primary function of the National Agricultural Statistics Service (NASS) is to prepare and issue current official State and national estimates of crop and livestock production. Estimates of fruit, tree nuts, and specialty crops are an integral part of this program. These estimates support the NASS strategic plan to annually cover 99% of all agricultural receipts. Information is collected on a voluntary basis from growers, processors, and handlers through surveys.

Need and use of the Information: Data reported on fruit, nut, and Hawaii tropical crops are used by NASS to estimate acreage, yield, production, utilization, and crop value in States with significant commercial production. These estimate are essential to farmers, processors, and handlers in making production and marketing decisions. Estimates from these inquiries are used by market order administrators in their determination of expected supplies of

crop under federal and State market orders as well as competitive fruits and nuts.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 59,797.

Frequency of Responses: Reporting: On occasion; Annually; Quarterly; Semi-annually; Monthly.

Total Burden Hours: 8,794.

Rural Utilities Service

Title: 7 CFR part 1721, Extensions of Payments of Principal and Interest.

OMB Control Number: 0572–0123.

Summary of Collection: Rural Utilities Service (RUS) to adding procedures and conditions under which borrowers may request extensions of the payment of principal and interest. RUS electric program provides loans and loan guarantees to borrowers at interest rates and terms that are more favorable than those generally available for the private sector. As a result of obtaining federal financing, RUS borrowers receive economic benefits that exceed any direct economic costs associated with complying with (RUS) regulations and requirements. The authority for these extensions is contained in Section 12 of the Rural Electrification Act of 1936, as amended and Section 236 of the "Disaster Relief Act of 1970, as amended by the Department of Agriculture Reorganization Act of 1994."

Need and Use of the Information: The collection of information occurs only when the borrower requests an extension of principal and interest. Eligible purposes include financial hardship energy resource conservation loans, renewable energy project,, and contributions-in-aid of construction. The collections are made to provide needed benefits to borrowers while also maintaining the integrity of RUS loans and their repayment of taxpayer's monies.

Description of Respondents: Not for-profit institutions.

Number of Respondents: 90.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 784.

Rural Housing Service

Title: 7 CFR, Part 1955–B Management of Property.

OMB Control Number: 0575–0110.

Summary of Collection: The Farm Service Agency (FSA) and the Rural Business Cooperative Service (RBS) programs are administered under the provisions of the Consolidated Farm and Rural Development Act (CONTACT), as amended. FSA Farm Loan Program (FLP) provides supervised credit in the form of loans to family farmers and ranchers to purchase land and finance agricultural production. The Rural Housing Service (RHS) provides credit in the form of Multi-Family Housing loans and Community Facility loans. The RBS program is designed to improve, develop or finance business industry and employment and improve the economic and environmental climate in rural communities. These agencies must collect information on real property taken into custody and chattel property in the agency's inventory.

Need and Use of the Information: Information is obtained from farmers, ranchers and rural residents and submitted to the local FSA or Rural Development Office where it is used to track and monitor real and chattel property. This information is required to prevent losses to the Government when security property is abandoned or to comply with the provisions of the CONTACT and congressional intent of assuring that acquired properties are sold to beginning farmers.

Description of Respondents: Farms; Business or other for-profits; Individuals or households.

Number of Respondents: 292.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 136.

Animal Plant and Health Inspection Service

Title: Exotic Newcastle Disease in Birds and Poultry; Chlamydiosis in Poultry.

OMB Control Number: 0579–0116.

Summary of Collection: Title 21, U.S.C. authorizes the Department of Agriculture and the Animal Plant and Health Inspection Service (APHIS) to take necessary actions to prevent, control and eliminate domestic diseases, and to manage non-domestic diseases such as Exotic Newcastle Disease (END) and Chlamydiosis. Disease prevention is the most effective method for maintaining a healthy animal population and for enhancing APHIS ability to compete in the world market of animals and animal product trade.

Need and Use of the Information: APHIS will collect information through the use of documents attesting to the health status of the birds or poultry being moved, the number and types of birds or poultry being moved in a particular shipment, the shipment's point of origin, the shipment's designation, and the reason for the interest movement. These documents also provide useful "trackback" information in the event an infected bird or chicken is discovered and an investigation must be launched to determine where the bird or chicken originated. The information provided by these documents is critical to APHIS ability to prevent the interstate spread of END, which is highly contagious and capable of causing significant economic harm to the U.S. poultry industry.

Description of Respondents: Business or other for profit; Individuals or households; Farms; State, Local or Tribal Government.

Number of Respondents: 57.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 34.

Animal Plant and Health Inspection Service

Title: Asian Long Horned Beetle Regulations.

OMB Control Number: 0579–0122.

Summary of Collection: The Animal and Plant Health Inspection Service (APHIS) of the Department of Agriculture is responsible for preventing plant pest and noxious weeds from entering the United States, preventing the spread of pests and weeds not widely distributed in the United States, and eradicating those imported pests and weeds when eradication is feasible. Section 415 of the Plant Protection Act (7 U.S.C. 7715) provides authority for the Secretary of Agriculture to quarantine any State, Territory, or District of the United States to prevent the spread of insect pests and plant diseases (such as Asian Long Horned Beetle) that are new to the United States, or not widely distributed throughout the United States. The Asian Long horned beetle is a destructive pest of hardwood trees including apple, cherry, pear, and citrus, and of forest trees. The beetle bore into the heartwood of host trees; eventually killing them.

Need and Use of the Information: APHIS will collect information to control and monitor the movement of the Asian long horned beetle. If the information were not collected the effectiveness of the Asian Long Horned Beetle Quarantine would be severely compromised.

Description of Respondents: Farms; Business or other for profit; State, Local, or Tribal Government; Individuals or households.

Number of Respondents: 225.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 132.

Animal Plant and Health Inspection Service

Title: Importation of Fruits and Vegetables.

OMB Control Number: 0579–0128.

Summary of Collection: The Animal and Plant Health Inspection Service (APHIS) of the Department of Agriculture is responsible for preventing plant diseases or insect pests from entering the United States. Section 5 of the Plant Quarantine Act (7 U.S.C. 159) authorizes the Secretary of Agriculture to determine whether the unrestricted importation of any plants, fruits, vegetables, roots, bulbs, seeds, or other plant products not included by the term "nursery stock" will result in the introduction of plant diseases or insect pests into the United States, and to then specify which of these products will be subject to the provisions of section 1 of the Plant Quarantine Act. Before entering the United States all fruits and vegetables are subject to inspection and disinfections at their port of first arrival to ensure that no plant pests are inadvertently brought into the United States.

Need and Use of the Information: APHIS will collect information using the Phytosanitary Certificate to ensure that fruits and vegetables can be imported into the United States with minimal risk of introducing exotic plants pests such as fruit flies and leek moths. Without this information APHIS would need to inspect each and every shipment very thoroughly to ensure that no pests were accompanying the shipment.

Description of Respondents: Business or other for profit; State, Local, or Tribal Government; Individuals or households; Farms.

Number of Respondents: 50.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 501.

Animal Plant and Health Inspection Service

Title: Hass Avocado.

OMB Control Number: 0579–0129.

Summary of Collection: The Animal and Plant Health Inspection Service (APHIS) of the Department of Agriculture is responsible for preventing plant diseases or insect pests from entering the United States, preventing the spread of pests not widely distributed in the United States, and eradicating those imported when eradication is feasible. The Plant Protection Act (7 U.S.C. 7707) and the Organic Act (7 U.S.C. 147a) authorizes APHIS to carry out this mission. APHIS will collect information from a variety of individuals, both within and outside of the United States, who are involved in growing, packing, handling, transporting, and importing foreign logs, trees, shrubs, and other articles. Currently there are regulations that allow fresh Hass Avocado fruit grown in approved orchards in Michoacan, Mexico to be imported into the United states under certain conditions.

Need and Use of the Information: APHIS will collect information using forms PPQ 519, Compliance Agreement, and PPQ 587, Permits. The information collected will ensure that fresh Hass Avocados from Mexico do not harbor exotic insect pests.

Description of Respondents: Business or other for profit; State, Local, or Tribal Government.

Number of Respondents: 380.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 443.

Animal Plant and Health Inspection Service

Title: Importation of Tomatoes from France, Morocco, and Western Sahara, Chile, and Spain.

OMB Control Number: 0579–0131.

Summary of Collection: The Department of Agriculture is responsible for preventing plant diseases or insect pests from entering the United States, as well as the spread of pests not widely distributed in the United States, and eradicating those imported when eradication is feasible. The Plant Quarantine Act and the Organic Act authorizes the Department to carry out this mission. 7 CFR 319.56 thru 319.56–8 prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests, including fruit flies. These regulations allow tomatoes from Spain, Chile, France, Morocco, and Western Sahara to be imported into the United States (subject to certain conditions).

Need and Use of the Information: The Animal and Plant Health Inspection Service (APHIS) will collect information using the phytosanitary certificate certifying that the tomatoes were grown in registered greenhouses in a specified area of the exporting country. If the information were not collected, APHIS' ability to protect the United States from exotic insect pests would be severely compromised.

Description of Respondents: Business or other for profit; Individuals or households; Farms.

Number of Respondents: 34.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 1704.

Animal Plant and Health Inspection Service

Title: Mexicali Valley-Karnal Bunt.

OMB Control Number: 0579–0132.

Summary of Collection: The Department of Agriculture is responsible for preventing plant diseases or insect pests from entering the United States, preventing the spread of pests not widely distributed in the United States, and eradicating those imported when eradication is feasible. The Plant Quarantine Act and the Federal Plant Pest Act authorizes the Department to carry out this mission. The Plant Protection and Quarantine Program of the Animal and Plant Health Inspection Service (APHIS) are responsible for implementing the regulations that carry out the intent of the Act. Wheat and other wheat-related articles offered for entry from the Karnal Bunt free zone of the Mexicali Valley would need to be accompanied by a phytosanitary certificate issued by the Mexican plant protection authorities. This certificate would state that the wheat or other articles were grown in the designated Karnal Bunt free area of the Mexicali Valley.

Need and use of the information: The collected information contained on the signed phytosanitary certificate by Mexico's national plant protection official is used to ensure that wheat imported into the U.S. is free of Karnal Bunt. If the information is not collected introduction of Karnal Bunt into the United States could cause millions of dollars in damage to U.S. wheat crops, as well as additional millions of dollars to eradicate.

Description of Respondents: Business or other for profit; Individuals or households; Farms.

Number of Respondents: 20.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 120.

Animal Plant and Health Inspection Service

Title: BSE—Certificate of Origin.

OMB Control Number: 0579–0183.

Summary of Collection: These authorities: sections 111, 114, 114a, 115, 120, 121, 125, 126, 134a, 134c, 134f, and 134g of Title 21, U.S.C., permit the Secretary of Agriculture to prevent, control and eliminate domestic diseases such as brucellosis as well as manage exotic diseases such as Bovine Spongiform Encephalopathy (BSE) and other foreign animal diseases. BSE is a neurological disease of bovine animals and other ruminants and is not known to exist in the United States. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing the Animal and Plant Health Inspection Service

(APHIS) ability to compete in exporting animals and animal products.

Need and use of the Information: APHIS will collect the applicant's name, address, the name and address of the individual who is exporting the material or product, the type and amount of material or product being shipped, the intended use of the material or product, and the origin and destination points of the material or product being shipped using form VS–16–3, Import Permit Application. The information contained in the VS form 16–3 enables APHIS to determine whether the shipment qualifies for import into the United States. Without the information it would be impossible for APHIS to effectively prevent BSE-contaminated animal products from entering the United States.

Description of Respondents: Business or other for profit.

Number of Respondents: 1,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,494.

Animal Plant and Health Inspection Service

Title: Black Stem Rust; Identification Requirements and Addition of Rust-Resistant Varieties.

OMB Control Number: 0579–0186.

Summary of Collection: The Plant Protection Act gives the Secretary of Agriculture the responsibility for preventing plant diseases or insect pests from entering the United States, preventing the spread of pests not widely distributed in the United States, and eradicating those imported pests when eradication is feasible. Black Stem Rust is one of the most destructive plant diseases of small grains that are known to exist in the United States. A fungus that reduces the quality and yield of infected wheat, oat, barley, and rye crops by robbing host plants of food and water.

Need and Use of the Information: APHIS will collect information to prevent the spread of black stem rust by providing for and requiring the accurate identification of rust-resistant varieties by inspectors.

Description of Respondents: Business or other for profit.

Number of Respondents: 4.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 32.

Grain Inspection, Packers & Stockyards Administration

Title: Report and Recordkeeping Requirements.

OMB Control Number: 0580–0013.

Summary of Collection: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is mandated to provide, upon request, inspection, certification, and identification services related to assessing the class, quality, quantity, and condition of agricultural products shipped or received in interstate and foreign commerce. Applicants requesting GIPSA services must specify the kind and level of service desired, the identification of the product, the location, the amount, and other pertinent information in order that official personnel can efficiently respond to their needs.

Need and Use of the Information: GIPSA employees use the information to guide them in the performance of their duties. Additionally, producers, elevator operators, and/or merchandisers who obtain official inspection, testing, and weighing services are required to keep records related to the grain or commodity for three years. Personnel who provide official inspection, testing, and weighing services are required to maintain records related to the lot of grain or related commodity for a period of five years. The information is used for the purpose of investigating suspected violations.

Descriptions of Respondents: Business or other for-profit.

Number of Respondents: 2,372.

Frequency of Responses: Recordkeeping; Reporting: On occasion, Weekly, Monthly, Semi-annually, Annually.

Total Burden Hours: 396,937.

Agricultural Marketing Service—Farm Service Agency

Title: Pricing Pilot Program.

OMB Control Number: 0581–0190.

Summary of Collection: The Consolidated Appropriations Act 1999 on November 29, 1999 (Public Law 106–113 (113 Stat. 1536, Section 1001(a)(8))) mandated the implementation of a Dairy Forward Pricing Pilot Program. The Dairy Forward Pricing Pilot Program became effective on July 19, 2000. The program permits a handler to pay producers or cooperative associations a negotiated price, rather than the minimum Federal order price, for milk that is under forward contract, provided that such milk does not exceed the handler's non-fluid use of milk for the month. This is voluntary program and only applies to federally regulated milk that is not packaged for fluid use.

Need and Use of the Information: AMS will use questionnaires to conduct a study of forward contracting under the pilot program to determine the impact on milk prices paid to producers in the United States. The study is due to Congress no later than April 30, 2002. The information collected from the questionnaires will identify participants' size, availability of contracts, sources of information utilized to make decisions, and impacts on business operations; and AMS will review summarize, and evaluate the different types of contracts that have been written under the pilot program. If the information is not collected, the Department will not be able to determine the extent of the impact of the forward contract has had on milk prices paid to producers.

Description of Respondents: Business or other for profit; Farms.

Number of Respondents: 8000.

Frequency of Responses: Reporting: On occasion; Other (one time).

Total Burden Hours: 3,275.

Food and Nutrition Service

Title: Employment and Training (E&T) Program Report.

OMB Control Number: 0584–0339.

Summary of Collection: The Balanced Budget Act of 1997 (Public Law 105–33), enacted on August 5, 1997, modified the Employment and Training (E&T) Program so that States' efforts are now focused on a particular segment of the food stamp population-abled-bodied adults without dependents (ABAWDs). Section 6(d) of the Food Stamp Act of 1977 and 7 CFR 273.7 require each food stamp household member who is not exempt shall be registered for employment by the State agency at the time of application and once every twelve months thereafter, as a condition of eligibility. This requirement pertains to all household members over the age of 15 and under the age of 60. Each State agency must screen each work registrant to determine whether to refer the individual to its E&T Program. States' E&T Programs are federally funded through an annual E&T grant that is funded based on the number of food stamp recipients registered for work in that state. Both the Food Stamp Act and regulations require States to file quarterly reports about their E&T Programs so that the Food and Nutrition Service (FNS) can monitor their performance.

Need and use of the Information: FNS will collect information from the States on E&T program statistics and waiver exemptions for ABAWDs on a quarterly basis using form FNS–583, E&T Program Report. FNS needs this information to work with the States throughout the year to ensure they do not exceed their ABAWDs exemption allocation and to make preliminary adjustments prior to the end of the year so States can plan accordingly. The information will help FNS monitor program performance and

evaluate whether the component costs need adjustments in future years.

Description of Respondents: State, Local, or Tribal Government; Individuals or households.

Number of Respondents: 3,386,325.

Frequency of Responses: Reporting: Quarterly; Annually.

Total Burden Hours: 190,541.

Food and Nutrition Service

Title: The Prime Vendor Pilot Project Evaluation.

OMB Control Number: 0584–NEW.

Summary of Collection: The food and Nutrition Service (FNS) will implement a data collection phase for the evaluation of the Prime Vendor Pilot Project. The Prime Vendor Pilot Project is a pilot of the Food Distribution Program on Indian Reservations (FDPIR). The food Stamp Act of 1977 requires that a food distribution program be established on an Indian reservation, if an Indian Tribal Organization (ITO) requests it. If an ITO is capable, it may administer the program instead of a state agency. Currently, FDPIR is operated through a partnership between FNS and 94 ITO's and 6 states' distributing agencies. Eligibility criteria for receiving benefits include residence in a participating reservation and meeting income and resource eligibility criteria.

Need and use of the Information: FNS will collect information using a questionnaire. The information collected will determine whether the Prime Vendor System will improve food delivery service and reduce cost to both USDA and the ITO's that are receiving multi-food shipments in the FNS Midwest Region. If this information is not collected, USDA agencies will have no information to determine if the pilot is feasible, whether it results effective food delivery to ITO's.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 23.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 23.

Rural Housing Service

Title: 7 CFR 1902–A, Supervised Bank Accounts.

OMB Control Number: 0575–0158.

Summary of Collection: 7 CFR 1902–A, Supervised Bank Accounts, prescribes the policies and procedures for disbursing loan and grant funds, establishing and closing supervised accounts, and placing Multi-Family housing reserve accounts in supervised accounts. Supervised accounts are accounts with a financial institution in the names of a borrower and the United States Government, represented by Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, or Farm Service Agency (Agency). Also, the regulation outlines who uses supervised accounts; when they are used; and how they are established, monitored, and closed.

Need and Use of the Information: The agency's state and field offices will collect information from borrowers and financial institutions and use the information to monitor compliance with agency regulations governing supervised accounts, such as establishing, maintaining, and withdrawing funds. In addition, the information will be used to ensure that the borrowers operate on a sound basis and use the loan and grant funds for authorized purposes.

Description of Respondents: Business or other for-profit.

Number of Respondents: 20,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 26,260.

Agricultural Marketing Service

Title: Reporting Requirements Under the Regulations Governing Inspection and Certification of Processed Fruits and Vegetable and Related Products.

OMB Control Number: 0581–0123.

Summary of Collection: The Agricultural Marketing Act of 1946 (7 U.S.C. 1622(h)) requires and directs the Department of Agriculture to promulgate rules and regulations to carry out voluntary inspection and grading services of processed fruits and vegetables on a fee for service basis. The regulations governing Inspection and Certification of processed Fruit and Vegetables and Related Products (7 CFR 52) authorizes the collection of information to assure that the products sampled, inspected, graded and certified are actually the products requested to be sampled and inspected.

Need and use of the Information: The Agricultural Marketing Service (AMS) uses the data collected for grading and certification purposes and for hiring licensed samplers. The following forms are used by AMS for information collection: FV–159, Application for Inspection of Unofficially Submitted Samples of Food Products, the information collected is used to determine the purpose for which the inspection is desired for unofficially submitted samples. FV–356, *Application for Inspection* and *Certificate of Sampling*, the information is used to fill in the respondent's name and address, and to describe the containers, the location code marks and the number of containers in the lot. FV–468, *Application for License to Sample Processed Foods*, the information collected is used to hire prospective employees desiring to become licensed to sample processed foods and to certify as to the identification, location, kinds and condition of containers of processed products that are sampled.

Description of Respondents: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 1,672.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 32,366.

Agricultural Marketing Service

Title: Lamb Promotion, Research and Information Program.

OMB Control Number: 0581–NEW.

Summary of Collection: The authority for Lamb Promotion, Research, and Information Order is established under the Commodity Promotion, Research, and Information Act of 1996. These programs carry out projects relating to research, consumer information, advertising, producer information, market development, and product research with the goal of maintaining and expanding their existing markets and uses and strengthening their position in the marketplace.

Need and Use of the Information: Various forms were designed to collect and remit assessments to the Board, to certify organizations, to select nominees and certify nominating organizations, and use for reporting. The information requested on the forms is the minimum information necessary to effectively carry out the requirements of the program, is necessary to fulfill the intent of the ACT. Also, the information is not available from other sources because it relates specifically to individual lamb producers, feeders, seedstock producers, exporters and first handlers.

Description of Respondents: Farms; Individuals or households; Business or other for-profit.

Number of Respondents: 68,112.

Frequency of Responses: Recordkeeping; Reporting: Monthly.

Total Burden Hours: 66,547.

Foreign Agricultural Service

Title: Sugar Imported to be Re-exported in Refined Form, in Sugar-containing Products, or used in Production of Certain Polyhydric Alcohols.

OMB Control Number: 0551–0015.

Summary of Collection: Regulation 7 CFR part 1530 authorizes the Foreign Agricultural Service (FAS) to issue import licenses to enter raw cane sugar (exempt from the tariff-rate quota for the raw cane sugar imports and the related requirements) on the condition that an

equivalent quantity of refined sugar be: (1) Exported as refined sugar; (2) exported as an ingredient in sugar containing products; or (3) used in production of certain polyhydric alcohols. The purpose of the sugar import licensing program is to assist U.S. sugar manufacturers, refiners, and processors in making U.S. products price competitive on the world market; and facilitate the use of domestic refining capacity.

Need and use of the Information: FAS will collect information to: (1) Determine whether applicants for the program meet the Regulation's eligibility criteria; (2) monitor sugar imports, transfers, exports, and use in order to confirm that transactions are conducted and completed within the requirements of the Regulations; (3) audit participants' compliance with the Regulation; and (4) prevent entry of world-priced program sugar from entering the higher-priced domestic commercial sugar market. The information collected is needed by the Sugar Licensing Authority to manage, plan, evaluate, and account for program activities.

Description of Respondents: Business or other for-profit; Individuals or households.

Number of Respondents: 250.

Frequency of Responses: Reporting; Quarterly.

Total Burden Hours: 4,377.

Sondra A. Blakey,

Departmental Information Clearance Officer.

[FR Doc. 01–28890 Filed 11–19–01; 8:45 am]

BILLING CODE 3410–01–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Missouri Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Missouri Advisory Committee to the Commission will convene at 7 p.m. and adjourn at 8:30 p.m. on November 28, 2001, at the Millennium Hotel, 200 South 4th Street, St. Louis, Missouri 63102. The purpose of the meeting is to plan future activities and receive civil rights monitoring issues from members.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 13, 2001.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 01–28945 Filed 11–19–01; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

[I.D. 111401D]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Steller Sea Lion Revisions to Alaska Federal Fisheries Permit.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Emergency.

Burden Hours: 9.

Number of Respondents: 539.

Average Hours Per Response: 1 minute.

Needs and Uses: A biological opinion under Section 7 of the Endangered Species Act identified reasonable and prudent measures that are needed to protect endangered Steller sea lions. The National Marine Fisheries Service must implement changes to the pollock, Atka mackerel, and Pacific cod fisheries in the Exclusive Economic Zone off Alaska. One of the measures is to require participants to register for participation in these fisheries and for Atka mackerel fishermen to state whether they plan to fish inside Steller sea lion critical habitat. Registration would be accomplished by the addition of a few questions to the existing Application for Federal Fisheries Permit for Alaska, which participants are already required to complete. These new registrations would be in effect on January 1, 2002 and would end for Atka mackerel on January 15, 2002.

The information submitted in the registration will be used to create platoons of vessels for Atka mackerel fishing in the critical habitat, inform participants of vessel monitoring system requirements, plan the assignment of observers, and take other actions to implement and enforce management measures.

Affected Public: Individuals or households, business or other for-profit organizations.

Frequency: Triennial.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: November 14, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–28926 Filed 11–19–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Export Administration

[Docket Number: 01–BXA/TD–01]

Export Privileges, Actions Affecting: Tetrabal Corp., et al.

Tetrabal Corporation, Inc., 605 Trail Lake Drive, Richardson, Texas 75081 and Ihsan Medhat "Sammy" Elashi, 316 Candlewood Place, Richardson, Texas 75081; Related persons—Appellants.

Decision and Order

On November 2, 2001, the Administrative Law Judge (hereinafter the "ALJ") issued a Recommended Decision and Order in the above-captioned matter. The Recommended Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. The Recommended Decision and Order sets forth the procedural history of the case, the facts of the case, and the detailed findings of fact and conclusions of law. The findings of fact and conclusions of law concern whether Tetrabal Corporation, Inc. ("Tetrabal") and Ihsan Medhat "Sammy" Elashi ("Elashi") are "related persons" to Infocom Corporation, Inc. ("Infocom"). The findings of fact and conclusions of law also concern whether the issuance

of the September 6, 2001 order by the Assistant Secretary for Export Enforcement temporarily denying the export privileges of Tetrabal and Elashi because they are "related persons" to Infocom is justified and necessary to prevent evasion of that order.

Based on my review of the record and pursuant to § 766.23(c) of the Export Administration Regulations (15 CFR 766.23(c)),[1] I affirm the ALJ's finding that Tetrabal and Elashi are "related persons" to Infocom as that term is defined in 15 CFR 766.23. Moreover, I affirm the ALJ's finding that the order issued by the Assistant Secretary for Export Enforcement of September 6, 2001 denying the export privileges of Tetrabal and Elashi because they are "related persons" to Infocom is justified and necessary to prevent evasion of that order. Accordingly, the ALJ's Recommended Decision and Order is affirmed, the September 6, 2001 temporary denial order issued by the Assistant Secretary of Commerce for Export Enforcement is affirmed, and the appeal filed by Tetrabal and Elashi is denied.

This order is effective immediately.

Dated: November 10, 2001.

Kenneth I. Juster,

Under Secretary of Commerce for Export Administration.

In the matter of: Tetrabal Corporation,[1] 605 Trail Lake Drive, Richardson, Texas 75081
and
Ihsan Medhat "Sammy" Elashi,[2] 316 Candlewood Place, Richardson, Texas 75081, Related persons—Appellants

Before: Hon. Joseph N. Ingolia, Chief Administrative Law Judge, United States Coast Guard; Recommended Decision

(I) Preliminary Statement

This appeal is taken by Tetrabal Corporation ("Tetrabal") and, its Chief Executive Officer and sole owner, Ihsan Medhat "Sammy" Elashi in accordance with the Bureau of Export Administration ("BXA" or "Agency") laws and regulations codified at 50 U.S.C. app. sec. 2412(d) and 15 CFR 766.23 and 766.24.

Pursuant to 50 U.S.C. app. sec. 2412(d), 5 U.S.C. 3344, 5 CFR § 930.213, a letter dated October 15, 2001 from the United States Office of Personnel Management, and an interagency agreement entered into between the Coast Guard and BXA, the United States Coast Guard Administrative Law Judge Program has authority to adjudicate cases brought under the Export Administration Act of 1979 ("EAA" or "Act") codified at 50 U.S.C. app. sec. 2401–2420 (1994 & Supp. IV 1998), and the underlying procedural regulations codified at 15 CFR part 766.[3]

(II) Procedural Background

By order dated September 6, 2001, the Assistant Secretary for Export Enforcement ("Secretary") temporarily denied for a period of 180 Days ("Temporary Denial Order") all U.S. export privileges of Infocom Corporation, Inc. ("Infocom) and various closely related persons, including Tetrabal Corporation, Ihsan Medhat "Sammy" Elashi, and five other natural persons, who are all interconnected by ownership, control, or affiliation with Infocom. The Secretary found that:

(1) Infocom deliberately and covertly committed repeated violations of the Export Administration Regulations ("EAR") between 1997 and 2000 by making three shipments and attempting to ship computer equipment to Libya and Syria without obtaining required BXA export licenses, and by attempting to conceal the shipments to Librya and Syria by undervaluing the goods and by filing false and deceptive shipping documents;

(2) Infocom's principals have actively sought to engage in further export transactions; and

(3) Given the nature of the item shipped, future violations could go undetected.

Based on the aforementioned, the Secretary determined that a temporary denial order issued on an ex parte basis, without a hearing, was necessary and in the public interest to preclude future EAR violations. The Temporary Denial Order was served on Infocom and all related persons by mail on September 7, 2001, and was published in 66 FR 47630 on September 13, 2001.

On October 3, 2001, the United States Coast Guard Administrative Law Judge Docketing Center ("ALJ Docketing Center") received a letter dated September 28, 2001, appealing the temporary denial of export privileges. A copy of the letter was not served on BXA. The Appellants Tetrabal and Mr. Ihsan Elashi were advised that the appeal would not be considered perfected and action would not be taken until BXA was served with a copy of the letter.

On October 10, 2001, BXA notified the ALJ Docketing Center that the appeal had been received. BXA filed an opposition to the appeal on October 17, 2001.

In this case, the appeal was considered perfected once BXA was served with a copy of the appeal letter on October 10, 2001. Thus, pursuant to the time limitations established in 15 CFR § 766.24(e)(4), the recommended decision in the case was to be issued on October 24, 2001. However, since Respondent Elashi supplemented his appeal on October 22nd, two days before the recommended decision was going to be issued, by filing a response to BXA's answer, the time period for issuing the recommended decision was extended in order to allow BXA an opportunity to file a response. BXA filed a reply to the Appellants' supplemental pleading on October 30, 2001. The appellate record is now closed and the appeal is now ripe for decision.

Upon careful review of the pleadings and documentary evidence in this case, I recommend that the appeal filed by Tetrabal Corporation and Ihsan Mehat "Sammy" Elashi be Denied, and the Temporary Denial Ordered issued by the Affirmed.

(III) Findings of Fact

1. Infocom Coporation, Inc. is a reseller of computers and computer-related equipment, which was incorporated in the State of Texas on March 16, 1992 by Mr. Bayan Medhat Elashi. (Agency's Opposition to Appeal, Exhibit 2).

2. Infocom is located at 630 International Parkway, Suite 100, Richardson, Texas, (*Id.*).

3. Mr. Bayan Elashi is the owner and Chief Executive Officer of Infocom. (*Id.*).

4. Infocom is operated by: (a) Mr. Bayan Elashi; (b) his mother Fadwa Elafrangi, who serves as majority owner; and (c) his four brothers; (i) Ghassan Elashi, Vice President of Marketing; (ii) Basman Medhat Elashi, Logistics Manager; (iii) Hazin Elashi, Manager of Personal Computers Division; and (iv)

[1] The Export Administration Regulations codified at 15 CFR parts 730–774 were enacted in accordance with the Export Administration Act of 1979, as amended, which lapsed on August 20, 2001. However, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (1994 & Supp. IV 1998)), the President, through Executive Order 13,222 of August 17, 2001 (66 FR 44,025 (Aug. 22, 2001)), has continued the Regulations in full force and effect.

[1] The Appellant's appeal letter dated September 28, 2001 maintained that the address for Tetrabal Corp. is 908 Audelia Rd., Suite 200, PMB #245, Richardson, Texas 75801. The return address on the envelope accompanying the appeal letter maintained that the address is 605 Trail Alke Drive, Richardson, Texas 75801. On October 22, 2001, Appellant Ihsan Elashi verified that the true address for Tetrabal Corp. is 605 Trail Lake Drive, Richardson, Texas 78501.

[2] The Appellants have used several different spellings for "Elashi" including: El Ashi, Elashye, Ashi, and Elashyi.

[3] The Export Administration Regulations codified at 15 CFR part 766 were enacted in accordance with the EAA. The Act lapsed on August 20, 2001. However, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (1994 & Supp. IV 1998)), the President, through Executive Order 13222 of August 17, 2001 (66 FR 44025 (August 22, 2001)), has continued the Regulations in full force and effect.

Appellant Ihsan Medhat ("Sammy" Elashi, Systems Consultant, (*Id.;* Agency's Opposition to Appeal, Exhibit 1).

5. Appellant Ihsan Elashi is a United States citizen, who resides at 316 Candlewood Place, Richardson, Texas. He is the father of four boys, ranging in ages from 1 to 8 years old. (Agency's Opposition to Appeal, Exhibit 2; Appellants' Supplemental Pleading).

6. Appellant Ihsan Elashi was employed by Infocom until sometime well into 2000 and was very active in Infocom's business. (Agency's Opposition to Appeal, Exhibit 2; Appellants' Supplemental Pleading).

7. Computer parts and accessories are regularly shipped to Infocom at Appellant Ihsan Elashi's home address. (*Id.;* Agency's Reply to Appellants' Supplemental Pleading, Exhibit 2, 4–12).

8. Infocom uses Appellant Ihsan Elashi's home address on preprinted domestic and international Federal Express shipping labels. (*Id.*).

9. Infocom does not possess a license from either BXA or the Department of Treasury's Office of Foreign Assets Control to export or re-export computers or computer-related equipment to Libya or Syria. (Agency's Opposition to Appeal, Exhibit 1 and 2).

10. In February of 1997, Mr. Ihsan Elashi of Infocom knowingly sold computer equipment to Yousef Elamri, the director, shareholder, and representative of Computers & Information Technology, Ltd., a Libyan based company that has a presence in Malta. (Agency's Opposition to Appeal, Exhibit 2; Agency's Reply to Appellants' Supplemental Pleading, Exhibit 1, 12 and 13).

11. Mr. Ihsan Elashi had direct telephone contact with Mr. Elamri in Libya in February of 1997 and arranged for the computer equipment to be shipped to SMS Air Cargo ("SMS"), a freight forwarder in Valletta, Malta, and thereafter redirected to Libya. (Agency's Reply to Appellants' Supplemental Pleading, Exhibit 1 and 12).

12. Infocom shipped the computer equipment to SMS in Malta on March 5, 1997. (Agency's Opposition to Appeal, Exhibit 2).

13. The Shipper's Export Declaration ("SED"), which was signed by Basman Elashi, identified SMS as the ultimate consignee of the goods when, in fact, the true ultimate consignee was Computers & Information Technology, Ltd. in Libya. (*Id.*).

14. The computer equipment arrived in Malta on March 17, 1997 and was immediately loaded on a ferry and shipped to Tripoli, Libya on March 20, 1997. (*Id.*).

15. Tetrabal Corporation is a computer and computer-related equipment reseller that was incorporated by the Appellant Ihsan Elashi on July 20, 2000. (Agency's Opposition to Appeal, Exhibit 2; Appellants' Supplemental Pleading).

16. Mr. Ihsan uses his home address as the business address for Tetrabal. He also uses the following addresses in letters and other correspondence: (a) 605 Trail Lake Drive, Richardson, Texas 75081; and (b) 908 Audelia Rd, Suite 200, PNB# 245, Richardson, Texas 75081.

17. Tetrabal and Infocom conduct business with the same vendors that sell computers and computer-related equipment to both companies. (*Id.*).

18. Tetrabal and Infocom maintain the same customers and business contacts. (*Id.*).

19. Tetrabal has, on at least three occasions, sold computer products and equipment to Infocom on several occasions. (*Id.*).

20. On September 6, 2001, the Assistant Secretary for Export Enforcement issued an order temporarily denying all export privileges of Infocom, Appellant Tetrabal, Bayan Elashi, Ghassan Elashi, Basman Elashi, Appellant Ihsan Elashi, Hazim Elashi, and Fadwa Elafrangi for a period of 180 days upon finding that Infocom and its corporate officers and employees illegally shipped computer equipment between 1997 and 2000 to Libya and Syria without the required export licenses, and the company attempted to conceal the shipment by undervaluing the goods and filing false SEDs. (Agency's Opposition to Appeal, Exhibit 1).

21. On September 19, 2001, thirteen days after the Temporary Denial Order was issued, Appellant Ihsan Elashi delivered a Tetrabal Corporation check to Salinas International Freight, a freight forwarder in Dallas, Texas, to pay for shipment of 82 computers to Saudi Arabia, which was previously ordered from Dell on August 20, 2001 and sent to the freight forwarder on August 30, 2001. Upon receiving payment, Salinas International Freight exported the computers on September 22, 2001. Tetrabal undervalued the goods in this shipment on the SEDs. (Agency's Opposition to Appeal, Exhibit 2; Agency's Reply to Appellants' Supplemental Pleading, Exhibit 3; Appellants' Supplemental Pleading).

22. In a letter dated September 28, 2001 that was addressed to Ingram Micro, Inc., a computer product vendor and drafted by an employee or representative of Ingram Micro, Inc., Appellant Ihsan Elashi certified, by signing the letter, that he represents Infocom Corp. and Tetrabal Corp and all related persons cited in the Temporary Denial Order and Provides assurances that all products purchased from Ingram Micro, Inc. are intended for use or resale within the United States and will not be exported or re-exported except by express authorization of the U.S. Government. (Agency's Opposition to Appeal, Exhibit 2 and 3; Appellants' Supplemental Pleading).

23. Infocom has now shifted its business efforts to being an Internet service provider, while Tetrabal maintains the computer sales business. (Agency's Opposition to Appeal, Exhibit 2).

(IV) Ultimate Findings of Fact and Conclusions of Law

1. Appellants Tetrabal Corporation and Ihsan Medahat "Sammy" Elashi are related persons to Infocom Corporation, Inc. within the meaning of 15 CFR 766.23.

2. The Temporary Denial Order issued by the Assistant Secretary for Export Enforcement is justified and necessary to prevent evasion.

(V) Opinion

In support of foreign policy against terrorism, BXA and the Department of Treasury's Office of Foreign Assets Control has established comprehensive controls on export and re-export of goods to Libya and Syria from the United States. Virtually all exports and re-exports of U.S. origin goods, technology, or services to Libya are prohibited, unless specifically authorized. *See* 15 CFR 764.4; *see also* 31 CFR 550.202 and 550.409. A license is specifically required for the export and re-export from the United States to Libya of virtually all items, except, among other things, "publications and donated articles intended to relieve human suffering, such as food, clothing, medicine and medical supplies intended strictly for medical purposes." 31 CFR 550.202; *see also* 15 CFR 764.4(b)(1) and (2). Similarly, for anti-terrorism purposes, a license is required for the export and re-export of certain goods, such as computer equipment (ECCN 3A001), to Syria. 15 CFR 742.9 and 774, Supp. 1.

The Assistant Secretary for Export Enforcement has authority to issue a temporary denial order on an *ex parte* basis "upon a showing by BXA that the order is necessary in the public interest to prevent an imminent violation of the EAA, the EAR, or any order, license or authorization issued thereunder." 15

CFR 766.24(b). The Temporary Denial Order may be issued against a respondent and any "related persons." 15 CFR 766.23(a) and 766.24(c). The term "related persons" is defined as "persons then or thereafter related to the respondent by ownership, control, position of responsibility, affiliation or other connection in the conduct of trade or business." 15 CFR 766.23(a). "Person" is defined in the EAA as any individual, partnership, corporation, or other form of association. 50 U.S.C. App. sec. 2415(1).

In these proceedings, a "related person" may file an appeal with the administrative law judge. 15 CFR 766.23(c). The sole issues to be decided on appeal by the administrative law judge are: (a) Whether the person(s) is related to the respondent; and (b) whether the order is justified in order to prevent evasion. *Id.*

The facts in this case establish that Tetrabal and Ihsan Elashi are related persons within the meaning of 15 CFR 766.23(a) and the Temporary Denial Order is justified in order to prevent evasion.

I. Tetrabal Corporation and Ihsan Elashi Are Related Persons to Infocom

The Appellants' argument that Tetrabal Corporation and Ihsan Elashi are separate entities and there is no relationship with Infocom is rejected. The Temporary Denial Order and the documentary evidence submitted by BXA on appeal clearly establish an intimate business relationship between Infocom, Tetrabal Corporation, and Mr. Ihsan Elashi. Tetrabal Corporation and Mr. Ihsan Elashi are affiliated or interconnected with Infocom.

Mr. Bayan Elashi incorporated Infocom on March 16, 1992 and employed his brother, Ihsan Elashi to serve as the Systems Consultant. Mr. Ihsan Elashi worked for Infocom well into 2000 and represented Infocom until well after the issuance of the Temporary Denial Order on September 7, 2001. There is no evidence to support a finding that Mr. Ihsan Elashi was a mere employee.

To the contrary, Mr. Ihan Elashi was very active in Infocom's business. For instance, in March of 1997, Mr. Ihsan Elashi directly participated in the illegal and fraudulent sale and export of computer equipment to Libya, through Malta, without first obtaining the required BXA export license. He also used his home address on preprinted Federal Express shipping labels for Infocom and regularly accepted shipment of goods to his home address on behalf of Infocom.

Furthermore, after Ihsan Elashi incorporated Tetrabal Corp. on July 20, 2000, he continued to maintain an intimate business relationship with Infocom. Infocom and Tetrabal both shared use of Mr. Ihsan Elashi's home address for shipment and other purposes. The two companies maintain common computer vendors and customers. In addition, Tetrabal has sold computer components and equipment to Infocom on at least three occasions. Moreover, on September 28, 2001, Mr. Ihsan Elashi provided a written statement to Ingram Micro, Inc indicating that he represents Infocom, Tetrabal, and all related persons identified in the Temporary Denial Order.

There is no evidence that the statement in the September 28, 2001 letter was made under duress or that Mr. Ihsan Elashi was otherwise forced to make the statement. The mere fact that Ingram Micro, Inc. drafted the September 28, 2001 letter that was provided to Mr. Ihsan Elashi by electronic mail for signature is, by itself, insufficient to establish duress.

II. The Temporary Denial Order Is Justified

BXA has established that the Temporary Denial Order is justified. BXA procedural regulations provide that a Temporary Denial Order may be issued to prevent an "imminent" violation of export laws, regulations, or any order, license, or authorization issued thereunder. 15 CFR 766.24(b)(1). The procedural regulations provide:

> A violation may be "imminent" in either time or in degree of likelihood. To establish grounds for the temporary denial order, BXA may show either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations. To indicate the likelihood of future violations, BXA may show that the violation under investigation or charges is significant, deliberate, covert and/or likely to occur again, and that it is appropriate to give notice to companies in the United States and abroad to cease dealing with the person * * * in order to reduce the likelihood that a [the] person continues to export * * * (U.S.-origin) items, risking subsequent disposition contrary to export control requirements.

15 CFR 766.24(b)(3).

In this case, BXA has established that because of the deliberate and covert nature of the Appellants' actions, there exists a likelihood of future violations. The record shows that Infocom has recently focused its business efforts on being an Internet service provider while Mr. Ihsan Elashi and Tetrabal maintains the computer sales business. The purpose of the regulations that authorize the issuance of Temporary Denial Orders against related persons is to prevent respondents from evading the order by using an alter ego to conduct and continue exporting goods and other items. The record shows that Mr. Ihsan Elashi and Tetrabal have a propensity to commit future violations of the export regulations. As a matter of fact, on September 22, 2001, Mr. Ihsan Elashi, doing business as Tetrabal, violated the Temporary Denial Order, issued several weeks earlier, by exporting 82 personal computers to Saudi Arabia and undervaluing the goods on the SED. This most recent violation lends further justification for the Temporary Denial Order.

(VI) Conclusion

For the reasons stated above, I recommend that the appeal filed by Tetrabal Corporation and Ihsan Medhat "Sammy" Elashi *be Denied*, and the Temporary Denial Order issued by the Secretary be *Affirmed*.

Done and dated this 2nd day of November 2001, Baltimore, Maryland.

Joseph N. Ingolia,

Chief Administrative Law Judge, United States Coast Guard.

[FR Doc. 01–28940 Filed 11–19–01; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–866]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Folding Gift Boxes From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value.

SUMMARY: On August 6, 2001, the Department of Commerce (the Department) published the preliminary results of its investigation of certain folding gift boxes from the People's Republic of China. On August 17, 2001, we published amended preliminary results to correct ministerial errors and we postponed our final determination. The products covered by this investigation are certain folding gift boxes. The period of investigation is July 1, 2000, through December 31, 2000.

Based on our analysis of comments received and information obtained during verification, we have made

changes to the margin calculations. Therefore, the final results differ from the preliminary results.

EFFECTIVE DATE: November 20, 2001.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer or George Callen, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0410 and (202) 482–0180, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the provisions codified at 19 CFR part 351 (2000).

Final Determination

We determine that certain folding gift boxes (gift boxes) from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the "Final Margin" section of this notice.

Scope of the Investigation

The products covered by this investigation are certain folding gift boxes. Certain folding gift boxes are a type of folding or knock-down carton manufactured from paper or paperboard. Certain folding gift boxes are produced from a variety of recycled and virgin paper or paperboard materials, including, but not limited to, clay-coated paper or paperboard and kraft (bleached or unbleached) paper or paperboard. The scope of the investigation excludes gift boxes manufactured from paper or paperboard of a thickness of more than 0.8 millimeters, corrugated paperboard, or paper mache. The scope of the investigation also excludes those gift boxes for which no side of the box, when assembled, is at least nine inches in length.

Certain folding gift boxes are typically decorated with a holiday motif using various processes, including printing, embossing, debossing, and foil stamping, but may also be plain white or printed with a single color. The subject merchandise includes certain folding gift boxes, with or without handles, whether finished or unfinished, and whether in one-piece or multi-piece configuration. One-piece gift boxes are die-cut or otherwise formed so that the top, bottom, and sides form a single, contiguous unit. Two-piece gift boxes are those with a folded bottom and a folded top as separate pieces. Certain folding gift boxes are generally packaged in shrink-wrap, cellophane, or other packaging materials, in single or multi-box packs for sale to the retail customer. The scope of the investigation excludes folding gift boxes that have a retailer's name, logo, trademark or similar company information printed prominently on the box's top exterior (such folding gift boxes are often known as "not-for-resale" gift boxes or "give-away" gift boxes and may be provided by department and specialty stores at no charge to their retail customers). The scope of the investigation also excludes folding gift boxes where both the outside of the box is a single color and the box is not packaged in shrink-wrap, cellophane, other resin-based packaging films, or paperboard.

Imports of the subject merchandise are currently classified under *Harmonized Tariff Schedule of the United States* (HTSUS) subheadings 4819.20.00.40 and 4819.50.40.60. These subheadings also cover products that are outside the scope of this investigation. Furthermore, although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Background

We published in the **Federal Register** the preliminary determination in this investigation on August 6, 2001. See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Folding Gift Boxes From the People's Republic of China*, 66 FR 40937 (August 6, 2001) (*Preliminary Determination*). Since the publication of the *Preliminary Determination*, the following events have occurred.

On August 6, 2001, Max Fortune Industrial Ltd. (Max Fortune) and Red Point Paper Products Co., Ltd. (Red Point), respondents in this investigation, requested that the Department correct ministerial errors they found in their margin calculations. On August 17, 2001, the Department determined that the ministerial errors alleged by the respondents constituted significant ministerial errors within the meaning of 19 CFR 351.224(g)(1) and we made the suggested corrections to these companies' margins. Therefore, we published in the **Federal Register** our amended preliminary determination in this investigation on August 17, 2001. See *Notice of Amended Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Folding Gift Boxes From the People's Republic of China*, 66 FR 43181 (August 17, 2001).

On August 8, 2001, Red Point requested that the Department postpone its final determination until November 12, 2001 (which is not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register**), and requested an extension of the provisional measures. In accordance with 19 CFR 351.210(b)(2)(ii), because (1) our preliminary determination was affirmative; (2) the respondent requesting the postponement accounted for a significant proportion of exports of the subject merchandise (see Memorandum from Laurie Parkhill to Richard W. Moreland dated May 1, 2001); and (3) no compelling reasons for denial existed, we granted the respondent's request and postponed the final determination. Because November 12, 2001, is a federal holiday, we postponed the final determination until November 13, 2001.

On August 13 through 17, 2001, the Department conducted a U.S. sales data and factors-of-production (FOP) data verification of Max Fortune. See Max Fortune verification report dated September 19, 2001. On August 20 through 23, 2001, the Department conducted a U.S. sales data and FOP data verification of Red Point. See Red Point verification report dated September 13, 2001. On September 10, 2001, the Department conducted a U.S. sales data verification of The Lindy Bowman Company (Lindy Bowman), a U.S. reseller of merchandise produced by Red Point. See Lindy Bowman verification report dated September 17, 2001.

On September 17, 2001, Max Fortune submitted additional surrogate-value data.

On October 2, 2001, the petitioners and Red Point submitted their case briefs with respect to the sales and FOP verifications and the *Preliminary Determination*. On October 9, 2001, the petitioners and respondents submitted rebuttal briefs with respect to the sales and FOP verification and the *Preliminary Determination*. No parties requested a hearing.

Period of Investigation

The period of investigation is July 1, 2000, through December 31, 2000.

Non-Market Economy

The Department has treated the PRC as a non-market economy (NME) country in all its past antidumping investigations. See *Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 25, 2000), and *Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From the People's Republic of China*, 66 FR 33522 (June 22, 2001). A designation as an NME country remains in effect until it is revoked by the Department. See section 771(18)(C) of the Act. The respondents in this investigation have not requested a revocation of the PRC's NME status. Therefore, we have continued to treat the PRC as an NME in this investigation. For further details, see the *Preliminary Determination*.

Separate Rates

In our *Preliminary Determination*, we found that Max Fortune and Red Point had met the criteria for the application of separate antidumping duty rates. We saw at verification that both companies are Hong Kong companies. We have not received any other information since the *Preliminary Determination* which would warrant reconsideration of our separates rates determination with respect to the respondents. Therefore, we continue to find that Max Fortune and Red Point should be assigned individual dumping margins. For a complete discussion of the Department's determination that the respondents are entitled to separate rates, see the *Preliminary Determination*, 66 FR at 40975.

Surrogate Country

As we found in the *Preliminary Determination*, for purposes of the final determination, we continue to find that India remains the appropriate primary surrogate country for the PRC. For further discussion and analysis regarding the surrogate country selection for the PRC, see the *Preliminary Determination*.

Use of Facts Available

We have continued to use adverse facts available in our calculation of the PRC-wide rate. We have not changed this rate since the *Preliminary Determination*. See the *Preliminary Determination*, 66 FR at 40975. In the Preliminary Determination, we determined that the application of total adverse facts available (AFA) was appropriate with respect to the PRC-wide entity, as this entity failed to respond to our antidumping questionnaire. As AFA, we applied a margin rate of 164.75 percent, the highest margin alleged in the petition, which we adjusted to account for the fact that we used India as the surrogate country (the petition used Indonesia). We corroborated the petition information to the extent possible. See the memorandum to the file entitled Corroboration of Facts Available, dated July 30, 2001. The interested parties did not object to the use of AFA for the PRC-wide entity, or to our choice of facts available, and no new facts were submitted which would cause us to reconsider this decision. Therefore, for the reasons set out in the *Preliminary Determination*, we have continued to use the highest margin alleged in the petition, as adjusted, for the purposes of this final determination notice.

Analysis of Comments Received

All issues raised in the case briefs by parties to this investigation are addressed in the Decision Memorandum, which is hereby adopted by this notice. See the Certain Folding Gift Boxes from the PRC Issues and Decision Memorandum dated November 13, 2001 (the Decision Memorandum). A list of the issues which parties raised, and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in B–099. In addition, a complete version of the Decision Memorandum can be accessed directly on the internet at ia.ita.doc.gov. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our findings at verification and our analysis of comments received, we have made adjustments to the calculation methodology in calculating the final dumping margins for Max Fortune and Red Point in this proceeding. See Final Analysis Memoranda for Max Fortune and Red Point dated November 13, 2001. These revisions are:

Red Point

1. We used the U.S. sales database that Red Point presented at the start of verification which incorporates its pre-verification corrections.
2. We deducted the declaration fees that Red Point incurred on U.S. sales.
3. We used the FOP database that Red Point presented at the start of verification which incorporates its pre-verification corrections. Because Red Point did not include the usage for plastic tabs for certain models in its database, we included the usages we verified for these models.
4. We recalculated Red Point's glue usage to account for beginning inventory in Red Point's calculation of usage of glue.
5. We recalculated Red Point's shrink-wrap usage to account for beginning inventory in Red Point's calculation of usage of shrink wrap.
6. We revised Red Point's per-piece shrink-wrap weights to accord with the weights we verified.
7. We revised Red Point's reported carton usage to accord with the usage we verified.
8. We converted Red Point's reported tape usage from a per-meter to a per-kilogram basis using a conversion factor based on information in the Red Point verification report dated September 13, 2001, at page 12.
9. We revised Red Point's reported market-economy input costs to accord with the costs we verified.
10. We revised Red Point's electricity usage calculation to include the electricity for the foil-stamping or pre-cutting processes.
11. We revised Red Point's labor usage calculation to accord with the labor hours we verified.
12. We have recalculated the surrogate value for electricity for Red Point.

Max Fortune

1. We used the U.S. sales database that Max Fortune submitted August 8, 2001.
2. We included an unreported billing adjustment for one invoice that we found at verification.
3. We found at verification that Max Fortune reported out-of-scope boxes, all of which are printed with the retailer's name. We have removed all sales of such boxes from Max Fortune's U.S. sales database.
4. We found at verification that Max Fortune allocated its movement expenses by dividing the expense by the standard weight and multiplying this number by the actual weight reported in the response for each observation. We corrected this by dividing the reported movement expenses by the reported actual weight and multiplying it by the standard weight for the model.
5. We found at verification that the sum of per-unit weight and per-unit scrap for each model of boxes incorporating duplex board exceeded the per-unit usage of those models. We corrected this by reallocating the scrap

offset to take into account the relative scrap generated by each model.

6. We found at verification that Max Fortune incorrectly reported that it did not incur freight expenses for inputs of glue. We included this freight expense when valuing the glue inputs.

7. We revised the value of Max Fortune's market-economy inputs pursuant to the corrections Max Fortune provided at the start of verification.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by each respondent for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondents. For changes from the *Preliminary Determination*, as a result of verification, see the "Changes Since the Preliminary Determination" section of this notice, above, and Max Fortune's and Red Point's Analysis Memoranda dated November 13, 2001.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B)(ii) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from the PRC, except for subject merchandise produced and exported by Max Fortune (which has a de minimis weighted-average margin), that are entered, or withdrawn from warehouses, for consumption on or after the date of publication of the final determination in the **Federal Register**. The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. This suspension of liquidation instruction will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average percent margin
Red Point Paper Products Co., Ltd	9.26
Max Fortune Industrial Ltd	1.67
PRC-wide Rate	164.75

The PRC-wide rate applies to all entries of the subject merchandise except for entries from exporters/producers that are identified individually above.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or a threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: November 13, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

I. Changes From the Preliminary Determination

II. Company Specific Issues

Comment 1: Use of Facts Available for Max Fortune

Comment 2: Use of Facts Available for Red Point

Comment 3: Red Point Paperboard Prices

Comment 4: Red Point and Lindy Bowman Affiliation

Comment 5: Red Point Selling, General, and Administrative Expenses and Profit

Comment 6: Red Point Electricity Valuation

[FR Doc. 01–29000 Filed 11–19–01; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Silicon Metal From Brazil: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 20, 2001.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor or Ronald Trentham, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; (202) 482–5831 and (202) 482–6320, respectively.

Information

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On September 6, 2000, the Department published a notice of initiation of an administrative review of the antidumping duty order on Silicon Metal from Brazil covering the period July 1, 1999 through June 30, 2000 (65 FR 53980). On August 6, 2001 (66 FR 40980), we published the preliminary results of review. In our notice of preliminary results, we stated our intention to issue the final results of this review no later than 120 days after the date of publication of the preliminary results, December 4, 2001.

Extension of Final Results of Review

We determine that it is not practicable to complete the final results of this review within the original time limit. *See* Decision Memorandum regarding this extension from Holly A. Kuga to Bernard T. Carreau, dated concurrently with this notice, which is on file in the Central Records Unit, Room B–099 of the main Commerce Building. Therefore, the Department is extending the time limit for completion of the final results until no later than February 2, 2002.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: November 11, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 01–28999 Filed 11–19–01; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Opportunity To Apply for Membership on the U.S.-Japan Private Sector/ Government Commission

AGENCY: International Trade Administration (ITA) of the Department of Commerce (DOC).

ACTION: Notice of membership opportunity.

SUMMARY: The U.S. Government is seeking letters of interest for private sector membership on the U.S. side of the U.S.-Japan Private Sector/ Government Commission ("Commission"). President Bush and Japanese Prime Minister Koizumi launched the Commission in June 2001 as part of the U.S.-Japan Economic Partnership for Growth ("Partnership"). The Commission is made up of U.S. and Japanese government and private sector representatives. It aims to integrate the U.S. and Japanese private sectors more fully into the economic work of the two Governments. The Commission will enable U.S. and Japanese private sector representatives to present input—including expertise, observations, and recommendations—on agenda topics agreed to in advance by the two Governments.

DATES: In order to receive full consideration, requests must be received no later than December 20, 2001.

ADDRESSES: Please send requests for consideration on company letterhead by fax or letter to Chiling Tong, Deputy Assistant Secretary, Office of Asia and the Pacific, U.S. Department of Commerce, Room 2036, 14th St. and Constitution Ave., NW., Washington, DC 20230, fax (202) 482–4760. Requests sent by email will not be considered. Candidates chosen for membership will be notified in writing.

FOR FURTHER INFORMATION CONTACT: Harrison Cook or Ian Clements, Office of Japan, U.S. Department of Commerce, Room 2320, 14th St. and Constitution Ave., NW., Washington, DC 20230, fax (202) 482–0469; or Amy Jackson, Office of Japan, U.S. Trade Representative, 600 17th St., NW., Washington, DC 20508, fax (202) 395–3597.

Authority: 15 U.S.C. 1512

SUPPLEMENTARY INFORMATION:

Introduction

The U.S. Government seeks letters of interest for private sector membership on the U.S. side of the Commission. President Bush and Japanese Prime Minister Koizumi launched the Commission in June 2001 as part of the Partnership. The Commission is made up of U.S. and Japanese government and private sector representatives. It aims to integrate the U.S. and Japanese private sectors more fully into the economic work of the two Governments. The Commission will enable U.S. and Japanese private sector representatives to present input—including expertise, observations, and recommendations—on agenda topics agreed to in advance by the two Governments. For a description of the goals and structure of the Commission and the Partnership, see the "Annex to the Joint Statement,'at the Commerce Department website: *http://www.mac.doc.gov/japan/source/menu/partnership/partnership2.html.*

Topics

The topics in 2002 will be "creating an environment for sustainable growth: raising productivity and corporate revitalization," with a special focus on corporate restructuring. In examining this topic, Commission members will likely wish to focus on the implications for efficient resource allocation of factors such as: corporate governance, efficiently functioning factor and product markets, the environment for entrepreneurship, and the legal and regulatory system. The Commission topic(s) will change annually.

Duties and Responsibilities of Private Sector Members

Private sector members will serve at the discretion of the Secretary of Commerce. Private sector individuals chosen for the Commission will be expected to be fully involved in all necessary preparatory meetings and attend the Commission's single 2002 meeting, which, as currently envisioned, will be held in the first quarter of the year in conjunction with the Subcabinet meeting. The Subcabinet is composed of government officials at the Deputy/Vice-Ministerial level from key economic agencies and ministries and other agencies and ministries appropriate to the Commission's topic(s). The number of private sector Commission members will be limited and will be determined in coordination with the Government of Japan. Members of the private sector delegation will serve for one term. Members who wish to serve additional terms must apply under the same rules as other future prospective members.

Private sector members are fully responsible for travel, lodging and personal expenses associated with their participation in the Commission. They will receive no compensation. The private sector members will serve in a representative capacity, presenting the views and interests of the particular business sector in which they operate; private sector members are not special government employees. Candidates will be vetted for pending business before the Commerce Department and United States Trade Representative. Members from the private sector will be chosen based on criteria set forth in this Notice.

No later than two months after completion of the first annual meeting, the two Governments will conduct a review of the Commission to assess the structure and effectiveness of the forum and, as appropriate, implement improvements.

Candidate Eligibility and Selection Procedures

The process for recruiting and selecting Commission members from the U.S. private sector is based on objective, written criteria developed in accordance with the Annex to the Joint Statement. The Annex can be found at the Commerce Department website: *http://www.mac.doc.gov/japan/source/menu/partnership/partnership2.html.* A candidate's partisan political activities (including political contributions) are not relevant to and will not be considered part of the selection process.

To be eligible for consideration, all candidates must be a U.S. citizen and not a registered foreign agent under the Foreign Agents Registration Act of 1938 (FARA).

All requests for consideration will be reviewed by a General Secretariat, which is composed of officials from the Department of Commerce and the Office of the United States Trade Representative. Members of the General Secretariat will evaluate each submission based on the evaluation criteria and provide a ranking of Excellent, Good, or Poor. Each ranked request for consideration will be sent to the Assistant Secretary for Market Access and Compliance, Department of Commerce, and the Assistant United States Trade Representative (AUSTR) for Japan (the "Selecting Officials") for final selection. The Selecting Officials will review the rankings and comments of the review team and will determine the candidates who will be selected for the commission.

Evaluation Criteria

In reviewing prospective members, a Government Secretariat, composed of officials from the Department of Commerce and the Office of the United States Trade Representative, will consider the following evaluation criteria:

- Experience in executive level positions, such as CEO of U.S. companies;[1]
- Experience doing business with or in Japan;
- Expertise in the topic to be considered by the Commission. In 2002, the topic will be "creating an environment for sustainable growth: Raising productivity and corporate revitalization;"
- Commitment to undertake any necessary preparatory work and to participate in any preparatory meetings and the Commission meeting itself;
- Commitment to assume the costs of travel, lodging and other personal expenses related to Commission participation;
- Contributions to membership diversity based on company size, type, and location; and
- Other considerations relevant to the Commission as described in the Annex to the U.S.-Japan Joint Statement by President Bush and Prime Minister Koizumi on June 30, 2001.

Submission Procedures and Requirements

To be considered for membership, please provide a personal resume and materials that would identify the following: (1) Name and title of the individual requesting consideration; (2) name and address of the company where the candidate is employed; (3) company's product or service line; (4) company size (market capitalization, annual revenues, number of employees); (5) company's experience in Japan (exports, sales, employees, years in Japan); (6) why candidate wishes to be considered for the Commission; and (7) the particular sector of the business community the candidate would represent.

Third parties, such as trade associations and government officials, may nominate or endorse potential candidates, but candidates must submit their own letters to be considered for Commission membership. Referrals from political organizations and any references to political contributions or other partisan political activities will not be considered in the selection process.

Please send requests for consideration on company letterhead by fax or letter. See **ADDRESSES.** Requests sent by email will not be considered. Candidates chosen for membership will be notified in writing.

Dated: November 13, 2001.

Chiling Tong,

Deputy Assistant Secretary for Asia and the Pacific.

[FR Doc. 01–28885 Filed 11–19–01; 8:45 am]

BILLING CODE 3510–DA–P

[1] A U.S. company is defined in the Procedures and Rules for Industry Sector Advisory Committees as a firm incorporated in the United States (or an unincorporated U.S. firm with its principal places of business in the United States) that is controlled by U.S. citizens or by another U.S. entity. An entity is not a U.S. company if 50 percent plus one share of its stock (if a corporation, or a similar ownership interest of an unincorporated entity) is controlled, directly or indirectly, by non-U.S. citizens or non-U.S., entities. If the member is to represent an entity or corporation with 10 percent or greater non-U.S. ownership, the nominee must demonstrate at the time of nomination that this ownership interest does not constitute control and will not adversely affect his or her ability to serve on the Commission.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111401A]

Proposed Information Collection; Comment Request; Economic Data Collection for the Trap Fishery in the U.S. Caribbean

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before January 22, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Jim Waters, Department of Commerce, NOAA, National Marine Fisheries Service, 101 Pivers Island Road, Beaufort, NC 28516-9722, (252–728–8710).

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) proposes to conduct a survey to collect socio-economic data from the Caribbean (Puerto Rico and the United States Virgin Islands) trap fishery. The survey intends to collect revenue, cost and other auxiliary economic information, e.g., vessel characteristics and capital investment, as well as socio-demographic information. The information collected is necessary to evaluate the economic impacts of potential gear regulations that are likely to be considered by the Caribbean Fishery Management Council. In addition, the information will be used to strengthen and improve fishery management decision-making, satisfy legal mandates under Executive Order 12866, the Magnuson-Stevens Fishery Conservation and Management Act (U.S.C. 1801 *et. seq.*), the Regulatory Flexibility Act, the Endangered Species Act, and the National Environmental Policy Act, and quantify achievement of performance measures in the NMFS Strategic Operating Plans.

II. Method of Collection

The socio-economic information will be collected via personal interview with a stratified random sample of commercial trap fishermen, with strata defined as three distinct fishing areas within the U.S. Caribbean: Puerto Rico; St. Croix, U.S. Virgin Islands (USVI); and St. Thomas/St. John, USVI. One hundred interviews will be completed in total: sixty (60) interviews in Puerto Rico; twenty (20) interviews in St. Croix; and twenty (20) interviews in St. Thomas/St. John.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time Per Response: 2 hours.

Estimated Total Annual Burden Hours: 200.

Estimated Total Annual Cost to Public: $0.

IV. Request for 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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques

or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 9, 2001.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 01–28925 Filed 11–19–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111301A]

Gulf of Mexico 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 Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Texas Habitat Protection Advisory Panel (AP).

DATES: The AP meeting is scheduled to begin at 9 a.m. on December 4, 2001, and will conclude by 4 p.m.

ADDRESSES: The meeting will be held at the Hobby Airport Hilton, 8181 Airport Boulevard, Houston, Texas 77061; telephone 713–645–3000.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, Florida, 33619.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Senior Fishery Biologist, at the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, Florida, 33619; telephone 813–228–2815.

SUPPLEMENTARY INFORMATION: At this meeting, the AP will discuss the U.S. Fish and Wildlife Service terracing project in Galveston Bay; the Jumbilee Cove habitat restoration project; the Galveston Bay Foundation terracing project in Galveston Bay; the use of oil dispersants on a shallow water oil spill of opportunity; and review the Council's Freshwater Inflow Policy. The AP will also receive an update on the Essential Fish Habitat Environmental Impact Statement.

The Texas Habitat AP is part of a three-unit Habitat Protection AP of the Gulf of Mexico Fishery Management Council. The principal role of the APs is to assist the Council in addressing issues related to Essential Fish Habitat (EFH) and other habitat and ecological relationships supporting the marine resources of the Gulf of Mexico. APs serve as a first alert system to call to the Council's attention proposed projects being developed and other activities which may adversely impact the Gulf marine fisheries and their supporting habitat. The APs may also provide advice to the Council on EFH, as well as policies and procedures for addressing environmental affairs.

Although non-emergency issues not contained on the agendas may come before the AP for discussion, those issues may not be the subject of formal action during these meetings. Actions of the AP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require 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

Copies of the agenda can be obtained by calling 813–228–2815. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by November 27, 2001.

Dated: November 15, 2001.

Richard W. Surdi,

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

[FR Doc. 01–28928 Filed 11–19–01; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111301D]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold meetings of its Advisory Panel Selection Committee, Scientific and Statistical Selection Committee, Information & Education Committee, Habitat Committee, Dolphin Wahoo Committee, Controlled Access Committee, Law Enforcement Committee, Snapper Grouper Committee and a joint meeting of the Snapper Grouper Committee, Snapper Grouper Advisory Panel and the Scientific and Statistical Committee (SSC). Public comment periods will be held during some of the meetings. There will also be a full Council Session.

DATES: The meetings will be held in December 2001. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Blockade Runner Beach Resort, 275 Waynick Drive, Wrightsville Beach, NC; telephone: (1–800) 541–1161 or (910) 256–2251.

Copies of documents are available from Kim Iverson, Public Information Officer, and South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: 843–571–4366; fax: 843–769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION:

Meeting Dates

1. Advisory Panel Selection Committee Meeting: December 3, 2001, 1 p.m.–3 p.m.

The Advisory Panel Selection Committee will meet in a closed session to review membership applications and develop recommendations.

2. Scientific and Statistical Selection Committee Meeting: December 3, 2001, 3 p.m.–4 p.m.

The Scientific and Statistical Selection Committee will meet in a closed session to review candidates for appointment to the SSC and develop recommendations.

3. Information & Education Committee Meeting: December 3, 2001, 4 p.m.–6 p.m.

The Information & Education Committee will meet to review current materials, projects and activities, develop goals and objectives, and identify needs related to public outreach.

4. Habitat Committee Meeting: December 4, 2001, 8:30 a.m.–10:30 a.m.

The Habitat Committee will meet to review the status of the Sargassum Fishery Management Plan (FMP),

review recommendations from the Habitat Advisory Panel, review habitat and environmental policies and modify as necessary, evaluate allowing rock shrimp trawling in or near the Oculina Habitat Area of Particular Concern (HAPC) by vessels with Vessel Monitoring Systems (VMS) and address Ecosystem FMP issues.

5. Dolphin Wahoo Committee Meeting: December 4, 2001, 10:30 a.m.–12 noon

The Dolphin Wahoo Committee will meet to review Draft Environmental Impact Statements (DEIS) and NMFS comments on the draft Dolphin Wahoo FMP, discuss new economic analytical requirements, discuss NMFS action on the emergency rule request regarding dolphin and wahoo management, and develop recommendations regarding the Dolphin Wahoo FMP for formal Secretarial review.

6. Controlled Access Committee Meeting: December 4, 2001, 1:30 p.m.–5:30 p.m.

Beginning at 1:30 p.m., a public hearing will be held on rock shrimp Maximum Sustainable Yield (MSY), Optimum Yield (OY) and status determination criteria.

Following the public hearing, the Controlled Access Committee will meet to discuss new economic analytical requirements for FMPs and review the Qualitative Vessel Capacity Report from NMFS. The Committee will also review DEIS comments on Shrimp Amendment 5 (rock shrimp limited access), approve changes to the document and make recommendations for submission to the Secretary of Commerce.

7. Law Enforcement Committee Meeting: December 5, 2001, 8:30 a.m.–10:30 a.m.

The Law Enforcement Committee will meet to review and comment on Snapper Grouper Amendment 13, review and comment on proposed Marine Protected Area (MPA) sites, discuss the joint Law Enforcement Committee and Advisory Panel meeting, and discuss law enforcement options in light of the current world security situation (i.e., emergency rule request to require Vessel Monitoring Systems (VMS).

8. Joint Snapper Grouper Committee, Advisory Panel and Assessment Group, and Scientific & Statistical Committee Meeting: December 5, 2001, 10:30 a.m.–12 noon and 1.30 p.m.–6:30 p.m.

The Snapper Grouper Committee, Advisory Panel, Assessment Group and the Scientific & Statistical Committee will meet to review the red porgy assessment and projections, review Snapper Grouper Amendment 13 options, review Snapper Grouper Amendment 14 options (marine protected area sites) and discuss additional stock assessment updates.

9. Snapper Grouper Committee Meeting: December 6, 2001, 8:30 a.m.–12 noon.

The Snapper Grouper Committee will meet to review and comment on the following; Proposed actions for Amendment 13 to the Snapper Grouper Fishery Management Plan including permit transfers, snowy grouper and golden tilefish management, prohibition of the sale of mutton snapper in May and June, review of stock status for speckled hind and warsaw grouper and evaluation of current regulations, spawning site closures and other measures. The Committee will also reach a decision regarding the red porgy assessment and projections, and develop recommendations for the Council on Snapper Grouper Amendment 14 options (marine protected area sites).

10. Council Session: December 6, 2001, 1:30 p.m.–6:00 p.m.

From 1:30 p.m.–1:45 p.m., the Council will have a Call to Order, introductions and roll call, adoption of the agenda, and approval of the June 2001 meeting minutes.

From 1:45 p.m.–2:15 p.m., the Council will hold elections for Chairman and Vice-Chairman and make presentations.

From 2:15 p.m.–4:15 p.m., the Council will hear a report from the Snapper Grouper Committee regarding the red porgy assessment and projections, decisions on Snapper Grouper Amendments 13 and 14 options and finalize the Gray's Reef Memorandum of Understanding (MOU).

From 4:15 p.m.–5:15 p.m., Beginning at 4:15 p.m., a public comment period will be held on Shrimp Amendment 5 (rock shrimp). Immediately following the comment period, the Council will hear a report from the Controlled Access Committee regarding Shrimp Amendment 5 and make any necessary changes to the document for submission to the Secretary of Commerce for approval.

From 5:15 p.m.–5:30 p.m., the Council will hear a report from the Scientific and Statistical Selection Committee and appoint new members to the Scientific and Statistical Committee. (closed session)

From 5:30 p.m.–6 p.m., the Council will hear a report from the Advisory Panel Selection Committee and appoint new Advisory Panel members. (closed session)

11. Council Session: December 7, 2001, 8:30 a.m.–3 p.m.

From 8:30 a.m.–9 a.m., the Council will hear a report from the Law Enforcement Committee regarding potential law enforcement action in light of the world security situation.

From 9 a.m.–10 a.m., the Council will hear a report from the Dolphin Wahoo Committee. Beginning at 9:45 a.m., a public comment period will be held regarding the proposed Dolphin Wahoo FMP. Immediately following the public comment period, the Council will make changes to the document as appropriate and approve it for submission to the Secretary of Commerce.

From 10 a.m.–10:30 a.m., the Council will hear a report from the Joint Executive and Finance Committees, and approve priority activities and the budget for Calendar Year (CY) 2002.

From 10:30 a.m.–10:45 a.m., the Council will hear a report from the Information & Education Committee.

From 10:45 a.m.–11:15 a.m., the Council will hear a report from the Habitat Committee and make a decision on allowing rock shrimp trawling in or near the Oculina HAPC by vessels with VMS.

From 11:15 a.m.–12 noon, the Council will hear a report regarding activities from the NMFS South East Fisheries Science Center and an update on the Atlantic Coast Cooperative Statistics Program (ACCSP).

From 1:30 p.m.–2 p.m., the Council will hear NMFS status reports on Golden Crab Amendment 3, Allowable gear rule change request, and Calico Scallop Section 7 submissions. NMFS will also give status reports on landings for Atlantic king mackerel, Gulf king mackerel (eastern zone), Atlantic Spanish mackerel, snowy grouper & golden tilefish, wreckfish, greater amberjack and south Atlantic octocorals.

From 2 p.m.–3 p.m., the Council will hear agency and liasion reports, discuss other business and upcoming meetings.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by November 30, 2001.

Dated: November 15, 2001.

Richard W. Surdi,

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

[FR Doc. 01–28929 Filed 11–19–01; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Reduction of Charges for Certain Cotton Textile Products Produced or Manufactured in the Republic of Turkey

November 16, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing charges.

EFFECTIVE DATE: November 21, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended. On June 26, 2001, in response to a request from the Government of Turkey, CITA published an adjusted limit for Category 350 from Turkey. As a result of administrative error, the adjusted limit was incorrect, and the correct limit was published on September 10, 2001. During the interim period, the Government of Turkey issued visas, and exporters and importer engaged in commercial transactions, in reliance on the limit published on June 26. Since June 26, CITA has published other directives which provided additional quota to Turkey in this category. As parties relied on the amount published on June 26, CITA is instructing U.S. Customs to reduce the charges applied to the limit established in the directive dated October 27, 2000, for goods exported in 2001, for Category 350 by 9,533 dozens, the amount that CITA has determined would permit Turkey to ship the full amount published on June 26.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 16, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Pursuant to a CITA decision to take into account the impact of an administrative error, effective on November 21, 2001, you are directed to reduce the charges applied to the limit established in the directive dated October 27, 2000, for goods exported in 2001, for Category 350 by 9,533 dozens.

The Committee for the Implementation of Textile Agreements has determined that CITA's action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–29109 Filed 11–16–01; 2:01 pm]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–05]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–11 with attached transmittal and policy justification.

Dated: November 9, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

30 OCT 2001
In reply refer to:
I-01/012208

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 02-05, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to the Taipei Economic and Cultural Representative Office in the United States for defense articles and services estimated to cost $288 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Richard J. Millies
Acting Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-05

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Taipei Economic and Cultural Representative Office in the United States

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$288 million
TOTAL	$288 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: This sale will provide funds for the establishment of a Cooperative Logistics Supply Support Arrangement (CLSSA) for spare parts in support of F-5E/F, C-130H, and F-16A/B aircraft, and for U.S. systems and sub-systems of the Indigenous Defense Fighter aircraft.

(iv) Military Department: Air Force (KDH)

(v) Prior Related Cases, if any:
FMS case KDG - $150 million - 12Nov99
FMS case KDF - $140 million - 10Mar98

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none

(viii) Date Report Delivered to Congress: 30 OCT 2001

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office in the United States - Cooperative Logistics Supply Support Arrangement

The Taipei Economic and Cultural Representative Office in the United States has requested the possible establishment of a Cooperative Logistics Supply Support Arrangement (CLSSA) for spare parts in support of F-5E/F, C-130H, and F-16A/B aircraft, and for U.S. systems and sub-systems of the Indigenous Defense Fighter (IDF) aircraft. The estimated cost is $288 million.

This sale is consistent with United States law and policy as expressed in Public Law 96-8.

These spare parts are required to assure that aircraft and aircraft systems previously procured from the United States are maintained in a mission capable status. The recipient will have no difficulty utilizing these additional spare parts.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

Procurement of these items will be from the many contractors providing similar items to the U.S. armed forces. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government and contractor representatives to the recipient.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 01–28892 Filed 11–19–01; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board will meet in closed session on February 27–28, 2002; May 15–16, 2002; and October 23–24, 2002, at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board will discuss interim findings and recommendations resulting from ongoing Task Force activities. The Board will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture and homeland security.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: November 9, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–28894 Filed 11–19–01; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board (DSB) Task Force on Vulnerability Assessment will meet in closed session on November 13–14, 2001, at SAIC, 4001 Fairfax Drive, Suite 500, Arlington, VA; and on November 29–30, 2001, at Rockefeller University, New York City, NY. The Task Force review will focus on providing the Secretary of Defense an alternative analytic perspective for assessing potential terrorist attacks on the United States within the next 12 months.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will focus on "out-of-the-box" thinking and scenarios to assess vulnerabilities to human life, economy, military power, domestic political morale and stability, external political influence and prestige. The Task Force will provide illustrative scenarios and suggested methods for ongoing threat and vulnerability assessments, particularly during Operation Enduring Freedom.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board meetings, concern matters listed in 5 U.S.C 552b(c)(1), and that accordingly these meetings will be closed to the public.

Due to critical mission requirements and the short time frame to accomplish this requirement, there is insufficient time to provide timely notice required by section 10(a)(2) of the Federal Advisory Committee Act and subsection 101–6.1015(b) of the GSA Final Rule on Federal Advisory Committee Act and subsection 101–6.1015(b) of the GSA Final Rule on Federal Advisory Committee Management, 41 CFR part 101–6, which further requires publication at least 15 calendar days prior to the first meeting of the Task Force on Vulnerability Assessment.

Dated: November 9, 2001.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–28893 Filed 11–19–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to amend one system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on December 20, 2001 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 601–4725.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: November 9, 2001.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DSMC 02

SYSTEM NAME:

Defense Systems Management College (DSMC) Student Files (February 22, 1993, 58 FR 10227).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Defense Acquisition University Student Files'.

SYSTEM LOCATION:

Delete entry and replace with 'Office of the Registrar, Defense Acquisition University, 9820 Belvoir Road, Ft. Belvoir, VA 22060–5565.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Replace 'Defense Systems Management College (DSMC)' with 'Defense Acquisition University'.

* * * * *

STORAGE:

Add to entry 'and computerized data bases.'

RETRIEVABILITY:

Add to the entry 'Computer databases are accessed by name and Social Security Number.'

SAFEGUARDS:

Add to entry 'Computer records are protected by individual passwords and the system is a security-accredited web based network.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Registrar, Defense Acquisition University, 9820 Belvoir Road, Ft. Belvoir, VA 22060–5565.'

* * * * *

DSMC 02

SYSTEM NAME:

Defense Acquisition University Student Files.

SYSTEM LOCATION:

Office of the Registrar, Defense Acquisition University, 9820 Belvoir Road, Ft. Belvoir, VA 22060–5565.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current, former, and nominated students of the Defense Acquisition University (DAU).

CATEGORIES OF RECORDS IN THE SYSTEM:

Data includes name, dependent data, Social Security Number, career brief application form, security clearance, college transcripts, correspondence, DAU grades, instructor and advisor evaluations, education reports, official orders, current address, and individual's photograph and other personal and experience historical data on past and present students.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; DoD Directive 5000.57, Defense Acquisition University; and E.O. 9397 (SSN).

PURPOSE(S):

This data is used by college officials to provide for the administration of and a record of academic performance of current, former, and nominated students; to verify attendance and grades; to select instructors; to make decisions to admit students to programs and to release students from programs; to serve as a basis for studies to determine improved criteria for selecting students; to develop statistics relating to duty assignments and qualifications. This data is used by the Registrar in preparing locator directories of current and former students which are disseminated to students, former students and other appropriate individuals and agencies for purposes of administration; by college officials in preparing student biographical booklets, student rosters, and press releases of student graduations and to evaluate quality content of various courses. This data may be transferred to any agency of the Department of Defense having an official requirement for the information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's

compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and computerized databases.

RETRIEVABILITY:

Filed records are sequenced alphabetically by last name, by class, and course. Locator cards are filed alphabetically in two categories, active students (by course) and former students. Computer databases are accessed by name and Social Security Number.

SAFEGUARDS:

Records are maintained in locked cabinets, in an area accessible only to authorized personnel. Building is locked during non-business hours. Only individuals designated as having a need for access to files by the system manager are authorized access to information in the files. Computer records are protected by individual passwords and the system is a security-accredited web based network.

RETENTION AND DISPOSAL:

Records are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Registrar, Defense Acquisition University, ATTN: 9820 Belvoir Road, Ft. Belvoir, VA 22060–5565.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Registrar, Defense Acquisition University, ATTN: HQ–AS–REG, 9820 Belvoir Road, Ft. Belvoir, VA 22060–5565.

Written requests for information should contain full name, Social Security Number, current address and telephone number, and course and class of individual, and must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Registrar, Defense Acquisition University, ATTN: HQ–AS–REG, 9820 Belvoir Road, Ft. Belvoir, VA 22060–5565.

Written requests for information should contain full name, Social Security Number, current address and telephone number, and course and class of individual, and must be signed.

For personal visits, the individual must provide acceptable identification, such as an ID card or driver's license.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES

Information is provided by the individual, supervisors, employers, instructors, advisors, examinations, and official military records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 01–28895 Filed 11–19–01; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Amend Systems of Records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on December 20, 2001 unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: November 9, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0040–1 DASG

SYSTEM NAME:

Professional Consultant Control Files (August 7, 1997, 62 FR 42524).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete "used or" from entry.

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Name, Social Security Number, address, curriculum vitae, appointment, duties, experience, compensation of appointed consultants.'

* * * * *

PURPOSE(S):

Revise entry to read 'To evaluate and appoint select individuals as professional consultants.'

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete second paragraph.

* * * * *

RETRIEVABILITY:

Delete entry and replace with 'By name.'

* * * * *

A0040–1 DASG

SYSTEM NAME:

Professional Consultant Control Files.

SYSTEM LOCATION:

Office of the Surgeon General, Headquarters, Department of the Army; U.S. Army Medical Command; U.S. Army Medical Command, Europe; U.S. Army Medical Command, Korea. Official mailing addresses are published as an appendix to the Army's compilation of system of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who has been appointed as a professional consultant in the professional medical services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, address, curriculum vitae, appointment,

duties, experience, compensation of appointed consultants.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C., Chapter 55, Medical and Dental Care; Army Regulation 40–1, Composition, Mission, and Function of The Army Medical Department; and E.O. 9397 (SSN).

PURPOSE(S):

To evaluate and appoint select individuals as professional consultants.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Records are maintained in secured areas accessible only to authorized individuals having official need therefore in the performance of assigned duties.

RETENTION AND DISPOSAL:

Records are destroyed 1 year after termination of consultant's appointment.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

For verification purposes, the individual should provide the full name, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

For verification purposes, the individual should provide the full name, current address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 01–28897 Filed 11–19–01; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice to Alter a System of Records.

SUMMARY: The Department of the Army is altering a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on December 20, 2001 unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 9, 2001, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 13, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0601–222 USMEPCOM

SYSTEM NAME:

ASVAB Student Test Scoring and Reporting System (February 22, 1993, 58 FR 10002).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Armed Services Military Accession Testing'.

SYSTEM LOCATION:

Replace the second paragraph with 'Segments exist at military entrance processing stations (MEPS) in the continental United States, Alaska, Puerto Rico, and Hawaii, participating school systems; State departments of education/testing agencies; Brooks Air Force Base, TX 78235–5352; Defense Manpower Data Center, 400 Gigling Road, Seaside, CA 93955–6771; Army Research Institute, 5001 Eisenhower Avenue, Alexandria, VA 22333–5600; and all service recruiters/recruiting commands. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete 'job corps' from entry. Add to entry 'the National Civilian Community Corps, and vocational students (i.e., technical institutions), as well as civilian and Active duty service members'.

CATEGORIES OF RECORDS IN THE SYSTEM:

Add 'rank' to entry.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 133, Under Secretary of Defense

for Acquisition; 10 U.S.C. 3013, Secretary of the Army; Technology, and Logistics; Army Regulation 601–222, Armed Services Military Personnel Accession Testing Programs; and E.O. 9397 (SSN).'

* * * * *

STORAGE:

Add to entry 'file cabinets, and electronic storage media/databases'.

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Records are maintained in locked room or filing cabinets, and are only accessible to authorized personnel. Automated data systems are further protected by use identification and manual controls.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Test score transmittals and qualification test answers records are maintained for one year then destroyed. Test material inventory files are maintained until inventory is approved, then destroy when no longer needed for conducting business, but not longer than 6 years.'

* * * * *

A0601–222 USMEPCOM

SYSTEM NAME:

Armed Services Military Accession Testing.

SYSTEM LOCATION:

Primary location: U.S. Military Entrance Processing Command, 2834 Green Bay Road, North Chicago, IL 60064–3094.

Segments exist at military entrance processing stations (MEPS) in the continental United States, Alaska, Puerto Rico, and Hawaii, participating school systems; State departments of education/testing agencies; Brooks Air Force Base, TX 78235–5352; Defense Manpower Data Center, 400 Gigling Road, Seaside, CA 93955–6771; Army Research Institute, 5001 Eisenhower Avenue, Alexandria, VA 22333–5600; and all service recruiters/recruiting commands. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

High school, college, the National Civilian Community Corps, and vocational students (i.e., technical institutions), as well as civilian and Active duty service members, who have been administered a version of the Armed Services Vocational Aptitude Battery (ASVAB).

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number, address and telephone number, date of birth, sex, ethnic group identification, educational grade, rank, booklet number of ASVAB test, individual's plans after graduation, and individual item responses to each of the 10 ASVAB subtests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 133, Under Secretary of Defense for Acquisition; 10 U.S.C. 3013, Secretary of the Army; Technology, and Logistics; Army Regulation 601–222, Armed Services Military Personnel Accession Testing Programs; and E.O. 9397 (SSN).

PURPOSE(S):

To compute and furnish test score products for career/vocational guidance and group assessment of aptitude test performance; to establish eligibility for enlistment and verify enlistment and placement scores and retest eligibility; for marketing evaluation, assessment of manpower trends and characteristics; and related statistical studies and reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Microfiche, optical mark sense answer sheets, computer magnetic tapes, file cabinets, and electronic storage media/databases.

RETRIEVABILITY:

By individual's name and Social Security Number.

SAFEGUARDS:

Records are maintained in locked room or filing cabinets, and are only accessible to authorized personnel. Automated data systems are further protected by use identification and manual controls

RETENTION AND DISPOSAL:

Test score transmittals and qualification test answers records are maintained for one year then destroyed. Test material inventory files are maintained until inventory is approved, then destroy when no longer needed for conducting business, but not longer than 6 years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Military Entrance Processing Command, 2834 Green Bay Road, North Chicago, IL 60064–3094.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about them is contained in this system should address written inquiries to the appropriate Military Entrance Processing Station. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

Individual should provide his/her full name, Social Security Number, date tested, address at the time of testing, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about them contained in this system should address written inquiries to the appropriate Military Entrance Processing Station. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

Individual should provide his/her full name, Social Security Number, date tested, address at the time of testing, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual and ASVAB tests.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and published in 32

CFR part 505. For additional information contact the system manager.

[FR Doc. 01–28898 Filed 11–19–01; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Available Buildings and Land at Military Installations Designated for Closure: Naval Air Station, Barbers Point, Oahu, HI

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding additional surplus property at the Naval Air Station, Barbers Point, Oahu, Hawaii.

FOR FURTHER INFORMATION CONTACT: Richard A. Engel, Head, BRAC Real Estate Section, Naval Facilities Engineering Command, 1322 Patterson Avenue SE., Suite 1000, Washington Navy Yard, DC 20374–5065, telephone (202) 685–9203, or J.M. Kilian, Director, Real Estate Department, Pacific Division, Naval Facilities Engineering Command, 258 Makalapa Drive, Suite 100, Pearl Harbor, HI 96860–3134, telephone (808) 472–1503. For more detailed information regarding particular properties identified in this notice (*i.e.* acreage, floor plan, sanitary facilities, exact street address, etc.), contact Mr. Roger Au, Base Operating Support, Pacific Division, Naval Facilities Engineering Command, 258 Makalapa Drive, Suite 100, Pearl Harbor, HI 96860–3134, telephone (808) 474–5946.

SUPPLEMENTARY INFORMATION: In 1993, the Naval Air Station, Barbers Point was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. Pursuant to this designation, in October 1995, approximately 2,146.9 acres of land and related facilities at this installation were determined surplus to the federal Government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended. In June 1997, a second determination was made that 5.7 acres of land and related facilities at this installation were surplus to the Federal Government. On September 4, 2001, a third determination was made that 54.9 acres of land and related facilities at this installation are surplus to the federal Government.

Notice of Surplus Property

Pursuant to paragraph (7)(B) of section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding redevelopment authority and additional surplus property at the Naval Air Station, Barbers Point, is published in the **Federal Register:**

Redevelopment Authority

The local redevelopment authority for the Naval Air Station, Barbers Point, HI, for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the Barbers Point Naval Air Station Redevelopment Commission. The Barbers Point Naval Air Station Redevelopment Commission was appointed by the Governor of the State of Hawaii to provide advice on the redevelopment of the closing Air Station. A cross section of community interests is represented on the Commission. The point of contact is Mr. William Bass, Executive Director, Barbers Point Naval Air Station Redevelopment Commission, PO Box 75268, Kapolei, HI 96707–0268, telephone (808) 692–7924 or 692–7925, facsimile (808) 692–7926.

Surplus Property Descriptions

The following is a listing of the additional land and facilities at the Naval Air Station, Barbers Point that were declared surplus to the federal Government on September 4, 2001.

Land

Two parcels of land consisting of approximately 54.9 acres of improved and unimproved fee simple land at the Naval Air Station, Barbers Point, on the island of Oahu, State of Hawaii.

Buildings

The following is a summary of the facilities located on the above described land.

—Storage Buildings. Comments: Two buildings of approximately 603 square feet.

—Generator Building. Comments: Approximately 328 square feet.

Expressions of Interest

Pursuant to paragraph 7(C) of section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, state and local Governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Air Station, Barbers Point, shall submit to the said local redevelopment authority (Barbers Point Naval Air Station Redevelopment Commission) a notice of interest, of such governments, representatives and parties in the above described additional surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant paragraphs 7(C) and (D) of said section 2905(b), the redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Hawaii the date by which expressions of interest must be submitted. In accordance with section 2(e)(6) of said Base Closure Community Redevelopment and Homeless Assistance Act of 1994, expressions of interest will be solicited by the Barbers Point Naval Air Station Redevelopment Commission.

Dated: November 9, 2001.

T.J. Welsh,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 01–28937 Filed 11–19–01; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice of closed meeting.

SUMMARY: The Chief of Naval Operations Executive Panel is to conduct a briefing of the High Impact Technology Working Group to the Chief of Naval Operations. This meeting will consist of discussions relating to technologies to enhance the Navy's role in the war on terrorism.

DATES: The meeting will be held on November 27, 2001, from 1 p.m. to 1:30 p m.

ADDRESSES: The meeting will be held at the Office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Commander Christopher Agan, CNO Executive Panel, 4825 Mark Center Drive, Alexandria, VA 22311, telephone (703) 681–6205.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), these matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

Dated: November 9, 2001.

T.J. Welsh,

Lieutenant Commander, U.S. Navy, Judge Advocate General's Corps, Federal Register Liaison Officer.

[FR Doc. 01–28936 Filed 11–19–01; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend record system.

SUMMARY: The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on December 20, 2001 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B10), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports. The records system being amended is set forth below, as amended, published in its entirety.

Dated: November 9, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N05041–1

SYSTEM NAME:

Inspector General (IG) Records (June 5, 2000, 65 FR 35620).

Changes:

SYSTEM LOCATION:

Delete "Building 200, 1014 N Street, SE., Suite 100, Washington, DC 20374–5006;" and replace with "1014 N Street, SE., Suite 100, Washington Navy Yard, DC 20374–5006;"

* * * * *

N05041–1

SYSTEM NAME:

Inspector General (IG) Records.

SYSTEM LOCATION:

Office of the Naval Inspector General, 1014 N Street, SE., Suite 100, Washington Navy Yard, DC 20374–5006; Inspector General offices at major commands and activities throughout the Department of the Navy and other naval activities that perform inspector general (IG) functions. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person who has been the subject of, witness for, or referenced in an Inspector General (IG) investigation, as well as any individual who submits a request for assistance or complaint to an Inspector General.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters/transcriptions of complaints, allegations and queries; tasking orders from the Department of Defense Inspector General, Secretary of the Navy, Chief of Naval Operations, and Commandant of the Marine Corps; requests for assistance from other Navy/Marine Corps commands and activities; appointing letters; reports of investigations, inquiries, and reviews with supporting attachments, exhibits and photographs; records of interviews and synopses of interviews; witness statements; legal review of case files; congressional inquiries and responses; administrative memoranda; letters and reports of action taken; referrals to other commands; letters to complainants and subjects of investigations; court records and results of non-judicial punishment; letters and reports of adverse personnel actions; financial and technical reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5014, Office of the Secretary of the Navy; 10 U.S.C. 5020, Naval Inspector General: details; duties; SECNAVINST 5430.57F, Mission and Functions of the Naval Inspector General, January 15, 1993.

PURPOSE(S):

To determine the facts and circumstances surrounding allegations or complaints against Department of the Navy personnel and/or Navy/Marine Corps activities.

To present findings, conclusions and recommendations developed from investigations and other inquiries to the Secretary of the Navy, Chief of Naval Operations, Commandant of the Marine Corps, or other appropriate Commanders.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and computerized database.

RETRIEVABILITY:

By subject's or complainant's name; case name; case number; and other case fields.

SAFEGUARDS:

Access is limited to officials/employees of the command who have a need to know. Files are stored in locked cabinets and rooms. Computer files are protected by software systems which are password protected.

RETENTION AND DISPOSAL:

Permanent. Retired to Washington National Records Center when four years old. Transfer to the National Archives and Records Administration when 20 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Naval Inspector General, 1014 N Street, SE, Suite 100, Washington Navy Yard, DC 20374–5006 or the local command's IG office. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Naval Inspector General, 1014 N Street, SE, Suite 100, Washington Navy Yard, DC 20374–5006 or the relevant command's IG office. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include the full name of the requester and/or case number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Naval Inspector General, 1014 N Street, SE, Suite 100, Washington Navy Yard, DC 20374–5006 or the relevant command's IG office. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include the full name of the requester and/or case number.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Complainants; witnesses; Members of Congress; the media; and other commands or government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

[FR Doc. 01–28896 Filed 11–19–01; 8:45 am]

BILLING CODE 5001–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting 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 December 20, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Cristal Thomas, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address CAThomas@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 Acting 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: November 14, 2001.

William Burrow,

Acting Leader, Regulatory Information Management, Office of the Chief Information, Officer.

Student Financial Assistance

Type of Review: Revision.

Title: Federal Direct Consolidation Loan Program Application Documents.

Frequency: On Occasion.

Affected Public: Businesses or other for-profit; Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 1,028,500.

Burden Hours: 681,875.

Abstract: These forms are the means by which an applicant applies for/promises to repay a Federal Direct Consolidation Loan and a lender verifies an eligible loan to be consolidated.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO.RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–28886 Filed 11–19–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting 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 December 20, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, 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 Acting 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: November 14, 2001.

William Burrow,

Acting Leader, Regulatory Information Management, Office of the Chief Information, Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Evaluation of the Projects with Industry (PWI) Program.

Frequency: One time.

Affected Public: Not-for-profit institutions; Individuals or household; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 462. Burden Hours: 540.

Abstract. The Evaluation of the PWI program will provide the Rehabilitation Services Administration (RSA) and other federal officials with information needed to assess the extent to which program purposes are being fulfilled. The data to be obtained will also enable RSA to identify the impact of recent regulatory changes on the program and to determine the ongoing utility of, and need for revisions to, the program's compliance indicators and performance indicators on the Government Performance and Results Act (GPRA). Respondents to information requests will include PWI staff, local Vocational Rehabilitation agency staff, Business Advisory Council members, employers of former PWI participants, local workforce investment board members, and staff of local one-stop job centers.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO.RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–28887 Filed 11–19–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–20–000]

California Independent System OperatorCorporation, California ElectricityOversight Board, Public Utilities Commission of the State of CaliforniaComplainants, v. Pacific Gas and Electric Company, Respondent; Notice of Complaint

November 14, 2001.

Take notice that on November 13, 2001, the California Independent System Operator Corporation (the ISO), the California Electricity Oversight Board, and the Public Utilities Commission of the State of California submitted a complaint pursuant to section 206 of the Federal Power Act, 16 U.S.C. 824e, against Pacific Gas and Electric Company (PG&E) alleging that certain rates, referred to as the Fixed Option Payments, payable by the ISO under certain reliability must run (RMR) contracts between the ISO and respondent are unjust and unreasonable.

Complainants allege that the currently effective Fixed Option Payments were set by a series of settlements in 1999 and 2000, that covered most RMR units, including those owned by PG&E. Complainants, along with the major California investor-owned utilities, including PG&E, sought to lower the cost of the Fixed Option Payment in Docket Nos. ER98–495–000, *et al.* In an initial decision in that proceeding, issued June 7, 2000, the Presiding Administrative Law Judge adopted the "net incremental cost" method for calculating the Fixed Option Payment. Claimants assert that the same method, applied to the respondents' RMR units, would yield Fixed Option Payments lower than those currently in affect. Complainants ask that the Commission institute an investigation, set a refund date of January 12, 2001, and defer further action pending its decision on exceptions in Docket Nos. ER98–495–000, *et al.*

Copies of the complaint were served on respondents and on other interested parties.

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 December 3, 2001. 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 December 3, 2001. 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.

David P. Boergers,
Secretary.
[FR Doc. 01–28948 Filed 11–19–01; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–42–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 14, 2001.

Take notice that on November 7, 2001, Colorado Interstate Gas Company (CIG) tendered for filing to as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective December 11, 2001:

Fourth Revised Sheet No. 3
Twelfth Revised Sheet No. 232
Tenth Revised Sheet No. 233A
Fourth Revised Sheet No. 281G
Twelfth Revised Sheet No. 283A
Seventeenth Revised Sheet No. 284
First Revised Sheet No. 463
First Revised Sheet No. 464

CIG states that these tariff sheets are being tendered to clarify the conditions of service for its Automatic Parking and Lending Service.

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.

David P. Boergers,
Secretary.
[FR Doc. 01–28957 Filed 11–19–01; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–44–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 14, 2001.

Take notice that on November 9, 2001, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, with an effective date of October 1, 2001.

CIG states that these tariff sheets are being submitted to consolidate the provisions of two sets of CIG tariff sheets with overlapping provisions that became effective on October 1, 2001.

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.

David P. Boergers,
Secretary.
[FR Doc. 01–28959 Filed 11–19–01; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–43–000]

Egan Hub Partners, L.P.; Notice of Proposed Changes in FERC Gas Tariff

November 14, 2001.

Take notice that on November 8, 2001, Egan Hub Partners, L.P. (Egan Hub) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed on Appendix A attached to the filing, to be effective on December 1, 2001.

Egan Hub states that the purpose of this filing is to: (1) reflect the implementation of the LINKr System for Egan Hub effective on December 1, 2001, including related changes to Egan Hub's capacity release and nomination processes, and (2) request a limited waiver of the requirements for Electronic Data Interchange/Electronic Delivery Mechanism and Flat File/Electronic Delivery Mechanism related to the GISB Version 1.4 standards until such time as requested by a Part 284 customer.

Egan Hub states that copies of its filing have been mailed to all affected 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.

David P. Boergers,

Secretary.

[FR Doc. 01–28958 Filed 11–19–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–45–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Tariff Filing

November 14, 2001.

Take notice that on November 9, 2001, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Thirteenth Revised Sheet No. 7 and Seventh Revised Sheet No. 48, proposed to be effective January 1, 2002.

Great Lakes states that the tariff sheets described above reflect the revised funding surcharges for the Gas Research Institute (GRI) for the year 2002. These surcharges were approved by the Commission in its letter order issued September 19, 2002, in Docket No. RP00–313–000, in which it also approved GRI's funding for its year 2002 research, development, and demonstration (RD&D) program and its 2002–2006 five-year RD&D plan.

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.

David P. Boergers,

Secretary.

[FR Doc. 01–28960 Filed 11–19–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–19–000]

Illinois Municipal Electric Agency Complainant, v. Louisville Gas & Electric Company Respondent; Notice of Complaint

November 14, 2001.

Take notice that on November 9, 2001, the Illinois Municipal Electric Agency tendered for filing a complaint against Louisville Gas & Electric Company in order to seek the establishment by the Commission of an effective refund date in connection with rate reductions expected as a result of IMEA's motion being filed simultaneously herewith in Docket No. ER98–1438.

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 November 29, 2001. 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 November 29, 2001. 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.

David P. Boergers,

Secretary.

[FR Doc. 01–28947 Filed 11–19–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–41–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

November 14, 2001.

Take notice that on November 6, 2001, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Twentieth Revised Sheet No. 25, to be effective January 1, 2002.

Natural states that the purpose of this filing is to implement the Gas Research Institute (GRI) Surcharge in accordance with Section 39 of the General Terms and Conditions of Natural's Tariff. The GRI surcharges were approved by the Federal Energy Regulatory Commission's (Commission) Letter Order issued September 19, 2001, in Docket No. RP01–434–000, to be effective January 1, 2002.

Natural states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

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.

David P. Boergers,

Secretary.

[FR Doc. 01–28956 Filed 11–19–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–18–000]

NEO California Power LLC, Complainant, v. California Independent System Operator Corporation, Respondent; Notice of Complaint

November 14, 2001.

Take notice that on November 13, 2001, NEO California Power LLC (NEO California) hereby filed, pursuant to section 206 of the Federal Power Act (FPA) 16 U.S.C. 824e(1994), and rules 2006 and 212 of the Commission's rules of practice and procedure, 18 CFR 385.206 and 385.212, against the California System Independent Operator Corporation (Cal ISO). NEO California states that the Cal ISO has violated the Commission's orders, as well as Agreements (SRA) from NEO California's new generation facilities constructed to help relieve the California energy crisis; (2) providing NEO California with a creditworthy buyer for the capacity under the SRAs, or ∫3) assuring NEO California that it would be paid for capacity sales under the SRAs.

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 December 3, 2001. 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 December 3, 2001. 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.

David P. Boergers,

Secretary.

[FR Doc. 01–28946 Filed 11–19–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2359–000]

Portland General Electric Company; Notice of Filing

November 14, 2001.

Take notice that on October 15, 2001, Portland General Electric Company tendered for filing with the Federal Energy Regulatory Commission (Commission) a notice of withdrawal of the energy imbalance portion of the revisions filed June 19, 2001 to the Second Revised Volume No. 8 of its tariff.

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 and protests should be filed on or before November 30, 2001. Protests will be considered by the Commission to determine 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.

David P. Boergers,

Secretary.

[FR Doc. 01–28950 Filed 11–19–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–21–000]

Southwestern Public Service Company, Complainant v. Golden Spread Electric Cooperative, Inc., Respondent; Notice of Complaint

November 14, 2001.

Take notice that on November 13, 2001, Southwestern Public Service Company (SPS) filed a Complaint against Golden Spread Electric Cooperative, Inc. (Golden Spread) pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206, and in compliance with the confidentiality requirements set forth in 18 CFR 388.112. SPS claims that Golden Spread has violated certain provisions of a Commitment and Dispatch Agreement by and between SPS and Golden Spread.

Golden Spread has been served a copy of the Complaint.

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 December 3, 2001. 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 December 3, 2001. 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.

David P. Boergers,

Secretary.

[FR Doc. 01–28949 Filed 11–19–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–5–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

November 14, 2001.

Take notice that on November 8, 2001, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the

following revised tariff sheet, to become effective November 8, 2001:

Sixth Revised Sheet No. 373

Williston Basin states that it has revised the above-referenced tariff sheet found in section 48 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1, to remove an inactive receipt point, Point ID No. 00895 (Bowdoin Area Mainline), from Williston Basin's Bowdoin Pool.

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.

David P. Boergers,

Secretary.

[FR Doc. 01–28951 Filed 11–19–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–20–000, et al.]

Green Country Energy, LLC, et al.; Electric Rate and Corporate Regulation Filings

November 13, 2001.

Take notice that the following filings have been made with the Commission:

1. Green Country Energy, LLC

[Docket Nos. EC02–20–000 and EL02–17–000]

Take notice that on November 6, 2001, Green County Energy, LLC (Applicant) tendered for filing with the Federal Energy Regulatory Commission (Commission), an application pursuant to Section 203 of the Federal Power Act for authorization to transfer certain jurisdictional facilities to one or more special purpose limited liability companies for purposes of a sale-leaseback financing. Applicant is developing a 795 MW (summer rated) generating facility (Facility) located in Jenks, Oklahoma. Applicant also requests that the Commission disclaim jurisdiction under the FPA with respect to the passive owner/lessor that will assume ownership of the Facility for financing purposes only.

Comment date: November 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Allegheny Energy Supply Company, LLC

[Docket No. EC02–21–000]

Take notice that on November 7, 2001, Allegheny Energy Supply Company, LLC, filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act for authorization for a leaseback-type financing transaction involving Hatfield's Ferry Power Station. The Applicant has requested Commission action on an expedited basis.

Comment date: November 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Calpine Eastern Corporation Mirant Americas Energy Marketing, L.P. Mirant New England, LLC Mirant Canal, LLC and FPL Energy, LLC v. ISO New England Inc.

[Docket No. EL01–124–001]

ISO New England Inc.

[Docket No. ER01–2559–003]

Take notice that on November 5, 2001, ISO New England Inc. made a compliance filing in response to the October 24, 2001 Order in these Dockets.

Copies of said filing have been served upon all parties to this proceeding, and upon NEPOOL Participants, as well as upon the utility regulatory agencies of the six New England States.

Comment date: December 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Ameren Services Company

[Docket Nos. ER01–1136–003]

Take notice that on November 7, 2001 Ameren Services Company, on behalf of Ameren Operating Companies, submitted the compliance filing to the Federal Energy Regulatory Commission (Commission) required by the Commission's October 23, 2001 order in Docket Nos. ER01–1136–000, ER01–1136–001, and ER01–1136–002. Copies of this filing were served on all parties included on the Commission's official service list established in this proceeding and on all affected state commissions.

Comment date: November 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Madison Gas and Electric Company

[Docket No. ER02–288–000]

Take notice that on November 8, 2001, Madison Gas and Electric Company (MGE) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Generation-Transmission Must Run Agreement with American Transmission Company LLC. The Must Run Agreement governs the terms and conditions for the dispatch of must run generation from Blount Generating Station in Madison, Wisconsin, to maintain the reliability of ATCLLC's transmission system. MGE requests that the Must Run Agreement be made effective on December 15, 2001.

Copies of the filing were served on the American Transmission Company LLC and the Public Service Commission of Wisconsin.

Comment date: November 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Midwest Generation, LLC

[Docket No. ER02–289–000]

Take notice that on November 8, 2001, Midwest Generation, LLC. (Midwest), tendered for filing with the Federal Energy Regulatory Commission (Commission) a Third Revised Service Agreement No. 1 under Midwest's FERC Electric Tariff, Original Volume No. 1 (the Collins Generating Station Power Purchase Agreement between Commonwealth Edison Company and Midwest) and First Revised Service Agreement No. 3 under Midwest's FERC Electric Tariff, Original Volume No. 1 (the Coal Generating Stations Power Purchase Agreement between Commonwealth Edison Company and Midwest).

Comment date: November 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–290–000]

Take notice that on November 8, 2001, the Midwest Independent Transmission System Operator, Inc.

(Midwest ISO) filed with the Federal Energy Regulatory Commission (Commission) a compliance filing for the implementation of the Midwest ISO Process for the Use of Network Resources Outside of the Midwest ISO and Evaluation of Competing Requests for Point-to-Point Transmission Service.

The Midwest ISO requested that the Commission determine that the proposed processes shall become effective prior to December 15, 2001.

Copies of this filing were electronically served upon Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region.

Comment date: November 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Public Service Corporation

[Docket No. ER02–291–000]

Take notice that on November 8, 2001, Wisconsin Public Service Corporation (Public Service) tendered for filing with the Federal Energy Regulatory Commission (Commission) four Generation-Transmission Must Run Agreements with American Transmission Company, LLC (ATCLLC). The Must Run Agreements govern the terms and conditions for the dispatch of real and reactive power from Public Service's Pulliam, West Marinette, Weston, and DePere Energy Center Plants to maintain the reliability of ATCLLC's transmission system. Public Service requests that the Must Run Agreements be made effective on December 15, 2001.

Copies of the filing were served upon ATCLLC and the Public Service Commission of Wisconsin.

Comment date: November 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Entergy Nuclear Indian Point 2, LLC

[Docket Nos. ER02–292–000]

Take notice that on November 8, 2001, Entergy Nuclear Indian Point 2, LLC (ENIP2) filed with the Federal Energy Regulatory Commission (Commission) a Capacity Purchase Agreement between ENIP2 and Consolidated Edison Company of New York, Inc. for the long-term sale of installed capacity from the Indian Point 2 Nuclear Generating Station to commence November 1, 2001. The filing is made pursuant to ENIP2's market-based rate tariff, FERC Electric Tariff, Original Volume No. 1.

Comment date: November 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Virginia Electric and Power Company

[Docket No. ER02–293–000]

Take notice that on November 8, 2001, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing with the Federal Energy Regulatory Commission (Commission) Notice of Termination of Non-Firm Point-To-Point Transmission Service Agreement with Entergy Power Marketing Corp. designated as First Revised Service Agreement No. 107 under FERC Electric Tariff, Second Revised Volume No. 5. Copies of the filing were served upon the Entergy Power Marketing Corp., Virginia State Corporation Commission and the North Carolina Utilities Commission.

Dominion Virginia Power respectfully requests an effective date of the termination of the Service Agreement of January 7, 2002, which is sixty (60) days from the date of filing of the Letter of Termination.

Comment date: November 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Virginia Electric and Power Company

[Docket No. ER02–294–000]

Take notice that on November 8, 2001, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing with the Federal Energy Regulatory Commission (Commission) Notice of Termination of Firm Point-To-Point Transmission Service Agreement with Entergy Power Marketing Corp. designated as First Revised Service Agreement No. 188 under FERC Electric Tariff, Second Revised Volume No. 5. Copies of the filing were served upon the Entergy Power Marketing Corp., Virginia State Corporation Commission and the North Carolina Utilities Commission.

Dominion Virginia Power respectfully requests an effective date of the termination of the Service Agreement of January 7, 2002, which is sixty (60) days from the date of filing of the Letter of Termination.

Comment date: November 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Virginia Electric and Power Company

[Docket No. ER02–295–000]

Take notice that on November 8, 2001, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing with the Federal Energy Regulatory Commission (Commission) Notice of Termination of Non-Firm Point-To-Point Transmission Service Agreement with Koch Energy Trading, Inc. designated as First Revised Service Agreement No. 183 under FERC Electric Tariff, Second Revised Volume No. 5. Copies of the filing were served upon the Koch Energy Trading, Inc., Virginia State Corporation Commission and the North Carolina Utilities Commission.

Dominion Virginia Power respectfully requests an effective date of the termination of the Service Agreement of January 7, 2002, which is sixty days from the date of filing of the Letter of Termination.

Comment date: November 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Virginia Electric and Power Company

[Docket No. ER02–296–000]

Take notice that on November 8, 2001, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing with the Federal Energy Regulatory Commission (Commission) Notice of Termination of Firm Point-To-Point Transmission Service Agreement with Koch Energy Trading designated as First Revised Service Agreement No. 134 under FERC Electric Tariff, Second Revised Volume No. 5. Copies of the filing were served upon the Koch Energy Trading, Virginia State Corporation Commission and the North Carolina Utilities Commission.

Dominion Virginia Power respectfully requests an effective date of the termination of the Service Agreement of January 7, 2002, which is sixty (60) days from the date of filing of the Letter of Termination.

Comment date: November 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Virginia Electric and Power Company

[Docket No. ER02–297–000]

Take notice that on November 8, 2001, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing with the Federal Energy Regulatory Commission (Commission) Notice of Termination of Service Agreement with FPL Energy Services, Inc. designated as First Revised Service Agreement No. 173 under FERC Electric Tariff, Third Revised Volume No. 4. Copies of the filing were served upon the FPL Energy Services, Inc., Virginia State Corporation Commission and the North Carolina Utilities Commission.

Dominion Virginia Power respectfully requests a waiver of the Commission's regulation to permit an effective date of November 16, 2001, as requested by FPL Energy Services, Inc.

Comment date: November 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Thompson River Co-Gen, LLC

[Docket No. ER02–298–000]

Take notice that on November 8, 2001, Thompson River Co-Gen, LLC (Thompson) petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of Thompson Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates, and waiver of certain Commission regulations.

Thompson intends to sell at wholesale electricity generated from a 12½ megawatt cogeneration facility located in Thompson Falls, Montana, to Montana Power Company (MPC). Thompson does not intend to make other wholesale sales of electricity to any entity other than MPC. Thompson is an LLC with passive ownership interests, and Barry Bates and Lawrence Underwood are the General Partners and will manage the day-to-day business of Thompson. Thompson has no legal or economic interest, and is not in any way related to, any utility or other entity that owns any generation, transmission or other jurisdictional facilities.

Comment date: November 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Wisconsin Power and Light Company

[Docket No. ER02–299–000]

Take notice that on November 9, 2001, Wisconsin Power and Light Company (WP&L) tendered for filing with the Federal Energy Regulatory Commission (Commission) two Generation-Transmission Must Run Agreements with American Transmission Company, LLC. The Must Run Agreements govern the terms and conditions for the dispatch of real and reactive power from WP&L's Columbia Energy Center Plant and the Rock County Plants to maintain the reliability of ATCLLC's transmission system. WP&L requests that the Must Run Agreements be made effective on December 15, 2001.

Comment date: November 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

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, N.E., Washington, D.C. 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.

David P. Boergers,

Secretary.

[FR Doc. 01–28901 Filed 11–19–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2413–043]

Georgia Power Company; Notice of Availability of Draft Environmental Assessment

November 14, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, the Office of Energy Projects has reviewed the application filed January 2, 2001, requesting the Commission's authorization to amend the project license. An environmental assessment (EA) is available for public review. The EA analyzes the environmental impacts of approving Georgia Power Company's (licensee for the Wallace Dam Project, FERC No. 2413) request to amend the project license to permit the City of Greensboro to increase their maximum rate of water withdrawal from 3.8 cubic feet per second (cfs) [1] or 2.45 million gallons per day (MGD) from Lake Oconee to 3.3 MGD.

Copies of the EA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. Copies of this filing are on file with the Commission and are available for public inspection. The EA may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

Anyone may file comments on the EA. The public, federal and state resource agencies are encouraged to provide comments. All written comments must be filed within 30 days of the issuance date of this notice shown above. 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. Send an original and eight copies of all comments marked with the docket number P–2413–040 to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. If you have any questions regarding this notice, please contact Sean Murphy at telephone: (202) 219–2964 or email: *sean.murphy@ferc.fed.us.*

David P. Boergers,

Secretary.

[FR Doc. 01–28953 Filed 11–19–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Draft License Application and Preliminary Draft Environmental Assessment (PDEA) and Request for Preliminary Terms and Conditions

November 14, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Draft—Two New Major Licenses.

b. *Project Nos.:* 2364–011 and 2365–022.

c. *Date Filed:* November 14, 2001.

d. *Applicant:* Madison Paper Industries.

e. *Name of Projects:* Abenaki and Anson Projects.

[1] FERC 25 ¶ 62,058, Order Approving Change in Land Rights, issued July 29, 1980.

f. *Location:* On the Kennebec River, in the towns of Anson and Madison, Somerset County, Maine.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.A. 791(a)–825(r).

h. *Applicant Contact:* David Lovley, Madison Paper Industries, P.O. Box 129, Main Street, Madison, ME 04950, (207) 696–1225.

i. *FERC Contact:* Nan Allen, (202) 219–2938, e-mail: *nan.allen@ferc.fed.us.*

j. *Status of Project:* With this notice the Commission is soliciting (1) preliminary terms, conditions, and recommendations on the Preliminary Draft Environmental Assessment (DEA), and (2) comments on the Draft License Application.

k. *Deadline for filing:* February 14, 2002.

All comments on the Preliminary DEA and Draft License Application should be sent to the address noted above in Item (h), and one copy filed with the following address: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. All comments must include the projects' names and numbers and bear the heading Preliminary Comments, Preliminary Recommendations, Preliminary Terms and Conditions, or Preliminary Prescriptions.

Comments and preliminary recommendations, terms and conditions, and prescriptions 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.

l. 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).

Madison Paper Industries. has mailed a copy of the Preliminary DEA and Draft License Application to interested entities and parties. Copies of these documents are available for review at Madison Paper Industries, P.O. Box 129, Main Street, Madison, ME 04950, (207) 696–1225.

m. With this notice, we are initiating consultation with the Maine State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

David P. Boergers,

Secretary.

[FR Doc. 01–28952 Filed 11–19–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

November 14, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12128–000.

c. *Date Filed:* October 1, 2001.

d. *Applicant:* Red Rock Hydroelectric Development Company.

e. *Name of Project:* Red Rock Hydroelectric Project.

f. *Location:* The proposed project would be located at the Red Rock Dam, a development of the U.S. Army Corps of Engineers, Rock Island District, on the Des Moines River, near the Town of Pella, in Marion County, Iowa. Approximately 15 acres of Federal land would be needed.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Thomas J. Wilkinson, Jr., Red Rock Hydroelectric Development Company, Suite 100, American Building, 101 Second Street, SE., Suite 400, Cedar Rapids, Iowa 52401–5878, Telephone: (319) 364–0900, Fax: (319) 368–1474.

i. *FERC Contact:* Mr. Lynn R. Miles, Sr. (202) 219–2671.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Please include the Project Number (12128–000) on any comments, protest, or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the Corps of Engineers existing Red Rock Dam, and existing Red Rock Dam and Lake, and would consist of: (1) An intake structure, (2) two 21-foot-diameter steel penstocks, (2) a powerhouse with two 15 MW turbine-generator units for a total installed capacity of 30 MW, and (3) appurtenant facilities. The project would have an annual generation of 110 GWh.

l. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions ((202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the

prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *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.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *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.

David P. Boergers,

Secretary.

[FR Doc. 01–28954 Filed 11–19–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

November 14, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12129–000.

c. *Date Filed:* October 1, 2001.

d. *Applicant:* Blackfeet Tribe of the Blackfeet Indian Reservation.

e. *Name of Project:* Sherburne Dam Hydroelectric Project.

f. *Location:* The proposed project would be located on Swiftcurrent Creek near the Town of Babb, in Glacier County, Montana. The existing Sherburne Dam was built by the federal government and is operated by the U.S. Bureau of Reclamation.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Jeanne S. Whiteing, Attorney, Whiteing & Smith, 1136 Pearl Street, Suite 203, Boulder, CO 80302.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 219–2671, or e-mail address: *lynn.miles@ferc.fed.us.*

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Competing Application:* Project No. 12038–000, Date Filed: June 4, 2001, Public Notice issued: July 2, 2001, Public comment period ended: October 31, 2001.

l. *Description of Project:* The proposed project would utilize the existing Sherburne Dam and Reservoir and would consist of: (1) A penstock to be installed in the embankment or inside the existing outlet works, (2) a powerhouse containing a single 1 megawatt (MW) turbine/generator with a total installed capacity of 1 MW, (3) a 6-mile long transmission line to tie into an existing 28 mile-long 34.5 kv transmission line, and (4) appurtenant facilities.

The project would have an annual generation of 4.3 GWh.

m. *Locations 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., Washington, DC 20426, or by calling (202) 208–1371. 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).

n. *Preliminary Permit*—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work

proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–28955 Filed 11–19–01; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket Nos. 96–45 and 96–98; DA 01–2636]

Final Opportunity for Parties To Refresh the Record Regarding Reconsideration of Rules

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In July 2001, the Commission published three notices asking parties to refresh the record regarding petitions for reconsideration of the *Universal Service First Report and Order*, *Local Competition First Report and Order*, and *Local Competition Second Report and Order*. In this document, the Commission provides a list of the petitioners that did not respond to the July notices. To ensure that each party that filed a petition for reconsideration to the *Universal Service First Report and Order*, *Local Competition First Report and Order*, and *Local Competition Second Report and Order* has actual notice and an opportunity to respond, the Bureau will mail a copy of the Notice released on November 14, 2001 to these parties so that these parties may file a supplemental notice of their intent to pursue their respective petitions for reconsideration. The Commission intends to dismiss those petitions for reconsideration from parties that do not indicate an intent to pursue their respective petitions.

DATES: Comments are due on or before December 20, 2001.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for where and how to file comments.

FOR FURTHER INFORMATION CONTACT: Sheryl Todd, Management Analyst, or Richard D. Smith, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400 TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: In July 2001, the Common Carrier Bureau (Bureau) released three notices, the *Universal Service Notice* (66 FR 37963, July 20, 2001), the *Local Competition First Report and Order Notice* (66 FR 38611, July 25, 2001), and the *Local Competition Second Report and Order Notice* (66 FR 42499, August 13, 2001) asking parties to refresh the record regarding petitions for reconsideration of the *Universal Service First Report and Order* (62 FR 32862, June 17, 1997), *Local Competition First Report and Order* (61 FR 45476, August 29, 1996), and *Local Competition Second Report and Order* (61 FR 47284, September 6, 1996). The Bureau noted that since the release of these orders many of the issues raised in the petitions for reconsideration may have become moot or irrelevant in light of intervening events. For these reasons, the Bureau requested that parties that had filed petitions for reconsideration of these orders file a supplemental notice in response to the notices indicating which issues, if any, they still wished to have reconsidered. The Bureau stated that to the extent parties did not indicate an intent to pursue their respective petitions for reconsideration, the Commission would deem such petitions withdrawn and would dismiss such petitions. Each of the notices were published in the **Federal Register**. Several parties filed in response to the notices indicating an intent to pursue their respective petitions for reconsideration.

In this notice, the Bureau announces the list of the petitioners that did not respond to the July notices, as set forth below. These parties may file a supplemental notice of their intent to pursue their respective petitions for reconsideration on or before December 20, 2001. The Commission intends to dismiss those petitions for reconsideration from parties that do not indicate an intent to pursue their respective petition for reconsideration. To ensure that each party that filed a petition for reconsideration to the *Universal Service First Report and Order*, *Local Competition First Report and Order*, and *Local Competition Second Report and Order* has actual notice and an opportunity to respond, in addition to publishing this notice in the **Federal Register**, the Bureau will also mail a copy of this notice to these parties. To the extent that parties have already indicated that they wish to pursue their respective petitions, they need not respond to this notice.

All filings relating to the *Universal Service First Report and Order* are to reference CC Docket No. 96–45. All filings relating to the *Local Competition First* and *Second Report and Order* are to reference CC Docket No. 96–98. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full

name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., TW–A325, Washington, DC 20554. Parties also must send copies of their *Universal Service First Report and Order* filings to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, SW., Room 5–A422, Washington, DC 20554. Parties must send copies of their *Local Competition First Report and Order* filings to Janice M. Myles, Common Carrier Bureau, 445 Twelfth Street, SW., Room 5–C327, Washington, DC 20554. Parties must send copies of their *Local Competition Second Report and Order* filings to Dennis Johnson, Common Carrier Bureau, 445 Twelfth Street, SW., Room 6–A207, Washington, DC 20554. In addition, interested parties must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 Twelfth Street, SW., Room CY–B402, Washington, DC 20554. The original petitions for reconsideration that parties filed in 1996–1997 are available for inspection and copying during normal business hours in the FCC's Reference Center, Room CY–A257, 445 12th Street, SW, Washington, DC 20554.

Pursuant to § 1.1206 of the Commission's rules, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

This is a list of the petitioners that did not respond to the July notices.

Commenter	Date filed
Petitions for Reconsideration of the Universal Service First Report and Order	
Ad Hoc	7/17/97
AirTouch Communications, Inc.	7/17/97
Alaska Public Utilities Commission	7/17/97
Alaska Telephone Association	7/17/97
Alliance for Public Technology	7/14/97
ALLTEL	7/17/97
American Petroleum Institute	7/16/97
AMSC Subsidiary Corporation	7/17/97
Arkansas Public Service Commission	7/16/97
Benton Foundation/Edgemont Neighborhood Coalition	7/23/97
Cellular Telecommunications Industry Assoc.	7/17/97
Columbia Communications Corp.	7/17/97
Comcast Cellular Communications, Inc.	7/17/97
Fidelity Telephone Company	7/17/97
Florida Dept. of Education	7/17/97
Florida Dept. of Management Services	7/17/97
Florida Public Service Commission	7/16/97
GE American Communications, Inc.	7/17/97
Georgia Dept. of Administrative Services—Info.Tech.	7/17/97
General Communications, Inc.	7/17/97
Global Village Schools Institute	6/25/97
GVNW	7/11/97
ITCs, Inc.	7/17/97
Information Technology Assoc. of America	7/16/97
Iowa Telecommunications and Technology Commission	7/17/97
Kansas Corporation Commission	7/17/97
MCI Telecommunications Corporation	7/17/97
National Association of State Telecommunications Directors	7/17/97
National Exchange Carrier Association, Inc.	7/17/97
New Jersey Division of the Ratepayer Advocate	7/17/97
New York Library Association	7/17/97
NEXTEL Communications, Inc.	7/17/97
Ozark Telecom, Inc.	7/17/97
Personal Communications Industry Association	7/17/97
ProNet Inc.	7/17/97
Rural Telephone Companies	7/17/97
Sandwich Isles	7/17/97
Sprint Corp.	7/17/97
Sprint Spectrum L.P.	7/17/97
Teletouch Licenses, Inc.	7/17/97
TelHawaii, Inc.	7/17/97
Texas Public Utilities Commission	7/16/97
Time Warner Communications Holdings, Inc.	7/17/97
United Utilities	7/16/97
US WEST	7/17/97
Vermont Public Service Board	7/17/97
Washington State Dept. of Information Services	7/17/97
Western Alliance	7/17/97
Wyoming Public Service Commission	7/17/97

Commenter	Date filed
Petitions for Reconsideration of the Local Competition First Report and Order	
Airtouch Paging, Cal-Autofone and Radio Electronic Products Corp.	9/30/96
American Electric Power Service Corporation, et al.	9/30/96
American Public Power Association	9/30/96
Arch Communications Group, Inc.	9/30/96
Association of American Railroads	9/30/96
Beehive Telephone Company, Inc.	9/30/96
Carolina Power & Light Company	9/30/96
Cellular Telecommunications Industry Association	9/30/96
Colorado Public Utilities Commission	9/27/96
Comcast Cellular Communications, Inc. and Vanguard Cellular Systems, Inc.	9/30/96
Consolidated Communications Telecom Services Inc.	9/30/96
Consolidated Edison Company of New York, Inc.	9/30/96
Cox Communications, Inc.	9/30/96
Delmarva Power & Light Company	9/30/96
Duquesne Light Company	9/30/96
Edison Electric Institute, et al.	9/30/96
Florida Power & Light Company	9/30/96
General Communication, Inc.	9/30/96
Information Technology Association of America	9/30/96
Kalida Telephone Company, Inc.	9/30/96
Local Exchange Carrier Coalition	9/30/96
Lower Colorado River Authority	9/30/96
Margaretville Telephone Co., Inc.	9/30/96
Meek, Representative Carrie P.	9/23/96
National Cable Television Association, Inc.	9/30/96
Pacific Gas and Electric Company	9/30/96
Paging Network, Inc.	9/30/96
Pennsylvania Power & Light Company	9/30/96
Pilgrim Telephone, Inc.	9/30/96
Public Service Commission of Wisconsin	9/27/96
Public Utilities Commission of Ohio	9/30/96
Rand McNally & Company	9/30/96
Sprint Corporation	9/30/96
Teleport Communications Group Inc.	9/30/96
Texas Public Utility Commission	9/26/96
Time Warner Communications Holdings, Inc.	9/30/96
UTC, The Telecommunications Association	9/30/96
Washington Utilities and Transportation Commission	9/30/96
Weldon, Representative Dave	9/23/96
WinStar Communications, Inc.	9/30/96
Petitions for Reconsideration of the Local Competition Second Report and Order	
Airtouch Paging/PowerPage	10/7/96
Ameritech	10/7/96
AT&T	10/7/96
BellSouth Corp.	10/7/96
GTE Service Corp.	10/7/96
MCI Telecommunications Corp.	10/7/96
New York State Dept. of Public Service	10/7/96
NYNEX Telephone Companies	10/7/96
Rural Telephone Coalition	10/7/96
U.S. Telephone Association	10/7/96

Dated: November 14, 2001.

Katherine L. Schroder,

Division Chief, Accounting Policy Division.

[FR Doc. 01–28934 Filed 11–19–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise

noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 14, 2001.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. United Bancor, Ltd., Dickenson, North Dakota; to merge with Bismarck Bancshares, Inc., Bismarck, North Dakota, and thereby indirectly acquire Bank Center First, Bismarck, Bismarck, North Dakota.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Krum Bancshares, Inc., Krum, Texas, and Krum Bancshares of Delaware, Inc., Dover, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of Farmers & Merchants State Bank of Krum, Krum, Texas.

Board of Governors of the Federal Reserve System, November 14, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–28913 Filed 11–19–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 17, 2001.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Bancshares Holding Corp., Downers Grove, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Commerce, Downers Grove, Illinois.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Siuslaw Financial Group, Inc., Florence, Oregon; to become a bank holding company by acquiring 100 percent of the voting shares of Siuslaw Valley Bank, Florence, Oregon.

Board of Governors of the Federal Reserve System, November 15, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–28997 Filed 11–19–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Competition and Intellectual Property Law and Policy in the Knowledge-Based Economy

AGENCY: Federal Trade Commission.

ACTION: Notice of public hearings and opportunity for comment.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") announces public hearings beginning in January 2002 on "Competition and Intellectual Property Law and Policy in the Knowledge-Based Economy." The hearings will focus primarily on the implications of antitrust and patent law and policy for innovation and other aspects of consumer welfare. Copyright and trademark issues as they arise in particular high-tech contexts also may be considered. The hearings will be held at and administered by the FTC and co-hosted with the Antitrust Division of the Department of Justice.

The knowledge-based economy has grown in economic significance over the past few decades. It is increasingly important that competition and intellectual property law and policy work in tandem to support and encourage ongoing innovation underlying that economy. Policies for both competition and intellectual property raise legal and economic questions that are substantially interlinked.

Through public hearings, we seek to gather facts about, and to enhance the understanding of, how doctrines, practices, and policies of each discipline affect both initial and sequential innovation, and related functions, in today's economy. The goal is to promote dialogue, learning, and consensus building among business, consumer, government, legal, and academic communities on these topics. In addition to officials from the FTC and the Antitrust Division, business, consumer, judicial, Congressional, and other government representatives will be invited, as will representatives from the antitrust and intellectual property bars, economists, and academics.

The hearings will be transcribed and placed on the public record. Any written comments received also will be placed on the public record. A public report that incorporates the results of the hearings, as well as other research, will be prepared after the hearings.

DATES: The hearings will begin in January 2002 and will conclude later in the spring. Specific dates and more specific topic listings will be provided in a later notice and in press releases. Any interested person may submit written comments responsive to any of the topics to be addressed; such comments should be submitted no later than the last session of the hearings.

ADDRESSES: When in session, the hearings will be held in Room 432 at the FTC headquarters, 600 Pennsylvania Avenue, NW., Washington, DC. All interested parties are welcome to attend. Written comments should be submitted in both hard copy and electronic form. Six hard copies of each submission should be addressed to Donald S. Clark, Office of the Secretary, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Submissions should be captioned "Comments regarding Competition & Intellectual Property." Electronic submissions may be sent by electronic mail to *"competitionandintellectualproperty@*

ftc.gov." Alternatively, electronic submissions may be filed on a 3–1/2 inch computer disk with a label on the disk stating the name of the submitter and the name and version of the word processing program used to create the document.

FOR FURTHER INFORMATION CONTACT: Matthew Bye, Office of General Counsel, Policy Studies, 600 Pennsylvania Avenue, NW., Room 505, Washington, DC 20580; telephone (202) 326–3522; e-mail: *mbye@ftc.gov*. Detailed agendas for the hearings will be available on the FTC Home Page *(http://www.ftc.gov)* and through Angela Wilson, Staff Assistant, at (202) 326–3190.

SUPPLEMENTARY INFORMATION: The issues that juxtapose competition and intellectual property policy are ones that have potentially broad implications for the development of the U.S. economy and consumer welfare. Courts have recognized that "[although] the aims and objectives of patent and antitrust laws may seem, at first glance, wholly at odds[, . . .] the two bodies of law are actually complementary, as both are aimed at encouraging innovation, industry, and competition." [1]

Yet the question of how to balance intellectual property and competition policy in particular circumstances has generated significant debate and discussion over the decades. During the 1970's, federal antitrust enforcement received justified criticism for certain policies—since revised [2]—overly hostile to the appropriate use of patents. More recently, some have questioned whether certain intellectual property policies, practices, and doctrines incorporate a proper appreciation of competitive issues, including ways in which intellectual property protection may impede—rather than encourage—innovation. Others have raised questions on whether certain antitrust approaches are properly appreciative of the need to promote innovation. The intersection of antitrust and intellectual property law continues to present difficult questions, and the debate may have intensified as the knowledge economy has increased in its importance to consumer welfare.

Thus, a series of hearings to explore the issues raised in this ongoing debate is timely. We approach these issues with open minds and in a spirit of learning. The hearings that are announced in this notice will, it is hoped, further fact gathering, learning, dialogue, and discussion among the affected parties, and will result in a greater understanding of and consensus about the approaches to policy in these areas that are most likely to benefit U.S. consumers.

The hearings will include consideration of the following general issues. This list is not exhaustive, and parties submitting written comments do not have to address each issue.

General Issues for Consideration

What roles do competition and intellectual property law and policy play in fostering initial and follow-on innovation? From a practical business perspective, how does each contribute to or impede ongoing innovation? What do empirical studies show?

What is the frequency of cross-licensing, patent pooling, and other arrangements for the transfer or joint use of intellectual property? Does their use or usefulness vary across industries? What business reasons most typically underlie their creation? What intellectual property and competition issues do they typically raise? Have the guideposts for antitrust analysis established by the DOJ/FTC Antitrust Guidelines for the Licensing of Intellectual Property proved useful?

To what extent does commercialization of new technology require multiple licenses from multiple patentees—that is, to what extent do "patent thickets" exist? How do they affect both practices with respect to intellectual property and competition among innovator companies? How should policymakers take this into account?

What competition issues arise in the settlement of patent disputes and in the context of other agreements, such as standard setting, that involve patent rights? What should be the standards for assessing the antitrust significance of a unilateral refusal to deal, an issue recently addressed by the Federal Circuit's decision in *CSU v. Xerox?* [3] To what extent has the Federal Circuit become an increasingly important source of antitrust doctrine?

To what extent do questions about the scope and types of patents (*e.g.*, business methods patents), and the procedures and criteria under which they are issued, raise competition issues? To what extent do substantive and procedural rules, both at agency and judicial levels, have implications for initial and sequential innovation, competition, and appropriability? What are the facts in this area?

To what extent is the assessment of these and other intellectual property-related questions different for new technologies? How does the globalization of the economy affect the assessment of these and related issues? What further insights can be offered to both intellectual property and antitrust doctrine from economics and other disciplines?

To what extent should, and if so, how might, fact gathering and other learning from the hearings be incorporated into competition and intellectual property practices, doctrine, and procedures?

The hearings will be transcribed and placed on the public record. Any comments received also will be placed on the public record. A public report that incorporates the results of the hearings, as well as other research, will be prepared after the hearings.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 01–28943 Filed 11–19–01; 8:45 am]

BILLING CODE 6750–01–P

[1] *Atari Games Corp.* v. *Nintendo of Am., Inc.*, 897 F. 2d 1572, 1576 (Fed. Cir. 1990).

[2] *See generally*, U.S. Department of Justice and Federal Trade Commission, *Antitrust Guidelines for the Licensing of Intellectual Property* (1995).

[3] In re Independent Service Organizations Antitrust Litigation, 203 F. 3d 1322, 1327 (Fed. Cir. 2000), cert. denied, CSU, L.L.C. v. Xerox Corp., 121 S.Ct. 1077 (2001).

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General Advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expirationa nd requires that notice of this action be published in the *Federal Register*.

The following transactions were granted early terminated of the witing period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans#	Acquiring	Acquired	Entities
Transactions Granted Early Termination—10/15/2001			
20012431	The Mead Corporation	Westvaco Corporation	Westvaco Corporation.
20012432	Westvaco Corporation	The Mead Corporation	The Mead Corporation.
20020004	Dennis Wood	Solectron Corporation	Solectron Corporation.
20020006	Flextronics International Ltd	Xerox Corporation	Xerox Corporation.
20020007	Paul G. Allen	High Speed Access Corp	High Speed Access Corp.
20020011	Solectron Corporation	Stream International Inc	Stream International Inc.
20020012	El Paso Energy Partners, L.P	El Paso Corporation	Deepwater Holdings, L.L.C.
20020016	Sun Capital Partners II, L.P	Brunswick Corporation	Igloo Holding, Inc. Igloo Products Corp.
20020017	Mellon Financial Corporation	Eagle Investment Systems Corp	Eagle Investment Systems Corp.
Transactions Granted Early Termination—10/16/2001			
20012471	M. Francois Pinault	Gucci Group N.V	Gucci Group N.W.
Transactions Granted Early Termination—10/18/2001			
20012467	O. Bruton Smith	Ray Childress Acquisition I, L.O	Ray Childress Acquisition I, L.P.
20012473	UTI Corporation	Unique Instruments, Inc	Unique Instruments, Inc.
20020018	AirGate PCS, Inc	iPCS, Inc	iPCS, Inc.
Transactions Granted Early Termination—10/19/2001			
20020005	Stiching Interbrew	Brauerei Beck GmbH & Co. KG	Brauerei Beck GmbH & Co. KH.
20020019	General Electric Company	Spirent pic	Spirent Sensing, Inc.
20020029	Hitachi, Ltd	Tactica Holdings, Inc	Tactica Holdings, Inc.
20020031	Hilfreich Foundation	The Resort at Summerlin Limited Partnership.	The Resort at Summerlin Limited, Partnership.
20020034	Blackstone iPCS Capital Partners L.P.	AirGate PCS, Inc	AirGate PCS, Inc.
20020035	Blackstone Communications Partners I, L.P.	AirGate PCS, Inc	AirGate PCS, Inc.
Transactions Granted Early Termination—10/22/2001			
20020041	nv Nuon	Utilities, Inc	Utilities, Inc.
Transactions Granted Early Termination—10/23/2001			
20020010	Ascension Health	Baptist Hospital System, Inc	Baptist Hospital System, Inc.
20020033	The Bank of New York Company, Inc	Westminster Research Associates, Inc	Westminster Research Associates, Inc.
Transactions Granted Early Termination—10/26/2001			
20020022	Daughters of Charity Ministry Service Corporation.	Catholic Healthcare West	Catholic Healthcare West.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Officer, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 01–28941 Filed 11–19–01; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entitites
Transactions Granted Early Termination—10/29/2001			
20020042	Omnicom Group Inc.	Schwartz Paper Company	Integrated Merchandising Systems LLC.

Trans #	Acquiring	Acquired	Entitites
20020044	Neptune Acquisition I Corp	Schlumberger Limited	Schlumber Resource Management Services, Inc.
20020046	InterMune, Inc	Eli Lilly and Company	Eli Lilly and Company.
20020050	First Reserve Fund IX, L.P	C&W Fabricators, Inc	C&W Fabricators, Inc.
20020054	General Electric Company	Robert W. Doede and Nina J. Doede	Centurion Capital Group Inc.
20020056	WPP Group plc	Mark Penn	Neuro Corp.
			Penn, Schoen & Berland Associates, Inc.
			PSA Interviewing Denver, Inc.
20020065	Olympus Growth Fund III, L.P	Dana Pross	Club Staffing, Inc.
Transactions Granted Early Termination—10/30/2001			
20020052	Quest Diagnostics Incorporated	Lifepoint Medical Corporation	Lifepoint Medical Corporation.
Transactions Granted Early Termination—10/31/2001			
20020066	C.B. Bard, Inc	NMT Medical Inc	NMT Medical Inc.
Transactions Granted Early Termination—11/02/2001			
20011871	Northrop Grumman Corporation	Newport News Shipbuilding, Inc	Newport News Shipbuilding, Inc.
Transactions Granted Early Termination—11/06/2001			
20012394	Career Holdings, Inc	HeadHunter.NET, Inc	HeadHunter.NET, Inc.
20020030	VeriSign, Inc	Illuminet Holdings, Inc	Illuminet Holdings, Inc.
20020064	Apollo Investment V, L.P	IMC Global Inc	IMC Inorganics, Inc.
20020068	The News Corporation Limited	Liberty Media Corporation	Fox Sports International Distribution Ltd.
			Fox Sports Latin America Ltd.
			Fox Sports Mexico Distribution LLC.
			Fox Sports Middle East Ltd.
			Fox Sports U.S. Distribution LLC.
			Fox Sports World Espanol LLC.
			Fox Sports World LLC.
			ISP Transponder, LLC.
20020076	Omnicom Group Inc	Richard Tarlow & Sandra Carlson, husband and wife.	Carlson & Partners Inc.
Transactions Granted Early Termination—11/07/2001			
20020072	Clear Channel Communications, Inc	Barry A. Ackerley	The Ackerley Group, Inc.
20020073	The J.M. Smucker Company	The Procter & Gamble Ohio Brands Company.	The Procter & Gamble Ohio Brands Company.
20020079	John H. Chuang	Renaissance Worldwide, Inc	Renaissance Worldwide, Inc.
20020081	Weatherford International, Inc	CiDRA Corporation	CiDRA Corporation.
Transactions Granted Early Termination—11/08/2001			
20012190	PerkinElmer, Inc	Stonington Capital Appreciation 1994 Fund, L.P.	Packard BioScience Company.
20012191	Stonington Capital Appreciation 1994 Fund, L.P.	PerkinElmer, Inc	PerkinElmer, Inc.
20020086	International Multifoods Corporation	General Mills, Inc	General Mills, Inc.
Transactions Granted Early Termination—11/09/2001			
20020075	Edward H, Arnold	Roadway Corporation	Arnold Transportation Services, Inc.
20020077	Qwest Communications International Inc.	KPNQwest N.V	KPNQwest N.V.
20020078	NMS Communications Corporation	Lucent Technologies Inc	Lucent Technologies Inc.
20020080	Union Pacific Corporation	Harold R. Tate	Motor Cargo Industries, Inc., Ute Trucking and Leasing.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 01–28942 Filed 11–9–01; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 5, 2001, from 8:30 a.m. to 5:30 p.m., and on December 6, 2001, from 8 a.m. to 5:30 p.m.

Location: Holiday Inn, Kennedy Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Contact: Karen M. Templeton-Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, e-mail: SomersK@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12542. Please call the Information Line for up-to-date information on this meeting.

Agenda: On December 5, 2001, the committee will discuss: (1) The development of diagnostic immunohistochemistry (IHC) and fluorescence in situ hybridization (FISH) assays intended to identify patients who might benefit from treatment with a particular therapeutic product, with a focus on the characterization and interpretation of assay results; and (2) biologics licensing application 1037925008, a labeling supplement for HERCEPTIN (trastuzumab), Genentech, Inc., indicated for the treatment of patients with metastatic breast cancer who have tumors which overexpress HER–2. The proposed labeling supplement would include the use of FISH testing using the PATH VYSION HER–2 DNA Probe Kit, Vysis, Inc., as a diagnostic method to select patients for HERCEPTIN therapy. On December 6, 2001, the committee will discuss: (1) postmarketing safety issues associated with the use of CAMPTOSAR Injection (irinotecan hydrochloride injection), Pharmacia & Upjohn Co., combined with 5FU/leucovorin ("Saltz" regimen) approved for the first-line treatment of patients with metastatic colorectal cancer. Potential labeling changes and issues regarding clinical trials to address the relevant safety and efficacy concerns will be discussed; and (2) supplemental new drug application (NDA) 20–637/S016, GLIADEL Wafer (carmustine), Guilford Pharmaceuticals, Inc., indicated for use as a treatment to significantly prolong survival and maintain overall function (as measured by preservation of Karnovsky Perfomance Status) and neurological function in patients with malignant glioma undergoing primary and/or recurrent surgical resection.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 27, 2001. Oral presentations from the public will be scheduled between approximately 8:45 a.m. and 9:15 a.m., and 1:30 p.m. and 1:45 p.m. on December 5, 2001, and between approximately 8:15 a.m. and 8:45 a.m., and 1 p.m. and 1:15 p.m. on December 6, 2001. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 27, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation. After the scientific presentations, a 30-minute open public session may be conducted for interested persons who have submitted their request to speak by November 27, 2001, to address issues specific to the topic before the committee.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 16, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–29137 Filed 11–16–01; 2:50 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0269]

Draft Guidance for Industry on the Clinical Studies Section of Labeling for Prescription Drugs and Biologics—Content and Format; Availability; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until November 26, 2001, the comment period for the draft guidance for industry entitled "Clinical Studies Section of Labeling for Prescription Drugs and Biologics—Content and Format" that appeared in the **Federal Register** of July 9, 2001 (66 FR 35797). This draft guidance is part of a comprehensive effort to improve the format and content of prescription drug labeling. The agency is taking this action in response to a request for an extension and to allow interested parties additional time to submit comments.

DATES: Submit written or electronic comments on the draft guidance by November 26, 2001. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3844, FAX 1–888–CBERFAX, or Voice Information System at 800–835–4709 or 301–827–1800. Send one self-addressed, adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit

electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Janet M. Jones, Center for Drug Evaluation and Research (HFD–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–6758, or Toni Stifano, Center for Biologics Evaluation and Research (HFM–602), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3028, or e-mail: stifano@cber.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 9, 2001 (66 FR 35797), FDA announced the availability of a draft guidance for industry entitled "Clinical Studies Section of Labeling for Prescription Drugs and Biologics—Content and Format." As part of a comprehensive effort to make prescription drugs safer to use, FDA is engaged in several initiatives to make prescription drug labeling a better information source for health care practitioners—clearer, more informative, more accessible, and more consistent from drug to drug. Recently the agency published a proposed rule to revise the overall format of prescription drug labeling (65 FR 81082, December 22, 2000). The agency also is developing a number of guidance documents that focus on the content of certain labeling sections. The first draft guidance entitled "Content and Format of the Adverse Reactions Section of Labeling for Human Prescription Drugs and Biologics" was made available for public comment on June 21, 2000 (65 FR 38563).

The draft guidance entitled "Clinical Studies Section of Labeling for Prescription Drugs and Biologics—Content and Format" is the second guidance document on the content and format of individual labeling sections. Among other things, the draft guidance discusses what studies to include in the Clinical Studies section, how to describe those studies, and how to present clinical study data in graphs and tables. The agency also is trying to raise awareness, with this draft guidance, of the implications for product promotion of information contained in the Clinical Studies section. This section exists in the current labeling and is expected to continue to exist when the proposed rule to revise the format for prescription drug labeling is made final.

On October 1, 2001, FDA received a request from the Pharmaceutical Research and Manufacturers of America (PhRMA) to extend the comment period. PhRMA indicated that it needed additional time to coordinate comments from its member companies. In response to this request, and to provide all interested persons additional time to comment on this draft guidance, FDA is reopening the comment period until November 26, 2001.

II. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at http://www.fda.gov/ohrms/dockets/default.htm, http://www.fda.gov/cder/guidance/index.htm, or at http://www.fda.gov/cber/guidelines.htm.

Dated: November 14, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–28961 Filed 11–19–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0489]

Draft "Guidance for Clinical Trial Sponsors on the Establishment and Operation of Clinical Trial Data Monitoring Committees;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled "Guidance for Clinical Trial Sponsors on the Establishment and Operation of Clinical Trial Data Monitoring Committees" dated November 2001. The draft guidance document, when finalized, will assist sponsors of clinical trials in determining when a data monitoring committee (DMC) is needed for optimal study monitoring and how such committees should operate.

DATES: Submit written or electronic comments on the draft guidance to ensure their adequate consideration in preparation of the final document by February 19, 2002. General comments on agency guidance documents are welcome at any time. Submit written or electronic comments on the collections of information by January 22, 2002.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448; the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; or the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844; or the CDRH Facts-On-Demand system at 1–800–899–0381 or 301–827–0111. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT:

Stephen M. Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210;

Robert Temple, Center for Drug Evaluation and Research (HFD–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–6758; or

Joanne Less, Center for Devices and Radiological Health (HFZ–403), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled "Guidance for Clinical Trial Sponsors on the Establishment and Operation of Clinical Trial Data Monitoring Committees" dated November 2001. The draft guidance document, when finalized, will assist sponsors of clinical trials in determining when a DMC is needed for optimal study monitoring, and how such committees should operate. The draft guidance addresses the roles, responsibilities, and operating procedures of DMCs.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This draft guidance document represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of Information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology..

Title: Draft Guidance for Clinical Trial Sponsors on the Establishment and Operation of Clinical Trial Data Monitoring Committees

Description: FDA is issuing a draft guidance document that will assist sponsors of clinical trials in determining when a DMC is needed for optimal study monitoring, and how such committees should operate. The draft guidance addresses the roles, responsibilities, and operating procedures of DMCs, and describes certain reporting and recordkeeping responsibilities including the following: (1) Standard operating procedures (SOPs); (2) interim reports by a sponsor to a DMC, statistical approach to FDA, DMC report of meeting minutes to the sponsor; and (3) meeting records. The information collection provisions for § 314.50(d)(5)(ii) (21 CFR 314.50(d)(5)(ii)) have been approved under OMB Control No. 0910–0001.

A. Standard Operating Procedures

Under the draft guidance, the agency recommends that all DMCs have well-defined SOPs. Subjects to be addressed in SOPs should include, but may not be limited to, the following:

- Schedule and format for meetings,
- Format for presentation of data,
- Identification of individuals who will have access to interim data to ensure confidentiality,
- Identification of individuals who may attend all or part of the DMC meetings,
- Method and timing of providing DMC members with interim study reports,
- Specification of the statistical approach that will be used to evaluate treatment effects and approach to considering early termination of the study for benefit or harm,
- Assessment of potential conflicts of interest of proposed DMC members,
- Interaction between FDA and DMC members for certain products, and
- Rapid unblinding of treatment codes to DMC members when needed.

The agency also recommends that the sponsor submit a description of the SOPs to FDA.

B. Interim Reports by a Sponsor to a DMC

The agency recommends in the draft guidance that the sponsor or sponsor's contractor submit an interim report, including information to be presented by the statistician at the DMC meeting, to the DMC. The interim report provides the DMC with essential information regarding the trial upon which they may base their recommendations.

C. Statistical Approach

The agency recommends in the draft guidance that the final statistical approach be submitted to FDA before initiation of interim monitoring. FDA reviews this information and may provide comments to the sponsor.

D. DMC Report of Meeting Minutes to Sponsor

The agency recommends in the draft guidance that the DMC issue a written report to the sponsor based on the meeting minutes. Reports to the sponsor should include only those data generally available to the sponsor. The sponsor may convey the relevant information in this report to other interested parties such as study investigators. Meeting minutes or other information that include discussion of confidential data would not be provided to the sponsor.

E. Meeting Records

The agency recommends in the draft guidance that the DMC or the group preparing the interim reports to the DMC maintain all meeting records. This information should be submitted to FDA with the clinical study report (§ 314.50(d)(5)(ii)).

Description of Respondents: The submission and data collection recommendations described in this document affect sponsors of clinical trials and DMCs.

Burden Estimate: Table 1 of this document provides the burden estimate of the annual reporting burden for the information to be submitted in accordance with the draft guidance. Table 2 of this document provides the burden estimate of the annual recordkeeping burden for the information to be maintained in accordance with the draft guidance.

Reporting and Recordkeeping Burdens

Based on information from FDA review divisions, FDA estimates there are currently 740 clinical trials with DMCs regulated by CBER, CDER, and CDRH. FDA estimates that the average length of a clinical trial is 2 years, resulting in an annual estimate of 370 clinical trials. Because FDA has no information on which to project a change in the use of DMCs, FDA estimates that the number of clinical trials with DMCs will not change significantly in the next few years. For purposes of this information collection, FDA estimates that each sponsor is responsible for approximately 10 trials,

resulting in an estimated 37 sponsors affected by the guidance annually.

Based on information provided to FDA by sponsors that have typically used DMCs for the kinds of studies for which this guidance recommends them, FDA estimates that the majority of sponsors have already prepared SOPs for DMCs, and only a minimum amount of time would be necessary to revise or update them for use for other clinical studies. Based on FDA's experience with clinical trials using DMCs, FDA estimates that the sponsor on average would issue two interim reports per clinical trial to the DMC. FDA estimates that the DMCs would hold two meetings per year per clinical trial resulting in the issuance of two DMC reports of the meeting minutes to the sponsor. One set of both of the meeting records should be maintained per clinical trial. Based on FDA's experience with the submission of investigational new drug applications (INDs), FDA estimates that one statistical approach per clinical trial would be submitted to FDA.

The hours per response and hours per record are based on FDA's experience with comparable recordkeeping and reporting provisions applicable to FDA regulated industry. The hours per response include the time the respondent would spend reviewing, gathering, and preparing the information to be submitted to the DMC, FDA, or the sponsor. Because clinical trials vary greatly in complexity, FDA estimates that the time needed to prepare and submit an interim report by a sponsor or sponsor's contractor to the DMC would generally range from 40 to 200 hours with an average of 120 hours for each report. The hours per record include the time to record, gather, and maintain the information.

The total estimated burden for both the reporting and recordkeeping burdens under the draft guidance are 93,684 hours.

FDA invites comments on this analysis of information collection burdens. FDA estimates the burden of this information collection as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Reporting Activity	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
SOPs	37	1	37	4	148
Interim reports by the sponsor to a DMC	370	2	740	120	88,800
Statistical approach to FDA	370	1	370	8	2,960
DMC report of meeting minutes to the sponsor	370	2	740	1	740
Total					92,648

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
SOPs	37	1	37	8	296
Meeting records	370	1	370	2	740
Total					1,036

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

III. Comments

This draft document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments regarding this draft guidance document and on the collection of information. Submit written or electronic comments to ensure adequate consideration in preparation of the final document by February 19, 2002. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at http://www.fda.gov/cber/guidelines.htm, http://www.fda.gov/cder/guidance/index.htm, http://www.fda.gov/cdrh, or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: November 14, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–28962 Filed 11–19–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0464]

Vaccine Adverse Event Reporting System; Revised Form VAERS–2; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a proposed revised form entitled "Vaccine Adverse Event Reporting System" (Form VAERS–2) dated July 2001. This proposed revised form is intended to facilitate electronic reporting. The form has been revised by deleting data fields that FDA considers redundant or unnecessary, and by

adding or revising data fields to ensure reporting clarity.

DATES: Submit written or electronic comments on the proposed revised Form VAERS–2 to ensure their adequate consideration in preparation of the final form by January 22, 2002.

ADDRESSES: Submit written requests for single copies of the proposed revised form to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The form may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the proposed revised Form VAERS–2.

Submit written comments on the proposed revised form to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Michael Anderson, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a proposed revised form entitled "Vaccine Adverse Event Reporting System" (Form VAERS–2) dated July 2001. The Vaccine Adverse Event Reporting System is a cooperative program for vaccine safety of FDA and the Centers for Disease Control and Prevention. VAERS is a postmarketing safety surveillance program collecting information about adverse events (side effects) that occur after the administration of U.S. licensed vaccines. Reports are welcome from all concerned individuals: Patients, parents, health care providers, pharmacists, and vaccine manufacturers. The proposed revised form is intended to facilitate electronic reporting. The form has been revised by deleting data fields that FDA considers redundant or unnecessary, and by adding or revising data fields to ensure reporting clarity.

II. Comments

The proposed revised form is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments regarding the form. Submit written or electronic comments on the proposed revised form to ensure their adequate consideration in preparation of the final form by January 22, 2002. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the proposed revised form and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the proposed revised form at either http://www.fda.gov/cber/vaers/report.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: November 7, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–28884 Filed 11–19–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Public Hearing; Notice of Meeting

In accordance with section 10(a) (2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of December.

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: December 5, 2001; 9 a.m.–4 p.m.

Place: Parklawn Building, Conference Rooms G & H, 5600 Fishers Lane, Rockville, Maryland 20857, and Audio Conference Call.

The full ACCV will meet on Wednesday, December 5, from 9:00 a.m. to 4:00 p.m. The public can join the meeting in person at the address listed above or by audio conference call by dialing 1–888–316–9406, and providing the following information:

Leader's Name: Thomas E. Balbier, Jr.

Password: ACCV.

The agenda items will include, but not limited to: a discussion of proposed legislation from the House Committee on Government Reform; a discussion of a possible alternative standard for the adjudication of claims for non-table injuries; a discussion on the interim payment of medical expenses; a presentation from petitioners attorneys' perspective; a discussion of the legislative proposal for reversionary trusts; a presentation on the Institute of Medicine's Report, "Thimerosal-Containing Vaccines and Neurodevelopmental Disorders"; and updates from the National Vaccine Injury Compensation Program, the Department of Justice, and the National Vaccine Program Office.

Public comment will be permitted at the end of the ACCV meeting on December 5, 2001. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to:

Ms. Cheryl Lee, Principal Staff Liaison, Division of Vaccine Injury Compensation, Office of Special Programs, Health Resources and Services Administration, Room 8A–46, 5600 Fishers Lane, Rockville, MD 20857. Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time.

Persons who do not file an advance request for a presentation, but desire to make an oral statement, may sign-up in Conference Rooms G and H on December 5, 2001. These persons will be allocated time as time permits.

Anyone requiring information regarding the ACCV should contact Ms. Cheryl Lee, Principal Staff Liaison, Division of Vaccine Injury Compensation, Office of Special Programs, Health Resources and Services Administration, Room 8A–46, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–2124 or e-mail: *clee@hrsa.gov.*

Agenda items are subject to change as priorities dictate.

Dated: November 14, 2001.

James J. Corrigan,

Associate Administrator for Management and Program Support.

[FR Doc. 01–28963 Filed 11–19–01; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: October 2001

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of October 2001, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, City, State	Effective Date
Program-Related Convictions	
ANTONUCCI, LEONARD BAYSIDE, NY	11/20/2001
BUKHARI, SAMAD SANTA ANA, CA	11/20/2001
ELENKIWICH, LYLE G YANKTON, SD	11/20/2001
HEFFERNAN, THOMAS CINCINNATI, OH	11/20/2001
JAIN, TARUN FORT GRATIOT, MI	11/20/2001
MUHAMED, MUNIR A T HENDERSON, NV	11/20/2001
PUSHKIN, YURI Y COLUMBUS, OH	11/20/2001
ROBERT A. ROSEVEAR D D S, P C LEAWOOD, KS	08/27/2001
SANDOVAL, DANNY A AURORA, CO	11/20/2001
STRAUSBERG, LEE EVERETT DAYTON, OH	11/20/2001
WOODRUM, DOROTHY A SHELBURNE, VT	11/20/2001
Felony Conviction for Health Care Fraud	
LENIU, GRACE FAITAMALII TEMECULA, CA	11/20/2001
Felony Control Substance Conviction	
CUMMINGS, REGINA DAWN LOUISVILLE, KY	11/20/2001
DILL, CHRISTY APRIL MARYVILLE, TN	11/20/2001
SPRENGER, CRAIG R FARGO, ND	11/20/2001
Patient Abuse/Neglect Convictions	
EMMONS, HOLLY ANN IONIA, MI	11/20/2001
FROMMELT, JEFFREY PAUL CEDAR RAPIDS, IA	11/20/2001
HILL, SHERYL CLEVELAND, OH	11/20/2001
INGLES, JEANETTE SHAKOPEE, MN	11/20/2001
LOWE, ELLEN M SPRINGFIELD, OH	11/20/2001
MILLER, SUSAN JEAN SELDEN, NY	11/20/2001
POWELL, NATASHA B WARRENS HGTS, OH	11/20/2001
STORER, CARLA S WEST UNION, OH	11/20/2001
WALKER, BEATRICE N AUGUSTA, SC	11/20/2001
WILCOX, DUSTIN LINCOLN SANDY, UT	11/20/2001
Conviction for Health Care Fraud	
ROSOL, DEBRA LYNN WAVERLY, IA	11/20/2001
License Revocation/Suspension/ Surrendered	
ABBARNO, AASE JURGENSEN BULLHEAD CITY, AZ	11/20/2001
ACKERMAN, MILTON J KAILUA, HI	11/20/2001
ANCY, CAROLYN COLLINS BURLESON, TX	11/20/2001
AUSTIN, RUBY JEWEL LAWTON, OK	11/20/2001
AUSTIN, ALENE JO SHAWNEE, OK	11/20/2001
AZGOROV, TODOR PETKOV VAN NUYS, CA	11/20/2001
BUDDINGH, SUSANNE E SANTA CLARITA, CA	11/20/2001
CHAPMAN, LENORA A PHOENIX, AZ	11/20/2001
CLEVELAND, MIRIAM G DES MOINES, IA	11/20/2001
COTTON, TINA SUE SAUCIER CLARKSVILLE, AR	11/20/2001
COWAN, MORLEY B NASHVILLE, TN	11/20/2001
COX, ROY LYNN OMAHA, NE	11/20/2001
CUMMINGS, RALEIGH R FOREST FALLS, CA	11/20/2001
DENSON, MARK L TUCSON, AZ	11/20/2001
EARLEY, ANNA RENEE POTEAU, OK	11/20/2001
FINKEN, JEAN ELIZABETH AMARILLO, TX	11/20/2001
FOSTER, JERRIL L ANN MONTGOMERY, AL	11/20/2001
FREMER, EDWARD M BULLHEAD CITY, AZ	11/20/2001
GELO, DEBBIE H NAPLES, FL	11/20/2001
GRAVES, JAMES FREDERICK PACE, FL	11/20/2001
GREINEDER, DIRK K CONCORD, MA	11/20/2001
HAVEN, GERRY BURGESS LAYTON, UT	11/20/2001
HOVIS, VICKIE D MITCHELL FYFFE, AL	11/20/2001
JONES, PAULA RENEE BAY MINETTE, AL	11/20/2001
KELLER, ELLEN J WEBSTER CITY, IA	11/20/2001
KENYON, KEITH E VAN NUYS, CA	11/20/2001
KLEIN, DONNA MACDONALD CHALFONT, PA	11/20/2001
KNALL, PHILIP A SCOTTSDALE, AZ	11/20/2001
KROEGER, JANE L SUMNER, IA	11/20/2001
LAWAY, SANDRA INGOSAN ESCONDIDO, CA	11/20/2001
LEWIS, RUSSELL DEAN ONEONTA, AL	11/20/2001
LUJAN, CYNTHIA A TUCSON, AZ	11/20/2001
MCCLINTON, M COLLEEN MCALLEN, TX	11/20/2001
MITCHELL, ALICE E LUBBOCK, TX	11/20/2001
OUR HOUSE, INC HANNIBAL, MO	11/20/2001
PACIFIC PLAZA PHARMACY LONG BEACH, CA	11/20/2001
PAULK, JAMES MICHAEL VICKSBURG, MS	11/20/2001
PIPER, MARVIN A ALTADENA, CA	11/20/2001
REYNOLDS, RENEE KAYE FORT DODGE, IA	11/20/2001
RICHARDSON, GINA HAMMONTON, NJ	11/20/2001
RODGERS, PATRICK LONG BEACH, CA	11/20/2001
ROGERS, KAREN R HOCKLEY, TX	11/20/2001
SHELLEY, DIANA MARIA SAN ANTONIO, TX	11/20/2001
SHIPLEY, LAURA LYNNE LOMITA, CA	11/20/2001
SLOAN, MELISSA MAXINE DALLAS, TX	11/20/2001
SMART, RITA PAULETTE ST PAUL, MN	11/20/2001
SOWELL, DAVID ASHLEY, ND	11/20/2001
STEWART, KENNETH LESLIE FRESNO, CA	11/20/2001
SWEEDEN, ANITA ANN	11/20/2001

Subject, City, State	Effective Date
VAN BUREN, AR	
TAYLOR, SHEILA DIANE ..... MADISON, AL	11/20/2001
TITA, MOSES NCHO ..... OKLAHOMA CITY, OK	11/20/2001
TRABULUS, NORMAL ..... VAN NUYS, CA	11/20/2001
VOHAN, JENNIFER A ..... MESA, AZ	11/20/2001
WARNER, RICHARD A ..... LOS ANGELES, CA	11/20/2001
WETZEL, CHRISTINA L ..... MITCHELLVILLE, IA	11/20/2001
WILBUR, FRANK MICHAEL .... VICTORVILLE, CA	11/20/2001
WILLIAMS, SANDRAN J ..... PHOENIX, AZ	11/20/2001
WILLIAMS, REBECCA DENISE DENVER, CO	11/20/2001
WILSON, FRANCES PETRAIA TALIHINA, OK	11/20/2001
Federal/State Exclusion/Suspension	
PASCALE, DAWN M ..... GUILFORD, CT	11/20/2001
Fraud/Kickbacks	
MCCOY, PAUL ..... CHICAGO, IL	04/20/2001
REICHLE, FREDERICK ..... WARRINGTON, PA	10/01/2001
ROSEVEAR, ROBERT A ..... SHAWNEE MISSION, KS	08/27/2001
WILLIAMS, NELLIE ..... EVERGREEN PARK, IL	06/20/2001
WILLIAMS, RICARDO ..... EVERGREEN PARK, IL	06/20/2001
Owned/Controlled by Convicted Entities	
ALAN C ASHKINAZY, D C ..... LAKE WORTH, FL	11/20/2001
BROWN'S CHIROPRACTIC CTR. ..... PANAMA CITY, FL	11/20/2001
CENTER FOR INTEGRATED HEALTH ..... VENTURA, CA	11/20/2001
COLUMBIA HEALTH & REHAB CTR ..... DECATUR, GA	11/20/2001
CONFER CLINIC OF CHIRO-PRACTIC ..... UNIONTOWN, PA	11/20/2001
EYE CATCHER OPTICAL ..... BOWLING GREEN, KY	11/20/2001
GUYER CHIROPRACTIC ..... SANTA ROSA, CA	11/20/2001
INLAND VALLEY CHIRO-PRACTIC ..... FONTANA, CA	11/20/2001
ITHACA MEDICAL GROUP ..... HACIENDA HGTS, CA	11/20/2001
KONZA FAMILY HEALTH CENTER ..... MANHATTAN, KS	11/20/2001
MELNAR CHIROPRACTIC ..... N LITTLE ROCK, AR	11/20/2001
OPTIMUM HEALTH CHIRO-PRACTIC ..... LAGUNA, CA	11/20/2001
PACIFIC FAMILY CLINIC, INC GLENDALE, CA	11/20/2001
PIZARRO MEDICAL GROUP, INC ..... WINTER PARK, FL	11/20/2001
PROGRESSIVE HEALTH CHIROPRACT ..... VISTA, CA	11/20/2001
STEPHEN W RATER, D D S, S C ..... MADISON, WI	11/20/2001
WALNUT HILLS FAMILY CHIROPRACT ..... ENGLEWOOD, CO	11/20/2001
Default on HEAL Loan	
ANDRADE, LUCIO G ..... STAMFORD, CT	11/20/2001
AUSTIN, MICHAEL B ..... TAMPA, FL	11/20/2001
BORDEAUX, DEBORAHS ..... SURFSIDE, BEACH, SC	11/20/2001
CALOMINO, JUDE L ..... SAN CLEMENTE, CA	11/20/2001
CONLEY, PAMELA M ..... BAY SAINT LOUIS, MS	11/20/2001
COSTANZO, ANTHONY J JR SILVER SPRING, MD	11/20/2001
JONES, GERALD WALTER JR MONTCLAIR, NJ	11/20/2001
KIRK, PATRICIA ANN ..... LEAGUE CITY, TX	11/20/2001
LALIOS, NICHOLAS A ..... MERRILLVILLE, IN	11/20/2001
MARCEL, PERRY LEE ..... ROCKWALL, TX	11/20/2001
PHARO, ARLETTE NAYLOR ... HOUSTON, TX	11/20/2001
SCHIRCK, PHILLIP M ..... ROCHESTER, NY	11/20/2001
SHIVANAND, BHARATHI N ..... N SYRACUSE, NY	11/20/2001
SIBOLD, HARRY EUGENE ..... CHARLOTTE, NC	11/20/2001
STAUDER, MARK F ..... LOUDON, TN	11/20/2001
SWIGERT, MARK E ..... SUMMERDALE, AL	11/20/2001
TIBBETTS, NEIL R ..... WORCESTER, MA	11/20/2001
VITTOR, VIRGINIA JOYCE ..... UNION, MS	11/20/2001
WARFEL, JEANNIE L ..... PLANON, TX	11/20/2001

Dated: November 1, 2001.

Maureen Byer,

Acting Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 01–28931 Filed 11–19–01; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Core Measures for the Center for Substance Abuse Prevention—New—The mission of SAMHSA's Center for Substance Abuse Prevention (CSAP) is to decrease substance use and abuse and related problems among the American public by bridging the gap between research and practice. CSAP accomplishes this through field-testing scientifically defensible programs; disseminating comprehensive, culturally appropriate prevention strategies, policies, and systems; and capacity building for states and community-based providers. Data will be collected from CSAP grants and contracts where participant outcomes are assessed pre- and post-intervention. The analysis of these data will help determine whether progress is being made in achieving CSAP's mission.

The primary purpose of the proposed data activity is to promote the use among CSAP grantees and contractors of measures recommended by CSAP as a result of extensive examination and recommendations, using consistent criteria, by panels of experts. The use of consistent measurement for specified constructs across CSAP funded projects will improve CSAP's ability to respond to the Government Performance and Results Act (GPRA) and address goals and objectives outlined in the Office of National Drug Control Policy's Performance Measures of Effectiveness.

It is important to emphasize that CSAP is not requiring the use of these measures if (1) The program does not already plan to target change in the specified construct(s) and/or (2) the measure is not valid for the program's targeted population. The Core Measures are only to be used if appropriate to the program's target population and consistent with the outcome(s) selected by the program. Consequently, no additional burden on the target population is estimated because the program is not being asked to collect

data above and beyond what would already have been planned. The annual burden estimated is that for the grantees to extract the necessary data from their files and provide it to CSAP's data coordinating center. The table below summarizes the maximum estimated time, *i.e.*, if all programs used all of the Core Measures—which is unlikely.

ESTIMATES OF ANNUALIZED HOUR BURDEN

CSAP Program	Number of grantees	Responses/ grantee	Hours/response	Total hours
FY01				
Knowledge Development				
Community Initiated	22	2	3	132
Family Strengthening	7	2	3	42
High Risk Youth	17	2	3	102
Targeted Capacity Enhancement				
HIV/Targeted Capacity	45	2	3	270
State Incentive Grant	10	2	3	60
FY02				
Knowledge Development				
Community Initiated	44	2	3	264
Family Strengthening	14	2	3	84
High Risk Youth	34	2	3	204
Targeted Capacity Enhancement				
HIV/Targeted Capacity	90	2	3	.....
State Incentive Grant	20	2	3	120
FY03				
Knowledge Development				
Community Initiated	66	2	3	396
Family Strengthening	21	2	3	126
High Risk Youth	51	2	3	306
Targeted Capacity Enhancement				
HIV/Targeted Capacity	135	2	3	810
State Incentive Grant	30	2	3	180
Annual Average	202	.....	.....	1,212

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Lauren Wittenberg, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: November 13, 2001.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Administration.

[FR Doc. 01–28910 Filed 11–19–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for a City Government Facility, Deltona, Volusia County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The City of Deltona (Applicant), seeks an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The ITP would authorize the take of two families of the threatened Florida scrub-jay, *Aphelocoma coerulescens* and the threatened eastern indigo snake, *Drymarchon corais couperi,* in Volusia County, Florida, for a period of twenty (20) years. The proposed taking is incidental to land clearing activities, road widening and development on a 10-acre project site (Project). The Project contains about 0.2 acre of occupied Florida scrub-jay habitat, and the potential exists for the entire Project to provide habitat to the eastern indigo snake. A description of the mitigation and minimization measures outlined in the Applicant's Habitat Conservation Plan (HCP) to address the effects of the Project to the protected species is described further in the **SUPPLEMENTARY INFORMATION** section below.

The Service also announces the availability of an environmental

assessment (EA) and HCP for the incidental take application. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended. The Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 60 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA, and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before January 22, 2002.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216–0912. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Comments and requests for the documentation must be in writing to be processed. Please reference permit number TE038176–0 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional Permit Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313; or Mr. Miles A. Meyer, Fish and Wildlife Biologist, Jacksonville Field Office, (see **ADDRESSES** above), telephone: 904/232–2580, extension 114.

SUPPLEMENTARY INFORMATION: The Florida scrub-jay is geographically isolated from other subspecies of scrub-jays found in Mexico and the Western United States. The Florida scrub-jay is found exclusively in peninsular Florida and is restricted to scrub habitat. The total estimated population is between 7,000 and 11,000 individuals. Due to habitat loss and degradation throughout the State of Florida, it has been estimated that the Florida scrub-jay population has been reduced by at least half in the last 100 years. Surveys have indicated that two families of Florida scrub-jays utilize habitat associated with the maintained right-of-way of Providence Boulevard on the Project site. Construction of the Project's infrastructure, widening of turn lanes and an entrance road will likely result in death of, or injury to, Florida scrub-jays incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with property development will reduce the availability of habitat used for feeding and shelter.

Historically, the eastern indigo snake occurred throughout Florida and into the coastal plain of Georgia, Alabama, and Mississippi. Georgia and Florida currently support the remaining, endemic populations of eastern indigo snake. Over most of its range, the eastern indigo snake frequents a diversity of habitat types such as pine flatwoods, scrubby flatwoods, xeric sandhill communities, tropical hardwood hammocks, edges of freshwater marshes, agricultural fields, coastal dunes and human altered habitats. Due to its relatively large home range, this snake is especially vulnerable to habitat loss, degradation, and fragmentation. The wide distribution and territory size requirements of the eastern indigo snake makes evaluation of status and trends very difficult. Surveys for this species on site were negative, however the habitat is suitable. If any eastern indigo snakes are present, construction of the Project's infrastructure may result in their death or injury incidental to the carrying out of these otherwise lawful activities.

The EA considers the environmental consequences of two alternatives. The no action alternative may result in loss of habitat for Florida scrub-jays and eastern indigo snakes and exposure of the Applicant under section 9 of the Act. The proposed action alternative is issuance of the ITP with on-site mitigation. The on-site preservation alternative would restore and preserve 0.7 acre of unoccupied habitat adjacent to a 357 acre county-owned scrub habitat preserve. The affirmative conservation measures outlined in the HCP to be employed to offset the anticipated level of incidental take to the protected species are the following:

1. The impacts associated with the proposed project include 0.06 acre of temporary impacts to occupied scrub-jay habitat for the installation of an underground water line and 0.17 acre of permanent impacts associated with road widening and construction of turn lanes. To mitigate for the proposed impacts to occupied habitat the applicant will restore and preserve 0.7 acre of unoccupied scrub habitat. This amount is based on mitigation at a ratio of 3:1 (three acres restored for every one acre impacted). Management will be conducted on a regular basis by the City of Deltona Parks and Recreation Department. After initial habitat restoration of the 0.7 acre mitigation area, the property would then be set apart through an easement, requiring preservation and management for Florida scrub-jays and eastern indigo snakes into perpetuity.

2. No construction activities would occur within 150 feet of an active Florida scrub-jay nest during the nesting season.

3. The HCP provides a funding mechanism for these mitigation measures.

As stated above, the Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP. An appropriate excerpt from the FONSI reflecting the Service's finding on the application is provided below:

Based on the analysis conducted by the Service, it has been determined that:

1. Issuance of an ITP would not have significant effects on the human environment in the project area.

2. The proposed take is incidental to an otherwise lawful activity.

3. The Applicant has ensured that adequate funding will be provided to implement the measures proposed in the submitted HCP.

4. Other than impacts to endangered and threatened species as outlined in the documentation of this decision, the indirect impacts which may result from issuance of the ITP are addressed by other regulations and statutes under the jurisdiction of other government entities. The validity of the Service's ITP is contingent upon the Applicant's compliance with the terms of the permit and all other laws and regulations under the control of State, local, and other Federal governmental entities.

The Service will also evaluate whether the issuance of a section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of the biological opinion, in

combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: November 5, 2001.

H. Dale Hall,

Acting Regional Director.

[FR Doc. 01–28911 Filed 11–19–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Environmental Assessment and Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit From the Interagency Task Force Proposing the Six Points Road Interchange and Related Development in Marion and Hendricks Counties, IN

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public and other agencies of the availability of a draft Habitat Conservation Plan (HCP) and Incidental Take Permit (ITP) application for review and comment. The HCP and ITP application were submitted to the U.S. Fish and Wildlife Service (Service) by an Interagency Task Force proposing to construct a new interchange on Interstate 70 (I–70) in the vicinity of Six Points Road and related development in Hendricks and Marion Counties, Indiana. A colony of federally-endangered Indiana bats (*Myotis sodalis*) occupies the project area during summer and it has been determined that the proposed actions will result in incidental take. On September 28, 2001 the Task Force submitted an application to the Service for a permit for incidental take pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended (Act, 16 U.S.C. 1531, *et seq.*). The submission of the (ITP) application required the development of an HCP by the applicants detailing measures to be taken to avoid, minimize, and mitigate impacts to Indiana bats. If issued, the ITP would authorize incidental take of Indiana bats resulting from proposed road construction, commercial development, and airport expansion and improvements. The requested term of the permit is 15 years.

Prior to issuing the ITP, the Service is required to analyze alternatives considered in the development of the HCP. This analysis is contained in a draft Environmental Assessment (EA), as required by the National Environmental Policy Act (NEPA), for the Federal action in issuance of a permit under section 10(a)(1)(B) of the Act. This draft EA is also available for public review and comment. This notice is provided pursuant to section 10(a) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).Copies of the draft HCP and EA may be obtained by making a request to Regional HCP Coordinator, at the address below.

DATES: Written comments must be received on or before January 22, 2002.

ADDRESSES: Persons wishing to review the documents may obtain copies by writing, telephoning, faxing, or e-mailing: Regional HCP Coordinator, U.S. Fish and Wildlife Services, 1 Federal Drive, Fort Snelling, MN 55111–4056, Telephone: (612) 713–5343, Fax: (612) 713–5292. The EA is also available at the following Internet address: *http://midwest.fws.gov/nepa/.*

Public Involvement: Documents will be available for public inspection during normal business hours (8:00–4:30), at the U.S. Fish and Wildlife Service Regional Office in Fort Snelling, Minnesota, and at the Bloomington Field Office in Bloomington, Indiana. The draft HCP and EA are available for public review and comment for a period of 60 days.

All comments received from individuals become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act and the Council on Environmental Quality's NEPA regulations (40 CFR 1506.6(f)). 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. If a respondent wishes us to withhold his/her name and/or address, this must be stated prominently at the beginning of the comment.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Fasbender, Regional HCP Coordinator, U.S. Fish and Wildlife Service, Fort Snelling, Minnesota, Telephone: (612) 713–5343, or e-mail *peter_fasbender@fws.gov.*

SUPPLEMENTARY INFORMATION: Section 9 of the Act and Federal regulations prohibit "take" of fish or wildlife species listed as endangered or threatened. Take of listed fish or wildlife is defined under the Act to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct (16 U.S.C. 1538). Harm may include significant habitat modification where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including, breeding, feeding, and sheltering (50 CFR 17.3(c)). The Service may, under limited circumstances, issue permits to take listed species, provided such take is incidental to, and not the purpose of, an otherwise lawful activity. Regulations governing permits for endangered species are found in 50 CFR 17.22.

Background on Habitat Conservation Plan

An Interagency Task Force composed of the Indianapolis Airport Authority, the Indianapolis Department of Public Works, the Indianapolis Department of Metropolitan Development, the Federal Highway Administration, the Indiana Department of Transportation, and the Hendricks County Board of County Commissioners proposes to construct a new interchange on I–70 and associated highway improvements near Six Points Road in Hendricks and Marion Counties, Indiana. Additional development will occur in the area in association with the road construction, including expansion and improvements at the Indianapolis International Airport, and commercial and industrial development within the AmeriPlex area south of I–70.

At least one maternity colony of Indiana bats is known to utilize scattered patches of high quality habitat within the proposed project area during the summer. Within the HCP boundary, 343 acres will be cleared for the proposed project, including 146 acres of mature forest, 119 acres of widely scattered trees (e.g., former residential lawns), 69 acres of sparsely forested areas (e.g., wooded pasture) or immature woodlots, and 10 acres of linear forested habitat (e.g., fencerows). The mature forest provides high quality Indiana bat roosting and foraging habitat. Potential roosting habitat exists in those areas with mature trees, while foraging habitat is located throughout the project area. Incidental take of Indiana bats is expected to occur from the loss and degradation of roosting and foraging habitat, resulting in reduced reproduction and overwinter survival, and the decreased fitness of individuals.

The purpose of the HCP is to ensure incidental take will be minimized and mitigated to the maximum extent practicable and will not appreciably reduce the likelihood of the survival and recovery of this species in the wild. The Task Force designed the HCP in

consultation with the Service to ensure the project area and adjoining areas used by Indiana bats will continue to support suitable habitat for the species, while allowing for incidental take of Indiana bats from the proposed activities. Measures in the HCP designed to avoid, minimize, and mitigate the impacts of the proposed action on Indiana bats include: (1) No trees cleared when Indiana bats may occupy maternity roosts; (2) permanent protection of 373 acres of existing Indiana bat habitat; (3) 346 acres hardwood seedlings will be planted and protected in perpetuity; (4) the Indiana bat population response to the proposed construction and mitigation will be monitored for 15 years and mitigation plantings will be monitored for 5 years; and (5) the applicants will work with the Service to develop and implement an outreach program to educate the public regarding the Indiana bat.

Background on Environmental Assessment

The Proposed Action consists of issuing an ITP and implementation of the HCP. The draft EA considers two action alternatives and the "No Action" alternative. The NEPA process will be completed after the comment period, at which time the Service will evaluate the permit application (if appropriate to the selected alternative), the HCP, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If the requirements are met, the Service will issue a permit to the Interagency Task Force for the incidental take of Indiana bat associated with the proposed activities in Marion and Hendricks Counties, Indiana. The final permit decision will be made no sooner than 60 days from the date of this notice.

The area encompassed by the HCP may contain facilities eligible to be listed on the National Register of Historic Places and other historical or archeological resources may be present. The National Historic Preservation Act and other laws require these properties and resources be identified and considered in project planning. The public is requested to inform the Service of concerns about archeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns.

Dated: November 9, 2001.

Charles M. Wooley,

Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 01–28912 Filed 11–19–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–830–1030–XP–2–24 1A]

OMB Approval Number 1004–0172 Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On June 15, 2001, the BLM published a notice in the **Federal Register** (66 FR 32637) requesting comments on this proposed collection. The comment period ended on August 14, 2001. The BLM received two comments in response to that notice. You may obtain copies of the proposed collection of information, related forms, public comments, and any other explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made with 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0181), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630), 1849 C St., NW., Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLMS's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Generic Clearance for Customer Comment Cards.

OMB Approval Number: 1004–0172.

Bureau Form Number: Not Applicable.

Abstract: The Bureau of Land Management will conduct surveys of its programs and services using customer comment card to identify: service needs of customers; strengths and weaknesses of services; ideas or suggestions for improvement of services from our customers; barriers to achieving customer service standards; and changes to customer service standards. Customer comment cards will be available for general customers with specific programmatic cards in the following areas: rights-of-way; land management transactions; recreational permittees; mining claim recordation; oil and gas leases; information access centers; recreational and educational users; wild horse and burro, and grazing permits and leases.

Frequency: Annually or on occasion as necessary.

Description of Respondents: General customers of the BLM for its programs and services.

Estimated Completion Time: 3 minutes per response.

Annual Responses: 10,000.

Application Fee Per Response: 0.

Annual Burden Hours: 500.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: October 2, 2001.

Michael H. Schwartz,

BLM Information Collection Clearance Officer.

[FR Doc. 01–28932 Filed 11–19–01; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–830–1030–XP–2–24 1A]

OMB Approval Number 1004–0181 Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On June 15, 2001, the BLM published a notice in the **Federal Register** (66 FR 32637) requesting comments on this proposed collection. The comment period ended on August 14, 2001. The BLM received two comments in response to that notice. You may obtain copies of the proposed collection of information, related forms, public comments, and

any other explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB is required respond to this request to this request within 60 days buy my respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0181), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630), 1849 C St., NW., Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Generic Clearance for Customer Surveys.

OMB Approval Number: 1004–0181.

Bureau Form Number: Not Applicable.

Abstract: The Bureau of Land Management will conduct customer surveys to determine the satisfaction of its customers with its programs and services. The anticipated programs/customers to survey are: Wild Horse and Burro, Grazing Permittees, Information Access Center Users, Land Management Transactions, Mining Claimants, Oil and Gas Lessees, Recreation and Education Users, Recreation Permits, Rights-of-Way Applicants, and Fire and Aviation.

We will use the data to identify:

(1) Service needs of customers;

(2) Strengths and weaknesses of services;

(3) Ideas or suggestions for improvement of service from BLM customers;

(4) Barriers to achieving customers services standards; and

(5) Changes to customer service standards.

Frequency: Once when surveyed.

Description of Respondents: General customers of the BLM for its programs and services.

Estimated Completion Time: 15 minutes per response.

Annual Responses: 13,000

Application Fee Per Response: 0.

Annual Burden Hours: 3,250.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: October 2, 2001.

Michael H. Schwartz,

BLM Information Collection Clearance Officer.

[FR Doc. 01–28933 Filed 11–19–01; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Assessment Prepared for Proposed Central Gulf Sale 182 on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of the environmental assessment on proposed Central Gulf of Mexico Lease Sale 182.

SUMMARY: The Minerals Management Service (MMS) has prepared an environmental assessment (EA) for the proposed annual Lease Sale 182 for the Central Planning Area of the Gulf of Mexico Outer Continental Shelf. In this EA, the MMS reexamined the potential environmental effects of the proposed action and alternatives based on any new information regarding potential impacts and issues that was not available at the time the Final Environmental Impact Statement (FEIS) for Lease Sales 169, 172, 175, 178, and 182 was prepared.

No new significant impacts were identified for proposed Lease Sale 182 that were not already assessed in the FEIS for Lease Sales 169, 172, 175, 178, and 182. As a result, MMS determined that a supplemental EIS is not required and prepared a Finding of No New Significant Impact.

A copy of the EA is available to the public upon request from the Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394 or by calling 1–800–200–GULF.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Mr. Alvin Jones, telephone (504) 736–1713.

Dated: September 25, 2001.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 01–28923 Filed 11–19–01; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service (MMS)

Outer Continental Shelf (OCS), Central Gulf of Mexico (GOM), Oil and Gas Lease Sale 182

AGENCY: Minerals Management Service, Interior.

ACTION: Availability of the proposed Notice of Sale.

SUMMARY: Gulf of Mexico OCS; Notice of Availability of the proposed Notice of Sale for proposed Oil and Gas Lease Sale 182 in the Central GOM. This Notice is published pursuant to 30 CFR 256.29(c) as a matter of information to the public.

With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, provides the affected States the opportunity to review the proposed Notice. The proposed Notice sets forth the proposed terms and conditions of the sale, including minimum bids, royalty rates, and rentals.

The proposed Notice of Sale for Sale 182 and a "Proposed Sale Notice Package" containing information essential to potential bidders may be obtained from the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Telephone: (504) 736–2519.

The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is currently scheduled for March 20, 2002.

Dated: November 9, 2001.

Thomas R. Kitsos,

Acting Director, Minerals Management Service.

[FR Doc. 01–28924 Filed 11–19–01; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–403 and 731–TA–895–896 (Final)]

Pure Magnesium From China and Israel

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China of pure magnesium, provided for in subheading 8104.30.00 of the Harmonized Tariff Schedule of the United States (HTSUS), that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).[2] The Commission also determines, pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b) and §1673d(b)) that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded by reason of imports from Israel of pure magnesium provided for in subheadings 8104.11.00 and 8104.19.00, and 8104.30.00 of the HTSUS, that have been found by the Department of Commerce to be sold in the United States at LTFV and to be subsidized by the Government of Israel.

Background

The Commission instituted these investigations effective October 17, 2000, following receipt of a petition filed with the Commission and Commerce by Magcorp, Salt Lake City, UT, the United Steel Workers of America, Local 8319, Salt Lake City, UT, and the USWA International.[3] The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of pure magnesium from Israel were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. § 1671b(b)) and imports of pure magnesium from China and Israel were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 4, 2001 (66 FR 29987) and September 20, 2001 (66 FR 48478). The hearing was held in Washington, DC, on October 11, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on November 13, 2001. The views of the Commission are contained in USITC Publication 3467 (November 2001), entitled *Pure Magnesium from China and Israel: Investigations Nos. 701–TA–403 and 731–TA–895–896 (Final).*

By order of the Commission.

Issued: November 14, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–28900 Filed 11–19–01; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioners Hillman and Miller dissenting. They defined two domestic like products, pure granular magnesium and pure magnesium ingot. With respect to pure granular magnesium, they found subject imports from Israel to be negligible and they found that the domestic pure granular magnesium industry is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded by reason of subject imports from China. They also found that the domestic pure magnesium ingot industry is not materially injured or threatened with material injury and the establishment of an industry in the United States is not materially retarded by reason of subject imports from Israel.

[3] See letter from petitioners dated October 26, 2000, amending the petitions to include the USWA International as co-petitioners and April 20, 2001 amendment to petitions adding "concerned employees of Northwest Alloys, Inc." as co-petitioners.

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–413 and 731–TA–913–918 (Final)]

Stainless Steel Bar From France, Germany, Italy, Korea, Taiwan, and the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: November 13, 2001.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION: On September 17, 2001, the Commission established a schedule for the conduct of the final phase of the subject investigations (**Federal Register** 66 FR 48063, September 17, 2001). Subsequently, the Department of Commerce moved the date for its final determinations in the investigations from December 17, 2001, to January 15, 2001. The Commission, therefore, is revising its schedule to conform with Commerce's new schedule.

The Commission's new schedule for the investigations is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than January 10, 2002; if parties are not able to agree on time allocations (within the prescribed limit) for the hearing, a prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on January 15, 2002; the prehearing staff report will be placed in the nonpublic record on January 4, 2002; the deadline for filing prehearing briefs is January 11, 2002; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on January 17, 2002; the deadline for filing posthearing briefs is January 25, 2002; the Commission will make its final release of information on February 12, 2002; and final party comments are due on February 14, 2002.

For further information concerning these investigations see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: November 14, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–28902 Filed 11–19–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil Action No. 98–475–JJF]

United States of America v. Federation of Physicians and Dentists, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. section 16(b) through (h), that a proposed Final Judgment and Competitive Impact Statement have been filed in a civil antitrust case, United States of America v. Federation of Physicians and Dentists, Inc., Civil Action No. 98–475JJF, in the United States District Court for the District of Delaware.

The Complaint in the case alleges that the Federation of Physicians and Dentists, Inc. ("Federation") coordinated an understanding among its members, Delaware orthopedic surgeons in private practice, to negotiate exclusively through the Federation to oppose a proposed fee reduction by Blue Cross and Blue Shield of Delaware in violation of section 1 of the Sherman Act, 15 U.S.C. 1.

The proposed Final Judgment eliminates the Federation's illegal practices and prevents their renewal, enjoining the Federation from engaging in practices that would limit competition among Delaware orthopedic surgeons in the sale of orthopedic services.

Public comment on the proposed Final Judgment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to Gail Kursh, Chief; Health Care Task Force; Antitrust Division; United States Department of Justice; 325 Seventh St., NW.; Room 404; Washington, DC 20530 (Tel.: (202) 307–5799).

Mary Jean Moltenbrey,

Director of Civil Nonmerger Enforcement, Antitrust Division, United States Department of Justice.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over both of the parties, and venue of this action is proper in the District of Delaware.

2. The parties consent that a Final Judgment in the form attached may be filed and entered by the Court, upon the motion of either party or upon the Court's own action, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court.

For Plaintiff:
Charles A. James,
Assistant Attorney General.
R. Hewitt Pate,
Deputy Assistant Attorney General.
Mary Jean Moltenbrey,
Director of Civil Non-Merger, Enforcement, Office of Operations.
Gail Kursh,
Chief, Health Care Task Force.
David C. Jordan,
Assistant Chief, Health Care Task Force, Antitrust Division, Department of Justice, Washington, DC 20530.
Steven Kramer,
Richard S. Martin,
Scott Scheele,
Adam Falk,
Attorneys, Antitrust Division, Department of Justice, 325 7th Street, NW., Washington, DC 20530, (202) 307–0997.
Colm Connolly,
United States Attorney, District of Delaware.
Virginia Gibson-Mason,
Assistant United States Attorney, 1201 Market Street, Suite 1100, Wilmington, DE 19801, Tel.: (302) 573–6277, Facsimile: (302) 573–6220.

For Defendant:
Perry F. Goldlust (DSB #770),
Heiman, Abner, Goldlust & Baker, First Federal Plaza, Suite 600, P.O. Box 1675, Wilmington, DE 19899–1675, Tel.: (302) 658–1800.
Hal K. Litchford,
Donald E. Christopher,
G. Steven Fender,
Litchford & Christopher, 390 N. Orange Avenue, P.O. Box 1549, Orlando, FL 32802, Tel.: (407) 422–6600.

Final Judgment

Plaintiff, the United States of America, having filed its Complaint on August 12, 1998, and plaintiff and defendant Federation of Physicians and Dentists, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of fact or law;

And Whereas defendant has agreed to be bound by the provisions of this Final Judgment.

Now, Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law, and upon consent of the plaintiff and defendant, it is hereby *Ordered, Adjudged, and Decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and over the plaintiff and defendant to, this action. The Complaint states a claim upon which relief may be granted against defendant under section 1 of the Sherman Act, 15 U.S.C. 1.

II. Definitions

As used in this Final Judgment:

(A) "Communicate" means to discuss, disclose, transfer, disseminate, or exchange information or opinion, formally or informally, in any manner;

(B) "Competing physicians" or "competing orthopedic surgeons" means two or more physicians (or two or more orthopedic surgeons, respectively) in separate, private medical practices in the same specialty in the same country;

(C) "Competitively sensitive information" means:

(1) Any participating physician's actual or possible view, intention, or position concerning the negotiation or acceptability of any proposed or existing payer contract or contract term, including the physician's negotiating or contracting status with any payer or the physician's response to any payer contract or contract term; or

(2) Any proposed or existing term of any payer contract that affects:

(a) The amount of fees or payment, however determined, that a participating physician charges, contracts for, or accepts from, or considers charging, contracting for, or accepting from any payer for providing physician services;

(b) The duration, amendment, or termination of the payer contract;

(c) Utilization review and pre-certification; or

(d) The manner of resolving disputes between the participating physician and the payer;

(D) "Defendant" means the Federation of Physicians and Dentists, its directors, officers, agents, representatives, and

employees; its successors and assigns; and each entity over which it has control;

(E) "Messenger" means a person, including defendant or an agent for defendant, that communicates to a payer any competitively sensitive information it obtains, individually, from a participating physician or communicates, individually, to a participating physician any competitively sensitive information it obtains from a payer;

(F) "Objective information" or "objective comparison" means empirical data that are capable of being verified or a comparison of such data;

(G) "Participating physician" means a physician who is either in solo practice or a group practice, and who participates in a messenger arrangement, and any employee of such physician or group practice acting on the physician's or group practice's behalf in connection with a messenger arrangement; for purposes of this Final Judgment, a "participating physician" does not include physicians or other medical professional employees who belong to a recognized or certified bargaining unit that is affiliated with the Federation of Physicians and Dentists;

(H) "Payer" means any person that purchases or pays for all or part of a physician's services for itself or any other person and includes but is not limited to independent practice associations, individuals, health insurance companies, health maintenance organizations, preferred provider organizations, and employers;

(I) "Payer contract" means a contract between a payer and a physician by which that physician agrees to provide physician services to persons designated by the payer;

(J) "Person" means any natural person, corporation, firm, company, sole proprietorship, partnership, joint venture, association, institute, governmental unit, or other legal entity;

(K) "Protocols" means a set of written guidelines, which have been adopted by defendant for dissemination to its members to assist in the implementation and administration of the terms of the Final Judgment and which have been approved by plaintiff for the limited purpose of assuring that defendant's existing and future members who do not receive a copy of this Final Judgment receive adequate notice of its terms. These Protocols shall not diminish defendant's and its member's obligation to comply with the terms of this Final Judgment and federal antitrust law, which are controlling in the event of any conflict or inconsistency; and

(L) "Recognized or certified bargaining unit" means a group of physicians that have been recognized or certified pursuant to state or federal law to bargain collectively with their common employer over wages, terms, and conditions or employment.

III. Applicability

(A) This Final Judgment applies to defendant and to those persons in active concert or participation with defendant, including defendant's member physicians in private practice who receive actual notice of the Final Judgment by personal service or otherwise.

(B) This Final Judgment shall not apply to the conduct of any physicians or other medical professional employees who belong to recognized or certified bargaining units that are affiliated with defendant to the extent such conduct is reasonably related to the lawful activities of the recognized or certified bargaining unit.

(C) Nothing contained in this Final Judgment is intended to suggest or imply that any provision herein is or has been created or intended for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

IV. Injunctive Relief

(A) The defendant and all other persons in active concert or participation with defendant who receive actual notice of the Final Judgment by personal service or otherwise are enjoined from directly or indirectly:

(1) Participating in, encouraging, or facilitating any agreement or understanding between competing physicians about any actual or proposed payer contract or contract term:

(2) Participating in, encouraging, or facilitating any agreement or understanding between competing physicians to deal with any payer exclusively through a messenger rather than individually or through other channels;

(3) Negotiating, collectively or individually, on behalf of competing physicians any actual or proposed payer contract or contract term with any payer;

(4) Making any recommendation to competing physicians about any actual or proposed payer contract or contract term or whether to accept or reject any such payer contract or contract term;

(5) Communicating any competitively sensitive information to or in the presence of, competing physicians;

(6) Communicating to competing physicians any subjective opinion or subjective analysis, evaluation, or assessment about competitively sensitive information;

(7) Precluding or discouraging any competing physicians from exercising his, her, or their own independent business judgment in determining whether to negotiate, contract, or deal directly with any payer; and

(8) Acting as a messenger for any competing physicians unless:

(a) Defendant informs each participating physician of any payer's decision not to communicate or to discontinue communicating with that participating physician through defendant;

(b) Defendant communicates all competitively sensitive information that it receives from any payer separately to each participating physician designated by the payer;

(c) Defendant obtains individually from each participating physician any competitively sensitive information that it communicates to any payer;

(d) Defendant does not communicate any competitively sensitive information obtained from any participating physician to anyone other than to payers designated by the participating physician;

(e) Defendant does not violate any of the provisions of Paragraph IV(A)(1)–(7) of this Final Judgment;

(f) For five (5) years from the date of entry, at the outset of its involvement with any payer as a messenger (or within 30 days of the entry of this Final Judgment for any ongoing involvement, on behalf of a participating physician, with a payer), defendant informs the payer in writing that, at any time, (i) payer is free to decline to communicate with any participating through defendant, and (ii) any participating physician is free to communicate with the payer individually without defendant's involvement;

(g) For five (5) years from the date of entry, when first designated by any participating physician as a messenger (or within 30 days of the entry of this Final Judgment for any ongoing involvement on behalf of a participating physician, with a payer), defendant informs the participating physician in writing that he or she is free at any time communicate with any payer individually without defendant's involvement;

(h) For five (e) years from the date of entry, when first designated by any participating physician as a messenger, and at the outset of its involvement with any payer as a messenger (or within 30 days of the entry of this Final Judgment for any ongoing involvement, on behalf of a participating physician, with a

payer), defendant informs the participating physician and any payer with whom it communicates as a messenger of behalf of the participating physician in writing that it cannot negotiate, collectively, for any participating physician any payer contract or contract term but can act only as a messenger; and

(i) For five (5) years from the date of entry, defendant ensures that (i) any oral communication between it and any payer or any participating physician is contemporaneously memorialized in writting or by recording sufficient to show the date, participants to, and substance of the communication and the person making the writing or recording; (ii) such memorialization or recording and any written communication between defendant and any payer or participating physician are preserved for two years; (iii) any correspondence containing competitively sensitive information is addressed individually to each participating physician; and (iv) no correspondence between defendant and a payer that includes the competitively sensitive information of a physician is sent to any other competing physician.

(B) The defendant's member physicians, who participate in any messenger or any other arrangement provided by defendant, are enjoined from directly or indirectly:

(1) Participating in, encouraging, or facilitating any agreement or understanding among competing physicians about any competitively sensitive information;

(2) Participating in, encouraging, or facilitating any agreement or understanding among competing physicians about using a messenger;

(3) Communicating or facilitating the communication of any competively sensitive information to, or in the presence of, competing physicians; and

(4) Participating in, encouraging, or facilitating any agreement or understanding among any competing physicians that any of defendant's physician members will deal with a payer only through a messenger or other agent or representative.

V. Permitted Conduct

(A) Subject to the provisions of Section IV of this Final Judgment;

(1) At a participating physician's request, defendant may communicate to the participating physician accurate, factual, and objective information about a proposed payer contract offer or contract terms, including, if requested, objective comparisons with terms to that participating physician by other payer;

(2) Defendant may engage in activities reasonably necessary to facilitate lawful activities by physician network joint ventures and multi-provider networks as those terms are used in Statements 8 and 9 of the 1996 Statements of Antitrust Enforcement Policy in Health Care, 4 Trade Reg. Rep. (CCH) ¶ 13.153 ("Health Care Policy Statements") and in activities that are lawful under Statement 6 of the Health Care Policy Statement; and

(3) Defendant may objectively review and analyze terms and conditions of any proposed or actual payer contract that do not constitute competitively sensitive information and may convey or publish the results of such review and analysis to its members in a manner that does not constitute a recommendation or suggestion as to whether any term or condition of the payer contract should be accepted or rejected.

(B) Nothing in this Final Judgment shall prohibit defendant, or any one or more of its members from:

(1) Engaging or participating in lawful union organizational efforts and activities;

(2) Advocating or discussing, in accordance with the doctrine established in *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961), *United Mine Workers* v. *Pennington*, 381 U.S. 657 (1965), and their progeny, legislative, judicial, or regulatory actions, or other governmental policies or actions; and

(3) Exercising rights protected by the National Labor Relations Act or any state collective bargaining laws.

(C) Nothing in this Final Judgment shall prohibit

(1) Any of defendant's members from engaging solely with other members or employees of such member's bona fide solo practice or practice group in activities otherwise prohibited herein; and

(2) Any physician member of defendant (or the bona fide practice group that employs such physician), acting along in the exercise of his, her or its own independent business judgment, from choosing the payer or payers with which to contract, and/or refusing to enter into discussion or negotiations with any payer.

(D) Nothing in this Final Judgment shall prohibit or impair the right of defendant (or any affiliate thereof) as a labor organization from communicating with other labor organizations concerning the identity of payers who are considered pro- or anti-union, provided such activity is consistent with § 8(b)(4) of the National Labor Relations Act, 29 U.S.C. 158(b)(4), and to the extent it does not constitute a secondary boycott.

VI. Compliance Program

Defendant shall maintain an antitrust compliance program, which shall include:

(A) Distributing within 60 days from the entry of this Final Judgment.

(1) A copy of the Final Judgment and Competitive Impact Statement to all of the defendant's officers, directors, employees, agents, and representatives, who provide, or supervise the provision of, services to competing physicians, and to all existing orthopedic surgeon members practicing in Delaware; Connecticut; the greater Dayton, Ohio area, including Montgomery County; and the greater Tampa, Florida area, including Hillsborough, Pinellas, and Pasco Counties; and

(2) A copy of the Protocols to all of defendant's physician members who are in private practice and not part of a recognized or certified bargaining unit;

(B) Distributing in a timely manner,

(1) A copy of the Final Judgment and Competitive Impact Statement to any person who succeeds to a position with the Federation, as described in Paragraph VI(A)(1);

(2) A copy of the Protocols to any physician who is in private practice and not part of a recognized or certified bargaining unit and who becomes a Federation member;

(C) Holding an annual seminar explaining to all of defendant's officers, directors, employees, agents, and representatives who provide, or supervise the provision of, services to competing physicians, the antitrust principles applicable to their work, the restrictions contained in this Final Judgment, and the implications of violating the Final Judgment;

(D) Maintaining an internal mechanism by which questions from any of defendant's officers, directors, employees, agents, and representatives about the application of the antitrust laws to the representation of competing physicians, whether as a messenger or as some other representative, can be answered by counsel as the need arises;

(E) Obtaining, within 120 days from the entry of this Final Judgment, and retaining for the duration of this Final Judgment, a certificate from:

(1) Each of defendant's officers, directors, employees, agents, and representatives, who provide, or supervise the provision of, services to competing physicians, and from each of defendant's physician members who receives, pursuant to Paragraph VI(A)(1), a copy of the Final Judgment and Competitive Impact Statement, that

he or she has received, read, and understands this Final Judgment, and that he or she has been advised and understands that he or she must comply with the Final Judgment and may be held in civil or criminal contempt for failing to do so;

(2) Each of defendant's physician members who is in private practice and not part of a recognized or certified bargaining unit and who receives, pursuant to Paragraph VI(A)(2), a copy of the Protocols, that he or she has received, read, and understands the Protocols;

(F) Obtaining, within 60 days following distribution, pursuant to Paragraph VI(B), and retaining for the duration of this Final Judgment, a certificate from:

(1) Each person who succeeds to a position with the Federation as described in Paragraph VI(A)(1), that he or she has received, read, and understands this Final Judgment, and that he or she has been advised and understands that he or she must comply with the Final Judgment and may be held in civil or criminal contempt for failing to do so; and

(2) Any physician who is in private practice and not part of a recognized or certified bargaining unit and who becomes a member, that he or she has received, read, and understands the Protocols; and

(G) Maintaining for inspection by plaintiff a record of recipients to whom the Final Judgment. Competitive Impact Statement, or Protocols have been distributed and from whom written certifications pursuant to Paragraph VI(E) or (F), have been received.

VII. Certification

(A) Within 75 days after entry of this Final Judgment defendant shall certify to plaintiff that it has distributed the Final Judgment Competitive Impact Statement and Protocols as required by Paragraph VI(A).

(B) For a period of ten years following the date of entry of this Final Judgment, defendant shall certify annually on the anniversary date of the entry of this Final Judgment to plaintiff that it has complied with the provisions of this Final Judgment.

VIII. Plaintiff's Access

(A) For the purposes of determining or securing compliance with this Final Judgment or determining whether this Final Judgment should be modified or terminated, and subject to any legally recognized privilege, authorized representatives of the Antitrust Division of the United States Department of Justice, shall upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to defendant, be permitted.

(1) Access during regular business hours to inspect and copy all records and documents in the possession, custody, or control of defendant, which may have counsel present, relating to any matters contained in this Final Judgment:

(2) To interview defendant's officers, directors, employees, agents, and representatives, who may have individual counsel present, concerning such matters; and

(3) To obtain written reports from defendant, under oath if requested, relating to any matters contained in this Final Judgment.

(B) The defendant shall have the right to be represented by counsel in any proceeding under this Section.

(C) No information or documents obtained by the means provided in this Section shall be divulged by plaintiff to any person other than duly authorized representatives of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If, at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies, in writing, the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material, "subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days' notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grant jury proceeding) to which defendant is not a party.

(E) The provisions of Paragraph VIII(A) do not apply to any Federation member or to any member's group practice.

IX. Jurisdiction Retained

(A) This Court retains jurisdiction to enable any party to this Final Judgment, but no other person, to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

(B) If federal or state legislation enacted after the entry of this Final Judgment permits conduct prohibited by this Final Judgment, defendant may move for and plaintiff will reasonably consider an appropriate modification of this Final Judgment.

X. Expiration of Final Judgment

This Final Judgment shall expire ten (10) years from the date of entry.

XI. Public Interest Determination

Entry of this Final Judgment is in the public interest.

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

United States District Judge

Competitive Impact Statement

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), the United States files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On August 12, 1998, the United States filed a civil antitrust Complaint alleging that the defendant. Federation of Physicians and Dentists, Inc. ("Federation"), restrained competition in violation of section 1 of the Sherman Act, 15 U.S.C. 1.

The Complaint alleged that the Federation coordinated an understanding among certain members—competing Delaware orthopedic surgeons in private practice—that they would seek to negotiate exclusively through the Federation to oppose Blue Cross and Blue Shield of Delaware's ("Blue Cross") proposed reduction in fees and to inhibit other health care insurers in Delaware from reducing the fees paid to these surgeons.

The Complaint seeks injunctive relief to enjoin continuance and prevent recurrence of the violation. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce its provisions and to punish violations thereof.

II. Practices Giving Rise to the Alleged Violation

A. Background

During the period of the alleged violation, four major health care insurers operated in Delaware. Of these four, Blue Cross was the largest, covering nearly 200,000 Delaware residents. All of the insurers had formed

"networks" of participating providers, contracting with hospitals and physicians to provide medical care to their subscribers. To increase or retain patient volume, participating providers agreed to accept the fees paid by an insurer as full payment (plus any applicable deductible amount or co-payment paid by the patient) for their services. To make their networks marketable to Delaware employers and their employees, insurers needed to include a number of the orthopedic surgeons who practiced in various areas in Delaware as participating providers.

From late 1996 through early 1998, approximately 47 orthopedic surgeons were actively engaged in private practice in Delaware; most belonged to competing independent practice groups. Twenty-six practiced in New Castle County, including 20 who belonged to the County's three major orthopedic practice groups. The remaining surgeons practiced in "downstate" Delaware communities. Prior to the violation alleged in the Complaint, all 47 Delaware orthopedic surgeons were participating providers in Blue Cross's provider network.

The Federation is a labor organization with its headquarters in Tallahassee, Florida. The Federation has traditionally acted, in employment contract negotiations, as a collective bargaining agent under federal and state labor law for physicians who are employees of public hospitals or other health care entities. For several years, however, the Federation has recruited economically independent physicians in private practice in many states to encourage these independent physicians to use the Federation in negotiating their fees and other terms in their contracts with health care insurers.

B. Illegal Agreement To Negotiate With Blue Cross Exclusively Through the Federation

The Federation and its Delaware orthopedic surgeon members conspired to restrain competition in the sale of orthopedic physicians services in various areas of Delaware. This conspiracy developed in the fall of 1996 when the Federation began recruiting orthopedic surgeons in Delaware, touting itself as a vehicle for increasing their bargaining leverage with insurers in fee negotiations. During 1997, the Federation succeeded in recruiting nearly all of the orthopedic surgeons in private practice in Delaware.

In August 1997, Blue Cross notified all of its network physicians, including orthopedic physicians, of a planned fee reduction. By this action, Blue Cross sought to set the fees for Delaware orthopedic surgeons at levels closer to those paid to orthopedic surgeons in nearby areas, such as metropolitan Philadelphia. To resist Blue Cross's proposed fee reductions, the Federation and its orthopedic-surgeon members reached an understanding that Federation members would negotiate fees with Blue Cross solely through the Federation's executive director John "Jack" Seddon.

During the fall of 1997 and continuing through early 1998, the Federation and its Delaware orthopedic-surgeon members coordinated efforts to ensure a unified response to Blue Cross's proposed fee reduction. Acting on the advice of one member, nearly all Federation members designated Jack Seddon to represent them in fee negotiations with Blue Cross. Mr. Seddon subsequently recommended that Federation members should reject Blue Cross's fee reduction, and he informed Federation members that other Federation members were simultaneously receiving the same recommendation.

Thereafter, Mr. Seddon and others, acting on behalf of themselves and the Federation, instructed Federation members how to sustain their coordinated negotiating position with Blue Cross. In doing so, they impressed upon members the importance of jointly resisting Blue Cross's fee proposal by demanding that Blue Cross deal exclusively with them through the Federation. Federation members carried out Mr. Seddon's recommendations, ultimately submitting contract termination notices when Blue Cross refused to accede to their demand that it negotiate with them through Mr. Seddon. Confronted with this concerted resistance by Federation members, Blue Cross modified, but refused to rescind, its proposed fee reduction.

C. Improper Use of the "Messenger Model" by the Federation and Its Members

In establishing their illegal agreement, the Federation and its members claimed that they were acting as a legitimate "third-party messenger," as described in Statements 8 and 9 of the Department of Justice and Federal Trade Commission *Statements of Antitrust Enforcement Policy in Healthcare*, 4 Trade Reg. Rep. (CCH) ¶13,153 at 20.831 (August 28, 1996) ("Health Care Policy Statements"). The conduct of the Federation and its members, however, failed to conform to a legitimate messenger model, which may facilitate contracting between providers and payers. A legitimate messenger arrangement, however, may not collectively negotiate for providers, enhance their bargaining power, organize a refusal to deal, or facilitate the sharing of price and other competitively sensitive information among them.

D. Effect of the Agreement

As a result of the illegal agreement to negotiate with Blue Cross only through the Federation, virtually all Federation members had rejected Blue Cross's proposed fee schedule and had given notice of their intent to terminate their Blue Cross contracts within 90 days. In further coordination with the Federation, members also notified patients and referring physicians of the impending termination of their participation with Blue Cross. These notices sought to prompt employers and patients to pressure Blue Cross to meet the Federation members' price demands.

Although Blue Cross attempted to reopen negotiations with individual physicians in early 1998, Federation members uniformly rejected such efforts. Consequently, by the end of February 1998, Blue Cross had only a few participating orthopedic surgeons in its physician network, impairing its ability to offer a provider network that included an adequate number of orthopedic surgeons.

The purpose of the Federation's and its members' agreement was to force Blue Cross to rescind the proposed fee reduction for orthopedic surgeons and to inhibit Blue Cross's effort to contract with those surgeons at reduced fees. In some cases, Blue Cross subscribers who needed to receive orthopedic services either paid higher prices to receive care from their former physicians as non-participating providers or had to forego or delay receiving such care.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment seeks to eliminate defendant and its members' illegal practices in Delaware, and elsewhere, and to prevent their renewal. As discussed in further detail below, it seeks to achieve these goals by prohibiting the Federation and its members from engaging in specified activities and by requiring the Federation to establish an antitrust compliance program. The proposed Final Judgment applies to defendant's conduct not only in Delaware but nationwide.

A. Prohibitions

In general, the proposed Final Judgment prohibits the Federation from participating, encouraging, or

facilitating any agreement or understanding between competing physicians, or from negotiating, collectively or individually, on behalf of competing physicians, about any actual or proposed payer contract or contract term. In addition, defendant is prohibited from making any recommendation to competing physicians about any actual or proposed payer contract or contract term or about whether to accept or reject any such payer contract or contract term.

The proposed Final Judgment also enjoins the Federation from communicating any competitively sensitive information to, or in the presence of, competing physicians, and from communicating to competing physicians any subjective opinion or subjective analysis, evaluation, or assessment about competitively sensitive information. It enjoins the Federation from precluding or discouraging any competing physicians from exercising their independent business judgment in determining whether to negotiate, contract, or deal directly with any payers. It also enjoins the Federation from participating in, encouraging, or facilitating any agreement or understanding between competing physicians to deal with any payer exclusively through a messenger rather than individually or through other channels.

In addition to enjoining certain conduct by the Federation, the proposed Final Judgment also prohibits certain conduct by Federation member physicians who participate in any messenger or any other arrangement provided by defendant. Defendant's members are prohibited from participating in, encouraging, or facilitating any agreement or understanding among competing physicians about: (1) Any competitively sensitive information; (2) using a messenger; or (3) requiring that a payer deal with them only through a messenger or other agent or representative. They are also prohibited from communicating or facilitating the communication of any competitively sensitive information to, or in the presence of, competing physicians.

B. Permitted Conduct

During the first five years that the Final Judgment is in effect, the proposed Final Judgment permits the Federation to act as a messenger for competing physicians only under certain enumerated conditions.[1] For that five-year period, the Federation is enjoined from acting as a messenger for any competing physicians unless it informs the payer and participating physicians in writing that the payer may decline to communicate through the Federation and that the payer and participating physicians may communicate with each other without defendant's involvement. During that period, the Final Judgment also requires the Federation, when acting as a messenger to inform payers and its member physicians in writing that it cannot negotiate, collectively or individually, for any such physician about any contract or contract term.

Subject to other provisions of the Final Judgment, at a participating physician's request, the Federation may communicate to the requesting physician accurate, factual, and objective information about a proposed payer contract offer or contract terms, including, if requested, objective comparisons with terms offered to that physician by other payers. If conducted appropriately, these activities will likely facilitate, rather than impair, competition.

The Federation may also engage in activities reasonably necessary to facilitate lawful activities by physician network joint ventures and multi-provider networks as those terms are used in Statements 8 and 9 of the Health Care Policy Statements and in activities involving physician participation in writing fee surveys that are lawful under Statement 6 of the Health Care Policy Statements. In addition, Federation physician members may continue to engage independently, or solely with other members or employees of such member's bona fide solo practice or practice groups, in activities otherwise prohibited by the Final Judgment, such as choosing the payer or payers with which to contract, and/or refusing to enter into discussion or negotiations with any payer.

Under the proposed Final Judgment, the Federation may also continue to engage in lawful union organizational efforts and activities. The proposed Final Judgment also does not limit the Federation's rights to petition in accordance with doctrine established in *Eastern Railroad Presidents Conference* v. *Noerr Motor Feight, Inc.*, 365 U.S. 127 (1961), and its progeny.

C. Compliance Program

The proposed Final Judgment requires the Federation to maintain an antitrust compliance program to help prevent recurrence of the actions that facilitated the antitrust violation alleged in the Complaint. As part of the compliance program, the Federation must distribute a copy of the proposed Final Judgment and Competitive Impact Statement to all of its present and succeeding personnel, including officers, directors, employees, agents, representatives who provide or supervise services to competing physicians and to all existing orthopedic-surgeon members practicing in Delaware. In addition, the Federation has agreed to distribute copies of the Final Judgment and Competitive Impact Statement to competing physicians and orthopedic surgeon members practicing in Connecticut: the greater Dayton, Ohio area, including Montgomery County; and the greater Tampa, Florida area, including Hillsborough, Pinellas, and Pasco Counties, areas where the United States has pending investigations involving the Federation. For all other present and future physician members, the Federation must distribute a copy of its Protocols, which are a set of written guidelines developed and adopted by defendant for dissemination to its members that have been approved by plaintiff for the limited purpose of assuring that defendant's existing and future members who do not receive a copy of this Final Judgment receive adequate notice of its terms. The Federation must also obtain from each person who receives the proposed Final Judgment and Competitive Impact Statement a certification that he or she has been advised and understands that he or she must comply with the Final Judgment; and similarly, the Federation must obtain from each person who receives a copy of the Protocols, a certification that he or she has received, read, and understands the Protocols.

Further, the Federation must also hold an annual seminar explaining to its officers, directors, employees, agents, and representatives who provide or supervise services to competing physicians, the applicable antitrust principles, the restrictions contained in the Final Judgment, and the implications of violating the Final Judgment. The proposed Final Judgment further requires the Federation to maintain an internal mechanism whereby questions about the application

[1] By Stipulation, defendant has agreed, until the end of 2001, not to act as a messenger, nor to negotiate any actual or proposed payer contract or contract term with any payer, on behalf of any orthopedic surgeons practicing in Delaware, except with a payer that has, in writing, authorized such activity and if the activity otherwise complies with the Final Judgment. In addition, defendant has agreed by stipulation to notify, in writing within 30 days from the filing of the Stipulation, each of its orthopedic surgeon members in Delaware and each payer doing business in Delaware with which defendant has communicated on behalf of any orthopedic surgeon, that defendant is prohibited during 2001 from acting as a messenger or negotiating on behalf of any orthopedic surgeons practicing in Delaware unless the payer has, in writing, authorized such activity, and the activity otherwise complies with the Final Judgment.

of the antitrust laws to the representation of competing physicians can be answered by counsel.

To facilitate monitoring of compliance with the Final Judgment, the Federation must make available, upon request, records and documents in their possession, custody, or control relating to matters contained in the Final Judgment. The Federation must also make its personnel available for interviews regarding such matters. In addition, the Federation must prepare written reports relating to the Final Judgment upon request.

D. Anticipated Effects of the Proposed Final Judgment on Competition

The proposed Final Judgment prohibits the Federation from coordinating, and its members from participating in, any joint action in regard to a payer contract or contract term, including any boycott of an insurer or other payer. Consequently, a payer's ability to maintain a comprehensive panel of competing physicians should no longer be hampered by the Federation and its members, and payers' subscribers should benefit from free and open competition in the purchase of physician services, including orthopedic surgical services, in Delaware and elsewhere.

By appropriate restrictions on the conduct of the Federation and its members, the relief imposed by the proposed Final Judgment will eliminate a substantial restraint on price competition among competing orthopedic surgeons in Delaware and elsewhere. It will do so by prohibiting the Federation from negotiating on behalf of its member physicians or acting anticompetitively in concert toward Blue Cross or any other insurer.

The proposed Final Judgment will thus restore the benefits of free and open competition to the provision of orthopedic physician services in Delaware and enjoin continuation or prevent replication of similar violations in areas outside Delaware. Unrestrained competition among orthopedic surgeons and other physicians who contract to participate in insurers' networks should benefit insurers and their subscribers.

IV. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendant Federation. The United States is satisfied, however, that the requirements and prohibitions contained in the proposed Final Judgment will restore and preserve viable competition for the provision of physician services among competing Federation members. To this end, the United States expects that the proposed relief, once implemented by the Court, will likely prevent the Federation from engaging in conduct that has significant adverse competitive effects.

The Department also considered a final judgment that would have flatly prohibited the Federation from acting as a third-party messenger nationwide. Other prohibitions considered were limitations on the areas and specialities for which the Federation would be allowed to function as a third-party messenger. As part of the process of compromise by both parties during settlement discussions, the Department ultimately did not insist on these alternative forms of relief following consideration of litigation risk, the likelihood of obtaining such relief through litigation, and the effectiveness of the relief obtained.

V. Remedies Available to Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees.

Entry of the proposed Final Judgment will neither impair nor assist in the bringing of such actions. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the Final Judgment has no prima facie effect in any subsequent lawsuits that may be brought against the Federation in this matter.

VI. Procedures Available for Modification of the Proposed Final Judment

The parties have stipulated that the proposed Final Judgment may be entered by this Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon this Court's determination that the proposed Final Judgment is in the public interest.

As provided by sections 2(b) and (d) of the APPA, 15 U.S.C. ¶ 16(b) and (d), any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of publication of this Competitive Impact Statement in the **Federal Register.**

The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdrawn its consent to the Final Judgment at any time prior to entry. The comments and the responses of the United States will be filed with the Court and published in the **Federal Register.**

Written comments should be submitted to: Gail Kursh, Chief, Health Care Task Force, Antitrust Division, U.S. Department of Justice, 325 Seventh St., NW., Rm. 404, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for modification, interpretation, or enforcement of the Final Judgment. The proposed Final Judgment would expire ten (10) years from the date of its entry.

VII. Determinative Documents

No materials and documents of the type described in section 2(b) of the APPA were considered in formulating the proposed Final Judgment. Consequently, none are being filed with this Competitive Impact Statement.

Dated: October 22, 2001.

Respectfully submitted,

Steven Kramer, Richard S. Martin, Scott Scheele, Adam J. Falk,

Attorneys, Antitrust Division, Department of Justice, Washington, DC 20530, Tel: (202) 307–0997, Fax: (202) 514–1517.

Virginia Gibson-Mason,

Assistance U.S. Attorney, Chief, Civil Division. 1201 Market Street, Suite 1100, Wilmington, DE 19801, (302) 573–6277.

[FR Doc. 01–28888 Filed 11–01–01; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Request OMB Emergency Approval; Application for T Nonimmigrant Status; Application for Immediate Family Member of T–1 Recipient; and Declaration of Law Enforcement Officer for Victim of Trafficking in Persons.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted an emergency information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with 5 CFR 1320. The INS

has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Therefore, OMB approval has been requested by November 21, 2001. If granted, the emergency approval is only valid for 180 days. ALL comments and/or questions pertaining to this pending request for emergency approval MUST be directed to OMB, Office of Information and Regulatory Affairs, Attention: Ms. Karen Lee, Department of Justice Desk Officer, 725—17th Street, NW., Suite 10235, Washington, DC 20503. Comments regarding the emergency submission of this information collection may also be submitted via facsimile to Ms. Lee at 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the INS requests written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted until January 22, 2002. During 60-day regular review, ALL comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

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

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

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

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

Overview of this information collection:

(1) *Type of Information Collection: Approval of a new information collection.*

(2) *Title of the Form/Collection:* Application for T Nonimmigrant Status; Application for Immediate Family Member of T–1 Recipient; and Declaration of Law Enforcement Officer for Victim of Trafficking in Persons.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Forms I–914, I–914 Supplement A, and I–914 Supplement B. Service Center Operations, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and Households. This application incorporates information pertinent to eligibility under the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106–386) and a request for employment. The information on all three parts of the form will be used by the Service to determine whether applicants meet the eligibility requirements for certain immigration benefits.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 8,750 I–914 responses at 2.25 hours per response; 18,750 I–914 Supplement A responses at 1 hour per response; and 7,000 I–914 Supplement B responses at .50 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 41,938 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 01–28899 Filed 11–19–01; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of November, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determination for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,127; Trumark, Inc., Lansing, MI

TA–W–40,252; Blue Ridge Textile Printers, Statesville, NC

TA–W–39,347; Capco Machinery Systems, Inc., Roanoke, VA

TA–W–39,840; Mini Lace, Inc., Hialeah, FL

TA–W–39,866; Halsey Drug Co., Inc., Brooklyn, NY

TA–W–39,446; Morgan Machine Co, Fulton, MO

TA–W–39,118, TKG International Corp., Macon GA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–40,164; Rayovac Portage Plant, Portage, WI
TA–W–39,842; Dallas Semiconductor, Dallas, TX
TA–W–40,086; Mail Well Envelope Co., Portland, OR
TA–W–39,099; ABC Rail, Calera, AL
TA–W–39,725; General Mills, Snacks Div., Carlisle, PA
TA–W–40,094; Heraeus Quartztech, Buford, GA

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–40,002; PDS Railcar Services, Port Huron, MI
TA–W–40,318; Private Manufacturing, Inc., El Paso, TX
TA–W–39,781; American Components, Inc., Research and Development, Dandridge, TN

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–39,404; Empire Specialty Steel, Inc., Formerly Known as Al Tech Specialty Steel, Dunkirk, NY: June 19, 2001.
TA–W–39,879; Northwest Wood Products, Inc., Kettle Falls, WA: August 7, 2000.
TA–W–39,444; Kennecott Utah Copper Corp., Utah Mining Division, Bingham Canyon, UT: June 1, 2000.
TA–W–39,587; Grote Industries, LLC, Madison, IN: June 15, 2000.
TA–W–40,155; Burle Industries, Inc., Lancaster, PA: September 26, 2000.
TA–W–39,875; Maida Development Co., Hampton, VA: August 9, 2000.
TA–W–39,122; J and L Specialty Steel, Inc., Midland, PA: April 11, 2000.
TA–W–40,112; Loparex, West Chicago, IL: September 18, 2000.
TA–W–39,415; Tyco International, White City, OR: May 22, 2000.
TA–W–39,521; Kleinert's, Inc., Elba, AL: April 1, 2001.
TA–W–40,105; CTS Reeves, Frequency Products, Sandwich, IL: August 21, 2000.
TA–W–40,144; Pea Ridge Iron Ore Co., Sullivan, MO: September 14, 2000.
TA–W–40,102; Joplin Manufacturing, Inc., Joplin, MO: September 3, 2000.
TA–W–39,884; VF Playwear, Inc., Centerville, AL: August 2, 2000.
TA–W–40,051 & A; Prime Tanning, Rochester, NH and Berwick, ME: September 4, 2000.
TA–W–40,134 & A; Commodore Hat, New York, New York and Adamstown, PA: September 5, 2000.
TA–W–40,214; Intermetro Industries, Wilkes Barre, PA: September 28, 2000.
TA–W–39,949; Eaton Corp., Shelbyville, TN: August 13, 2000.
TA–W–40,008; Summit Circuits, Inc., Fort Wayne, IN: August 28, 2000.
TA–W–39,818; CMI Industries, Inc., Clarksville Plant Including Workers of Defender Services, Inc., Clarksville, GA: July 27, 2000.
TA–W–39,851; Barko Hydraulics, LLC, Superior, WI: August 2, 2000.
TA–W–39,736, A & B; Air-Way Manufacturing Co., Plant #1, Olivet, MI, Plant #2, Olivet, MI and Edgerton, OH: July 21, 2000.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of November, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–04768; Trumark, Inc., Lansing, MI
NAFTA–TAA–05331; Rayovac, Portage Plant, Portage, WI
NAFTA–TAA–05033; Blue Ridge Textile Printers, Statesville, NC
NAFTA–TAA–05369; Garan Manufacturing, Ozark, AR
NAFTA–TAA–05250; Motorola, Atlanta Order Fulfillment Center (AOFC), Suwanee, GA
NAFTA–TAA–05463; C-Mac Quartz Crystals, Inc., div. Of C-Mac of America, Mechanicsburg, PA
NAFTA–TAA–04935; Tyco International, White City, OR
NAFTA–TAA–04674; SLI Product Lighting, Mullins, SC
NAFTA–TAA–05449; Ruppe Hosiery, Inc., Kings Mountain, NC

The workers firm does not produce an article as required for certification under section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended.

NAFTA–TAA–05390; General Electric Capital, Card Services, Bloomington, MN
NAFTA–TAA–05290; PDS Railcar Services, Port Huron, MI
NAFTA–TAA–05457; Private Manufacturing, Inc., El Paso, TX

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–05408; VF Imagewear (West), Inc., Wartburg, TN: October 5, 2000
NAFTA–TAA–05407; VF Imagewear (West), Inc., Lillington, NC: October 8, 2000
NAFTA–TAA–05168; CMI Industries, Inc., Clarksville Plant, Clinton Fabrics Div., Clarksville, GA: July 24, 2000
NAFTA–TAA–05254; Barko Hydraulics, LLC, Superior, WI: August 2, 2000
NAFTA–TAA–05186; Lancer Partnership, Ltd, Screw Machine Department, San Antonio, TX: July 27, 2001.

I hereby certify that the aforementioned determinations were issued during the month of November, 2001. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 13, 2001.

Edward A. Tomchick,

Director, Division of, Trade Adjustment Assistance.

[FR Doc. 01–28976 Filed 11–19–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,679 and NAFTA–04608]

Kazoo, Inc. San Antonio, TX; Notice of Negative Determination Regarding Application for Reconsideration

By application of April 12, 2001, the petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA) under petition TA–W–38,679 and North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA) under petition NAFTA–4608. The TAA denial notice applicable to workers of Kazoo, Inc., San Antonio, Texas, was signed on March 12, 2001 and will soon be published in the **Federal Register**. The NAFTA–TAA denial notice applicable to workers of Kazoo, Inc., San Antonio, Texas, was signed on March 12, 2001 and published in the **Federal Register** on April 5, 2001 (66 FR 18118).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Kazoo, Inc., San Antonio, Texas engaged in cutting fabric, was denied because the "contribution importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The "contributed importantly" test is generally demonstrated through a survey of the workers firm's customers. The subject firm did not increase their imports of cut fabric. Sales at the subject firm increased during 2000. The subject firm transferred their cutting operations to another domestic facility.

The NAFTA–TAA petition for the same workers group was denied because criteria (3) and (4) of the group eligibility requirements in paragraph (a)(1) of Section 250 of the Trade Act, as amended, were not met. The subject firm did not import cut fabric like and directly competitive with what the subject plant produced from Mexico or Canada, nor was the cutting operation shifted from the workers' firm to Mexico or Canada.

The petitioner alleges that the company shifted the cutting operation at Mexico. The petitioner attached selected letters of recommendation which depicts a shift in production in Mexico. The company was contacted and confirmed that the cutting operation was not shifted to Mexico, nor was the cutting operation contracted out to any Mexican contractor.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC this 29th day of October, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–28984 Filed 11–19–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,550]

Pottstown Precision Casting, Inc./ Harvard Industries, Inc. formerly/ known/as Doehler Jarvis Stowe, PA; Notice of Negative Determination on Reconsideration

On August 15, 2001, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on August 29, 2001 (66 FR 45698).

The Department initially denied TAA to workers of Pottstown Precision Casting, Inc./Harvard Industries, Inc., formerly known as Doehler Jarvis, Stowe, Pennsylvania because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The workers at the subject firm were engaged in employment related to the production of automotive components.

The petition asserted that selected customers of the subject plant imported various automotive component parts, contributing importantly to the worker separations.

On reconsideration, the Department surveyed all selected customers (as supplied by the petitioner) of the subject firm regarding their purchases of products (as depicted by the petitioners application) like and directly competitive to what the subject plant produced during the relevant period. The Department contacted all customers as selected by the petitioner, all customers responded. The survey revealed that imports were negligible during the relevant period. The survey also revealed that the closure of the plant forced customers to seek other manufacturers of products like and directly competitive with what the subject plant produced.

The survey further indicated that customers of the subject firm purchased subject plant components, further processed the product and then exported some parts to foreign sources. The foreign sources integrated the parts into finished products.

The petitioner further asserted that the subject plant was under an existing TAA certification (TA–W–38,550) that expired on March 5, 2001. The customer of that certification was contacted and reported that only a negligible portion of the components (stators) were imported during the relevant period of the current investigation.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance and NAFTA–TAA for workers and former workers of Pottstown Precision Casting, Inc./Harvard Industries, Inc., formerly known as Doehler Jarvis, Stowe, Pennsylvania.

Signed at Washington, DC, this 26th day of October, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–28983 Filed 11–19–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,180]

Art Unlimited, LLC, New Holstein, Wi; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 7, 2001, in response to a petition filed by a company official on behalf of workers at Art Unlimited, LLC, located in New Holstein, Hurley, and Montreal, Wisconsin.

This case is being terminated because the petitioner was requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 5th day of November, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–28990 Filed 11–19–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,324]

Birmingham Steel, Joliet, IL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 5, 2001 in response to a worker petition which was filed by the United Steelworkers of America, Local 9777, on the same date on behalf of workers at Birmingham Steel, Joliet, Illinois.

Production at the plant ceased in February 2001. A negative determination applicable to the petitioning group of workers was issued on July 30, 2001 (TA–W–39,082). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 7th day of November, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–28980 Filed 11–19–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,969]

Dupont Nylon, Seaford, DE; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 10, 2001, in response to a petition filed by a company official on behalf of workers at DuPont Nylon, Seaford, Delaware.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 5th day of November 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–28989 Filed 11–19–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,268]

Great Lakes Chemical Corporation, Nitro, WV; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 29, 2001, in response to a petition filed by a company official on behalf of workers at Great Lakes Chemical Corporation, Nitro, West Virginia.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 2nd day of November, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–28988 Filed 11–19–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,064]

H&H Tool, Meadville, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 24, 2001, in response to a worker petition which was filed by a company official and three additional petitioners, on behalf of workers at H&H Tool, Meadville, Pennsylvania. The workers produce precision machine parts for the automated assembly machine industry.

The petitioners have requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Dated: Signed at Washington, DC this 5th day of November, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–28987 Filed 11–19–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,350]

Hill Knitting Mills, Richmond Hill, New York; Notice of Negative Determination Regarding Application for Reconsideration

By application dated June 13, 2001, the company requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on May 8, 2001, and published in the **Federal Register** on May 23, 2001 (66 FR 28553).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Hill Knitting Mills, Richmond, New York was denied because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The "contributed importantly" test is generally demonstrated through a survey of customers of the workers' firm. None of the customers reported increasing their purchases of imported interlock JACQ strips with and without separation.

The petitioner feels that the decision is incorrect, since the decision depicted goods the plant produced were used for children's clothing. The petitioner indicated that the goods were used for more than just children's clothing. Although the decision indicated that the workers produced knit fabric for children's clothing the investigation encompassed all goods (interlock JACQ strips with and without separation—sweater blanks, knitted fabric) the mill produced, without distinguishing the end-use (adult, children's—male and female) of the goods considered in the decision. Therefore, the initial investigation and resulting determination included all goods the company produced.

The company in their request for reconsideration explained the reason for the declines in their business, however no new evidence pertinent to the initial petition and investigation was presented.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 26th day of October 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–28982 Filed 11–19–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,084]

Mettler Toledo Process Analytical, Inc., Woburn, MA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 24, 2001 in response to a worker petition, which was filed on behalf of workers at Metter Toledo Process Analytical, Inc., Woburn, Massachusetts.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 9th day of November 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–28975 Filed 11–19–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,244]

Northrop Grumman Formerly Known as Litton Watertown, CT; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 22, 2001 in response to a worker petition, which was filed by the workers at Northrup Grumman, formerly known as Litton, Watertown, Connecticut.

The investigation revealed that the petitioning group of workers were certified on October 31, 2001 (TA–W–40,185). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 8th day of November 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–28979 Filed 11–19–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,077]

Prime Tanning Company Rochester, NH; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 24, 2001, in response to a worker petition filed on behalf of workers at Prime Tanning Company, Rochester, New Hampshire.

The petitioning group of workers is subject to an ongoing investigation (TA–W–40,051). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 5th day of November 2001.

Linda G. Poole,

Certifying Officer, Division of, Trade Adjustment Assistance.

[FR Doc. 01–28986 Filed 11–19–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,742]

Republic Technologies International, LLC, Johnstown, PA; Notice of Negative Determination On Reopening

The Department on its own motion reopened the petition investigation for workers of the subject firm. The denial notice was signed on August 14, 2001, and published in the **Federal Register** on August 23, 2001 (66 FR 44379).

The Department initially denied TAA to workers engaged in the production of steel bar (billets), at Republic Technologies International, Johnstown, Pennsylvania, because criterion (3) of the worker group eligibility requirements of section 222 of the Trade Act of 1974, as amended, was not met. Increased imports did not contribute importantly to declines in sales or production and worker separations.

The petitioner states that an affiliated plant located in Canton, Ohio producing hot rolled steel bars was certified for TAA under TA–W–38,782. The petitioner further states that these two facilities are identical, owned and operated by the same corporation and also supply the same customers.

The billets produced at the Johnstown facility are not like and directly competitive with hot rolled steel bars produced at the Canton plant. In fact, the subject plant shipped virtually all (a negligible amount went to the Canton, Ohio plant) billet production to an affiliated plant located in Lackawanna, New York to be rolled into hot rolled steel bars. The Lackawanna, New York facility was not under any TAA certification during the relevant period. The Canton certification was based on outside customers increasing their reliance on hot rolled steel bars, not billets.

Although the Canton and Johnstown plants are operated by the same

corporation, they produce different products. The two plants are not vertically integrated and therefore the Johnstown workers may not be tied to the Canton TAA certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 30th day of October 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–28981 Filed 11–19–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,188]

Rhoda Lee, Inc., New York, NY; Notice of Negative Determination Regarding Application for Reconsideration

By application dated June 12, 2001, the Amalgamated Ladies' Garment Cutters' Union, Local 10, UNITE requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on May 8, 2001, and published in the Federal Register on May 23, 2001 (66 FR 28553).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Rhoda Lee, Inc., New York, New York was denied because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended; was not met. The denial was based on evidence indicating that markers the impacted worker group produced, were only used when the company contracted out work and the company did not import markers during the relevant period.

The petitioner alleges that Rhoda Lee, Inc. replaced domestic production (apparel) with imports, thus the need for markers decreased resulting in the displacement of the worker(s).

The impacted worker(s) of the subject plant producing markers were separately identifiable from other functions performed at the subject firm and therefore is the group of worker(s) which may be considered for TAA eligibility. The company did not import makers and only purchased markers from other domestic sources during the relevant period.

The imports of any other product (apparel) by the company is not relevant to this petition that was filed on behalf of worker(s) producing markers.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 26th day of October 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–28985 Filed 11–19–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—05455]

Harris Welco, J.W. Harris Company, Kings Mountain, NC; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on October 22, 2001, in response to a petition filed by a company official on behalf of workers at Harris Welco, J.W. Harris Company, Kings Mountain, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 2nd day of November, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–28978 Filed 11–19–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Division of Trade Adjustment Assistance (DTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of DTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request if filed in writing with the Director of DTAA not later than November 30, 2001.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of DTAA at the address shown below not later than November 30, 2001.

Petitions filed with the Governors are available for inspection at the Office of the Director, DTAA, ETA, DOL, Room

C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 13th day of November, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at Governor's Office	Petition No.	Articles produced
Fibermark (PACE)	Rochester, MI	10/22/2001	NAFTA–5,453	Fiber based materials.
Faraday LLC (IBEW)	Tecumseh, MI	10/22/2001	NAFTA–5,454	Fire alarm systems.
Harris Welco (Wkrs)	Kings Mountain, NC	10/22/2001	NAFTA–5,455	Plastic lens.
Apparel Finishers (Wkrs)	Athen, GA	10/22/2001	NAFTA–5,456	Garments.
Private Manufacturing (Wkrs)	El Paso, TX	10/19/2001	NAFTA–5,457	Warehousing & packing for garments.
Scientific Atlanta (Wkrs)	Norcross, GA	10/22/2001	NAFTA–5,458	Electronic hardware.
Mulox (Wkrs)	Baxley, GA	10/23/2001	NAFTA–5,459	Flexible bulk containers.
Summitville Carolina (Wkrs)	Morganton, NC	10/23/2001	NAFTA–5,460	Glazed ceramic floor.
Key Industries (Wkrs)	Tompkinsville, KY	10/23/2001	NAFTA–5,461	Blue jeans and overalls.
Modern Engineering (Wkrs)	Troy, MI	10/24/2001	NAFTA–5,462	Engineering documents.
C–Mac Quartz Crystals (Wkrs)	Mechanicsburg, PA	10/25/2001	NAFTA–5,463	Electronic oscillators.
Harvard Industries (UAW)	Jackson, MI	10/25/2001	NAFTA–5,464	Automotive cooling fans for car.
Teasdale Tool (Co.)	Meadville, PA	10/25/2001	NAFTA–5,465	Molds, Mold insorts and molded products.
Nocona Athletic Goods—Nocona Leather (Co.).	Nocona, TX	10/25/2001	NAFTA–5,466	Baseball gloves and football protective.
Commercial Warehouse Trail (Co.)	El Passo, TX	10/25/2001	NAFTA–5,467	Surgical blankets.
CW Industries—Hazelton Enterprises (Wkrs).	Hazelton, PA	10/25/2001	NAFTA–5,468	Electrical switches.
Aalfs Manufacturing (Co.)	Mena, AR	10/25/2001	NAFTA–5,469	Denim bottoms.
Tyco International Power Systems (CWA)	Mesquite, TX	10/26/2001	NAFTA–5,470	Power supplies.
Syst-A-Matic tool and Design (Co.)	Meadville, MA	10/29/2001	NAFTA–5,471	Design and build of connector holders.
Design and Cut (Wkrs)	Cartersville, GA	10/29/2001	NAFTA–5,472	Cut clothes.
Madili Corporation (IAM)	Kalama, WA	10/25/2001	NAFTA–5,473	Logging equipment.
Bremen Bowdon Invest (Wkrs)	Bowdon, GA	10/29/2001	NAFTA–5,474	Men's suits, sport coats and pants.
Carling Technologies—Carling Switch (Wkrs).	Brownsville, TX	10/26/2001	NAFTA–5,475	Switches and magnetic circuit breakers.
Modern Plastic Technics (Wkrs)	West Berlin, NJ	10/17/2001	NAFTA–5,476	Bar code scanning equipment.
Vison Tool and Manufacturing (Wkrs)	Meadville, PA	10/26/2001	NAFTA–5,477	Molds, dies and spare tooling.
Precon New Products (Wkrs)	Boise, ID	10/22/2001	NAFTA–5,478	Retractable phone cords.
Stan's Wood Products (Wkrs)	Bend, OR	10/25/2001	NAFTA–5,479	Pressboard and particle board.
AA Precisioneering (Wkrs)	Meadville, PA	10/29/2001	NAFTA–5,480	Injection molds.
Texfi Industries (Co.)	Jefferson, GA	10/29/2001	NAFTA–5,481	Apparel fabric.
Texfi Industries (Co.)	Rocky Mountain, NC	10/29/2001	NAFTA–5,482	Apparel fabric.
Hi Swear Automotive (Co.)	Torrance, CA	10/24/2001	NAFTA–5,483	Wheel bearing nuts.
Maysville Garment (Co.)	Maysville, NC	10/29/2001	NAFTA–5,484	Knit & woven shirts, dresses, knit pants.
Harris Welco—Welcast Plastics (Co.)	Barberton, OH	10/29/2001	NAFTA–5,485	Plastic lens.
Dixon Ticonderoga (Wkrs)	Sandvsky, OH	10/29/2001	NAFTA–5,486	Lead and chalk.
Crouzet Corporation (Co.)	Carrollton, TX	10/27/2001	NAFTA–5,487	Timers.
Phelps Dodge Sierrita (Co.)	Green Valley, AZ	10/29/2001	NAFTA–5,488	Cooper.
Arvinmeritor (Co.)	Fayette, AL	10/29/2001	NAFTA–5,489	Automotive exhaust components.
Johnson Controls (Wkrs)	Renyoldsburg, OH	10/29/2001	NAFTA–5,490	Programmable temperature controls.
Creative Leather and Vinyl (Wkrs)	Brookfield, WI	10/30/2001	NAFTA–5,491	Leather parts for shoes, wallets.
Wheeling Corrugating Co (Wkrs)	Chehalis, WA	10/29/2001	NAFTA–5,492	Steel Products.
Buckeye Steel Castings Co (USWA)	Columbus, OH	10/30/2001	NAFTA–5,493	Castings for Rail Cars.
SportRack Accessones (Wkrs)	Shelburne, VT	10/29/2001	NAFTA–5,494	Sportrack Accessories.
Thermal Industries, Inc (Wkrs)	Pittsburgh, PA	10/30/2001	NAFTA–5,495	Vinyl Lineal Extrusion.
Sony Electronics (Wkrs)	Mt. Pleasant, PA	10/22/2001	NAFTA–5,496	Apexture Grilles, TV's.
Cardinal Brands/Hazel, Inc (Wkrs)	Washington, MO	11/05/2001	NAFTA–5,497	Office Products—Duffle Bags, Backpacks.
Williamette Industries, Inc. (Co.)	Winston, OR	11/02/2001	NAFTA–5,498	Laminated Veneer Lumber.
Prime Tanning Corp (RWDSU)	Saint Joseph, MO	11/05/2001	NAFTA–5,499	Finished Leather.
Romart, Inc. (UNITE)	Scranton, PA	10/31/2001	NAFTA–5,500	Men's Sport, Dress Coats, Formalwear.
Huhtamaki (Wkrs)	Mt. Carmel, PA	10/31/2001	NAFTA–5,501	Plastic Containers and Lids.
Linnton Plywood Association (Co.)	Portland, OR	10/30/2001	NAFTA–5,502	Lumber.
Telair International (Wrks)	Rancho Dominguez, CA.	10/31/2001	NAFTA–5,503	Air Cargo Containers.
Flambeau Corp (Co.)	Sun Prairie, WI	11/01/2001	NAFTA–5,504	Cell Phone Components.
Bassett Mirror Co., Inc. (Wkrs)	Bassett, VA	11/01/2001	NAFTA–5,505	Tables.
Syst-A-Matic Tool and Design (Co.)	Meadville, PA	10/29/2001	NAFTA–5,506	Connector Holders—Automobiles.
Dana Corp. (Co.)	Robinson, IL	11/01/2001	NAFTA–5,507	Automobiles.
Skyjack, Inc. (Wkrs)	Wathena, KS	11/01/2001	NAFTA–5,508	Aerial Lifts.
HMG Intermark Worldwide Manufacturing (Co.).	Reading, PA	11/01/2001	NAFTA–5,509	Assembly of Parts (Plastic, Wood, Metal).
Corning, Inc. (AFGWU)	State College, PA	11/02/2001	NAFTA–5,510	Television Panels & Funnels.

APPENDIX—Continued

Subject firm	Location	Date received at Governor's Office	Petition No.	Articles produced
Control Concepts Corp, (Co.)	Ocala, FL	10/25/2001	NAFTA–5,511	Surge Suppression Equipment.
Sunbrand—Wilcox and Gibbs (Co.)	Norcross, GA	11/05/2001	NAFTA–5,512	Software.
Cook Technologies (Wkrs)	Green Lane, PA	11/02/2001	NAFTA–5,513	Medical blades.
Pennsylvania Tool and Gages (Co.)	Meadville, PA	11/02/2001	NAFTA–5,514	Plastic injection molds.
Carlisle Engineered Products (UAW)	Erie, PA	11/02/2001	NAFTA–5,515	Molding dies.
Tri Cities Manufacturing (Wkrs)	Tuscumbia, AL	10/31/2001	NAFTA–5,516	Electronic assemblies for auto.
Armstrong—Hunt International (Wkrs)	Milton, FL	11/02/2001	NAFTA–5,517	Heat exchangers.
Appleton Papers (Wkrs)	Camphill, PA	11/06/2001	NAFTA–5,518	Carbonless paper.
Motor Coil Mfg.—Wabtec Corp. (Wkrs)	St. Louis, MO	11/06/2001	NAFTA–5,519	Reconditioned train traction motors.
Willamette Industries (Co.)	Saginaw, OR	10/29/2001	NAFTA–5,520	Lumber.
Value Line Textiles (Co.)	Pilot Mountain, NC	11/07/2001	NAFTA–5,521	Socks.
Value LIne Textiles (Co.)	Lenior City, TN	11/07/2001	NAFTA–5,522	Socks.
Motorola (Co.)	Elk Grove Village, IL	11/05/2001	NAFTA–5,523	Radio transceivers.
Tresco Tool (Co.)	Guys Mills, PA	11/08/2001	NAFTA–5,524	Plastic injection molds.
R.L. Stowe Mills (Co.)	Belmont, NC	11/05/2001	NAFTA–5,525	Textile yarn.
Haskell Senator International (IUE)	Verona, PA	11/08/2001	NAFTA–5,526	Office furniture.
Freudenberg=Nok (Wkrs)	Bensenville, IL	11/08/2001	NAFTA–5,527	Crank shaft seals, pan seals & lop seals.
Robbins—Witt (Wkrs)	Wearren, AR	11/08/2001	NAFTA–5,528	Flooring.
Safeway, Inc. (IBT)	Grandview, WA	11/09/2001	NAFTA–5,529	Mayonnaise and salad dressing.
Bristol Compressors (Co.)	Sparta, NC	11/09/2001	NAFTA–5,530	Compressors.
Regal Rugs (PACE)	North Vernon IN	11/07/2001	NAFTA–5,531	Bath and accent rugs.
Flextronics International (Co.)	Palm Harbor, FL	11/08/2001	NAFTA–5,532	Electronic boards.
Port Townsend Paper (PACE)	Port Townsend, WA	11/08/2001	NAFTA–5,533	Kraft paper and kraft paper containers.
Trion Industries (Co.)	Wilkes Barre, PA	11/07/2001	NAFTA–5,534	Packaging of toys.
Rich Products (BETGM)	Appleton, WI	11/06/2001	NAFTA–5,535	Frozen bread, rolls, sweet goods etc.
Libro Shirt—Lebro Shirt (Co.)	Lykens, PA	11/06/2001	NAFTA–5,536	Police uniform shirt.
Chem West Systems (Wkrs)	Portland, OR	11/05/2001	NAFTA–5,537	Plastic cabinets.
St. Clair Technologies (Wkrs)	Charlotte, MI	01/07/2001	NAFTA–5,538	Wiring harness.

[FR Doc. 01–28977 Filed 11–19–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Records of Tests and Examinations of Personnel Hoisting Equipment

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) 44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before January 22, 2002.

ADDRESSES: Send comments to Gordon J. Burke, Jr., Director, Administration and Management, 4015 Wilson Boulevard, Room 615, 4015, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to Burke-Gordon@msha.gov, along with an original printed copy. Mr. Burke can be reached at (703) 235–1383 (voice), or (703) 235–1563 (facsimile).

FOR FURTHER INFORMATION CONTACT: Charlene N. Barnard, Regulatory Specialist, Records Management Division, U.S. Department of Labor, Mine Safety and Health Administration, Room 725, 5014 Wilson Boulevard, Arlington, VA 22203–1984. Ms. Barnard can be reached at *Barnard-charlene@msha.gov* (Internet E-mail), (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

These requirements provide for a record of specific test and inspections of a mines's personnel hoisting systems, including the wire rope, to ensure that the system remains safe to operate. Review of the record indicates whether deficiencies are developing in the equipment, in particular the wire rope, so that corrective action may be taken before an accident occurs. The requirements also provide for a systematic procedure for the inspection, testing, and maintenance of shaft and hoisting equipment. The mine operator must certify that the required inspections, tests, and maintenance have been made then record any unsafe condition identified during the examination or test.

The precise format in which the record is kept is left to the discretion of the mine operator. All records are made by the person conducting the required examination or test. Unless otherwise noted below, these records are to be retained for one year at the mine site.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Records of Tests and Examinations of Personnel Hoisting Equipment. MSHA is particularly interested on comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request may be viewed on the Internet by accessing the MSHA Home Page (*http://www.msha.gov*) and selecting "Statutory and Regulatory Information" then "Paperwork Reduction Act Submissions (*http://www.msha.gov/regspwork.htm*)", or by contacting the employee listed above in the **FOR FURTHER INFORMATION CONTACT** section of this notice for a hard copy.

III. Current Actions

The information is used by industry management and maintenance personnel to project the expected safe service performance of hoist and shaft equipment; to indicate when maintenance and specific tests need to be performed; and to ensure that wire rope attached to the personnel conveyance is replaced in time to maintain the necessary safety for miners. Federal inspectors use the records to ensure that inspections are conducted, unsafe conditions identified early and corrected. The consequence of hoist or shaft equipment malfunctions or wire rope failures can result in serious injuries and fatalities. It is essential that MSHA inspectors be able to verify that mine operators are properly inspecting their hoist and shaft equipment and maintaining it in safe condition.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Record of Tests and Examinations of Personnel Hoisting Equipment.

OMB Number: 1219–0034.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Recordkeeping: One year.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response (hours)	Burden hours*
Examination:					
56/57.19023 (a) and (d) ..	96	Daily	22,360	20 minutes	7,379
56/57.19121	86	Weekly	4,472	10 minutes	745
56/57.19129	86	Bi-weekly	2,236	45 minutes	1,677
56/57.19131					
56/57.19132					
56/57.19133					
56/57.19134					
Recording:					
56/57.19023 (a) and (d) ..	86	Daily	22,360	5 minutes	1,789
56/57.19121	86	Weekly	4,472	5 minutes	358
56/57.19129					
56/57.19131	86	Bi-Weekly	2,236	5 minutes	179
56/57.19132					
56/57.19133					
56/57.19134					
Examination:					
56/57.19022	86	2/year	172	1 hour	172
56/57.19023(c)					
56/57.19023(e)					
Recording	86	2/year	172	9 minutes	26
Examination:					
75.1400–4	174	Daily	135.720	20 minutes	44,788
75.1433(d)	174	Bi-weekly	9,048	20 minutes	2,986
75.1404	174	On occasion	17,383	4 hours	69,532
75.1433(d)	174	Semi Annually	626	1 hour	626
77.1906					
Recording:					
	174	Daily	45,240	5 minutes	3,619
	174	Bi-weekly	4,524	5 minutes	362
	174	On occasion	209	5 minutes	17
	174	Semi Annually	626	5 minutes	50
Examination: 75.1400–2	174	Bi-monthly	2,088	45 minutes	1,566
Recording	174	Bi-monthly	2,088	5 minutes	167
Total	260		276,032	2 hours	7,001,385

* Discrepancies due to rounding.

Total Annualized Capital/Startup Costs: $0.

Total Operating and Maintenance Costs: $208,800.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 9, 2001.

Gordon J. Burke, Jr.,

Director, Administration and Management.

[FR Doc. 01–28974 Filed 11–19–01; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE (NCLIS)

Sunshine Act; Meeting

AGENCY: U.S. National Commission on Libraries and Information Science.

ACTION: Notice of meeting.

SUMMARY: The U.S. National Commission on Libraries and Information Science is holding an open business meeting to discuss Commission programs and administrative matters. Topics will include, the discussion of the role of libraries in disaster preparedness and response in light of the September 11th terrorist attack. Other topics will include consideration of a research and development initiative on library and information services for individuals with disabilities, and the Commission's role in planning for an international conference on information literacy.

DATE AND TIME: NCLIS Business Meeting—December 5, 2001, 2 p.m. to 5 p.m. and December 6, 2001, 9 to 12 p.m.

ADDRESSES: Conference Room, NCLIS Office, 1110 Vermont Avenue, NW., Suite 820 Washington, DC 20005.

STATUS: Open meeting.

FOR FURTHER INFORMATION CONTACT: Rosalie Vlach, Director, Legislative and Public Affairs, U.S. National Commission on Libraries and Information Science, 1110 Vermont Avenue, NW., Suite 820, Washington, DC 20005, e-mail *rvlach@nclis.gov*, fax 202–606–9203 or telephone 202–606 9200.

SUPPLEMENTARY INFORMATION:

The meeting is open to the public, subject to space availability. To make special arrangements for physically challenged persons, contact Rosalie Vlach, Director, Legislative and Public Affairs, 1110 Vermont Avenue, NW., Suite 820, Washington, DC 20005, e-mail *rvlach@nclis.gov*, fax 202–606–9203 or telephone 202–606–9200.

Dated: November 16, 2001.

Robert S. Willard,

NCLIS Executive Director.

[FR Doc. 01–29064 Filed 11–16–01; 11:41 am]

BILLING CODE 7527–$$–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2001–8 CARP CD 98–99]

Distribution of 1998 and 1999 Cable Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Request for comments and schedule.

SUMMARY: The Copyright Office of the Library of Congress is announcing the schedule for a Phase I CARP proceeding to distribute 1998 cable royalty funds collected under section 111, 17 U.S.C. In addition, the Office is seeking comment as to the advisability of consolidating the 1998 Phase I distribution proceeding with the Phase I distribution proceeding for the 1999 cable royalty funds.

DATES: Comments on consolidation are due no later than December 20, 2001.

ADDRESSES: If hand delivered, parties shall deliver an original and five copies of all comments on consolidation to: Office of the Copyright General Counsel, James Madison Memorial Building, First and Independence Avenue, SE., Room LM–403, Washington, DC 20540. If sent by mail, comments should be addressed to: Copyright Arbitration Royalty Panel (CARP), PO Box 70977, Southwest Station, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or William J. Roberts, Jr., Senior Attorney for Compulsory Licenses, Copyright Arbitration Royalty Panel (CARP), PO Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: Each year cable systems submit royalties to the Copyright Office for the retransmission to their subscribers of over-the-air broadcast signals. These royalties are, in turn, distributed in one of two ways to copyright owners whose works were included in a retransmission of an over-the-air broadcast signal and who timely filed a claim for royalties with the Copyright Office. The copyright owners may either negotiate the terms of a settlement as to the division of the royalty funds, or the Librarian of Congress may convene a Copyright Arbitration Royalty Panel ("CARP") to determine the distribution of the royalty fees that remain in controversy. *See* 17 U.S.C. chapter 8.

On September 6, 2000, the Library of Congress published a Notice in the **Federal Register** seeking comment as to the existence of controversies for the distribution of 1998 cable royalties. 65 FR 54077 (September 6, 2000). The parties to the distribution reported both Phase I and Phase II controversies and filed their Notices of Intent to Participate. On October 2, 2001, the Library published a Notice in the **Federal Register** seeking comments as to the existence of controversies for the distribution of 1999 cable royalties. 66 FR 50219 (October 2, 2001). The parties to this distribution reported Phase I and Phase II controversies as well and filed their Notices of Intent to Participate. Both proceedings are now eligible for proceedings before a CARP.

Request for Comments

It is the preliminary view of the Library that consolidating the 1998 cable Phase I distribution proceeding with the 1999 cable Phase I distribution proceeding will not overburden a CARP and will promote administrative efficiency. We seek comment as to whether consolidation is the best course of action and, if not, how the Library should proceed with the 1999 Phase I cable distribution.

Schedule of the Proceeding

The Library is announcing the schedule of the proceeding for the Phase I distribution of 1998 cable royalties. If, after consideration of the comments, the Library determines that consolidation is appropriate, the Library will issue an Order to that effect and the schedule described below will apply to the consolidated proceeding.

A. Commencement of the Proceeding

A royalty distribution proceeding under part 251 of 37 CFR is divided into two essential phases. The first is the 45-day precontroversy discovery phase, during which the parties exchange their written direct cases, exchange their documentation and evidence in support of their written direct cases, and engage in the pre-CARP motions practice described in § 251.45. The other phase is the proceeding before the CARP itself, including the presentation of evidence and the submission of proposed findings by all of the participating parties. The proceeding before the CARP may be in the form of hearings or, in accordance with the requirements of § 251.41(b) of the rules, the proceeding may be conducted solely on the basis of written pleadings.

B. Precontroversy Discovery Schedule and Procedures

Any party that has filed a Notice of Intent to Participate in the Phase I 1998 cable distribution proceeding is entitled to participate in the precontroversy discovery period. Each party may request of an opposing party nonprivileged documents underlying facts asserted in the opposing party's written direct case. The precontroversy discovery period is limited to discovery of documents related to written direct cases and any amendments made during the period.

The following is the precontroversy discovery schedule:

Action	Deadline
Filing of Written Direct Cases	April 1, 2002.
Requests for Underlying Documents Related to Written Direct Cases.	April 10, 2002.
Responses to Requests for Underlying Documents.	April 17, 2002.
Completion of Document Production.	April 23, 2002.
Follow-up Requests for Underlying Documents.	April 29, 2002.
Responses to Follow-up Requests.	May 3, 2002.
Motions Related to Document Production.	May 8, 2002.
Production of Documents in Response to Follow-up Requests.	May 10, 2002.
All Other Motions, Petitions, and Objections.	May 15, 2002.

The precontroversy discovery period, as specified by § 251.45(b) of the rules, will begin on April 1, 2002, with the filing of written direct cases by each party. Each party in this proceeding who has filed a Notice of Intent to Participate *must* file a written direct case on the date prescribed above. Failure to submit a timely filed written direct case will result in dismissal of that party's claim. Parties must comply with the form and content of written direct cases as prescribed in 37 CFR 251.43. Each party to the proceeding must deliver a complete copy of its written direct case to each of the other parties to the proceeding, as well as file a complete copy with the Copyright Office by close of business on April 1, 2002, the first day of the 45-day period.

After the filing of the written direct cases, document production will proceed according to the above-described schedule. Each party may request underlying documents related to each of the other parties' written direct cases by April 10, 2002, and responses to those requests are due by April 17, 2002. Documents which are produced as a result of the requests must be exchanged by April 23, 2002. It is important to note that all initial document requests must be made by the April 10, 2002 deadline. Thus, for example, if one party asserts facts that expressly rely on the results of a particular study that was not included in the written direct case, another party desiring production of that study must make its request by April 10, 2002; otherwise, the requesting party is not entitled to production of the study.

The precontroversy discovery schedule also establishes deadlines for follow-up discovery requests. Follow-up requests are due by April 29, 2001, and responses to those requests are due by May 3, 2001. Any documentation produced as a result of a follow-up request must be exchanged by May 10, 2002. An example of a follow-up request would be as follows. In the above example, one party expressly relies on the results of a particular study which is not included in its written direct case. As noted above, a party desiring production of that study or survey must make its request by April 10, 2002. If, after receiving a copy of the study, the reviewing party determines that the study heavily relies on the results of a statistical survey, it would be appropriate for that party to make a follow-up request for production of the statistical survey by the April 29, 2002, deadline. Again, failure to make a timely follow-up request would waive the requesting party's right to request production of the survey.

In addition to the deadlines for document requests and production, there are two deadlines for the filing of precontroversy motions. Motions related to document production must be filed by May 8, 2002. Typically, these motions are motions to compel production of requested documents for failure to produce them, but they may also be motions for protective orders. Finally, all other motions, petitions and objections must be filed by May 15, 2002, the final day of the 45-day precontroversy discovery period. These motions, petitions, and objections include, for example, petitions to dispense with formal hearings under § 251.41(b).

Due to the time limitations between the procedural steps of the precontroversy discovery schedule, we are requiring that all discovery requests and responses to such requests be served by hand or fax on the party to whom such response or request is directed. Filing of requests and responses with the Copyright Office is neither required nor encouraged.

Filing and service of all precontroversy motions, petitions, objections, oppositions, and replies shall be as follows. In order to be considered properly filed with the Librarian and/or Copyright Office, all pleadings must be delivered to the Copyright Office no later than 5 p.m. of the filing deadline date. Parties may deliver the pleadings to: Office of the Register of Copyrights, Room LM–403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC 20540; or alternatively, parties may send their pleadings by Federal Express to: Copyright Arbitration Royalty Panel (CARP), CARP Specialist, (Tel. 202–707–8380), Federal Express, 208 Second Street, SE., Washington, DC 20003, provided that the filing reaches the Copyright Office by the deadline. The Office cautions parties to use only the Federal Express address listed in this Order, to include the telephone number of the Office, and to direct the package to the attention of the CARP Specialist. The Federal Express office will notify the Copyright Office upon receipt of a properly addressed package and the Copyright Office will make arrangements to pick up the package the same day. Under no circumstances will the Office make arrangements to retrieve a package from any other Federal Express location or track a misdirected package. Each party bears the responsibility for insuring that the filings are in the Copyright Office by the deadline.

The form and content of all motions, petitions, objections, oppositions, and replies filed with the Office must be in compliance with §§ 251.44(b)–(e). As provided in § 251.45(b), oppositions to any motions or petitions must be filed with the Office no later than seven business days from the date of filing of such motion or petition. Replies are due five business days from the date of filing of such oppositions. Service of all motions, petitions, objections, oppositions, and replies must be made on counsel or the parties by means no slower than overnight express mail on the same day the pleading is filed.

C. Initiation of Arbitration

The 180-day arbitration period will be initiated on July 15, 2002. The schedule of the arbitration proceeding will be established by the CARP after the three arbitrators have been selected.

Dated: November 15, 2001.

David O. Carson,

General Counsel.

[FR Doc. 01–28996 Filed 11–19–01; 8:45 am]

BILLING CODE 1410–33–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2001–2 CARP DTNSRA and Docket No. 2001–1 CARP DSTRA 2]

Digital Performance Right In Sound Recordings Rate Adjustment Proceedings

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of inquiry and request for notices of intention to participate.

SUMMARY: The Copyright Office of the Library of Congress is requesting comments as to whether the rate adjustment proceeding to determine reasonable rates and terms for the public

performance of sound recordings by new subscription services should be consolidated with the rate adjustment proceeding to determine reasonable rates and terms for the public performance of sound recordings by pre-existing satellite digital audio radio services and pre-existing subscription services. The Office is also calling for submission of Notices of Intent to Participate from parties interested in participating in either or both proceedings.

DATES: Comments and Notices of Intent to Participate are due no later than December 20, 2001. Reply comments are due no later than January 22, 2002.

ADDRESSES: An original and five copies of comments, reply comments and Notices of Intent to Participate, if sent by mail, should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, they should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room LM–403, First and Independence Avenues, SE., Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, PO Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax (202) 252–3423.

SUPPLEMENTARY INFORMATION:

Background

In 1995, Congress passed the Digital Performance Right in Sound Recordings Act, Public Law 104–39, which gave copyright owners of sound recordings an exclusive right to perform publicly their copyrighted works by means of a digital audio transmission, subject to certain limitations and exemptions. 17 U.S.C. 106(6). Among the limitations placed on the performance of a sound recording was the creation of a statutory license for performances made by nonexempt, non-interactive digital subscription services. 17 U.S.C. 114. Initial rates and terms for transmissions made by these services were determined by the Librarian of Congress after a proceeding before a Copyright Arbitration Royalty Panel ("CARP") under chapter 8 of the Copyright Act. 63 FR 25394 (May 8, 1998).

Section 114 was amended with the passage of the Digital Millennium Copyright Act of 1998 ("DMCA"), Public Law 105–304, to create statutory licenses to cover additional digital audio transmissions. These include "eligible nonsubscription transmissions" and those transmissions made by "new subscription services" and "pre-existing satellite digital audio radio services."

On January 9, 2001, the Copyright Office published a **Federal Register** notice initiating a voluntary six-month negotiation period to establish terms and rates for the statutory licenses covering "pre-existing satellite digital audio radio services," and "pre-existing subscription services" (the three subscription services in existence prior to the passage of the DMCA). 66 FR 1700 (January 9, 2001). No agreements were reached. After the close of the negotiation period, the Office received petitions from the Recording Industry Association of America ("RIAA"), and jointly XM Satellite Radio, Inc. and Sirius Satellite Radio, Inc., requesting that the Librarian of Congress convene a CARP to establish terms and rates for the statutory license for pre-existing satellite digital audio radio services. Convocation of these proceedings is pending.

On February 12, 2001, the Copyright Office published a **Federal Register** notice initiating a voluntary six-month negotiation period to establish rates and terms for the statutory license covering new subscription services. 66 FR 9881 (February 12, 2001). No agreements were reached. After the close of the negotiation period, the Office received petitions from Music Choice and RIAA requesting that the Librarian of Congress convene a CARP to establish terms and rates for the statutory license covering new subscription services.

Request for Comments

In its petition to convene a CARP for new subscription services, Music Choice requests the Copyright Office to consolidate the proceeding for new subscription services (Docket No. 2001–2 CARP DTNSRA) with the proceeding for pre-existing satellite digital audio radio services and pre-existing subscription services (Docket No. 2001–1 CARP DSTRA2). Music Choice submits that "[g]ood cause exists to consolidate the two proceedings in the interest of fairness and efficiency." Music Choice petition at 1.

The Library seeks comment as to the advisability of consolidating Docket No. 2001–2 CARP DTNSRA with Docket No. 2001–1 CARP DSTRA2. Can both dockets be handled efficiently and effectively by a single CARP? What are the advantages, if any, of convening separate CARPs for these two dockets?

Request for Notices of Intent To Participate

Section 251.45(a) of the rules, 37 CFR, requires that a Notice of Intention to Participate be filed in order to participate in a CARP proceeding, but it does not prescribe the contents of the Notice. Recently, in another proceeding, the Library has been forced to address the issue of what constitutes a sufficient Notice and to whom it is applicable. See 65 FR 54077 (September 6, 2000); see also Orders in Docket No. 2000–2 CARP CD 93–97 (June 22, 2000, and August 1, 2000). These rulings will result in a future amendment to § 251.45(a) to specify the content of a properly filed Notice. In the meantime, the Office advises those parties filing Notices of Intention to Participate in this proceeding to comply with the following instructions.

Each party wishing to participate in Docket No. 2001–2 CARP DTNSRA, Docket No. 2001–1 CARP DSTRA, or both must file a Notice of Intention to Participate that contains the following: (1) The party's full name, address, telephone number, and facsimile number (if any); (2) identification of whether the Notice covers Docket No. 2001–2 DTNSRA, Docket No. 2001–1 CARP DSTRA, or both; and (3) a statement of the party's intention to fully participate in a CARP proceeding.

Claimants may, in lieu of individual Notices of Intention to Participate, submit joint Notices. In lieu of the requirement that the Notice contain the party's name, address, telephone number and facsimile number, a joint Notice shall provide the full name, address, telephone number, and facsimile number (if any) of the person filing the Notice and it shall contain a list identifying all parties to the joint Notice. In addition, if the joint Notice is filed by counsel or a representative of one or more of the parties identified in the joint Notice, the joint Notice shall contain a statement from such counsel or representative certifying that, as of the date of submission of the joint Notice, such counsel or representative has the authority and consent of the parties to represent them in the CARP proceeding.

Notices of Intention to Participate are due no later than December 20, 2001. Failure to file a timely Notice of Intention to Participate may preclude a party from participating in a CARP proceeding.

Dated: November 13, 2001.

David O. Carson,

General Counsel.

[FR Doc. 01–28995 Filed 11–19–01; 8:45 am]

BILLING CODE 1410–33–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 01–145]

Notice; Correction.

SUMMARY: In the **Federal Register** issue of Tuesday, October 23, 2001 (Volume 66, No. 205), pg. 53640, Notice [01–129], make the following correction: "Dates: All comments should be submitted on or before November 23, 2001" should read "Dates: All comments should be submitted on or before December 23, 2001."

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Small Business and Small Disadvantaged Business Concerns and Related Contract Provisions, NASA FAR Supplement Part 18–19, SF 295.

OMB Number: 2700–0073.

Type of Review: Extension.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 01–28847 Filed 11–19–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 01–144]

Notice; Correction

SUMMARY: In the **Federal Register** issue of Tuesday, October 23, 2001 (Volume 66, No. 205), pg. 53640, Notice [01–130], make the following correction: "Dates: All comments should be submitted on or before November 23, 2001" should read "Dates: All comments should be submitted on or before December 23, 2001."

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Property Management and Controls, Grants.

OMB Number: 2700–0047.

Type of Review: Extension.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 01–28848 Filed 11–19–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Sunshine Act Meeting; Meeting of the National Museum Services Board and the National Commission on Libraries and Information Science

AGENCY: Institute of Museum and Library Services & National Commission on Libraries and Information Science.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board and the National Commission on Libraries and Information Science. This notice also describes the function of the boards. Notice of this meeting is required under the Government through the Sunshine Act (Public Law 94–409) and regulations of the Institute of Museum and Library Services, 45 CFR 1180.84.

TIME/DATE: 2 pm–5 pm on Thursday, December 6, 2001.

STATUS: Open.

ADDRESSES: The Monticello and Arlington Rooms of the Madison Hotel, 15th & M Streets, NW., Washington, DC 20005, (202) 862–1600.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lyons, Special Assistant to the Director, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Room 510, Washington, DC 20506, (202) 606–4649.

SUPPLEMENTARY INFORMATION: The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Public Law 94–462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under the Museum Services Act.

The United States National Commission on Libraries and Information Science (NCLIS) is established under Public Law 91–345 as amended, The National Commission on Libraries and Information Science Act. In accordance with section 5(b) of the Act, the commission has the responsibility for advising the Director of the Institute of Museum and Library Services on general policies relating to library services.

The meeting on Thursday, December 6, 2001 will be open to the public. If you need special accommodations due to a disability, please contact: Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506—(202) 606–8536—TDD (202) 606–8636 at least seven (7) days prior to the meeting date.

Agenda

5th Annual Meeting of The National Museum Services Board and The National Commission on Libraries and Information Science in The Monticello and Arlington Rooms of The Madison Hotel, 15th & M Street, NW., Washington, DC 20005, on Thursday, December 6, 2001

2 pm–5 pm

I. The Chair's Welcome and Minutes of the 4th Annual Meeting
II. Director's Welcome and Opening Remarks
III. 21st Century Learner Conference Report
IV. Webwise 2002: Conference Preview
V. National Leadership Grants
  a. Analysis: National Leadership Grants 2001
  b. Panel and Field Review Process
  c. Discussion: Emerging Issues and Opportunities
VI. National Award for Museum Service/National Award for Library Service
VII. Budget Update: New Opportunities

Dated: November 16, 2001.

Teresa LaHaie,

Administrative Officer, National Foundation on the Arts and Humanities, Institute of Museum and Library Services.

[FR Doc. 01–29065 Filed 11–16–01; 11:50 am]

BILLING CODE 7036–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Sunshine Act Meeting; Meeting of the National Museum Services Board

AGENCY: Institute of Museum and Library Services.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the function of the board. Notice of this meeting is required under the Government through the Federal Advisory Committee Act (5 U.S.C. App.) and regulations of the Institute of Museum and Library Services, 45 CFR 1180.84.

TIME/DATE: 9 am–12 pm on Friday, December 7, 2001.

STATUS: Open.

ADDRESSES: The Monticello and Arlington Rooms of the Madison Hotel, 15th & M Streets, NW., Washington DC 20005, (202) 862–1600.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lyons, Special Assistant to the Director, Institute of Museum and

Library Services, 1100 Pennsylvania Avenue, NW., Room 510, Washington, DC 20506, (202) 606–4649.

SUPPLEMENTARY INFORMATION: The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Public Law 94–462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under the Museum Services Act.

The meeting on Friday, December 7, 2001 will be open to the public. If you need special accommodations due to a disability, please contact: Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW, Washington, DC 20506—(202) 606–8536—TDD (202) 606–8636 at least seven (7) days prior to the meeting date.

Agenda

82nd Meeting of The National Museum Services Board in The Monticello and Arlington Rooms of The Madison Hotel, 15th & M Streets, NW., Washington, DC 20005, on Friday, December 7, 2001.

9 am–12 pm

I. Chairman's Welcome
II. Approval of Minutes from the 81st NMSB Meeting
III. Director's Report
IV. Staff Reports
  (a) Office of Management and Budget
  (b) Office of Public and Legislative Affairs
  (c) Office of Technology and Research
  (d) Office of Museum Services
  (e) Office of Library Services
V. General Operating Support Grants: Program Review
VI. Looking Ahead: General Board Discussion

Dated: November 16, 2001.

Teresa LaHaie,

Administrative Officer, National Foundation on the Arts and Humanities, Institute of Museum and Library Services.

[FR Doc. 01–29066 Filed 11–16–01; 11:51 am]

BILLING CODE 7036–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On October 12, 2001, the National Science Foundation published a notice in the **Federal Register** of a Waste Management permit application received. A Waste Management permit was issued on November 13, 2001 to the following applicant: Anne Kershaw, Adventure Networks International; Permit No.: 2002 WM–003.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 01–28930 Filed 11–19–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND PLACE: 9:30 a.m., Tuesday, November 27, 2001.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The two items are Open to the Public.

MATTERS TO BE CONSIDERED:

7410—Highway Accident Report—Collision Between Metrolink Train 901 and Mercury Transportation, Inc., Tractor-Semitrailer at Highway-Railroad Grade Crossing in Glendale, California, on January 28, 2000.

7411—Railroad Accident Report—Rear-End Collision of National Railroad Passenger Corporation (Amtrak) Train P286 With CSXT Freight Train Q620 on the CSX Railroad at Syracuse, New York, February 5, 2001.

News Media Contact: Telephone: (202) 314–6100. Individuals requesting specific accommodations should contact Ms. Carolyn Daragan at (202) 314–6305 by Friday, November 23, 2001.

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: November 16, 2001.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 01–29170 Filed 11–16–01; 3:29 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–237 and 50–249]

Exelon Generation Company, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–19 and DPR–25, issued to Exelon Generation Company, LLC (Exelon, the licensee), for operation of the Dresden Nuclear Power Station, Units 2 and 3, located in Grundy County, Illinois.

The proposed amendment would allow an increase in the licensed power level from 2527 megawatts thermal (MWt) to 2957 MWt. This change represents an increase of approximately 17 percent above the current licensed thermal power at Dresden Nuclear Power Station, Units 2 and 3, and is considered an extended power uprate. The proposed amendment would also change the operating licenses and the technical specifications appended to the operating licenses to provide for implementing uprated power operation.

The original amendment request, dated December 27, 2000, was submitted by Commonwealth Edison Company (ComEd). ComEd was subsequently merged into Exelon Generation Company, LLC. By letter dated February 7, 2001, Exelon informed the NRC that it assumed responsibility for all pending NRC actions that were requested by ComEd. The original application was supplemented by letters dated February 12, April 6 and 13, May 3, 18, and 29, June 5, 7, and 15, July 6 and 23, August 7, 8, 9, 13 (two letters), 14 (two letters), 29, and 31 (two letters), September 5 (two letters), 14, 19, 25, 26, and 27 (two letters), and November 2, 2001 (two letters).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By December 20, 2001, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the

Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland or electronically on the Internet at the NRC Web site *http://www.nrc.gov/NRC/CFR/index.html*. If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition must specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest. The petition must also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amendment petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene that must include a list of the contentions that the petitioner seeks to have litigated in the hearing. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of each contention and a concise statement of the alleged facts or expert opinion that support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the copies of the amendment under consideration. The contention must be on that, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement that satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing and petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the request for a hearing and the petition should be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. Edward J. Cullen, Jr., Vice President and General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated December 27, 2000, as supplemented by letters dated February 12, April 6 and 13, May 3, 18, and 29, June 5, 7, and 15, July 6 and 23, August 7, 8, 9, 13 (two letters), 14 (two letters), 29, and 31 (two letters), September 5 (two letters), 14, 19, 25, 26, and 27 (two letters), and November 2, 2001 (two letters), which are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 115555 Rockville Pike (first floor). Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 9th day of November 2001.

For the Nuclear Regulatory Commission.

Lawrence W. Rossbach,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–29101 Filed 11–19–01; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of November 19, 26, December 3, 10, 17, 24, 2001.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 19, 2001

There are no meetings scheduled for the Week of November 26, 2001.

Week of December 3, 2001—Tentative

Monday, December 3, 2001

2 p.m.—Briefing on Status of Steam Generator Action Plan (Public

Meeting), (Contact: Maitri Banerjee, 301–415–2277).

Wednesday, December 5, 2001

1:25 p.m.—Affirmation Session (Public Meeting) (if needed).

1:30 p.m.—Meeting with Advisory Committee on Reactor Safeguards (ACRS), (Public Meeting) (Contact: John Larkins, 301–415–7360).

Week of December 10, 2001—Tentative

There are no meetings scheduled for the Week of December 10, 2001.

Week of December 17, 2001—Tentative

There are no meetings scheduled for the Week of December 17, 2001.

Week of December 24, 2001—Tentative

There are no meetings scheduled for the Week of December 24, 2001.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

ADDITIONAL INFORMATION: By a vote of 5–0 on November 14, the Commission determined pursuant to U.S.C. 552b(e) and 9.107(a) of the Commission's rules that "Affirmation of (a) International Uranium (USA) Corp. White Mesa Uranium Mill Review of LBP–01–15; (b) Private Fuel Storage (Independent Spent Fuel Storage Installation) Docket No. 72–22–ISFSI; Review of LBP–01–19, 53 NRC 416 (May 31, 2001); and (c) U.S. Enrichment Corporation; Pace's Petition for Review of Director's Decision on the Paducah Upgrade Amendment" be held on November 14, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the internet at: *http://www.nrc.gov*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please sent an electronic message to *dkw@nrc. gov.*

Dated: November 15, 2001.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 01–29108 Filed 11–16–01; 1:12 pm]

BILLING CODE 4510–30–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3374]

State of Indiana; (And Contiguous Counties in the State of Michigan)

Elkhart and St. Joseph Counties and the contiguous Counties of Kosciusko, LaGrange, La Porte, Marshall, Noble and Starke in the State of Indiana; and Berrien, Cass and St. Joseph Counties in the State of Michigan constitute a disaster area due to damages caused by severe storms and tornadoes that occurred October 24, 2001. Applications for loans for physical damage may be filed until the close of business on January 14, 2002 and for economic injury until the close of business on August 13, 2002 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.500
Homeowners without credit available elsewhere	3.250
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	6.375
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 337411 for Indiana and 337511 for Michigan. For economic injury, the numbers are 9N2900 for Indiana and 9N3000 for Michigan.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: November 13, 2001.

John Whitmore,

Acting Administrator.

[FR Doc. 01–28916 Filed 11–19–01; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During Week Ending November 2, 2001

The following Agreements were filed with the Department of Transportation under provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the applications.

Docket Number: OST–2001–10915.
Date Filed: October 29 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC23 ME–TC3 0125 dated 30 October 2001, Mail Vote 171—Resolution 010e, TC23 Middle East—South East Asia, Special Passenger Amending Resolution, Intended effective date: December 1, 2001.

Docket Number: OST–2001–10924.
Date Filed: October 30, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC23 EUR–SEA 0120 dated October 5, 2001, PTC23 EUR–SEA 0124 dated November 2, 2001, Mail Vote 166—TC23/TC123 Europe-South East Asia, Expedited Resolutions, Intended effective date: November 15, 2001.

Docket Number: OST–2001–10926.
Date Filed: October 30, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC23 EUR–SEA 0125 dated November 2, 2001, Mail Vote 167—TC23/TC123 Europe-South East Asia, Expedited Resolutions, Intended effective date: January 1, 2002.

Docket Number: OST–2001–10956.
Date Filed: November 2, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC12 NMS–ME 0001 dated November 6, 2001, Mail Vote 176—Resolution 010j, TC12 North/Mid/South Atlantic-Middle East, Special Passenger Amending Resolution, Intended Effective Date: November 15, 2001.

Andrea M. Jenkins,

Federal Register Liaison.

[FR Doc. 01–28914 Filed 11–19–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending November 2, 2001

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's procedural regulations (See 14 CFR 301.201 *et seq.*). The due date for answers, conforming applications, or motions to modify scope are set forth below for each application. Following the answer

period, DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2001–10928.

Date Filed: October 30, 2001.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 20, 2001.

Description: Application of Dutch Caribbean Airline N.V. d/b/a Dutch Caribbean Express (DCE), pursuant to 49 U.S.C. section 41302 and subpart B, requesting a foreign air carrier permit authorizing DCE to engage in scheduled foreign air transportation of persons, property and mail from behind the Netherlands Antilles via the Netherlands Antilles and intermediate points to a point or points in the United States and beyond, and to operate charters to and from the US in accordance with DOT's regulations.

Andrea M. Jenkins,

Federal Register Liaison.

[FR Doc. 01–28915 Filed 11–19–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2001–10403]

Information Collections Under Review by the Office of Management and Budget (OMB): 2115–0503, 2115–0543, 2115–0553, 2115–0579, 2115–0094, and 2115–0582

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded the six Information Collection Reports (ICRs) abstracted below to OMB for review and comment. Our ICRs describe the information we seek to collect from the public. Review and comment by OMB ensure that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before December 20, 2001.

ADDRESSES: Please send comments to (1) the Docket Management System (DMS), U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001; and (2) the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), 725 17th Street NW., Washington, DC 20503, to the attention of the Desk Officer for the USCG.

Copies of the complete ICRs are available for inspection and copying in public docket USCG 2001–10403 of the Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the internet at *http://dms.dot.gov;* and for inspection from the Commandant (G–CIM–2), U.S. Coast Guard, room 6106, 2100 Second Street SW., Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Regulatory History

This request constitutes the 30-day notice required by OMB. The Coast Guard has already published [66 FR 45072 (August 27, 2001)] the 60-day notice required by OMB. That notice elicited no comments.

Request for Comments

The Coast Guard invites comments on the proposed collections of information to determine whether the collections are necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the Department's estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, to DMS or OIRA, must contain the OMB Control Numbers of all ICRs addressed. Comments to DMS must contain the docket number of this request, USCG 2001–10403. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Requests

1. *Title:* Plan Approval and Records for Vessels Carrying Oil in Bulk.

OMB Control Number: 2115–0503.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of vessels.

Forms: This collection of information does not require the public to fill out Coast Guard forms, but does require the owners of vessels to submit plans, calculations, specifications and manuals to the Coast Guard Marine Safety Center for review.

Abstract: This information collection aids the Coast Guard in determining whether a vessel complies with certain standards of safety and environmental protection.

Annual Estimated Burden Hours: The estimated burden is 443 hours a year.

2. *Title:* Advance Notice and Certification of Adequacy for Reception Facilities.

OMB Control Number: 2115–0543.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of reception facilities, and owners and operators of vessels.

Form: CG–5401, CG–5401A, CG–5401B, and CG–5401C.

Abstract: This information collection is needed to evaluate the adequacy of reception facilities before issuance of a Certificate of Adequacy. Information for the advance notice ensures effective management of reception facilities and reduces the burden to facilities and ships.

Annual Estimated Burden Hours: The estimated burden is 1,215 hours a year.

3. *Title:* Approval of Equivalent Equipment or Procedures Other Than Those Specified by Rule.

OMB Control Number: 2115–0553.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of facilities in the Outer Continental Shelf (OCS).

Form: This collection of information does not require the public to fill out Coast Guard forms, but does require the public to submit their information by letter or e-mail.

Abstract: This information collection implements the concept of Best Available and Safest Technology provided for in section 21 of the Outer-Continental-Shelf (OCS) Lands Act, as amended. The information allows owners and operators to propose, for approval by the Coast Guard, alternative equipment or procedures that would provide a comparable level of safety.

Annual Estimated Burden Hours: The estimated burden is 50 hours a year.

4. *Title:* Application for Permit to Transport Municipal and Commercial Waste.

OMB Control Number: 2115–0579.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of vessels.

Form: This collection of information does not require the public to fill out Coast Guard forms, but does require the owner or operator of a vessel to apply for a permit to transport waste.

Abstract: This information collection provides the basis for issuing or denying a permit for the transportation of municipal or commercial waste in the coastal waters of the United States.

Annual Estimated Burden Hours: The estimated burden is 391 hours a year.

5. *Title:* Safety Approval of Cargo Containers.

OMB Control Number: 2115–0094.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and manufacturers of containers, and organizations that the Coast Guard delegates to act as Approval Authorities.

Form: This collection of information does not require the public to fill out Coast Guard forms, but does require the public to formulate their own applications to apply for approval of their cargo containers.

Abstract: This information collection requires owners and manufactures of cargo containers to submit information and keep records associated with the approval and inspection of those containers. This information is needed to ensure compliance with the International Convention for Safe Containers (CSC).

Annual Estimated Burden Hours: The estimated burden is 101,732 hours a year.

6. *Title:* Safety of Vessels in the Commercial Fishing Industry.

OMB Control Number: 2115–0582.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners, agents, individuals-in-charge of vessels in the commercial fishing industry, and insurance underwriters.

Form: This collection of information does not require the public to fill out Coast Guard forms, but does require each affected member of the public to submit a letter of attestation, an exemption request, or a request for acceptance as a qualified instructor.

Abstract: This information collection is intended to improve safety on board vessels in the commercial fishing industry.

Annual Estimated Burden Hours: The estimated burden is 8,205 hours a year.

Dated: November 9, 2001.

V.S. Crea,

Director of Information and Technology.

[FR Doc. 01–28965 Filed 11–19–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Federally Obligated Property Release at Outlaw Field, Clarksville, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: Under the provisions of Title 49, U.S.C. section 47153(c), notice is being given that the FAA is considering a request from the Clarksville/Montgomery County Regional Airport Authority to waive the requirement that a 0.466-acre parcel of federally obligated property, located at Outlaw Field, be used for aeronautical purposes.

DATES: Comments must be received on or before December 20, 2001.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 3385 Airways Boulevard, Suite 302, Memphis, TN 38116–3841.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John Jackson, Chairman of the Clarksville/Montgomery County Regional Airport Authority at the following address: 200 Airport Road, Clarksville, TN 37042.

FOR FURTHER INFORMATION CONTACT: Cynthia K. Willis, Program Manager, Memphis Airports District Office, 3385 Airways Boulevard, Suite 302, Memphis, TN 38116–3841, (901) 544–3495 extension 16. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by Clarksville/Montgomery County Regional Airport Board to release 0.466 acres of federally obligated property at Outlaw Field. The property will be purchased by the State of Tennessee Department of Transportation and used for the widening of Tiny Town Road. The land is located at the intersection of Tiny Town Road and Outlaw Field Road, which is an area north of Runway 17. Release of the property will allow for a realignment at the intersection of Outlaw Field Road and Tiny Town Road due to the widening of Tiny Town Road from two lanes to five lanes by the State of Tennessee Department of Transportation. The net proceeds from the non-aeronautical use or the sale of this property will be used for airport purposes.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Clarksville/Montgomery County Regional Airport Authority.

Issued in Memphis, Tennessee on November 13, 2001.

LaVerne F. Reid,

Manager, Memphis Airports District Office, Southern Region.

[FR Doc. 01–28939 Filed 11–19–01; 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.

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 two new tasks concerning quality assurance and ratings for aeronautical repair stations.

DATES: The meeting will be held on December 5, 2001, from 9:00 a.m. to 5:00 p.m. Arrange for teleconference capability and presentations by November 28, 2001.

ADDRESSES: The meeting will be held at the Federal Aviation Administration. 800 Independence Avenue, SW., Room 1010, MacCracken Room, Washington, DC 20591.

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 (Pub. L. 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 December 5, 2001, from 9:00 a.m. to 5:00 p.m. at the Federal Aviation Administration, 800 Independence Avenue, SW., Room 1010, Washington, DC 20591.

Meeting Agenda

9:00 a.m. Opening remarks and committee administration

9:30 a.m. Overview of comments on repair station ratings submitted to FAA in response to public meetings held in 1989
9:50 a.m. Break
10:00 a.m. Overview of comments on repair station ratings submitted to FAA in response to FAA's 1999 proposal to revise repair stations regulations
10:50 a.m. Break
11:00 a.m. Discussion of ratings systems
12:00 p.m. Lunch
1:00 p.m. Continued discussion of ratings systems
1:50 p.m. Break
2:00 p.m. Overview of comments on quality assurance submitted to FAA in response to FAA's 1999 proposal to revise repair station regulations
2:50 p.m. Break
3:00 p.m. Discussion of quality assurance contractual and regulatory requirements
3:50 p.m. Break
4:00 p.m. Discussion of various repair station operations and the need for quality assurance systems
4:30 p.m. Discussion of future meeting dates, locations, activities, and plans
5:00 p.m. Adjourn

Attendance is open to the interested 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 before November 28, 2001. 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.

The public must make arrangements by November 28, 2001, 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 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 an assistive listening device, if requested by November 28, 2001. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Security Information

Visitors must provide a valid identification (e.g., driver's license or passport), be logged-in as a Visitor, and be issued a paper ID indicating Visitor status before being allowed entry into the building. Please prominently display your government-issued identification at all times while visiting FAA Headquarters. Visitors are permitted to enter FAA Headquarters only if escorted by a FAA employee. Visitors must be escorted throughout the building for the duration of their visit, including as they exit at the conclusion of their business on site.

Acts of violence both here and overseas make these security measures both prudent and necessary. Your cooperation and support will facilitate our ability to maintain a safe and secure working environment for everyone.

Issued in Washington, DC, on November 4, 2001.

James J. Ballough,

Assistant Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 01–28930 Filed 11–19–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: St. Charles and St. Louis Counties, MO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advice the public that an environmental impact statements (EIS) will be prepared for a proposed new bridge location of U.S. Route 40 and Interstate 64 over the Missouri River in St. Charles and St. Louis Counties, Missouri.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Casey, Environmental Projects Engineer, FHWA Division Office, 209 Adams Street, Jefferson City, MO 65101, Telephone: (573) 636–7104; or Mr. Dave Nichols, Director of Project Development, Missouri Department of Transportation, PO. Box 270, Jefferson City, MO 65102, Telephone Number: (573) 751–4586.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Department of Transportation (MoDOT), will prepare an EIS on a proposal to replace the existing westbound I–64 (U.S. Route 40) bridge over the Missouri River with a new bridge and appurtenant roadways/structures in St. Charles and St. Louis Counties, Missouri. The existing westbound bridge was completed in 1935. A location study will run concurrently with the preparation of the EIS and will provide definitive alternatives for evaluation in the EIS. The proposed action will accomplish several goals:

(1) Improve safety and capacity for through traffic, (2) replace the aging westbound bridge over the Missouri River, and (3) promote economic development in the counties involved.

The proposed project begins 0.5 mile east of the U.S. Route 40 and Route 94 interchange in St. Charles County and continues easterly to 0.6 mile east of the Chesterfield Airport Road interchange in St. Louis County. The project in approximately 1.9 miles in length. The proposed new bridge location will provide for a 3 or 4-lane crossing of the Missouri River.

Alternatives under consideration include (1) No build. (2) build alternatives north or south of the existing bridge and (3) transportation system management options.

To date, preliminary information has been issued to local officials and other interested parties. As part of the scoping process, an interagency meeting will be held with federal, state, and local agencies. In addition, public information meetings, and community official meetings will be held to solicit public and agency input and to engage the regional community in the decision making process. A location public hearing will be held to present the findings of the draft EIS (DEIS). The DEIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or MoDOT at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: November 13, 2001.

Peggy J. Casey,

Environmental Projects Engineer, Jefferson City.

[FR Doc. 01–28909 Filed 11–19–01; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The nature of the information collection is described as well as its expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 24, 2001. One comment was received. The writer indicated enforcement of U.S. citizenship requirements is necessary in order to protect current and future investment in U.S.-flag tonnage by U.S. citizens.

DATES: Comments must be submitted on or before December 20, 2001.

FOR FURTHER INFORMATION CONTACT: Philip Budwick, MaritimeAdministration, MAR–222, 400 Seventh Street, SW., Washington, DC 20590. Telephone: 202–366–5167 or FAX: 202–366–7485. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Requirements for Establishing U.S. Citizenship (46 CFR part 355).

OMB Control Number: 2133–0012.

Type of Request: Extension of currently approved collection.

Affected Public: Shipowners, Charterers, Equity Owners, Ship Managers.

Form(s): Special Format.

Abstract: In accordance with 46 CFR part 355, shipowners, charterers, equity owners, ship managers, etc., seeking benefits provided by statute are required to provide on an annual basis, an Affidavit of U.S. Citizenship to the Maritime Administration (MARAD) for analysis. The Affidavits of U.S. Citizenship filed with MARAD will be reviewed to determine if the applicants are eligible to participate in the programs offered by the agency.

Annual Estimated Burden Hours: 1500 hours.

Addressee: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

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 information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC on November 14, 2001.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 01–28903 Filed 11–19–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34086 (Sub-No. 1)]

The Columbia and Cowlitz Railway Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No. 34086 [1] to permit the trackage rights to expire, as they relate to the operations extending between Rocky Point and Longview, on March 1, 2002.

DATES: This exemption is effective on December 20, 2001. Petitions to reopen must be filed by December 10, 2001.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34086 (Sub-No. 1) must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioner's representative Stephen L. Day, Esq., Betts Patterson Mines, P.S., One Convention Place, 701 Pike Street, Suite 1400, Seattle, WA 98101–3927.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. (TDD for the hearing impaired: 1 (800) 877–8339.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dā 2 Dā Legal, Suite 405, 1925 K Street, NW., Washington, DC 20006. Telephone: (202) 293–7776. (Assistance for the hearing impaired is available through TDD services 1 (800) 877–8339.)

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: November 9, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 01–28842 Filed 11–19–01; 8:45 am]

BILLING CODE 4915–00–P

[1] On August 27, 2001, The Columbia and Cowlitz Railway Company (CLC) filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the trackage rights agreement (agreement) by The Burlington Northern and Santa Fe Railway Company (BNSF) to grant temporary overhead trackage rights to CLC over BNSF's line between Rocky Point, WA (BNSF milepost 95.8), and Longview, WA (BNSF milepost 101.1), a distance of 5.3 miles. *See The Columbia and Cowlitz Railway Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 34086 (STB served Sept. 14, 2001). The agreement is scheduled to expire on March 1, 2002. The trackage rights operations under the exemption were scheduled to be consummated on September 3, 2001.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34088 (Sub–No. 1)]

The Columbia and Cowlitz Railway Company—Trackage Rights Exemption—The Longview Switching Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No. 34088 [1] to permit the trackage rights to expire, as they relate to the operations

[1] On August 27, 2001, The Columbia and Cowlitz Railway Company (CLC) filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the trackage rights agreement (agreement) by The Longview Switching Company (LSC) to grant temporary overhead trackage rights to CLC over LSC's line between Columbia Junction, WA, and Longview Junction, WA. *See The Columbia and Cowlitz Railway Company—Trackage Rights Exemption—The Longview Switching Company*, STB Finance Docket No. 34088 (STB served Sept. 14, 2001). The agreement is scheduled to expire on March 1, 2002. The trackage rights operations under the exemption were scheduled to be consummated on September 3, 2001.

extending between Columbia Junction and Longview Junction, on March 1, 2002.

DATES: This exemption is effective on December 20, 2001. Petitions to reopen must be filed by December 10, 2001.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34088 (Sub-No. 1) must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioner's representative Stephen L. Day, Esq., Betts Patterson Mines, P.S., One Convention Place, 701 Pike Street, Suite 1400, Seattle, WA 98101–3927.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: 1 (800) 877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dā 2 Dā Legal, Suite 405, 1925 K Street, NW., Washington, DC 20006. Telephone: (202) 293–7776. [Assistance for the hearing impaired is available through TDD services 1 (800) 877–8339.]

Board decisions and notices are available on our Website at *www.stb.dot.gov.*

Decided: November 9, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 01–28841 Filed 11–19–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34114]

Yolo Shortline Railroad Company—Lease and Operation Exemption—Port of Sacramento

Yolo Shortline Railroad Company (Yolo), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to lease from the Port of Sacramento (Port) and to operate approximately 3.1 miles of rail line (known as the Sacramento-Yolo Port Belt Railroad) in West Sacramento, CA. The Port granted Yolo exclusive occupancy and operating rights on portions of the Port's trackage.[1] The rail lines extend from: (1) Engineer's Station 0.0 to Engineer's Station 24+62; (2) Engineer's Station 39+88 to Engineer's Station 62+29; and (3) Engineer's Station 107+33 to Engineer's Station 149+44. Yolo certifies that its projected annual revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier.

The transaction was expected to be consummated on or about October 31, 2001.

If the notice contains false or misleading information. the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34114, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Mr. David Magaw, President, Yolo Shortline Railroad Company, 341 Industrial Way, Woodland, CA 95776.

Board decisions and notices are available on our website at: *www.stb.dot.gov.*

Decided: November 6, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–28401 Filed 11–19–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 185X)]

Union Pacific Railroad Company—Abandonment Exemption—in Pulaski County, AR

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to abandon a 0.63-mile rail line over the Junction Bridge Line from milepost 343.65 to milepost 343.02, and a 2.1-mile rail line over the Rock Street Industrial Lead from the Amtrak connection near milepost 345.3 to milepost 347.4 near E. 6th Street, a total distance of 2.73 miles, in Pulaski County, Little Rock, AR. The lines traverse United States Postal Service Zip Codes 66607 and 66612.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) the lines have a history of limited erratic use as an overhead route, but all such traffic can be rerouted over other UP rail lines in the area; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 20, 2001, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 30, 2001. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 10, 2001, with: Surface Transportation

[1] Port states that, in West Sacramento, it owns and maintains approximately 8 miles of railroad trackage of which it is leasing approximately 3.1 miles to Yolo. The remainder of the trackage is spurs and sidings within the Port's fenced-in industrial area that serves the Port and its various tenants and customers. The Port will retain the control and maintenance of its trackage within the fenced area of the Port's property, and Yolo will be the rail carrier providing direct service to the Port.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. See 49 CFR 1002.2(f)(25).

Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Mack H. Shumate, Jr., Senior General Attorney, Union Pacific Railroad Company, 101 North Wacker Drive, Room 1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

UP has filed an environmental report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. SEA will issue an environmental assessment (EA) by November 23, 2001. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by UP's filing of a notice of consummation by November 20, 2002, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at: *WWW.STB.DOT.GOV*.

Decided: November 6, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–28503 Filed 11–19–01; 8:45 am]

BILLING CODE 4915–00–P

Federal Register

Tuesday,
November 20, 2001

Part II

General Services Administration

41 CFR Part 300–2, et al.
Federal Travel Regulation; Relocation Allowances; Final Rule

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 300–2, 300–3, 300–70 and Ch. 302

[FTR Amendment 98]

RIN 3090–AG93

Federal Travel Regulation; Relocation Allowances

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) for relocation allowances. This amendment is written in plain language using a question and answer format in continuation of the General Services Administration's (GSA's) effort to make the FTR easier to understand and to use. These changes provide greater flexibility for agencies to authorize and approve relocation expenses.

EFFECTIVE DATE: This final rule is effective February 19, 2002.

FOR FURTHER INFORMATON CONTACT: Jim Harte, Travel Management Policy, telephone (202) 501–1538.

SUPPLEMENTARY INFORMATION:

A. Background

This amendment is written in "plain language" as a continuation of the General Services Administration's (GSA) effort to make the FTR easier to understand and use.

What Is the "Plain Language" Style of Regulation Writing?

The "plain language" style of regulation writing is a new, simpler to read and understand, question and answer regulatory format. Questions are in the first person, and answers are in the second person. GSA uses a "we" question when referring to an agency, and an "I" question when referring to the employee. However, the rules stated in either instance apply to both the agency and the employee.

What Are the Significant Changes?

1. Part 300–3, Glossary of Terms, is amended by adding new terms and revises the definition of household goods (HHG) by removing the exclusion of small boats and adding ultra light vehicles.

2. Section 300–70.2 is amended to require agencies to report the administrative cost associated with their processing of travel authorizations and travel vouchers. This requirement is necessary to substantiate administrative cost savings associated with the JFMIP recommendations to simplify and streamline the entire travel process from start to finish.

3. Part 302–1, Applicability, General Rules and Eligibility Conditions, is designated and renumbered Part 302–1, General Rules.

4. Part 302–2, Allowances for Subsistence and Transportation, is designated Part 302–2, Employee Eligibility Requirements.

5. Section 302–2.6 increases the mileage distance for a short-distance relocation requirement from 10 miles to 50 miles.

6. Section 302–2.11 increases the maximum length of time for which agencies are authorized to extend the eligibility period for employees to incur reimbursable relocation expenses from one year to two years.

7. Part 302–3, Allowances for Miscellaneous Expenses, becomes part 302–16.

8. Section 302–4.201 revises the computation of en route per diem for relocation travel by eliminating the one-fourth of the prescribed per diem rate for each one-fourth of the prescribed minimum driving distance and replacing it with the same per diem rate prescribed for temporary duty travel-75% of the applicable M&IE allowance for the first day of travel and last day of travel.

9. Sections 302–16.12(a) and (b) are revised to increase the miscellaneous expense flat rate allowances from $350 to $500 for an employee without immediate family and from $700 to $1000 for an employee with immediate family.

10. Part 302–4, Allowance for Househunting Trip Expenses, is redesignated as part 302–5 and remains unchanged except for references and by adding a new question 302–5.18 which clarifies that any balance, after expenses incurred, under fixed amount reimbursement belongs to the employee.

11. Part 302–5, Allowances for Temporary Quarters Subsistence Expenses, is redesignated as part 302–6 and remains unchanged except for references and by adding a new question 302–6.203 which clarifies that any balance, after expenses incurred under fixed amount reimbursement belongs to the employee.

12. Section 302–6.12 corrects cross references.

13. Section 302–6.4(b) increases the mileage distance from 40 to 50 miles, via a usually traveled surface route, for the authorization of temporary quarters subsistence expense allowance.

14. Section 302–6.104 is revised to allows agency flexibility to authorize TQSE in less than 30-day increments.

15. Part 302–6, Allowances for Expenses Incurred in Connection with Residence Transaction, is redesignated as part 302–11.

16. Part 302–7, Transportation of Mobile Home, is redesignated as part 302–10.

17. Part 302–8, Transportation and Temporary Storage of Household Goods and Professional Books, Papers and Equipment, is redesignated as part 302–7.

18. New § 302–7.303 is added to authorize the shipment of professional books, papers and equipment (PBP&E) from an OCONUS location upon returning to CONUS for separation from the OCONUS assignment, provided that the PBP&E was transported to the OCONUS location at the expense of the Government.

19. Part 302–9, Allowances for Nontemporary Storage of Household Goods, is redesignated as part 302–8 and the term "Nontemporary Storage" is revised to read "Extended Storage".

20. Part 302–10, Allowances for Transportation and Emergency Storage of a Privately Owned Vehicle, is redesignated as part 302–9 and remains unchanged except for references.

21. Part 302–11, Relocation Income Tax (RIT) Allowance, is redesignated as part 302–17 and remains as it currently appears in the CFR, except that only the latest published RIT allowance tables appear in Appendices A, B, C, and D.

22. Subparts A and B of part 302–12 are reversed and renumbered accordingly. The part designation and text remain the same.

23. Part 302–13 is reserved.

24. Part 302–14, Home Marketing Incentive Payments, remains as it currently appears in the CFR.

25. Part 302–15, Allowances for Property Management Services, remains as it currently appears in the CFR.

26. The term "nontemporary storage" in sections 302–17.3(c): 302–17.4(c); and 302–17.7(b) is revised to read "extended storage".

27. Part 302–11 (redesignated as part 302–17, Relocation Income Tax (RIT) Allowance) has not been rewritten and remains as it currently appears in the CFR. The part is currently under review by the Internal Revenue Service.

The following redesignation table is provided for the convenience of the reader:

Old part	New part
302–1	302–1 & 302–2.
302–1, Subparts A, B & C	302–3
302–2	302–4
302–3	302–16

Old part	New part
302–4	302–5
302–5	302–6
302–6	302–11
302–7	302–10
302–8	302–7
302–9	302–8
302–10	302–9
302–11	302–17
302–12	302–12
302–14	302–14
302–15	302–15

B. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment. Therefore, the Regulatory Flexibility Act does not apply.

C. Executive Order 12866

GSA has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This rule also is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Chapters 300 and 302

Government employees, Entitlements and transfers, Relocation allowances, Travel and transportation expenses.

For the reasons set forth in the preamble, 41 CFR Ch. 300 is amended and Ch. 302 is revised as follows:

CHAPTER 300—[AMENDED]

PART 300–2—HOW TO USE THE FTR

1. The authority citation for 41 CFR part 300–2 continues to read as follows:

Authority: 5 U.S.C. 5707; 5 U.S.C. 5738; 5 U.S.C. 5741–5742; 20 U.S.C. 905(a); 31 U.S.C. 1353; 40 U.S.C. 486(c); 49 U.S.C. 40118; E.O. 11609, 3 CFR, 1971–1975 Comp., p. 586.

2. Section 300–2.22 is amended by revising the table to read as follows:

§ 300–2.22 Who is subject to the FTR?

* * * * *

For	The employee provisions are contained in	And the agency provisions are contained in
Chapter 301	Subchapters A, B, and C	Subchapter D.
Chapter 302	Subparts A, B, C, D, E, F, and G	Subparts A, B, C, D, E, F and G.
Chapter 303	N/A	Subparts A, B, C, D, E and F.

Part 300–3—GLOSSARY OF TERMS

3. The authority citation for 41 CFR part 300–3 continues to read as follows:

Authority: 5 U.S.C. 5707; 5 U.S.C. 5738, 5 U.S.C. 5741–5742; 20 U.S.C. 905(a); 31 U.S.C. 1353; 40 U.S.C. 486(c); 49 U.S.C. 40118; E.O. 11609, 3 CFR, 1971–1975 Comp., p. 586.

4. Section 300–3.1 is amended by adding in alphabetical order the following definitions:

§ 300–3.1 What do the following terms mean?

* * * * *

Agency—For purposes of chapter 302 *agency* means:

(1) An executive agency as defined in Title 5 U.S.C. 105 (an executive department an independent, establishment, the General Accounting Office, or a wholly owned Government corporation as defined in section 101 of the Government Corporation Control Act, as amended (31 U.S.C. 9101), but excluding a Government controlled corporation);

(2) A military department;

(3) A court of the United States;

(4) The Administrative Office of the United States Courts;

(5) The Federal Judicial Center;

(6) The Library of Congress;

(7) The United States Botanic Garden;

(8) The Government Printing Office; and

(9) The District of Columbia.

* * * * *

Commuted Rate—A price rate used to calculate a set amount to be paid to an employee for the transportation and temporary storage of his/her household goods. It includes cost of line-haul transportation, packing/unpacking, crating/uncrating, drayage incident to transportation and other accessorial charges and costs of temporary storage within applicable weight limit for storage including handling in/out charges and necessary drayage.

* * * * *

Extended Storage—Storage of household goods while an employee is assigned to an official station or post of duty to which he/she is not authorized to take or unable to use the household goods or is authorized in the public interest. Also referred to as nontemporary storage.

* * * * *

Household Goods (HHG)—Property, unless specifically excluded, associated with the home and all personal effects belonging to an employee and immediate family members on the effective date of the employee's change of official station orders (the day the employee reports for duty at the new official station) that legally may be accepted and transported by a commercial HHG carrier.

(1) HHG also includes:

(i) Professional Books, papers and equipment (PBP&E);

(ii) Spare parts of a POV (see definition of POV) and a pickup truck tailgate when removed);

(iii) Integral or attached vehicle parts that must be removed due to high vulnerability to pilferage or damage, (e.g., seats, tops, wench, spare tire, portable auxiliary gasoline can(s) and miscellaneous associated hardware);

(iv) Consumable goods for employees assigned to locations where the Department of State has determined that such goods are necessary;

(v) Vehicles other than POVs (such as motorcycles, mopeds, jet skies, snowmobiles, golf carts, boats that can be transported in the moving van (e.g., canoe, kayak, rowboat, O/I motorboat (14 ft or less)).

(vi) Ultralight Vehicles (defined in 14 CFR part 103 as being single occupant, for recreation or sport purposes, weighing less than 155 pounds if unpowered or less than 254 pounds if powered, having a fuel capacity NTE 5 gallons, airspeed NTE 55 knots, and power-off stall speed NTE 24 knots.

(2) HHG does not include:

(i) Personal baggage when carried free on tickets;

(ii) Automobiles, trucks, vans and similar motor vehicles, mobile homes, camper trailers, and farming vehicles;

(iii) Live animals including birds, fish, reptiles;

(iv) Cordwood and building materials;

(v) HHG for resale, disposal or commercial use rather than for use by employee and immediate family members;

(vi) Privately owned live ammunition; and

(vii) Propane gas tanks.

(3) Federal, State and local laws or carrier regulations may prohibit commercial shipment of certain articles not included in paragraph (2) of this definition. These articles frequently include:

(i) Property liable to impregnate or otherwise damage equipment or other property (e.g., hazardous articles including explosives, flammable and corrosive material, poisons);

(ii) Articles that cannot be taken from the premises without damage to the article or premises;

(iii) Perishable articles (including frozen foods) articles requiring refrigeration, or perishable plants unless;

(*a*) Shipment is to be transported not more than 150 miles and/or delivery accomplished within 24 hours from the time of loading,

(*b*) No storage is required, and

(*c*) No preliminary or en route services (e.g., watering or other preservative method) is required of the carrier.

* * * * *

Mobile Home—Any type of house trailer or mobile dwelling constructed for use as a residence and designed to be moved overland, either by self-propulsion or towing. Also, a boat (houseboat, yacht, sailboat, etc.) when used as the employee's primary residence.

* * * * *

Professional Books, Papers and Equipment (PBP&E)—Includes, but is not limited to, the following items in the employee's possession when needed by the employee in the performance of his/her official duties:

(1) Reference material;

(2) Instruments, tools, and equipment peculiar to technicians, mechanics and members of the professions;

(3) Specialized clothing (*e.g.*, diving suits, flying suits, helmets, band uniforms, religious vestments and other special apparel); and

(4) Communications equipment used by the employee in association with the MARS (see DoD 4650.2, Military Affiliate Radio System (MARS) which is available electronically from the world wide web at *http://web7.whs.osd.mil*).

* * * * *

Temporary Storage—Storage of HHG for a limited period of time at origin, destination or en route in connection with transportation to, from, or between official station or post of duty or authorized alternate points. Also referred to as storage in transit (SIT).

PART 300–70—AGENCY REPORTING REQUIREMENTS

5. The authority citation for 41 CFR part 300–70 continues to read as follows:

Authority: 5 U.S.C. 5707; 5 U.S.C. 5738, 5 U.S.C. 5741–5742; 20 U.S.C. 905(a); 31 U.S.C. 1353; 40 U.S.C. 486(c); 49 U.S.C. 40118; E.O. 11609, 3 CFR, 1971–1975 Comp., p. 586.

5A. Section 300–70.2 is amended by removing the word "and" after paragraph (d), redesignating paragraph (e) as (f) and adding a new paragraph (e) to read as follows:

§ 300–70.2 What information must we report?

* * * * *

(e) The estimated cost of administrating your agency's processing of travel authorizations and travel vouchers; and

* * * * *

6. Chapter 302 is revised as follows:

CHAPTER 302—RELOCATION ALLOWANCES

Subchapter A—Introduction

Subchapter B—Relocation Allowances

Subchapter C—Permanent Change of Station (PCS) Allowances for Subsistence and Transportation Expenses

Subchapter D—Transportation and Storage of Property

Subchapter E—Residence Transaction Allowances

Subchapter F—Miscellaneous Allowances

Subchapter A—Introduction

PART 302–1—GENERAL RULES

Subpart A—Applicability

Subpart B—[Reserved]

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a).

Subpart A—Applicability

Note to subpart A: Use of pronouns "I", "you", and their variants throughout this subpart refers to the employee.

§ 302–1.1 Who is eligible for relocation expense allowances under this chapter?

You are generally eligible for relocation expense allowances under this chapter if you are:

(a) A new appointee appointed to your first official duty station (as discussed in this chapter);

(b) An employee transferring in the interest of the Government from one agency or duty station to another for permanent duty, and your new duty station is at least 50 miles distant from your old duty station (see § 302–2.6 of this chapter);

(c) An employee of the United States Postal Service transferred for permanent duty, under 39 U.S.C. 1006, from the Postal Service to an agency as defined in 5 U.S.C. 5721;

(d) An employee performing travel in accordance with your overseas tour renewal agreement (see §§ 302–3.209 through 302–3.224 of this Chapter);

(e) An employee returning from an overseas assignment for separation from the Government;

(f) A student trainee assigned to any position upon completion of college work;

(g) An employee eligible for a "last move home" benefit upon separation from the Government (and your immediate family in the event of your death prior to separation or after separation but prior to relocating);

(h) A Department of Defense overseas dependents school system teacher;

(i) A career appointee to the Senior Executive Service (SES) as defined in 5 U.S.C. 3132(a)(4), and a prior SES appointee who is returning to your official residence for separation and who will be retaining SES retirement benefits; or

(j) An employee that is being assigned to a temporary duty station in connection with long-term assignment.

§ 302–1.2 Who is not eligible for relocation expense allowances under this chapter?

You are not eligible to receive relocation expense allowances under this chapter if you are:

(a) A Foreign Service Officer or a Federal employee transferred under the rules of the Foreign Service Act of 1980, as amended;

(b) An officer or an employee transferred under the Central Intelligence Act of 1949, as amended;

(c) A person whose pay and allowances are prescribed under title 37 U.S.C., "Pay and Allowances of the Uniformed Services"

(d) An employee of the Veterans' Administration to whom 38 U.S.C. 235 applies; or

(e) A person not covered in § 302–1.1.

Subpart B—[Reserved]

PART 302–2—EMPLOYEES ELIGIBILITY REQUIREMENTS

Subpart A—General Rules

Sec.

Authority: 5 U.S.C. 5721–5734; 20 U.S.C. 905(a).

Subpart A—General Rules

Note to subpart A: Use of pronouns "I", "you", and their variants throughout this subpart refers to the employee.

§ 302–2.1 When may I begin my transfer or reassignment?

You may begin your transfer or reassignment only after your agency has approved your travel authorization (TA) in writing (paper or electronic).

§ 302–2.2 May I relocate to my new official duty station before I receive a written travel authorization (TA)?

No, you must have the written TA (paper or electronic) before you relocate to your new official duty station.

§ 302–2.3 What determines my entitlements and allowances for relocation?

Your entitlements and allowances for relocation are determined by the regulatory provisions that are in effect at the time you report for duty at your new official station. However, this does not change the requirement that all aspects of a relocation must be completed time specified in § 302–2.4.

§ 302–2.4 What is my effective transfer or appointment date?

Your effective transfer or appointment date is the date on which you report for duty at your new or first official station, respectively.

§ 302–2.5 May I relocate from a location other than the location specified in my relocation travel authorization?

Yes, you may relocate from a place other than from where you are authorized. However, you will be required to pay all additional costs incurred for expenses above your authorized travel and transportation cost.

§ 302–2.6 May I be reimbursed for relocation expenses if I relocate to a new official station that is less than 50 miles from my old official duty station?

Generally no; you may not be reimbursed for relocation expenses if you relocate to a new official station that is less than 50 miles from your old official station, unless the head of the agency or designee authorizes an exception. On a case-by-case basis and having considered the following criteria, the head of your agency or designee may authorize the reimbursement of relocation expenses of less than 50 miles when he/she determines that it is in the interest of the Government: and

(a) The one way commuting pattern between the old and new official station increases by at least 10 miles but no more than 50 miles; or

(b) There is an increase in the commuting time to the new official station; or

(c) A financial hardship is imposed due to increased commuting costs.

Time Limits

§ 302–2.7 When may I begin my travel and transportation after receiving authorization to do so?

You and your immediate family member(s) may begin travel immediately upon receipt of your authorized TA.

§ 302–2.8 When must I complete all aspects my relocation?

You and your immediate family member(s) must complete all aspects of your relocation within two years from the effective date of your transfer or appointment, except as provided in § 302–2.9 or § 302–2.10.

§ 302–2.9 If I am furloughed to perform active military duty, will I have to complete all aspects of the relocation within the time limitation?

No, if you are furloughed to perform active military duty, the 2-year period to complete all aspects of relocation is exclusive of time spent on furlough for active military service.

§ 302–2.10 Does the 2-year time period in § 302–2.8 include time that I cannot travel and/or transport my household effects due to shipping restrictions to or from my post of duty OCONUS?

No, the 2-year time period in § 302–2.8 does not include time that you cannot travel and/or transport your household effects due to shipping restriction to or from your post of duty OCONUS.

§ 302–2.11 May the 2-year time limitation for completing all aspects of a relocation be extended?

Yes, the 2-year time limitation for completing all aspects of a relocation may be extended by your Agency for up to 2 additional years, but only if you have received an extension under § 302–11.22.

Service Agreements

§ 302–2.12 What is a service agreement?

A service agreement is a written agreement between you and your agency, signed by you and an agency representative, stating that you will remain in the service of the Government for a period of time as specified in § 302–2.13, after you have relocated.

§ 302–2.13 Am I required to sign a service agreement when transferring within or outside the continental United States or performing renewal agreement travel and what is the minimum period of service?

Yes, you are required to sign a service agreement when transferring within or outside the continental United States or performing renewal agreement travel. The minimum periods of service are:

(a) Within the continental United States for a period of service of not less than 12 months following the effective date of your transfer;

(b) Outside the continental United States for an agreed upon period of service of not more than 36 months or less than 12 months following the effective date of transfer;

(c) Department of Defense Overseas Dependent School System teachers for a period of not less than one school year as determined under chapter 25 of title 20, United States Code; and

(d) For renewal agreement travel a period of not less than 12 months from the date of return to the same or different overseas official station.

§ 302–2.14 Will I be penalized for violation of my service agreement?

Yes, if you violate a service agreement (other than for reasons beyond your control and which must be accepted by your agency), you will have incurred a debt due to the Government and you must reimburse all costs that your agency has paid towards your relocation expenses including withholding tax allowance (WTA) and relocation income tax (RIT) allowance.

§ 302–2.15 Must I provide my agency with my actual place of residence as soon as I accept a transfer/appointment OCONUS?

Yes, if you accept a transfer/appointment to an OCONUS location, you must immediately provide your agency with the information needed to determine your actual place of residence and to document it into your service agreement.

§ 302–2.16 Must I sign a service agreement for a "last move home" relocation?

No, you do not need to sign a service agreement for a "last move home" relocation.

§ 302–2.17 What happens if I fail to sign a service agreement?

If you fail to sign a service agreement, your agency will not pay for your relocation expenses.

§ 302–2.18 Can my service agreement be voided by a subsequent service agreement?

No, service agreements which are already in effect cannot be voided by subsequent service agreements.

§ 302–2.19 If I have more than one service agreement, must I adhere to each agreement separately?

Yes, service agreements can not be grouped together and must be adhered to separately. Each agreement is in effect for the period specified in the agreement.

Advancement of Funds

§ 302–2.20 May I receive an advance of funds for my travel and transportation expenses?

Yes, you may receive an advance of funds for your travel and transportation expenses, as prescribed by your agency, except for overseas tour renewal agreement travel.

§ 302–2.21 What requirements must I meet to receive a travel advance?

Your relocation travel authorization must authorize you to receive a travel advance.

§ 302–2.22 May I receive a travel advance for separation relocation?

Yes, you may receive a travel advance if approved by your agency.

Subpart B—Agency Responsibilities

Note to subpart B: Use of pronouns "we", "you", and their variants throughout this subpart refers to the agency.

§ 302–2.100 What internal policies must we establish before authorizing a relocation allowance?

Before authorizing a relocation allowance, you must set internal policies that determine:

(a) How you will implement the governing policies throughout this part;

(b) How you will determine when a relocation is in the best interest of the Government;

(c) When you will allow a travel advance for relocation expenses;

(d) Who will authorize and approve relocation travel;

(e) Under what additional circumstances will you require an employee to sign a service agreement; and

(f) Who is required to sign a service agreement.

§ 302–2.101 When may we authorize reimbursement for relocation expenses?

You may authorize reimbursement for relocation expenses:

(a) When you have determined that an employee's permanent change of station is in the best interest of the Government;

(b) Only after an employee has signed a service agreement to remain in service for the period specified in § 302–2.13; and

(c) When you have determined that the employee's relocation is incident to his/her change of official station.

§ 302–2.102 Who must authorize and approve relocation expenses?

The agency head or his/her designee must authorize and approve relocation expenses.

§ 302–2.103 How must we administer the authorization for relocation of an employee?

To administer the authorization for relocation of an employee, you must:

(a) Issue an employee a TA for relocation before he/she transfers to his/her new official station;

(b) Inform the employee of his/her transfer within a timeframe that will provide him/her sufficient time for preparation;

(c) Establish timeframes on when employees must submit a TA request; and

(d) Provide new employees with the applicable limitations of their travel benefits.

§ 302–2.104 What information must we provide on the TA?

On the TA, you must state the:

(a) Specific allowances that the employee is authorized; and

(b) Procedures that the employee is authorized to follow.

§ 302–2.105 When an employee transfers between Federal agencies, who is responsible for paying the employee's relocation expenses?

When an employee transfers between Federal agencies, all allowable expenses must be paid from the funds of the agency that the employee is transferring to. However, in the case of a reduction in force or transfer of function, an agreement may be made between the agencies concerned as to what relocation allowances will be paid by either agency or split between them. This should include the payment of expenses for the extended storage of the employee's household goods when assigned to an isolated permanent duty station within CONUS or a transfer to, from, or between foreign countries.

§ 302–2.106 May we waive statutory or regulatory limitations relating to relocation allowances for employees relocating to/from remote or isolated locations?

Yes, the agency head or his/her designee may waive any statutory or regulatory limitations for employees relocating (to/from a remote or isolated location) when determining that failure to waive the limitation would cause an undue hardship on the employee.

Time Limits

§ 302–2.110 Are there time factors that we must consider for allowing an employee to complete all aspects of relocation?

Yes, you should encourage employees to begin travel as soon as possible after authorization of travel is approved and inform employees that they must complete all aspects of relocation within a 2-year period from his/her effective date of transfer or appointment, unless the employee's 2-year period is extended to include:

(a) Time spent on military furlough;

(b) Delays caused by overseas shipping or other restrictions; or

(c) An extension for completion of residence transaction (see § 302–11.22 of this chapter).

Subchapter B—Relocation Allowances

PART 302–3—RELOCATION ALLOWANCE BY SPECIFIC TYPE

Subpart A—New Appointee

Subpart B—Transferred Employees

Subpart C—Types of Transfers

Relocation of Two or More Employed Immediate Family Members

Reduction in Force Relocation

Overseas Assignment and Return

Overseas Tour Renewal Agreement

Prior Return of Immediate Family Members

Authority: 5 U.S.C. 5721–5734; 20 U.S.C. 905(a).

Subpart A—New Appointee

Note to subpart A: Use of pronouns "I", "you", and their variants throughout this subpart refers to the employee, unless otherwise noted.

§ 302–3.1 Who is a new appointee?

A new appointee is:

(a) An individual who is employed with the Federal Government for the very first time (including an individual who has performed transition activities under section 3 of the Presidential Transition Act of 1963 (3 U.S.C. 102 note), and is appointed in the same fiscal year as the Presidential inauguration);

(b) An employee who is returning to the Government after a break in service (except an employee separated as a result of reduction in force or transfer of functions and is re-employed within one year after such action); or

(c) A student trainee assigned to the Government upon completion of his/her college work.

§ 302–3.2 As a new appointee or student trainee what relocation expenses may my agency pay or reimburse me for incident to a permanent change of station to my first official station?

As a new appointee or student trainee being assigned to a first official station your agency may or may not pay or reimburse you the relocation expenses indicated for the type of transfer in Tables A and B of this section. However, once the decision is made to pay or reimburse your relocation expenses, all mandatory relocation allowances are reimbursed, unless otherwise stated in the applicable parts of this chapter.

TABLE A.—ASSIGNED TO FIRST OFFICIAL STATION IN THE CONTINENTAL UNITED STATES (CONUS)

Column 1—Relocation allowances that agency must pay or reimburse	Column 2—Relocation allowances that agency has discretionary authority to pay or reimburse
1. Transportation of employee & immediate family member(s) (part 302–4 of this chapter). 2. Per diem for employee only (part 302–4 of this chapter) ..... 3. Transportation & temporary storage of household goods (part 302÷7 of this chapter). 4. Extended storage of household goods (part 302–8 of this chapter)[1] .. 5. Transportation of a mobile home or boat used as a primary residence in lieu of the transportation of household goods (part 302–10 of this chapter). 6. Relocation income tax allowance (RITA) (part 302–17 of this chapter).	1. Shipment of privately owned vehicle (POV) (part 302–9, subpart B of this chapter).

[1] **Note to Column 1, Item 4:** Only when assigned to a designated isolated official station in CONUS.

TABLE B.—ASSIGNED TO FIRST OFFICIAL STATION OUTSIDE THE CONTINENTAL UNITED STATES (OCONUS)

Column 1—Relocation allowances that agency must pay or reimburse	Column 2—Relocation allowances that agency has discretionary authority to pay or reimburse
1. Transportation of employee & immediate family member(s) (part 302–4 of this chapter). 2. Per diem employee only (part 302–4)	1. Shipment of privately owned vehicle (POV) (part 302–9 of this chapter). 2. Temporary quarters subsistence expense (TQSE) is not authorized in a foreign area, however, you may be entitled to the following under the Department of State Standard Regulations (DSSR) (Government Civilians—Foreign Areas) which is available from the Superintendent of Documents, Washington, DC 20402. (a) Foreign Transfer Allowance (FTA) (Subsistence Expense) for quarters occupied temporarily before departure from the 50 states or the District of Columbia for a official station in a foreign area incident to a permanent change of station and travel to first official station overseas. (b) Temporary quarters subsistence expenses (TQSE) when a transfer is authorized to a foreign area. (c) The miscellaneous expense portion of the FTA is authorized incident to first official station travel to a foreign area.
3. Transportation & temporary storage of household goods (part 302–7 of this chapter). 4. Extended storage of household goods (part 302–8 of this chapter) ...	3. Use of relocation service companies only when transfer is to Alaska or Hawaii (part 302–12 of this chapter). 4. Home marketing incentives only when transfer is to a non-foreign OCONUS area (part 302–15 of this chapter).
5. Relocation income tax allowance (RITA) (part 302–17 of this chapter).	

§ 302–3.3 As a new appointee, are there any expenses that my agency will not pay?

Yes, as a new employee, your agency will not pay for expenses that are not listed in § 302–3.2 (e.g., per diem for family, cost of househunting trip, miscellaneous expense allowance, etc.).

§ 302–3.4 If my agency authorizes me allowances for relocation, must it pay all of the expenses listed in § 302–3.2?

Yes, if your agency authorizes you allowances for relocation, it must pay all of the expenses listed in § 302–3.2.

§ 302–3.5 If I travel to my first official station before I have been appointed, will I be reimbursed for my relocation expenses?

Generally, you may not be reimbursed for relocation expenses incurred before you have been appointed to a Federal position and signed an agreement to remain in Government service for 12

months after appointment. However there is an exception for appointees who have performed Presidential transition activities. Such appointees may be reimbursed allowable travel and transportation expenses incurred at any time following the most recent Presidential election once they have signed a service agreement. However, appointment must occur in the same fiscal year as the Presidential transition activities.

Subpart B—Transferred Employees

§ 302–3.100 What is a transferred employee?

A transferred employee is an employee who transfers from one official station to another. This may also include employees separated as a result of reduction in force or transfer of functions who are re-employed within one year after such separation.

§ 302–3.101 As a transferred employee what relocation allowances must my agency pay or reimburse me for incident to a permanent change of station?

As a transferred employee there are mandatory and discretionary relocation expenses. Once an agency decision is made to pay or reimburse relocation expenses indicated for the type of transfer in tables (A) through (I) of this section, all the mandatory allowance must be paid or reimbursed, unless otherwise stated in the applicable parts. The discretionary relocation allowances indicated in tables (A) through (I) of this section may or may not be paid by the agency.

TABLE A.—TRANSFER BETWEEN OFFICIAL STATIONS IN THE CONTINENTAL UNITED STATES (CONUS)

Column 1—Relocation allowances that agency must pay or reimburse	Column 2—Relocation allowances that agency has discretionary authority to pay or reimburse
1. Transportation & per diem for employee & immediate family member(s) (part 302–4 of this chapter).	1. Househunting per diem & transportation, employee & spouse only (part 302–5 of this chapter).
2. Miscellaneous moving expense (part 302–16 of this chapter)	2. Temporary quarters subsistence expense (TQSE) (part 302–6 of this chapter).
3. Sell or buy residence transactions or lease termination expenses (part 302–11 of this chapter).	3. Shipment of privately owned vehicle (POV) (part 302–9, subpart B of this chapter).
4. Transportation & temporary storage of household goods (part 302–7 of this chapter).	4. Use of relocation service companies (part 302–12 of this chapter).
5. Extended storage of household goods (part 302–8 of this chapter) [1]	5. Property management services (part 302–15 of this chapter).
6. Transportation of a mobile home or boat used as a primary residence in lieu of the transportation of household goods (part 302–10 of this chapter).	6. Home marketing incentives (part 302–14 of this chapter).
7. Relocation income tax allowance (RITA) (part 302–17 of this chapter).	

[1] **Note to Column 1, Item 5:** Only when assigned to a designated isolated official station in CONUS.

TABLE B.—TRANSFER FROM CONUS TO AN OFFICIAL STATION OUTSIDE THE CONTINENTAL UNITED STATES (OCONUS)

Column 1—Relocation allowances that agency must pay or reimburse	Column 2—Relocation allowances that agency has discretionary authority to pay or reimburse
1. Transportation & per diem for employee & immediate family member(s) (part 302–4 of this chapter).	1. Temporary quarters subsistence expense (TQSE) is not authorized in a foreign area, however, you may be entitled to the following under the Department of State Standardized Regulations (DSSR) (Government Civilians-Foreign Areas): (a) A Foreign Transfer Allowance (FTA) for quarters occupied temporarily before departure from the 50 states or the District of Columbia for a official station in a foreign area incident to a permanent change of station and travel to first official station overseas. (b) Temporary quarters subsistence allowance (TQSA).
2. Miscellaneous expense allowance (part 302–16 of this chapter)	2. Property management services (part 302–15 of this chapter).
3. Transportation & temporary storage of household goods (part 302–7 this chapter).	3. Shipment of a privately owned vehicle (part 302–9 of this chapter).
4. Extended storage of household goods (part 302–8 of this chapter) ...	4. Use of relocation service companies when transfer is to Alaska or Hawaii (part 302–12 of this chapter).
5. Relocation income tax allowance (RITA) (part 302–17 of this chapter) [1].	5. Home marketing incentives when transfer is to Alaska or Hawaii (part 301–15 of this chapter).

[1] **Note to Column 1, item 5.** Allowed when old and new official stations are located in the United States. Also allowed when instead of being returned to the former non-foreign area official station, an employee is transferred in the interest of the Government to a different non-foreign area official station than from the official station from which transferred when assigned to the foreign official station.

TABLE C.—TRANSFER FROM OCONUS OFFICIAL STATION TO AN OFFICIAL STATION IN CONUS

Column 1—Relocation allowances that agency must pay or reimburse	Column 2—Relocation allowances that agency has discretionary authority to pay or reimburse
1. Transportation & per diem for employee & immediate family member(s) (part 302–4 of this chapter).	1. Shipment of a privately owned vehicle (part 302–9 of this chapter).
2. Temporary quarters subsistence expense (TQSE) (part 302–6 of this chapter) [1].	

TABLE C.—TRANSFER FROM OCONUS OFFICIAL STATION TO AN OFFICIAL STATION IN CONUS—Continued

Column 1—Relocation allowances that agency must pay or reimburse	Column 2—Relocation allowances that agency has discretionary authority to pay or reimburse
3. Miscellaneous expense allowance (part 302–16 of this chapter). 4. Sell & buy residence transaction expenses or lease termination expenses (part 302–11 of this chapter)[2]. 5. Transportation & temporary storage of household goods (part 302–7 of this chapter). 6. Extended storage of household goods only when assigned to a designated isolated official station in CONUS (part 302–8 of this chapter). 7. Relocation income tax allowance (RITA) (part 302–17 of this chapter).	

[1] **Note to Column 1, item 2:** A TQSA under the DSSR may be authorized preceding final departure subsequent to the necessary vacating of residence quarters.

[2] **Note to Column 1, item 4:** Allowed when old and new official stations are located in the United States. Also allowed when instead of being returned to the former non-foreign area official station, an employee is transferred in the interest of the Government to a different non-foreign area official station than from the official station from which transferred when assigned to the foreign official station.

TABLE D.—TRANSFER BETWEEN OCONUS OFFICIAL STATIONS

Column 1—Relocation allowances that agency must pay or reimburse	Column 2—Relocation allowances that agency has discretionary authority to pay or reimburse
1. Transportation & per diem for employee & immediate family member(s) (part 302–4 of this chapter). 2. Temporary quarters subsistence expense (TQSE) (part 302–6 of this chapter)[1]. 3. Transportation & temporary storage of household goods (part 302–7 of this chapter). 4. Miscellaneous expense allowance (part 302–16 of this chapter). 5. Extended storage of household goods (part 302–8 of this chapter). 6. Relocation income tax allowance (RITA) (part 302–17 of this chapter).	1. Shipment of a privately owned vehicle (POV) (part 302–9 of this chapter). 2. Property management services (part 302–15 of this chapter).

[1] **Note to Column 1, item 2:** TQSA may be authorized under the DSSR.

TABLE E.—TOUR RENEWAL AGREEMENT TRAVEL

Column 1—Relocation allowances that agency must pay or reimburse	Column 2—Relocation allowances that agency has discretionary authority to pay or reimburse
1. Transportation for employee & immediate family member(s) (part 302–4 of this chapter). 2. Per diem for employee only (part 302–4 of this chapter).	

TABLE F.—RETURN FROM OCONUS OFFICIAL STATION TO PLACE OF ACTUAL RESIDENCE FOR SEPARATION

Column 1—Relocation allowances that agency must pay or reimburse	Column 2—Relocation allowances that agency has discretionary authority to pay or reimburse
1. Transportation for employee & immediate family member(s) (part 302–4 of this chapter). 2. Per diem for employee only (part 302–4 of this chapter). 3. Transportation & temporary storage of household goods (part 302–7 of this chapter).	1. Shipment of a privately owned vehicle (POV) (part 302–9 of this chapter).

TABLE G.— LAST MOVE HOME FOR SES CAREER APPOINTEES UPON SEPARATION

Column 1—Relocation allowances that agency must pay or reimburse	Column 2—Relocation allowances that agency has discretionary authority to pay or reimburse
1. Transportation for employee & immediate family member(s) part 302–4 of this chapter). 2. Per diem for employee only (part 302–4 of this chapter). 3. Transportation & temporary storage of household goods (part 302–7 of this chapter). 4. Transportation of a mobile home or boat used as a primary residence in lieu of the transportation of household goods (part 302–10 of this chapter).	1. Shipment of privately owned vehicle (POV) (part 302–9, subpart B of this chapter).

TABLE H.—TEMPORARY CHANGE OF STATION (TCS)

Column 1—Relocation allowances that agency must pay or reimburse	Column 2—Relocation allowances that agency has discretionary authority to pay or reimburse
1. Transportation & per diem for employee & immediate family member(s) (part 302–4 of this chapter). 2. Miscellaneous expense allowance (part 302–16 of this chapter) ..... 3. Transportation & temporary storage of household goods (part 302–7 of this chapter). 4. Transportation of a mobile home or boat used as a primary residence in lieu of the transportation of household goods (part 302–10 of this chapter). 5. Transportation of a privately owned vehicle (POV)(part 302–9, subpart B of this chapter). 6. Relocation income tax allowance (RITA) (part 302–17 of this chapter). 7. Property management services (part 302–15 of this chapter).	1. Househunting trip expenses (part 302–5 of this chapter). 2. Temporary quarters subsistence expense (TQSE) (part 302–6 of this chapter).

TABLE I.—ASSIGNMENT UNDER THE GOVERNMENT EMPLOYEES TRAINING ACT (5 U.S.C. 4109) [1]

1. Transportation of employee & immediate family member(s) (part 302–4 of this chapter).
2. Per Diem for employee (part 302–4 of this chapter).
3. Movement of household goods & temporary storage (part 302–7 of this chapter).

[1] **Note to Table I:** The allowances listed in Table I may be authorized in lieu of per diem or actual expense allowances. This is not considered a permanent change of station.

Subpart C—Types of Transfers

Relocation of Two or More Employed Immediate Family Members

§ 302–3.200 When a member of my immediate family who is also an employee and I are transferring to the same official station, may we both receive allowances for relocation?

Yes, if you and an immediate family member(s) are both employees and are transferring to the same official station in the interest of the Government, the allowances under this chapter apply either to;

(a) Each employee separately and the other is not eligible as an immediate family member(s); or

(b) Only one of the employees considered as head of the household and the other is eligible as an immediate family member(s) on the first employee's TA.

§ 302–3.201 If my immediate family member and I both transfer to the same official station in the interest of the Government, may we both claim the same relocation expenses?

No, when separate allowances are authorized under this § 302–3.201, the employing agency or agencies shall not make duplicate reimbursement for the same claimed expenses.

§ 302–3.202 If my immediate family member and I both transfer to the same official station, may we both claim the same relocation allowances for the same non-employee family member?

No, when both you and your immediate family member transfer in the interest of the Government, you must provide your agency with the name(s) of non-employee family member(s) who will receive allowances under each of your TA. Only one of you may claim allowances for a non-employee member(s) of your immediate family (non-employee members may only be on one TA).

§ 302–3.203 If I am transferring in the interest of the Government and my employed immediate family member(s) transfer is not in the interest of the Government, will he/she receive relocation allowances?

Yes, your employed immediate family member(s) whose transfer is not in the interest of the Government will receive relocation allowances, but solely as a member of your immediate family.

§ 302–3.204 When an employed immediate family member and I are transferring in the interest of the Government, what information must we submit to our agency?

When you and an employed immediate family member are transferring in the interest of the Government, you both must provide:

(a) A signed document stating which method of authorization you select (separate or one single authorization); and

(b) Your agency with a written and signed copy of the names of which non-employee member(s) will receive allowances under your TA; if you select to receive separate TAs.

Reduction in Force Relocation

§ 302–3.205 If my transfer is involuntary (due to i.e., reduction in force, cessation, or transfer of work), is it considered to be in the interest of the Government?

Yes, an involuntary transfer (i.e., due to reduction in force, cessation, or transfer of work) is considered to be in the interest of the Government.

§ 302–3.206 If I am re-employed after a separation by reduction in force or transfer of functions, may my agency pay me a relocation allowance?

Yes, if you are re-employed after a separation by reduction in force or transfer of function, your agency may pay you a relocation allowance under the conditions of this chapter if:

(a) You are employed within one year of your involuntary separation date;

(b) Your new appointment is not temporary; and

(c) Your new appointment is at a different duty station from where your separation occurred and meets the mileage criteria in § 302–2.6 of this chapter for short distance relocation.

Overseas Assignment and Return

§ 302–3.207 Am I eligible to receive relocation allowances for overseas assignment and return travel?

You may be eligible to receive relocation allowances for overseas assignment and return travel if you are:

(a) An employee transferring to, from, or between official stations OCONUS; or

(b) A new appointee to a position OCONUS and at the time of your

appointment your residence is in an area other than your post of duty.

§ 302–3.208 What relocation expenses will my agency pay for my overseas assignment and return?

To determine what relocation expenses your agency will pay for your overseas assignment and return, see:

(a) Section 302–3.2 if you are a new appointee; or

(b) Section 302–3.101 if you are a transferred employee.

Overseas Tour Renewal Agreement

§ 302–3.209 What is overseas tour renewal travel?

Overseas tour renewal travel refers to travel of you and your immediate family returning to your home in the continental U.S., Alaska, or Hawaii between overseas tours of duty. See § 302–2.222 for travel to an actual place of residence in other than the United States.

§ 302–3.210 What is an overseas tour of duty?

An overseas tour of duty is an assignment to a post of duty outside the continental United States, Alaska or Hawaii.

§ 302–3.211 What is an allowance for overseas tour renewal travel?

An allowance for overseas tour renewal travel is a reimbursement for you and your immediate family of roundtrip travel and transportation expenses between your overseas post of duty and your actual place of residence in the U.S.

§ 302–3.212 How do I know if I am eligible to receive an allowance for overseas tour renewal travel?

You are eligible to receive an allowance for overseas tour renewal travel if:

(a) You are on an overseas assignment, and you have completed your tour of duty and satisfactorily completed your service agreement time period; and

(b) You are on an overseas assignment and you have signed a new service agreement to remain at your overseas post or to transfer to another overseas post of duty; or

(c) You meet the requirements and are eligible for tour renewal travel from Alaska or Hawaii under § 302–3.214.

§ 302–3.213 What allowances will I receive for tour renewal travel?

For tour renewal travel, you will receive payment for those authorized expenses as stated in item five of Tables A and B of § 302–3.101.

§ 302–3.214 May I receive reimbursement for tour renewal travel when my travel is between two places within the United States?

You may only receive reimbursement for tour renewal travel when your tours are between two places within the U.S. if you are an employee who is traveling from Alaska or Hawaii, and:

(a) You will continue to serve consecutive tours of duty within the same state from which you're traveling, and on September 8, 1982 you were:

(1) Serving your tour in one of these areas and have continued to do so; or

(2) En route to a post of duty in Alaska or Hawaii under a written service agreement to serve a tour of duty; or

(3) In the process of performing a tour renewal travel and has since then entered into another tour of duty in Alaska or Hawaii;

(b) Tour renewal agreement travel for recruiting or retention purposes is limited to two round trips beginning within 5 years after the date the employee first begins any period of consecutive tours of duty in Alaska or Hawaii. Employees shall be advised in writing of this limitation; or

(c) You are traveling due to your agency's mission to recruit or retain you as an employee to fulfill a position that requires a special skilled employee or to fill a position in a remote area.

§ 302–3.215 Will I be reimbursed for tour renewal travel from a post of duty in Hawaii and return to a post of duty in Alaska or for such travel from a post of duty in Alaska and return to a post of duty in Hawaii?

No, you will not be reimbursed for tour renewal travel unless your return travel is to a post of duty in the same State that you traveled from.

§ 302–3.216 When must I begin my first tour renewal travel from Alaska or Hawaii?

You must begin your first tour renewal travel within 5 years of your first consecutive tours in either Alaska or Hawaii.

§ 302–3.217 Will my family or I receive per diem for en route travel from my post of duty to my actual place of residence in the U.S.?

No, your family will not receive per diem for en route travel from your post of duty to your actual place of residence in the U.S. and return to the same or a different post of duty.

§ 302–3.218 Are there any special circumstances when my agency may authorize me travel and transportation expenses for my tour renewal travel in Alaska or Hawaii?

Other than as specified in §§ 302–3.209 through 302–3.226, your agency head will only authorize travel and transportation expenses for your tour renewal travel in Alaska or Hawaii if it determines that:

(a) Agency staffing needs are required to recruit or retain employees at a post of duty in Alaska or Hawaii; or

(b) Your agency is in need to recruit employees with special skills and knowledge and/or to fill positions in remote areas.

§ 302–3.219 Is there a limit on how many times I may receive reimbursement for tour renewal travel?

(a) If you are stationed in a foreign area or in an area other than Alaska or Hawaii, your agency may reimburse you for one overseas tour renewal trip for each time you complete your service agreement, which is related to your post of duty.

(b) For recruiting and retention purposes of consecutive tours served within Alaska and Hawaii, your agency may reimburse you a maximum of two round trips which must begin within 5 years after the date of your first tour.

§ 302–3.220 May my family and I travel to another U.S. location (other than from my actual place of residence) under my tour renewal agreement?

Yes, you and your family may travel to another U.S. location (other than from your actual place of residence) under your tour renewal agreement. However, your agency will only reimburse you for the amount of authorized expenses from your post of duty to your actual place of residence and return (as appropriate) on a usually traveled route.

Note to § 302–3.220: If your actual place of residence is located in the U.S., you and your family must spend a substantial amount of time in the U.S. in order to receive reimbursement.

§ 302–3.221 If I travel to another place in the U.S. (other than my actual place of residence) am I required to spend time at my actual place of residence to receive reimbursement?

No, you are not required to spend time at your actual place of residence to receive reimbursement if you travel to another place in the U.S. (other than your actual place of residence).

§ 302–3.222 Will I be reimbursed if I travel to another overseas location (instead of the U.S.)?

If you travel to another overseas location (instead of the U.S.), you will be reimbursed only if your actual residence is within that country in which you are taking your leave, and then you will only be reimbursed your authorized travel and transportation expenses. You will have to pay any

expense(s) above your authorized amount.

§ 302–3.223 What happens if I violate my new service agreement under a tour renewal assignment?

If you fail to complete your period of service under your new service agreement for reasons that are not acceptable to your agency, you must pay the Government:

(a) All transportation and per diem expenses that you received during your service agreement period for tour renewal travel of you and your immediate family;

(b) Transportation expenses for family members who traveled directly from your former post of duty to your current post of duty; and

(c) All transportation expenses for shipment of household goods from your former post to your current post of duty.

§ 302–3.224 If I violate my new service agreement, will the Government reimburse me for return travel and transportation to my actual place of residence?

If you violate your new service agreement, the Government will reimburse you for return travel and transportation to your actual place of residence only if you did not receive all of your allowances under a previous service agreement in which you successfully completed your required period of service. The Government will then authorize you reimbursement cost for return travel and transportation expenses from your former post of duty to your actual place of residence. If there is any additional cost you must pay the difference.

Prior Return of Immediate Family Members

§ 302–3.225 If my immediate family member(s) return to the U.S. before me, will I be reimbursed for transporting part of my household goods with my family and the rest of my household goods when I return?

Yes, if your family member(s) return to the U.S. before you, you will be reimbursed for transporting part of your household goods with your family and the rest of the household goods when you return as long as the combined weight of the two shipments does not exceed your total authorized weight limit.

§ 302–3.226 Will the Government reimburse me if I am not eligible to return with my immediate family member(s) to the U.S. and choose to send them at my own expense?

Yes, if you pay for the prior return of your eligible immediate family member(s), you will be reimbursed when you become eligible for return travel and transportation, you must provide your agency with all receipts and documentation to support your cost. Your agency will then reimburse your expenses, not to exceed your authorized allowance.

§ 302–3.227 If I become divorced from my spouse while OCONUS will I receive reimbursement to return my former spouse and dependents to the U.S.?

Yes, if you become divorced from your spouse while OCONUS, you will receive reimbursement to return your former spouse and dependents to their place of actual residence within or outside CONUS.

§ 302–3.228 Is my dependent who turned 21 while overseas entitled to return travel to my place of actual residence at the expense of the Government?

Your dependent who turned 21 while overseas is entitled to return travel to your place of actual residence at the expense of the Government only if your dependent traveled overseas as your dependent under your TA, but not beyond the end of your current agreed tour of duty.

Subpart D—Relocation Separation Overseas to U.S. Return for Separation

§ 302–3.300 Must my agency pay for return relocation expenses for my immediate family and me once I have completed my duty OCONUS?

Yes, once you have completed your duty OCONUS as specified in your service agreement, your agency must pay one-way transportation expenses for you, for your family member(s), and for your household goods.

§ 302–3.301 May I transport my household goods to a location other than my actual place of residence when I separate from the Government?

Yes, if you have successfully completed your service agreement, you may transport your household goods to a location other than your actual place of residence when you separate from the Government. However, the cost cannot exceed what it would cost to your actual place of residence. Any additional cost will be borne by you.

§ 302–3.302 May my agency pay for my immediate family member(s) and my household goods to be returned to the U.S. before I complete my service agreement?

Yes, your agency may pay for your immediate family member(s) and your household goods to be returned to the U S. before you complete your service agreement. However, your reason for not completing your service agreement must be determined by your agency as compassionate in nature or for circumstances beyond your control.

§ 302–3.303 May I claim reimbursement for the return of my immediate family member(s) or household goods more than once under one service agreement?

No, you cannot claim reimbursement for the return of your immediate family member(s) or household goods more than once under one service agreement.

SES Separation for Retirement

§ 302–3.304 Who is entitled to SES separation relocation allowances?

You are entitled to SES separation relocation allowances if you meet the conditions in § 302–3.307 and you are:

(a) A career appointee to the SES as defined in 5 U.S.C. 3132(a)(4); or

(b) A non-SES appointee who elects to retain SES retirement benefits and:

(1) Has a basic rate of pay at Level V of the Executive Schedule or higher; or

(2) Was previously a career appointee in the SES; or

(3) Elected under 5 U.S.C. 3392(c) to retain SES retirement benefits; or

(c) A Medical Center Director who:

(1) Served as a director of a Department of Veterans Affairs medical center under 38 U.S.C. 4103(a)(8) as in effect on November 17, 1988; or

(2) Separated from Government service on or after October 2, 1992; or

(3) Is not covered in paragraphs (a) or (b) of this section; or

(d) An immediate family member of an SES employee who died:

(1) In Government service on or after January 1, 1994; or

(2) After separating from Government service but before travel and/or transportation authorized under this subpart were completed.

§ 302–3.305 Who is not eligible for SES separation relocation expense allowances?

You are not eligible for SES separation relocation expense allowances if:

(a) You are a career appointee to an SES position, and your appointment is a limited term, limited emergency, or a noncareer appointment. (See 5 U.S.C. 3132(a)(5) through (7)); or

(b) You are an appointee to the Government but do not meet the criteria status within § 302–3.304.

§ 302–3.306 If I meet the conditions in § 302–3.307, what expenses am I allowed under separation for retirement travel?

If you meet the conditions in § 302–3.307, see item 7 of Tables A and C in § 302.3.101.

§ 302–3.307 Under what conditions may I receive separation relocation travel for my family and me?

You may receive separation relocation travel for you and your family if:

(a) You are a career appointee as defined in 5 U.S.C. 3132(a)(4), and you were transferred or reassigned geographically in the interest of and at the expense of the Government from one official station to another for permanent duty from:

(1) An SES career appointment to another SES career appointment; or

(2) An SES career appointment to an appointment outside the SES at a rate of pay equal to or higher than Level V of the Executive Schedule, and the employee elects to retain SES retirement benefits under 5 U.S.C. 3392; or

(3) A non-SES career appointment at the time of your transfer or assignment, which includes an appointment in a civil service position outside the SES, to an SES career appointment;

(b) At the time of the transfer or reassignment:

(1) You were eligible to receive an annuity for optional retirement under section 8336(a), (b), (c), (e), (f), or (j) or subchapter III of chapter 83 (Civil Service Retirement System (CSRS)) or under section 8412 of subchapter II of chapter 84 (Federal Employees Retirement System (FERS)) of title, 5 U.S.C.; or

(2) You were within 5 years of eligibility to receive an annuity for optional retirement under one of the authorities in paragraph (b)(1) of this section; or

(3) You were eligible to receive an annuity based on discontinued service retirement or early voluntary retirement under an OPM authorization, under section 8336(d) of subchapter III of chapter 83, or under 8414(b) of subchapter II of chapter 84 of title 5, U.S.C.;

(c) You separate from Federal service on or after September 22, 1988;

(d) You are eligible to receive an annuity upon separation (or, in the case of death, you met the requirements for being considered eligible to receive an annuity, as of the date of death) under the provisions of subchapter III of chapter 83 (CSRS) or chapter 84 (FERS) of title 5, U.S.C., including an annuity based on optional retirement, discontinued service retirement, early voluntary retirement under an OPM authorization, or disability retirement; and

(e) You have not previously received separation relocation benefits from the Government for retirement.

§ 302–3.308 Do I have to provide my agency with any special documents before receiving reimbursement for moving expenses?

Yes, before receiving reimbursement for moving expenses, you must submit a request to your agency for authorization and approval of your moving expenses with your tentative moving dates and the origin and destination location of your planned move, within the timeframe and format specified by your agency.

§ 302–3.309 Where should my travel and transportation begin?

Your travel and shipment of your HHG should begin from your last official station.

§ 302–3.310 Where will I be authorized to separate?

You will be authorized to separate at the place where you have chosen to reside within the United States.

§ 302–3.311 May I receive reimbursement for travel and transportation from an alternate location other than the duty station?

You will only be reimbursed for expenses up to the cost of travel and transportation expenses from your authorized official station to the place in the U.S. you have elected to reside. Any additional cost you will have to pay.

§ 302–3.312 Upon separation, if I elect to reside in a different geographical area which is less than 50 miles from my official duty station, will I receive reimbursement?

No, if upon separation you elect to reside in a different geographical area which is less than 50 miles from your official station, you will not receive reimbursement.

§ 302–3.313 May I have my household goods transported from more than one location?

Yes, you may have your household goods transported from more than one location. However, you will only receive reimbursement based on the cost of shipment from your official station, in one lot by the most economical route to the location where you elect to return. You will have to pay for any cost above what is authorized.

§ 302–3.314 Is there a time limit when I must begin my travel and transportation upon separation?

Yes, all travel and transportation of household goods must begin no later than six months after:

(a) Your date of separation; or

(b) The date of death of the employee who died before separation.

§ 302–3.315 May I be granted an extension on beginning my separation travel?

Your agency may grant you or your family member (in case of your death) an extension on beginning your separation travel, not to exceed 2 years from your effective date of separation or death if you died before separating.

Subpart E—Employee's Temporary Change Of Station

§ 302–3.400 What is a "temporary change of station (TCS)"?

A TCS means the relocation to a new official station for a temporary period while performing a long-term assignment, and subsequent return to the previous official station upon completion of that assignment.

§ 302–3.401 What is the purpose of a TCS?

A TCS provides agencies an alternative to a long-term temporary duty travel assignment which will increase your satisfaction and enhance morale, reduce your income tax liability, and save the Government money.

§ 302–3.402 When am I eligible for a TCS?

You are eligible for a TCS when you are directed to perform a TCS at a long-term duty location, and you otherwise would be eligible for payment of temporary duty travel allowances authorized under chapter 301 of this title. For exceptions, see § 302–3.403.

§ 302–3.403 Who is not eligible for a TCS?

The following individuals are not eligible for a TCS:

(a) A new appointee;

(b) An employee assigned to or from a State or local Government under the Intergovernmental Personnel Act (5 U.S.C. 3372 *et seq.*);

(c) An individual employed intermittently in the Government service as a consultant or expert and paid on a daily when-actually-employed (WAE) basis;

(d) An individual serving without pay or at $1 a year; or

(e) An employee assigned under the Government Employees Training Act (5 U.S.C. 4109).

§ 302–3.404 Under what circumstances will my agency authorize a TCS?

Your agency will authorize a TCS when:

(a) It is necessary to accomplish the mission of the agency effectively and economically, and

(b) You are directed to perform a long-term assignment at another official station; or

(c) Your agency otherwise could authorize temporary duty travel and pay

travel allowances, including payment of subsistence expenses, under chapter 301 of this title for the long-term assignment; or

(d) Your agency determines it would be more advantageous, cost and other factors considered, to authorize a long-term assignment; and

(e) You meet any additional conditions your agency has established.

§ 302–3.405 If my agency authorizes a TCS, do I have the option of electing payment of per diem expenses under part 301–11 of this title?

No, you do not have the option of electing payment of per diem expenses under part 301–11 of this title if your agency authorized a TCS.

§ 302–3.406 How long must my assignment be for me to qualify for a TCS?

To qualify for a TCS, your assignment must be not less than 6 months, nor more than 30 months.

§ 302–3.407 What is the effect on my TCS reimbursement if my assignment lasts less than 6 months?

Your agency may authorize a TCS only when a TCS is expected to last 6 months or more. If your assignment is cut short for reasons other than separation from Government service, you will be paid TCS expenses.

§ 302–3.408 What is the effect on my TCS reimbursement if my assignment lasts more than 30 months?

If your assignment exceeds 30 months, your agency:

(a) Must permanently assign you to your temporary official station or return you to your previous official station;

(b) May not pay for extended storage or property management services incurred after the last day of the thirtieth month; and

(c) Must pay the expenses of returning you and your immediate family and household goods to your previous official station unless you are permanently assigned to your temporary official station.

§ 302–3.409 Is there any required minimum distance between an official station and a TCS location that must be met for me to qualify for a TCS?

No, there is no required minimum distance between an official station and a TCS location that must be met for you to qualify for a TCS. However, your agency may establish the area within which it will not authorize a TCS.

§ 302–3.410 Must I sign a service agreement to qualify for a TCS?

No, you do not need to sign a service agreement to qualify for a TCS.

§ 302–3.411 What is my official station during my TCS?

Your official station during your TCS is the location of your TCS.

Expenses Paid Upon Assignment

§ 302–3.412 What expenses must my agency pay?

Your agency must pay:

(a) Travel, including per diem, for you and your immediate family under part 302–4 of this chapter;

(b) Transportation and temporary storage of your household goods under part 302–7 of this chapter;

(c) Extended storage when it is necessary as approved by your agency under part 302–8 of this chapter;

(d) Transportation of a mobile home instead of transportation of household goods under part 302–10 of this chapter;

(e) A miscellaneous expenses allowance under part 302–16 of this chapter;

(f) Transportation of a privately owned vehicle(s) under part 302–9 of this chapter; and

(g) A relocation income tax allowance under part 302–17 of this chapter for additional income taxes you incur on payments your agency makes under the authority of this section for your relocation expenses.

§ 302–3.413 Are there other expenses that my agency may pay?

Yes, your agency may pay:

(a) Househunting trip expenses under part 302–5 of this chapter;

(b) Temporary quarters subsistence expenses under part 302–6 of this chapter; and

(c) Reimbursement for Property Management Services under part 302–15 of this chapter.

Expenses Paid During Assignment

§ 302–3.414 If my agency authorizes a TCS, will it pay for extended storage of my household goods?

Yes, if your agency authorizes a TCS, it will pay for extended storage when it is necessary. Extended storage expenses include:

(a) Packing/unpacking;
(b) Crating/uncrating;
(c) Transporting to and from place of storage;
(d) Charges while in storage; and
(e) Other necessary charges directly related to storage.

§ 302–3.415 How long may my agency pay for extended storage of household goods?

Your agency may pay for extended storage of household goods for the duration of your TCS.

§ 302–3.416 Is there any limitation on the combined weight of household goods I may transport and store at Government expense?

Yes, the maximum combined weight is 18,000 pounds net weight. If you transport and/or store household goods in excess of the maximum weight allowance, you will be responsible for any excess cost.

§ 302–3.417 Will I have to pay any income tax if my agency pays for extended storage of my household goods?

You will be subject to income taxes on the amount of extended storage expenses your agency pays. However, your agency will pay you a relocation income tax allowance under part 302–17 of this chapter for substantially all of the additional Federal, State and local income taxes you incur on the expenses your agency pays.

§ 302–3.418 Will my agency pay for property management services when I am authorized a TCS?

Yes, your agency will reimburse you directly for expenses you incur or make payments on your behalf to a relocation services company, if you so choose. The term "property management services" refers to a program provided by a private company for a fee, which assists you in managing your residence at your previous official station as a rental property. Services provided by the company may include, but are not limited to, obtaining a tenant, negotiating a lease, inspecting the property regularly, managing repairs and maintenance, enforcing lease terms, collecting rent, paying the mortgage and other carrying expenses from rental proceeds and/or fund of the employee, and accounting for the transactions and providing periodic reports to the employee.

§ 302–3.419 For what property will my agency pay property management services?

Your agency will only pay for the property from which you commuted to/from work on a daily basis at your previous official station.

§ 302–3.420 How long will my agency pay for property management services?

Your agency will pay for property management services for the duration of your TCS.

§ 302–3.421 What are the income tax consequences when my agency pays for property management services?

When your agency pays for property management services:

(a) You will be taxed on the amount of property management expenses your agency pays, whether it reimburses you

directly for your expenses or pays a relocation services company to manage your residence; and

(b) Your agency will pay you a relocation income tax allowance under part 302–17 of this chapter for substantially all of the additional Federal, State and local income taxes you incur on the expenses your agency pays.

Note to § 302–3.421: You may wish to consult with a tax advisor to determine whether you will incur any additional tax liability, unrelated to your agency's payment of your property management expenses, as a result of maintaining your residence as a rental property.

Expenses Paid Upon Completion of Assignment or Upon Separation From Government Service

§ 302–3.422 What expenses will my agency pay when I complete my TCS?

Your agency will pay for the following expenses in connection with your return to your previous official station:

(a) Travel, including per diem, for you and your immediate family under part 302–4 of this chapter;

(b) Transportation and temporary storage of your household good under part 302–7 of this chapter;

(c) Transportation of a mobile home instead of transportation of our household goods under part 302–10 of this chapter;

(d) Temporary quarters subsistence expenses under part 302–6 of this chapter;

(e) A miscellaneous expenses allowance under part 302–16 of this chapter;

(f) Transportation of a privately owned vehicle(s) under part of this chapter; and

(g) A relocation income tax allowance under part 302–17 of this chapter for additional income taxes you incur on payments your agency makes under the authority of this part for your relocation expenses.

§ 302–3.423 If I separate from Government service upon completion of my TCS, what relocation expenses will my agency pay upon my separation?

If you separate from Government service upon completion of your TCS, your agency will upon your separation, pay the same relocation expenses it would have paid had you not separated from Government service upon completion of your TCS.

§ 302–3.424 If I separate from Government service prior to completion of my TCS, what relocation expenses will my agency pay upon my separation?

If you separate from Government service prior to completion of your TCS for reasons beyond your control that are acceptable to your agency, your agency will pay the same relocation expenses it would pay under § 302–3.423. If this is not the case, the expenses your agency pays may not exceed the reimbursement that you would have received under this chapter or chapter 301 of this title whichever your agency determines to be in the best interest of the Government.

§ 302–3.425 If I have been authorized successive temporary changes of station and reassigned from one temporary official station to another, what expenses will my agency pay upon completion of my last assignment or my separation from Government service?

Your agency will pay the expenses authorized in § 302–3.422 for your relocation from your current temporary official station to your last permanent official station.

Permanent Assignment to Temporary Official Station

§ 302–3.426 How is payment of my TCS expenses affected if I am permanently assigned to my temporary official station?

Payment of TCS expenses stops once your temporary official station becomes your permanent official station. Your agency may not pay any TCS expenses incurred beginning the day your temporary official station becomes your permanent official station.

§ 302–3.427 What relocation allowances may my agency pay when I am permanently assigned to my temporary official station?

When you are permanently assigned to your temporary official station, your agency may pay:

(a) Travel, including per diem, in accordance with part 302–4 of this chapter, for one round trip between your temporary official station and your previous official station, for you and members of your immediate family who relocated to the temporary official station with you. Your agency may also pay the same expenses for a one-way trip from the previous official station to the new permanent official station for any immediate family members who did not accompany you to the temporary official station;

(b) Residence transaction expenses under part 302–11 of this chapter;

(c) Property management expenses under part 302–15 of this chapter;

(d) Relocation services under part 302–12 of this chapter;

(e) Temporary quarters subsistence expenses in accordance with part 302–6 of this chapter;

(f) Transportation of household goods not previously transported to the temporary official station under part 302–7 of this chapter; and

(g) Transportation of a privately owned vehicle(s) not previously transported to the temporary official station under § 302–9.6 of this chapter.

§ 302–3.428 If I am permanently assigned to my temporary official station, is there any limitation on the weight of household goods I may transport at Government expense to my official station?

Yes. If you are permanently assigned to your temporary official station, you are limited to 18,000 pounds net weight for household goods you may transport at Government expense to your official station. This maximum weight will be reduced by the weight of any household goods transported at Government expense to your temporary official station under your TCS authorization. Subject to the 18,000 pound limit, your agency will pay to transport any household goods in extended storage to your official station. Additionally, if you change your residence as a result of your permanent assignment to your temporary official station, your agency may pay for transporting your household goods, subject to the 18,000-pound limit, between the residence you occupied during your temporary assignment and your new residence.

§ 302–3.429 Are there any relocation allowances my agency may not pay if I am permanently assigned to my temporary official station?

If you are permanently assigned to your temporary official station, your agency may not pay:

(a) Expenses of a househunting trip for you and your spouse to your temporary official station under part 302–5 of this chapter; or

(b) Residence transaction expenses for selling a residence or breaking a lease at the temporary official station under part 302–11 of this chapter.

Subpart F—Agency Responsibilities

Note to subpart F: Use of pronouns "we", "you", and their variants throughout this subpart refers to the agency.

§ 302–3.500 What governing policies and procedures must we establish for paying a relocation allowance under this part 302–3?

You must establish how you will implement policies that are required for this part, which include;

(a) When you will pay relocation expenses if an employee violates his/her service agreement;

(b) When you will authorize separate relocation allowances to an employee and an employee's immediate family member that are both transferring to the same official station;

(c) When you will grant an employee and/or the employee's immediate family member(s) an extension on beginning separation travel;

(d) When you will allow an employee to arrange his/her own relocation upon separation;

(e) When you will authorize a temporary change of station (TCS);

(f) When you will define an area not to reimburse for a TCS;

(g) When you will pay extended storage of household goods for TCS; and

(h) What relocation allowances you will and will not pay when an employee is permanently assigned to a temporary official station.

§ 302–3.501 Must we establish any specific procedures for paying a relocation allowance to new appointees?

Yes, you must establish specific guidelines for paying a relocation allowance to new appointees. These guidelines must establish the:

(a) Criteria in accordance with 5 CFR part 572 on how you will determine if a new appointee is eligible for the relocation allowances authorized therein; and

(b) Procedures which will provide new appointees with information surrounding his/her benefits.

§ 302–3.502 What factors should we consider in determining whether to authorize a TCS for a long-term assignment?

You should consider the following factors in determining whether to authorize a TCS:

(a) *Cost considerations.* You should consider the cost of each alternative. A long-term temporary duty travel assignment requires the payment of either per diem or actual subsistence expenses for the entire period of the assignment. This could be very costly to the agency over an extended period. A TCS will require fairly substantial relocation allowance payments at the beginning and end of the assignment, and less substantial payments for extended storage and property management services, when authorized, during the period of the assignment. Agencies should estimate the total cost of each alternative and authorize the one that is most advantageous for the agency, cost and other factors considered;

(b) *Tax considerations.* An employee who performs a temporary duty travel assignment exceeding one year at a single location is subject to income taxation of his/her travel expense reimbursements. The Income Tax Reimbursement Allowance (ITRA) allows for the reimbursement of Federal, State and local income taxes incurred as a result of an extended temporary duty assignment (see §§ 301–11.501 through 301–11.640 of this title). An employee who is authorized and performs a TCS also will be subject to income taxation of some, but not all, of his/her TCS expenses. You will pay an offsetting Relocation Income Tax (RIT) allowance on an employee's TCS expense reimbursements; and

(c) *Employee concerns.* The long-term assignment of an employee away from his/her official station and immediate family may negatively affect the employee's morale and job performance. Such negative effects may be alleviated by authorizing a TCS so the employee can transport his/her immediate family and/or household goods at Government expense to the location where he/she will perform the long-term assignment. You should consider the effects of a long-term temporary duty travel assignment on an employee when deciding whether to authorize a TCS.

Service Agreements

§ 302–3.503 Must we require employees to sign a service agreement?

Yes, you must require employees to sign a service agreement if the employee is receiving reimbursement for relocation travel expenses, except as provided in § 302–3.410 for a temporary change of station.

§ 302–3.504 What information should we include in a service agreement?

The service agreement should include, but not be limited to the following:

(a) The employee's name;

(b) The employee's effective date of transfer or appointment;

(c) The employee's actual place of residence at the time of appointment;

(d) The name of all dependents that are authorized to travel under the TA;

(e) Detailed information regarding the employee's obligation to repay funds spent on his/her relocation as a debt due the Government if the service agreement is violated;

(f) The employee's agreed period of time (see § 302–3.505) to remain in service; and

(g) The employee's signature accepting the terms of the agreement.

§ 302–3.505 How long must we require an employee to agree to the terms of a service agreement?

You must require an employee to agree to the terms of a service agreement:

(a) Within the continental United States for a period of service of not less than 12 months following the effective date of your transfer;

(b) Outside the continental United States for an agreed upon period of service of not more than 36 months or less than 12 months following the effective date of transfer;

(c) Department of Defense Overseas Dependent School System teachers for a period of not less than one school year as determined under chapter 25 of Title 20, United States Code; and

(d) Renewal agreement travel for a period of not less than 12 months from the date of return to the same or different overseas duty station.

§ 302–3.506 May we pay relocation expenses if the employee violates his/her service agreement?

If an employee does not fulfill the terms of the service agreement, the employee is indebted to the Government for all relocation expenses that have been reimbursed to the employee or that have been paid directly by the Government. However, if the reasons for not fulfilling the terms of the service agreement are beyond the employee's control and acceptable to the agency, you may release the employee from the service agreement and waive any indebtedness.

New Appointees

§ 302–3.507 Once we authorize relocation expenses for new appointees or student trainees what expenses must we pay?

Once you authorize relocation expenses for new appointees or student trainees, you must pay expenses in accordance with § 302–3.2.

§ 302–3.508 What relocation expenses are not authorized for new appointees or student trainees?

You must not pay any expenses to new appointees or student trainees for a relocation that are not listed under § 302–3.2.

Overseas Assignment And Return

§ 302–3.509 What policies must we follow when appointing an employee to an overseas assignment?

When appointing an employee to an overseas assignment, you must:

(a) Establish the employee's actual place of residence at the time of appointment and state it in his/her service agreement;

(b) Use guidance in 8 U.S.C. 1101(33) which states that "The term *residence* means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent", for establishing places of residence; and

(c) Require the employee to sign the service agreement prior to his/her relocation.

§ 302–3.510 When must we pay return travel for immediate family members?

You must pay transportation expenses for one-way return travel of immediate family members when the employee has successfully completed his/her service agreement period OCONUS.

§ 302–3.511 What must we consider when determining return travel for immediate family member(s) for compassionate reasons prior to completion of the service agreement?

You must determine that the public interest requires the return of the immediate family for compelling personal reasons of a humanitarian or compassionate nature, which may involve:

(a) His/her physical or mental health;

(b) The death of a member of the immediate family;

(c) Obligations imposed by authority or circumstances over which the individual has no control;

(d) The divorce or annulment of the employee's marriage; or

(e) A dependent that traveled to post of duty on the employee's authorized TA and has now reached his/her 21st birthdate.

§ 302–3.512 How many times are we required to pay for an employee's return travel?

You must pay for return travel and transportation of an employee only once at the end of each agreed period of service.

Overseas Tour Renewal Travel

§ 302–3.513 May we allow a travel advance for tour renewal agreement travel?

No, you cannot allow a travel advance for tour renewal agreement travel.

§ 302–3.514 Under what conditions must we pay for tour renewal agreement travel?

You must pay tour renewal agreement travel when:

(a) The employee has completed the agreed upon period of service outside CONUS;

(b) The employee has agreed to serve another OCONUS tour of duty at the same or different duty station; and

(c) You have determined that the employee meets the special rules under § 302–3.515 for Alaska or Hawaii.

§ 302–3.515 What special rules must we apply for reimbursement of tour renewal travel for employees stationed, assigned, appointed or transferred to/from Alaska or Hawaii?

The following rules apply:

(a) If on September 8, 1982 the employee was serving or committed to serve a tour of duty in Alaska or Hawaii then the employee shall continue to receive reimbursement for tour renewal agreement travel;

(b) After September 8, 1982 you must determine that tour renewal agreement travel expenses are necessary for the purposes of recruiting and retaining employees and you must inform employees in writing that tour renewal agreement travel for the purposes of recruiting and retention is limited to two round trips beginning within 5 years after the date the employee first begins any period of consecutive tours of duty.

SES Separation for Retirement

§ 302–3.516 What must we do before issuing payment for SES separation-relocation travel?

Before issuing payment for separation-relocation travel, you must establish timeframes for employees to submit request for authorization and approval of relocation expenses.

§ 302–3.517 May we issue travel advances for separation relocation?

No, travel advances for separation relocation may not be authorized.

SUBCHAPTER C—PERMANENT CHANGE OF STATION (PCS) ALLOWANCES FOR SUBSISTENCE AND TRANSPORTATION EXPENSES

PART 302–4—ALLOWANCES FOR SUBSISTENCE AND TRANSPORTATION

Subpart A—Eligibility

Sec.

Subpart B—Travel Expenses

Subpart C—Per Diem

Transferred Employees Only

Subpart D—Mileage Rates for Use Of POV

Subpart E—Daily Driving Distance Requirements

Subpart F—Use of More Than One POV

Subpart G—Advance Of Funds

Subpart H—Agency Responsibilities

Authority: 5 U.S.C. 5738; 20 U.S.C. 905 (a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1973 Comp., p. 586.

Subpart A—Eligibility

Note to subpart A: Use of pronouns "I", "you", and their variants throughout this subpart refers to the employee, unless otherwise noted.

§ 302–4.1 What is a permanent change of station (PCS)?

A permanent change of station (PCS) is an assignment of a new appointee to an official station or the transfer of an employee from one official station to another on a permanent basis.

§ 302–4.2 Am I eligible for subsistence and transportation allowances for PCS travel under this part?

Yes, you are eligible for subsistence and transportation allowances for PCS travel if your agency specifically authorizes relocation expenses under this part and are:

(a) Transferred employees (within or outside CONUS);

(b) New appointees (within or outside CONUS); and

(c) An employees assigned to posts of duty outside CONUS in connection with either overseas tour renewal agreement travel or return travel to places of residence for separation.

Note to § 302–4.2: Also see table at §§ 302–3.2 and 302–3.101.

Subpart B—Travel Expenses

§ 302–4.100 What PCS travel expenses will my immediate family members receive?

Except as specifically provided in § 302–4.202, the rules (for TDY travel) in chapter 301 of this title will be used for payment of the travel expenses of your immediate family members.

§ 302–4.101 Must my immediate family member(s) and I begin PCS travel at the old official station and end at the new official station?

No, if an alternate location is used, reimbursement is limited to the allowable cost by the usually traveled route between your old and new official stations.

Subpart C—Per Diem

§ 302–4.200 What per diem rate will I receive for en route relocation travel within CONUS?

Your per diem for en route relocation travel between your old and new official station will be at the standard CONUS rate (see Appendix A of part 302.17 of this chapter). You will be reimbursed in accordance with §§ 301–11.100 through 301–11.102 of this title.

§ 302–4.201 How are my authorized en route travel days and per diem determined for relocation travel?

Your authorized en route travel days and per diem are determined as follows: The number of authorized travel days is the actual number of days used to complete the trip, but not to exceed an amount based on a minimum driving distance per day determined to be reasonable by your agency. The minimum driving distance shall be not less than an average of 300 miles per calendar day. An exception to the daily minimum driving distance may be made when delay is beyond control of the employee, such as when it results from acts of God or restrictions by Government officials; when the employee is physically handicapped; or for other reasons acceptable to the agency.

§ 302–4.202 Are there any circumstances in which a per diem allowance for my immediate family members is not allowed?

Yes, per diem for your immediate family members cannot be authorized if you are:

(a) A new appointee;

(b) Assigned to posts of duty outside CONUS returning to place of actual residence for separation; or

(c) Being relocated under the Government Employees Training Act (5 U.S.C. 4109).

Transferred Employees Only

§ 302–4.203 How much per diem will my spouse receive if he/she accompanies me while I am performing PCS travel?

The maximum amount your spouse may receive if he/she accompanies you while you are performing PCS travel is three-fourths of your daily per diem rate.

§ 302–4.204 If my spouse does not accompany me but travels unaccompanied at a different time, what per diem rate will he/she receive?

If your spouse does not accompany you but travels unaccompanied at a different time, he/she will receive the same per diem rate to which you are entitled.

§ 302–4.205 If my spouse and I travel on the same days along the same general route by using more than one POV, is my spouse considered unaccompanied?

No; for per diem purposes, you and your spouse are considered to be traveling together if you travel on the same days along the same general route by using more than one POV.

§ 302–4.206 How much per diem will my immediate family receive?

Immediate family members age 12 or older receive three-fourths of your per diem rate, and children under 12 receive one-half of your per diem rate.

Subpart D—Mileage Rates for Use of POV

§ 302–4.300 What is the POV mileage rate for PCS travel?

When PCS travel by POV is approved, rates for payment of mileage allowances are taken from the following table:

Occupants of POV	Mileage rate
Employee only; or one member of immediate family	$0.15
Employee and one member; or two members of immediate family	0.17
Employee and two members; or three members of immediate family	0.19
Employee and three or more members; or four or more members of immediate family	0.20

§ 302–4.301 Do the rates in § 302–4.300 apply if I am performing overseas tour renewal agreement travel?

No, POV mileage must not be authorized for overseas tour renewal agreement travel.

§ 302–4.302 Are there circumstances that would allow me to receive a higher mileage rate OCONUS?

Yes, your agency may authorize a higher mileage rate at a rate not to exceed the maximum rate prescribed in § 301–10.303 of this title when:

(a) You are expected to use the POV on official business at the new official station;

(b) The common carrier rates for the facilities provided between the old and new official stations, the related constructive taxicab fares to and from terminals, and the per diem allowances prescribed under this part justify a higher mileage rate as advantageous to the Government as determined by your agency; or

(c) The costs of driving the POV to, from, or between official stations located outside CONUS justify a higher mileage rate as advantageous to the Government.

Subpart E—Daily Driving Distance Requirements

§ 302–4.400 Will I be required to drive a minimum distance per day?

Yes, your agency may establish a reasonable minimum driving distance that may be more than, but not less than an average of 300 miles per calendar day.

§ 302–4.401 Are there exceptions to this daily minimum?

Yes, your agency may authorize exceptions to the daily minimum driving distance when there is a delay beyond your control such as acts of God, restrictions by Governmental authorities, or other acceptable reasons; e.g., a physical handicap or special needs. Your agency must have a designated approving official authorize the exception.

§ 302–4.402 Will I be required to document the circumstances causing the delay?

Yes, you must provide a statement on your travel claim explaining the circumstances that caused the delay.

§ 302–4.403 Does this exception require authorization by my approving official?

Yes, authorization by your approving official is required for any exception to the daily minimum driving distance.

Subpart F—Use of More Than One POV

302–4.500 If I am authorized to use more than one POV, what are the allowances?

When you are authorized to use more than one POV, the allowances under §§ 302–4.300 and 302–4.302 apply for each POV.

§ 302–4.501 If I use an additional POV that was not authorized for PCS travel, will I be reimbursed for the additional POV?

No, your agency must authorize you reimbursement of the use of more than one POV before you are entitled to reimbursement.

Subpart G—Advance of Funds

§ 302–4.600 May I request an advance of funds for per diem and mileage allowances for PCS travel?

You may request advance of funds for per diem and mileage allowances for PCS travel, except for overseas tour renewal agreement travel.

Subpart H—Agency Responsibilities

Note to subpart H: Use of pronouns "we", "you", and their variants throughout this subpart refers to the agency, unless otherwise noted.

§ 302–4.700 What governing policies must we establish for payment of allowances for subsistence and transportation expenses?

For payment of allowances for subsistence and transportation expenses, you must establish policy and procedures governing:

(a) How you will implement the regulations throughout this part;

(b) A reasonable minimum driving distance per day that may be more than, but not less than an average of 300 miles per calendar day when use of a POV is used for PCS travel and when you will authorize an exception;

(c) Designation of an agency approving official who will authorize an exception to the daily minimum driving distance; and

(d) When you will authorize the use of more than one POV for PCS travel.

§ 302–4.701 What PCS travel expenses must we pay?

Except as specifically provided in this chapter, PCS travel expenses you must pay are:

(a) Per diem;

(b) Transportation costs; and

(c) Other travel expenses in accordance with 5 U.S.C. 5701–5709 and chapter 301 of this title.

§ 302–4.702 What PCS travel expenses must we pay for the employee's immediate family members?

Except as specifically provided in this chapter, the reimbursement limits in chapter 301 of this title govern payment of travel expenses you must pay for the employee's immediate family members.

§ 302–4.703 How do we compute the per diem for an established minimum driving distance per day?

Per diem for an established minimum driving distance per day is computed based on the lodgings-plus per diem system as described in §§ 301–11.100 through 301–11.103 of this title.

§ 302–4.704 Must we require a minimum driving distance per day?

Yes, you must establish a minimum driving distance not less than an average of 300 miles per day. However, an exception to the daily minimum driving distance may be made when the delay is:

(a) Beyond control of the employee, e.g., results from acts of God or restrictions by Government officials;

(b) Due to a physical handicap; or

(c) For other reasons acceptable to you.

§ 302–4.705 What are the allowances if the employee uses more POVs than authorized?

If the employee uses more POVs than authorized, reimbursement will be made as if all persons traveled in the number of POVs that you authorized.

PART 302–5—ALLOWANCE FOR HOUSEHUNTING TRIP EXPENSES

Subpart A—Employee's Allowance for Household Trip Expenses

Sec.

Subpart B—Agency Responsibilities

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13474, 3 CFR, 1971–1973 Comp., p. 586.

Subpart A—Employee's Allowance For Househunting Trip Expenses

Note to subpart A: Use of the pronouns "I" and "you" throughout this subpart refers to the employee.

§ 302–5.1 What is a "househunting trip"?

The term "househunting trip" refers to a trip made by the employee and/or spouse to your new official station locality to find permanent living quarters to rent or purchase. The term "living quarters" in this part includes apartments, condominiums, and cooperatives in addition to townhouses and single family homes.

§ 302–5.2 What is the purpose of the househunting trip expenses allowance?

The allowance for househunting trip expenses is intended to facilitate and expedite the employee's move from your old official station to your new official station and to lower the Government's overall cost for the employee's relocation by reducing the amount of time an employee must occupy temporary quarters. The allowance for househunting trip expenses provides the employee and/or spouse a period of time to concentrate on finding a suitable permanent residence at the new official station and thereby expedites the employee's relocation.

§ 302–5.3 Am I eligible for a househunting trip expenses allowance?

You are eligible for a househunting trip expenses allowance if you are an employee who is authorized to transfer, and in addition:

(a) Both your old and new official stations are located within the United States;

(b) You are not assigned to Government or other prearranged housing at your new official station; and

(c) Your old and new official stations are 75 or more miles apart (as measured by map distance) via a usually traveled surface route.

§ 302–5.4 Who is not eligible for a househunting trip expenses allowance?

New appointees and employees assigned under the Government Employees Training Act (5 U.S.C. 4109) are not eligible for a househunting trip expenses allowance.

§ 302–5.5 Must my agency authorize payment of a househunting trip expenses allowance?

No, your agency determines when it is in the Government's interest to authorize you a househunting trip and the procedures you must follow if it is authorized.

§ 302–5.6 Under what circumstances will I receive a househunting trip expenses allowance?

You will receive a househunting trip expenses allowance if:

(a) Your agency authorized you to perform a househunting trip in advance of the travel (the agency authorization must specify the mode of transportation and the period of time allowed for the trip);

(b) You have signed a service agreement;

(c) Your agency has established, and informed you of, the date you are to report to your new official station; and

(d) You meet any additional conditions your agency has established.

§ 302–5.7 Who may travel on a househunting trip at Government expense?

Only you and/or your spouse may travel on a househunting trip at Government expense.

§ 302–5.8 How many househunting trips may my agency authorize in connection with a particular transfer?

Your agency may authorize only one round trip for you and/or your spouse in connection with a particular transfer.

§ 302–5.9 May my spouse and I perform separate househunting trips at Government expense?

Yes, however, your reimbursement will be limited to the cost that would have been incurred if you and your spouse had traveled together on one round trip.

§ 302–5.10 How soon may I and/or my spouse begin a househunting trip?

You may begin your househunting trip as soon as your agency has notified you of your transfer and issued a travel authorization for a househunting trip. To take maximum advantage of your trip, however, it is very important that you become familiar as quickly as you can with your new official station area (*e.g.*, housing market conditions, school locations, etc.). If you are selling your residence at your old official station, you should not begin your househunting trip until you have a current appraisal of the value of the residence so that you can more accurately determine the appropriate price range of residences to consider during your househunting trip.

§ 302–5.11 Is there a time limit on the duration of a househunting trip?

A househunting trip should be for a reasonable period, not to exceed 10 calendar days, as authorized by your agency under § 302–5.101(d).

§ 302–5.12 When must my househunting trip be completed?

You and/or your spouse must complete your househunting trip as indicated in the following table:

For	Your househunting trip must be completed by
You	The day before you report to your new Official station.
Your spouse	The earlier of: (a) The day before your family relocates to your new official station; or (b) The day before the maximum time for beginning allowable travel expires (see § 302–2.100 of this chapter).

§ 302–5.13 What methods may my agency use to reimburse me for househunting trip expenses?

Your agency will reimburse your househunting trip expenses as indicated in the following table:

For	You are reimbursed
You and/or your spouse's transportation expenses	Your actual transportation costs.
You and/or your spouse's subsistence expenses.	One of the following: (a) A per diem allowance for you and/or your spouse as prescribed under part 302–4, subpart C of this chapter; or (b) If you accept your agency's offer of the fixed amount option, and:

For	You are reimbursed
	(1) Both you and your spouse perform a househunting trip either together or separately, a single amount determined by multiplying the applicable locality rate (listed in appendix A to chapter 301 of this subtitle) by 6.25 or (2) Only one of you performs a househunting trip, an amount determined by multiplying the applicable locality rate (listed in appendix A to chapter 301 of this subtitle) by 5.

§ 302–5.14 What transportation expenses will my agency pay?

Your agency will authorize you to travel by the transportation mode(s) (e.g., airline, train, or privately owned automobile) it determines to be advantageous to the Government. Your agency will pay for your transportation expenses by the authorized mode(s). If you travel by any other mode(s), your agency will pay your transportation expenses not to exceed the cost of transportation by the authorized mode(s).

§ 302–5.15 Must I document my househunting trip expenses to receive reimbursement?

To receive reimbursement for househunting trip transportation expenses you must itemize your transportation expenses and provide receipts as required by § 301–11.3(c) of this title. For fixed amount househunting trip subsistence reimbursement, you do not need to document your subsistence expenses. For per diem househunting trip subsistence expense reimbursement, you must itemize your lodging expenses and you must provide receipts as required by §§ 301–7.9(b) and 301–11.3(c) of this title.

§ 302–5.16 May I receive an advance of funds for househunting trip expenses?

Your agency may authorize an advance of funds, in accordance with § 302–2.20 of this chapter, for your househunting trip expenses. Your agency may not advance you funds in excess of the sum of your anticipated transportation costs and either the maximum per diem allowable under part 302–4 of this chapter for the location and duration of your househunting trip or your fixed amount househunting trip subsistence expenses payment, whichever applies.

§ 302–5.17 Am I in a duty status when I perform a househunting trip?

Yes, you are in a duty status when you perform a househunting trip.

§ 302–5.18 May I retain any balance left over from my househunting reimbursement if my fixed amount is more than adequate to cover my househunting trip?

Yes, if your fixed househunting amount is more than adequate to cover your househunting expenses any balance belongs to you.

Subpart B—Agency Responsibilities

Note to subpart B: Use of pronouns "we", "you", and their variants throughout this subpart refers to the agency.

§ 302–5.100 How should we administer the househunting trip expenses allowance?

You should administer the househunting trip expenses allowance to minimize or avoid its use when other satisfactory and more economical arrangement are available.

§ 302–5.101 What governing policies must we establish for the househunting trip expenses allowance?

You must establish policies and procedures governing:

(a) When you will authorize a househunting trip for an employee;

(b) Who will determine if a househunting trip is appropriate in each situation;

(c) If and when you will authorize the fixed amount option for househunting trip subsistence expenses reimbursement;

(d) Who will determine the appropriate duration of a househunting trip for an employee who selects a per diem allowance under part 302–4 of this chapter to reimburse househunting trip subsistence expenses; and

(e) Who will determine the mode(s) of transportation to be used.

§ 302–5.102 Under what circumstances may we authorize a househunting trip?

You may authorize a househunting trip on an individual-case basis when the employee has accepted the transfer and his/her circumstances indicate that a househunting trip actually is needed. You may not authorize a househunting trip when the purpose of the trip is to assist the employee in deciding whether he or she will accept the transfer.

§ 302–5.103 What factors must we consider in determining whether to offer an employee the fixed amount househunting trip subsistence expense reimbursement option?

You must consider the following factors:

(a) *Ease of administration.* Payment of a per diem allowance under part 302–4 of this chapter requires you to review claims for the validity, accuracy, and reasonableness of each expense amount, except for meals and incidental expenses. Fixed amount househunting trip subsistence expenses reimbursement is easier to administer because you do not have to review expense amounts.

(b) *Cost considerations.* You must weigh the cost of each reimbursement option on a case-by-case basis.

(c) *Treatment of employees.* The employee is allowed to choose between a per diem allowance under part 302–4 of this chapter and fixed amount househunting trip subsistence expenses reimbursement when you offer the fixed amount reimbursement method. You therefore should weigh employee morale and productivity considerations against actual cost considerations in determining which method to offer.

PART 302–6—ALLOWANCE FOR TEMPORARY QUARTERS SUBSISTENCE EXPENSES

Subpart A—General Rules

Sec.

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13474. 3 CFR, 1971–1973 Comp., p. 586.

Subpart A—General Rules

Note to subpart A: Use of pronouns "I", "you", and their variants throughout this subpart refers to the employee, unless otherwise noted.

§ 302–6.1 What are "temporary quarters?"

The term "temporary quarters" refers to lodging obtained for the purpose of temporary occupancy from a private or commercial source.

§ 302–6.2 What are "temporary quarters subsistence expenses (TQSE)"?

"Temporary quarters subsistence expenses" or "TQSE" are subsistence expenses incurred by an employee and/or his/her immediate family while occupying temporary quarters. TQSE does not include local transportation expenses incurred during occupancy of temporary quarters (see § 302–6.18 for details).

§ 302–6.3 What is the purpose of the TQSE allowance?

The TQSE allowance is intended to reimburse an employee reasonably and equitably for subsistence expenses incurred when it is necessary to occupy temporary quarters.

§ 302–6.4 Am I eligible for a TQSE allowance?

You are eligible for a TQSE allowance if you are an employee who is authorized to transfer; and

(a) Your new official station is located within the United States; and

(b) Your old and new official stations are 50 miles or more apart (as measured by map distance) via a usually traveled surface route.

§ 302–6.5 Who is not eligible for a TQSE allowance?

New appointees, employees assigned under the Government Employees Training Act (5 U.S.C. 4109), and employees returning from an overseas assignment for the purpose of separation are not eligible for a TQSE allowance.

§ 302–6.6 Must my agency authorize payment of a TQSE allowance?

No, your agency determines whether it is in the Government's interest to pay TQSE.

§ 302–6.7 Under what circumstances will I receive a TQSE allowance?

You will receive a TQSE allowance if:

(a) Your agency authorizes it before you occupy the temporary quarters (the agency authorization must specify the period of time allowed for you to occupy temporary quarters);

(b) You have signed a service agreement; and

(c) You meet any additional conditions your agency has established.

§ 302–6.8 Who may occupy temporary quarters at Government expense?

Only you and/or your immediate family may occupy temporary quarters at Government expense.

§ 302–6.9 Where may I/we occupy temporary quarters at Government expense?

You and/or your immediate family may occupy temporary quarters at Government expense within reasonable proximity of your old and/or new official stations. Neither you nor your immediate family may be reimbursed for occupying temporary quarters at any other location, unless justified by special circumstances that are reasonably related to your transfer.

§ 302–6.10 May my immediate family and I occupy temporary quarters at different locations?

Yes. For example, if you must vacate your home at the old official station and report to the new official station and your family remains behind until the end of the school year, you may need to occupy temporary quarters at the new official station while your family occupies temporary quarters at the old official station.

§ 302–6.11 What methods may my agency use to reimburse me for TQSE?

Your agency will reimburse you for TQSE under the actual expense method unless it permits the "fixed amount" reimbursement method as an alternative. If your agency makes both methods available to you, you may select the one you prefer.

§ 302–6.12 Must I document my TQSE to receive reimbursement?

For fixed amount TQSE reimbursement, you do not document your TQSE. For actual TQSE reimbursement, you must document your TQSE by itemizing each expense and providing receipts as required by

§§ 301–11.25, 301–11.306 and 301–52.4(b) of this title.

§ 302–6.13 How soon may I/we begin occupying temporary quarters at Government expense?

As soon as your agency has authorized you to receive a TQSE allowance and you have signed a service agreement.

§ 302–6.14 How is my TQSE allowance affected if my temporary quarters become my permanent residence quarters?

If your temporary quarters become your permanent residence quarters, you may receive a TQSE allowance only if you show in a manner satisfactory to your agency that you initially intended to occupy the quarters temporarily.

§ 302–6.15 May I receive an advance of funds for TQSE?

Yes, if authorized in accordance with § 302–2.20 of this chapter, your agency may advance the amount of funds necessary to cover your estimated TQSE expenses for up to 30 days. Your agency subsequently may advance additional funds for periods up to 30 days.

§ 302–6.16 May I receive a TQSE allowance if I am receiving another subsistence expenses allowance?

No, with one exception. You may receive a cost-of-living allowance payable under 5 U.S.C. 5941 in addition to a TQSE allowance.

§ 302–6.17 Am I eligible for a TQSE allowance if I transfer to a foreign area?

No, you may not receive a TQSE allowance under this part when you transfer to an area outside the United States. However, you may qualify for a comparable allowance under the Standardized Regulations (Government Civilians, Foreign Areas) prescribed by the Department of State.

§ 302–6.18 May I be reimbursed for local transportation expenses incurred while I am occupying temporary quarters?

Generally no; local transportation expenses are not TQSE, and there is no authority to pay such expenses under TQSE. You may, however, be reimbursed under part 301–4 of this subtitle for necessary transportation expenses if you perform local official business travel while you are occupying temporary quarters.

Subpart B—Actual TQSE Method of Reimbursement

§ 302–6.100 What am I paid under the actual TQSE reimbursement method?

Your agency will pay your actual TQSE incurred, provided the expenses are reasonable and do not exceed the maximum allowable amount. The "maximum allowable amount" is the "maximum daily amount" multiplied by the number of days you actually incur TQSE not to exceed the number of days authorized, taking into account that the rates change after 30 days in temporary quarters. The "maximum daily amount" is determined by adding the rates in the following table for you and each member of your immediate family authorized to occupy temporary quarters:

	The "maximum daily amount" of TQSE under the actual expense method that		
	You and/or your unaccompanied spouse [1] may receive is	Your accompanied spouse or a member of your immediate family who is age 12 or older may receive is	A member of your immediate family who is under age 12 may receive is
For:			
The first 30 days of temporary quarters.	The applicable per diem rate	.75 times the applicable per diem rate.	.5 times the applicable per diem rate.
Any additional days of temporary quarters.	.75 times the applicable per diem rate.	.5 times the applicable per diem rate.	.4 times the applicable per diem rate.

[1] (That is, when the spouse necessarily occupies temporary quarters in lieu of the employee or in a location separate from the employee.)

§ 302–6.101 May my agency reduce my TQSE allowance below the "maximum allowable amount"?

Yes, if the estimated daily amount of your TQSE is determined in advance to be lower than the maximum daily amount, your agency may reduce the maximum allowable amount to your expected expenses.

§ 302–6.102 What is the "applicable per diem rate" under the actual TQSE reimbursement method?

The "applicable per diem rate" under the actual TQSE reimbursement method is as follows:

For temporary quarters located in	The applicable per diem rate is
The continental United States (CONUS).	The standard CONUS rate.
Outside the Continental United States (OCONUS).	The locality rate established by the Secretary of Defense or the Secretary of State under § 301–11.6 of this title.

§ 302–6.103 What is the latest period for which actual TQSE reimbursement may begin?

The period must begin before the maximum time for beginning allowable travel and transportation under § 302–2.8.

§ 302–6.104 How long may I be authorized to claim actual TQSE reimbursement?

Your agency may authorize you to claim actual TQSE in increments of 30-days or less, not to exceed 60 consecutive days. However, if your agency determines that there is a compelling reason for you to continue occupying temporary quarters after 60 consecutive days, it may authorize an extension of up to 60 additional consecutive days. Under no circumstances may you be authorized reimbursement for actual TQSE for more than a total of 120 consecutive days.

§ 302–6.105 What is a "compelling reason" warranting extension of my authorized period for claiming an actual TQSE reimbursement?

A "compelling reason" is an event that is beyond your control and is acceptable to your agency. Examples include, but are not limited to when:

(a) Delivery of your household goods to your new residence is delayed due to strikes, customs clearance, hazardous weather, fires, floods or other acts of God, or similar events.

(b) You cannot occupy your new permanent residence because of unanticipated problems (e.g., delay in settlement on the new residence, or short-term delay in construction of the residence).

(c) You are unable to locate a permanent residence which is adequate for your family's needs because of housing conditions at your new official station.

(d) Sudden illness, injury, your death or the death of your immediate family member; or

(e) Similar reasons.

§ 302–6.106 May I interrupt occupancy of temporary quarters?

Yes, your authorized period for claiming actual TQSE reimbursement is measured on consecutive days, and once begun, normally continues to run whether or not you occupy temporary quarters. You may, however, interrupt your authorized period for claiming actual TQSE reimbursement in the following instances:

(a) For the time allowed for en route travel between the old and new official stations;

(b) For circumstances attributable to official necessity such as an intervening temporary duty assignment or military duty; or

(c) For a non-official necessary interruption such as hospitalization, approved sick leave, or other reason beyond your control and acceptable to your agency.

§ 302–6.107 What effect do partial days of temporary quarters occupancy have on my authorized period for claiming actual TQSE reimbursement?

Occupancy of temporary quarters for less than a whole day constitutes one full day of your authorized period. (However, see § 302–6.110 regarding en route travel.)

§ 302–6.108 When does my authorized period for claiming actual TQSE reimbursement end?

The period ends at midnight on the earlier of:

(a) The day preceding the day you and/or any member of your immediate family occupies permanent residence quarters.

(b) The day your authorized period for claiming actual TQSE reimbursement expires.

§ 302–6.109 May the period for which I am authorized to claim actual TQSE reimbursement for myself be different from that of my immediate family?

No, the eligibility period for which you are authorized to claim actual TQSE reimbursement for yourself and for each member of your immediate family must run concurrently.

§ 302–6.110 What effect do partial days have on my actual TQSE reimbursement?

You may not receive reimbursement under both the actual TQSE allowance and another subsistence expenses allowance within the same day, with one exception. If you claim TQSE reimbursement on the same day that en route travel per diem ends, your en route travel per diem will be computed under applicable partial day rules and you also may be reimbursed for actual TQSE you incur after 6 p.m. of that day.

§ 302–6.111 May I and/or my immediate family occupy temporary quarters longer than the period for which I am authorized to claim actual TQSE reimbursement?

Yes, but you will not be reimbursed for any of the expenses you incur during the unauthorized period.

Subpart C–Fixed Amount Reimbursement

§ 302–6.200 What am I paid under the fixed amount reimbursement method?

If your agency offers and you select the fixed amount TQSE reimbursement method, you are paid a fixed amount for up to 30 days. No extensions are allowed under the fixed amount method.

§ 302–6.201 How do I determine the amount of my payment under the fixed amount reimbursement method?

Multiply the number of days your agency authorizes TQSE by .75 times the maximum per diem rate (i.e., lodging plus meals and incidental expenses) prescribed in chapter 301 of this subtitle for the locality of the new official station. Then for each member of your immediate family, multiply the same number of days by .25 times the same per diem rate. Your payment will be the sum of this calculation.

§ 302–6.202 Will I receive additional TQSE reimbursement if my fixed amount is not adequate to cover my TQSE?

No, you will not receive additional TQSE reimbursement if the fixed amount is not adequate to cover your TQSE.

§ 302–6.203 May I retain any balance left over from my TQSE reimbursement if my fixed amount is more than adequate?

Yes, if your fixed TQSE amount is more than adequate to cover your TQSE expenses any balance belongs to you.

Subpart D—Agency Responsibilities

Note to subpart D: Use of pronouns "we", "you", and their variants throughout this subpart refers to the agency.

§ 302–6.300 How should we administer the TQSE allowance?

Temporary quarters should be used only if, and only for as long as, necessary until the employee and/or his/her immediate family can move into permanent residence quarters. You must administer the TQSE allowance to minimize or avoid other relocation expenses.

§ 302–6.301 What governing policies must we establish for the TQSE allowance?

You must establish policies and procedures governing:

(a) When you will authorize temporary quarters for employees;

(b) Who will determine if temporary quarters is appropriate in each situation;

(c) If and when you will authorize the fixed amount option for TQSE reimbursement;

(d) Who will determine the appropriate period of time for which TQSE reimbursement will be authorized, including approval of extensions and interruptions of temporary quarters occupancy; and

(e) Who will determine whether quarters were indeed temporary, if there is any doubt.

§ 302–6.302 Under what circumstances may we authorize the TQSE allowance?

You may authorize a TQSE allowance on an individual-case basis when use of temporary quarters is justified in connection with an employee's transfer to a new official station. You may not authorize a TQSE allowance for vacation purposes or other reasons unrelated to the transfer.

§ 302–6.303 What factors should we consider in determining whether the TQSE allowance is actually necessary?

The factors you should consider include:

(a) *The length of time the employee should reasonably be expected to occupy his/her residence at the old official station prior to reporting for duty at the new official station.* An employee and his/her immediate family should continue to occupy the residence at the old official station for as long as practicable to avoid the necessity for temporary quarters.

(b) *The existence of less expensive alternatives.* If a less expensive alternative to the TQSE allowance exists that will enable the employee to find permanent quarters at the new official station, you should consider such an alternative. For example, authorize a househunting trip instead of temporary quarters if it would cost less overall.

(c) *The existence of other opportunities to arrange for permanent quarters.* Consider whether the employee had other adequate opportunity to arrange for permanent quarters. For example, you should not authorize temporary quarters if the employee had adequate opportunity

during an extended temporary duty assignment to arrange for permanent quarters.

§ 302–6.304 What factors should we consider in determining whether to offer an employee the fixed amount TQSE reimbursement option?

The factors you should consider include:

(a) *Ease of administration.* Actual TQSE reimbursement requires an agency to review claims for the validity, accuracy, and reasonableness of each expense amount. Fixed amount TQSE reimbursement does not require review of expense amounts and is therefore easier to administer.

(b) *Cost considerations.* You must weigh the cost of each alternative. Actual TQSE reimbursement may extend up to 120 consecutive days, while fixed amount TQSE reimbursement is limited to 30 days. Actual TQSE reimbursement may be less expensive, since its ceiling is based on the standard CONUS rate, while fixed amount TQSE reimbursement is based on the locality per diem rate. However, fixed amount TQSE reimbursement may be less expensive because the maximum daily rate under actual TQSE reimbursement is a higher percentage of the applicable per diem rate than fixed amount TQSE reimbursement.

(c) *Treatment of employee.* The employee is allowed to choose between actual TQSE reimbursement and fixed amount TQSE reimbursement when you offer the fixed amount TQSE reimbursement method. You therefore should weigh employee morale and productivity considerations against actual cost considerations in determining which method to offer.

§ 302–6.305 What factors should we consider in determining whether quarters are temporary?

In determining whether quarters are "temporary", you should consider factors such as the duration of the lease, movement of household effects into the quarters, the type of quarters, the employee's expressions of intent, attempts to secure a permanent dwelling, and the length of time the employee occupies the quarters.

SUBCHAPTER D—TRANSPORTATION AND STORAGE OF PROPERTY

PART 302–7—TRANSPORTATION AND TEMPORARY STORAGE OF HOUSEHOLD GOODS AND PROFESSIONAL BOOKS, PAPERS, AND EQUIPMENT (PBP&E)

Subpart A—General Rules

Sec.

Subpart B—Commuted Rate

Subpart C—Actual Expense Method

Subpart D—Agency Responsibilities

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1973 Comp., p. 586.

Subpart A—General Rules

Note to subpart A: Use of pronouns "I", "you", and their variants throughout this subpart refers to the employee, unless otherwise noted.

§ 302–7.1 Who is eligible for the transportation and temporary storage of household goods (HHG) at Government expense?

The following are eligible for the transportation and temporary storage of household goods (HHG) at Government expense when a relocation has been

determined to be in the interest of the Government:

(a) An employee transferred between official duty stations, within or outside the continental United States (CONUS);

(b) A new appointee to his/her first official duty station within or outside the CONUS;

(c) An employee being returned to CONUS for separation from an outside CONUS assignment, after completion of an agreed upon period of services;

(d) An SES employee authorized last move home benefits under § 302–3.304 of this chapter;

(e) An employee authorized a temporary change of station (TCS).

§ 302–7.2 What is the maximum weight of HHG that may be transported or stored at Government expense?

The maximum weight allowance of HHG that may be shipped or stored at Government expense is 18,000 pounds net weight.

§ 302–7.3 May HHG be transported or stored in more than one lot?

Household goods may be transported and stored in multiple lots, however, your maximum HHG weight allowance is based upon shipping and storing all HHG as one lot.

§ 302–7.4 Does the weight of any professional books, papers and equipment (PBP&E) count against the 18,000 pound HHG weight limitation?

Yes, the weight on any PBP&E is generally part of and not in addition to the 18,000 pound HHG weight limitation. However, if the weight of any PBP&E causes the lot to exceed 18,000 pounds, the PBP&E may be transported to the new duty station as an administrative expense of the agency. Authorization for such shipment is granted solely at the discretion of the agency and subject to its policies governing such shipment.

§ 302–7.5 May the 18,000 pound HHG weight limitation be increased if PBP&E are transported as an administrative expense to the agency?

No, the 18,000 pound HHG weight limitation is mandated by statute and cannot be exceeded. Shipments of PBP&E as an administrative expense to the agency are not subject to the HHG maximum weight allowance.

§ 302–7.6 What are the authorized origin and destination points for the transportation of HHG and PBP&E.

The authorized origin and destination points for the transportation of HHG and PBP&E varies by category of employee and are as follows:

TRANSPORTATION OF HHG AND PBP&E

Category of employee	Authorized origin/destination
(a) Employee transferred between official stations.	Between the old and new official station.
(b) New appointee	From place of actual residence to New official station.
(c) Employee returning from outside CONUS assignment for separation from Government service.	Last official station to place of actual residence.
(d) SES last move home benefits.	From last official station to place of Selection.
Temporary change of official station (TCS).	From current official station to TCS location and return.

§ 302–7.7 May the origin and destination points be other than that prescribed in § 302–7.6?

Yes, shipments may originate or terminate at any location; however, your reimbursement is limited to the cost of transporting the property in one lot from the authorized origin to the authorized destination.

§ 302–7.8 Is there a time limit for the temporary storage of an authorized HHG shipment?

The initial period of temporary storage at Government expense shall not exceed 90 days in connection with any authorized HHG shipment. The HHG may be placed in temporary storage at origin, in transit, at destination, or any combination thereof. However, upon your written request, an additional 90 days may be authorized by the designated agency official. In no case may the maximum time limit for temporary storage exceed 180 days.

§ 302–7.9 What are some reasons that would justify the additional storage beyond the initial 90-day limit?

Reasons for justifying temporary storage beyond the initial 90-day limit include, but are not limited to:

(a) An intervening temporary duty or long-term training assignment;

(b) Non-availability of suitable housing;

(c) Completion of residence under construction;

(d) Serious illness of employee or illness or death of a dependent;

(e) Strikes, acts of God, or other circumstances beyond the control of the employee; or

(f) Similar reasons.

§ 302–7.10 Is property acquired en route eligible for transportation at Government expense?

No, property acquired en route will not be eligible for transportation at Government expense.

§ 302–7.11 What is the Government's liability for loss or damage to HHG?

The Government's liability for loss or damage to HHG is determined by your agency under title 31 U.S.C. 3721–3723 and agency implementing rules and regulations issued pursuant to the law.

§ 302–7.12 What are the various methods of shipping HHG and how is the weight determined for each type of shipment?

HHG should be shipped by the most economical method available. The various methods of shipment and weight calculations include the following:

Method of shipment	How weight of shipment is determined
(a) Uncrated (shipped in HHG movers van or similar conveyance).	The net weight will be shown on the bill of lading or weight certificate attached and includes the weight of barrels, boxes, cartons, and similar material used in packing, but does not include pads, chains, dollies and other equipment to load and secure the shipment.
(b) Crated shipments	When crated the net weight will not include the weight of the crating material. The net weight will be computed as being 60 percent of the gross weight. However, if the net weight computed in this manner exceeds the applicable weight limitation and if it is determined that, for reasons beyond the employee's control, unusually heavy crating and packing materials were necessarily used, the net weight may be computed at less than 60 percent of the gross weight.

Method of shipment	How weight of shipment is determined
(c) Containerized shipments (Special containers designed, e.g., lift vans, CONEX transporters, HHG shipping boxes, for repeated use).	When the known tare weight does not include the weight of interior bracing and padding materials but only the weight of the container, the net weight will be 85 percent of the gross weight less the weight of the container. If the known tare weight includes such material, so that the net weight is the same as it would be for uncrated shipments in interstate commerce, the net weight will not be subject to reduction.
(d) Constructive weight	If adequate scales are not available at origin, en route or at destination, a constructive weight based on 7 pounds per cubic foot of properly loaded van space may be used. Such weight may be used for a part-load when its weight could not be obtained, without first unloading it or other part-loads being carried in the same vehicle or when the HHG are not weighed because the carrier's charges for local or metropolitan area moves are properly computed on the basis other than weight or volume of the shipment (as when payment is based on an hourly rate and distance involved). In such instances a statement from the carrier showing the properly loaded van space required for the shipment should be obtained with respect to proof of entitlement to a commuted rate payment when net weight cannot be shown.

§ 302–7.13 What methods of transporting and paying for the movement of HHG, PBP&E and temporary storage are authorized?

There are two authorized methods of transporting and paying for the movement of HHG, PBP&E and temporary storage. Your agency will determine which of the following methods will be authorized.

(a) *Commuted Rate System.* Under the commuted rate system you assume total responsibility for arranging and paying for, at least the following services: packing/unpacking, crating/uncrating, pickup/deliver, weighing, line-haul, drayage, and temporary storage of your HHG and PBP&E with a commercial HHG carrier or by renting self drive equipment for a do-it-yourself move. When any PBP&E is transported as an administrative expense of your agency, all arrangements (e.g., packing/unpacking, pickup/delivery, weighing, temporary storage, etc.) will be handled and paid for by your agency.

(b) *Actual Expense Method.* Under the actual expense method, your agency assumes the responsibility for arranging and paying for all aspects (e.g., packing/unpacking, pickup/delivery, weighing, line-haul, drayage, temporary storage, etc.), of transporting your HHG and PBP&E with a commercial HHG carrier.

§ 302–7.14 Are there any disadvantages to using the commuted rate method for transporting HHG, PBP&E and temporary storage?

Yes. The disadvantages to using the commuted rate method for transporting HHG, PBP&E and temporary storage are that the:

(a) Government cannot take advantage of any special rates that may be offered only to Government shipments;

(b) Commuted rate method does not apply to intrastate moves; and

(c) Commuted rate method may not fully reimburse your out-of-pocket expenses.

§ 302–7.15 Must I use the method selected by my agency for transporting my HHG, PBP&E and temporary storage?

No, you do not have to use the method selected (§ 302–7.301) by your agency, and you may pursue other methods, however, your reimbursement is limited to the actual cost incurred, not to exceed what the Government would have incurred under the commuted rate system within CONUS and the actual expense method OCONUS.

§ 302–7.16 Is the maximum weight allowance for HHG and temporary storage limited when quarters are furnished or partly furnished by the Government OCONUS or upon return to CONUS?

When quarters are furnished or partly furnished by the Government OCONUS, your agency may limit the weight of HHG and temporary storage that can be transported to that location. Only the authorized weight allowance that was shipped to the OCONUS location may be returned to CONUS upon completion of the tour of duty, unless the agency makes an exception under conditions specified in agency internal regulations.

§ 302–7.17 May PBP&E be transported at Government expense upon returning to CONUS for separation from Government service, after completion of an OCONUS assignment?

Any PBP&E that was transported as an administrative expense of the Government to the OCONUS assignment will be returned as an administrative expense of the Government to the place of actual residence or any other location, not to exceed the cost to the authorized destination.

§ 302.7.18 Who is liable for any loss or damage to HHG incident to an authorized relocation?

When transporting HHG under the commuted rate or actual expense method and a commercial HHG carrier is used, the carrier accepts limited liability for any loss or damage in accordance with HHG carrier tariffs. For transporting HHG by self drive equipment for a do-it-yourself-move and for any loss or damage not covered by the HHG carrier, see part 302–11 of this chapter.

§ 302–7.19 Should I include items that are irreplaceable or of extremely high monetary or sentimental value in my HHG shipment?

Generally no; items that are irreplaceable or of extremely high monetary or sentimental value should not be included in your HHG shipment. Additional insurance may be purchased, at your expense, to cover any loss or damage, however, such items are not necessarily provided special security. Accordingly, it is advisable that you or an immediate family member(s) transport such items personally.

Subpart B—Commuted Rate

§ 302–7.100 How are the charges of transporting HHG, and temporary storage calculated?

The charges for transporting HHG, and temporary storage are computed by multiplying the number of pounds shipped divided by 100 (within the 18,000 maximum limitation) by the applicable rate per one-hundred pounds for the distance transported. This includes, but is not limited to packing/unpacking, crating/uncrating, drayage, weighing, pickup/delivery, line-haul, accessorial charges, and temporary storage charges, including but not limited to handling in/out, etc. However, your reimbursement may not fully cover your total out-of-pocket expenses. In determining the distance shipped you may use the Household Goods Carriers Mileage Guide (issued by the Household Goods Carriers' Bureau, 1611 Duke Street, Alexandria, VA 22314–3482), tariffs filed with GSA travel management centers, or any other mileage guide authorized by your agency. If the exact mileage is not shown, the next higher mileage distance

applies. If there is a minimum weight charge above the actual weight under applicable tariffs, reimbursement will be based on the minimum weight charge instead of the actual weight.

§ 302–7.101 Where can the commuted rate schedules for the transportation of HHG, and temporary storage be found?

The charges for the line-haul transportation, packing, crating, unpacking, drayage incident to transportation, and other accessorial charges for HHG, and temporary storage can be found in the Household Goods Carrier Bureau tariff (issued by the Household Goods Carriers' Bureau, 1611 Duke Street, Alexandria, VA 22314–3482) or by contacting the GSA travel management center or the appropriate office designated in your agency.

§ 302–7.102 How is the mileage distance determined under the commuted rate method?

To determine the distance from the authorized origin to the authorized destination, the Household Goods Carriers Standard Mileage Guide, or a standard road atlas issued by The Household Goods Carrier's Bureau, or any other mileage guide authorized by your agency.

Note to §§ 302–7.100 and 302–7.102. Any substantial deviation from the distances shown in the authorized mileage guides must be explained on the travel claim.

§ 302–7.103 How are the charges calculated when a carrier charges a minimum weight, but the actual weight of HHG, PBP&E and temporary storage is less than the minimum weight charged?

Charges for HHG, PBP&E and temporary storage are calculated based on the minimum weight charged by the carrier, but not to exceed 18,000 pounds.

§ 302–7.104 What documentation must be provided for reimbursement?

When claiming reimbursement under the commuted rate, you must provide:

(a) A receipted copy of the bill of lading (reproduced copies are acceptable) including any attached weight certificate copies if issued; or

(b) Other evidence showing points of origin and destination and the weight of your HHG, if no bill of lading was issued, or

(c) If a commercial HHG carrier is not used, you are responsible for establishing the weight of the HHG, and temporary storage by obtaining proper certified weight certificates. Certified weight certificates include the gross and tare weights. This is required because payment at commuted rates on the basis of constructive weight usually is not possible.

§ 302–7.105 May an advance of funds be authorized for transporting HHG and temporary storage?

An advance of funds may be authorized when the transportation of HHG and temporary storage is authorized under the commuted rate method.

§ 302–7.106 What documentation is required to receive an advance under the commuted rate method?

To receive an advance under the commuted rate method, you must provide a copy of an estimate of costs from a commercial HHG carrier or a written statement that includes:

(a) Origin and destination;

(b) A signed copy of a commercial bill of lading annotated with actual weight (or other evidence of actual weight) or a reasonable estimate acceptable to your agency; and

(c) Anticipated temporary storage period (not to exceed 90 days) at Government expense.

§ 302–7.107 May my HHG be temporarily stored at Government expense?

Yes, HHG may be stored at Government expense incident to the transporting of such goods either at the HHG carrier storage facility or a self storage facility. Storage may be at any combination of origin, en route locations or destination.

§ 302–7.108 What temporary storage expenses will be reimbursed?

The following will be reimbursed:

(a) Reimbursable temporary storage cost incident to storage at the HHG carriers facility are:

(1) Handling in;

(2) Daily storage;

(3) Handling out; and

(4) Drayage to residence.

(b) Reimbursable cost of storage at a self storage facility. This is the cost of the storage space that will reasonably accommodate the HHG transported.

§ 302–7.109 Are receipts required?

Yes, under the commuted rate system, a receipted copy of the warehouse or other bill for storage is required to support reimbursement.

§ 302–7.110 Is there a reimbursement limit?

Yes, reimbursement must not exceed the rates published in the Nationwide Household Goods Commercial Relocation Tariff (issued by the Household Goods Carriers' Bureau, 1611 Duke Street, Alexandria, VA 22314–3482), supplements thereto and reissues thereof.

Subpart C–Actual Expense Method

§ 302–7.200 How are charges paid and who makes the arrangements for transporting HHG, PBP&E and temporary storage under the actual expense method?

Your agency is responsible for making all the necessary arrangements for transporting HHG, PBP&E, and temporary storage, including but not limited to packing/unpacking, crating/uncrating, pickup/delivery, weighing, line-haul, etc., under the actual expense method. Your agency will issue a Bill of Lading or any other shipping document with all charges billed directly to the agency. Any cost or weight in excess of 18,000 pounds will be at your expense.

§ 302–7.201 Is temporary storage in excess of authorized limits and excess valuation of goods and services payable at Government expense?

No, charges for excess weight, valuation above the minimum amount, and services obtained at higher costs must be borne by the employee in the same manner as he/she is responsible for excess transportation costs.

Subpart D–Agency Responsibilities

Note to subpart D: Use of pronouns "we", "you", and their variants throughout this subpart refers to the agency.

§ 302–7.300 What policies and procedures must we establish for this part?

You must establish policies and procedures as required for this part, including who will:

(a) Administer your household goods program;

(b) Authorize PBP&E to be transported as an agency administrative expense;

(c) Authorize temporary storage in excess of the initial 90-day limit;

(d) Collect any excess cost or charges;

(e) Advise the employee on the Governments liability for any loss and damage claims under 31 U.S.C. 3721–3723; and

(f) Ensure that international HHG shipments by water are made on ships registered under the laws of the United States whenever such ships are available.

§ 302–7.301 What method of transporting HHG should we authorize?

You should authorize one of the following methods, of transporting an employee's HHG, PBP&E and temporary storage. The selected method should be stated on the relocation travel authorization.

(a) *Commuted Rate System.* For relocation or first duty station assignment within CONUS. This method will be used without regard to

the actual expense method, unless that method is more economical to the Government and results in a savings of $100 or more. Under this system the employee assumes total responsibility for arranging and paying for, at least the following services: Packing/unpacking, crating/uncrating, pickup/deliver, weighing, line-haul, drayage, and temporary storage of your HHG and PBP&E with a commercial HHG carrier or by renting self drive equipment for a do-it-yourself move. When any PBP&E is transported as an administrative expense of the agency, all arrangements (*e.g.*, packing/unpacking, pickup/delivery, weighing, temporary storage, etc.) will be handled and paid for by you the agency.

(b) *Actual Expense Method.* For all shipments OCONUS and where deemed economical to the Government within CONUS. Under the actual expense method, the Government assumes the responsibility for arranging and paying for all aspects (e.g., packing/unpacking, pickup/delivery, weighing, line-haul, drayage, temporary storage, etc.,) of transporting the employee's HHG, PBP&E.

§ 302–7.302 What method of transporting should we authorize for PBP&E?

You should authorize the actual expense method for transporting an employee's PBP&E only when the weight of the PBP&E causes the employee's shipment to exceed the maximum 18,000 pound HHG weight limitation. PBP&E should be weighed prior to shipment, if necessary, so the weight can easily be deducted from the 18,000 pound weight allowance. The PBP&E shipment should then be made separately from the HHG shipment and is an administrative expense to your agency.

§ 302–7.303 What guidelines must we follow when authorizing transportation of PBP&E as an administrative expense?

You have the sole discretion to authorize transportation of PBP&E provided that:

(a) An itemized inventory of PBP&E is provided for review by the authorizing official at the new official station;

(b) The authorizing official has certified that the PBP&E are necessary for performance of the employee's duties at the new duty station, and if these items were not transported, the same or similar items would have to be obtained at Government expense for the employee's use at the new official station; and

(c) You have acquired evidence that transporting the PBP&E would cause the employee's HHG to exceed 18,000 pound maximum weight allowances.

Note to § 302–7.303: PBP&E transported as an agency administrative expense to an OCONUS location may be returned to CONUS as an agency administrative expense for an employee separating from Government service.

§ 302–7.304 When HHG are shipped under the actual expense method, and PBP&E as an administrative expense, in the same lot, are separate weight certificates required?

Yes, the weight of the PBP&E and the administrative appropriation chargeable must be listed as separate items on the bill of lading or other shipping document.

PART 302–8—ALLOWANCES FOR EXTENDED STORAGE OF HOUSEHOLD GOODS (HHG)

Subpart A—General

Sec.

Subpart B—Extended Storage During Assignment to Isolated Locations in the Continental United States (CONUS)

Subpart C—Extended Storage During Assignment Outside the Continental United States (OCONUS)

Subpart D—Storage During School Recess for Department of Defense Overseas Dependents School (DoDDS) Teachers

Subpart E—Agency Responsibilities

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

Subpart A—General

Note to subpart A: Use of pronouns "I", "you", and their variants throughout this subpart refers to the employee, unless otherwise noted.

§ 302–8.1 When may extended storage of HHG be authorized?

Your agency may authorize extended storage of HHG under the following circumstances:

(a) Extended storage of HHG may be authorized in lieu of shipment when:

(1) You are assigned to an isolated duty station within CONUS (see subpart B of this part);

(2) You are assigned to an overseas official station where your agency limits the amount of HHG you may transport to that location;

(3) You are assigned to an OCONUS official station and your agency determines extended storage is in the public interest or cost effective to do so; or

(4) It is necessary for a temporary change of station (TCS).

(b) Extended storage of HHG is not permitted for a career SES employee eligible for last move home benefits.

§ 302–8.2 What is the purpose of extended storage?

The purpose of extended storage is to assist in protecting personal items when you are:

(a) Authorized a temporary change of station (TCS) under § 302–3.400 of this chapter;

(b) Assigned to isolated locations in CONUS to which the employee cannot take or at which the employee is unable to use his/her HHG and personal effects because of the absence of residence quarters at that location,

(c) Assigned OCONUS when:

(1) The official station is one to which you cannot take or at which you are

unable to use your HHG and your personal effects; or

(2) The head of your agency authorizes storage of your HHG is in the public interest or is more economical than transporting; or

(d) Storage is necessary during school recess for DoDDS teachers.

§ 302–8.3 How will I know when my agency has made a decision to authorize extended storage of my HHG?

Your agency will indicate on your travel authorization the specific allowances you are authorized as provided in this chapter.

§ 302–8.4 May I receive an advance of funds for storage allowances covered by this part?

No, an advance of funds is not allowed for storage allowances of HHG.

Subpart B—Extended Storage During Assignment to Isolated Locations in the Continental United States (CONUS)

§ 302–8.100 What is the policy for extended storage of HHG during assignment to isolated locations in CONUS?

Extended storage of HHG belonging to an employee transferred or a new appointee assigned to an official station at an isolated location in CONUS may be allowed only when it is clearly justified under the conditions in this part and is not primarily for the convenience, or at the request of, the employee or the new appointee.

§ 302–8.101 What are the criteria for determining whether an official station is an isolated official station for purposes of this part?

(a) As determined by your agency, an official station at an isolated location is a place of permanent duty assignment in CONUS at which you have no alternative except to live where you are unable to use your HHG because:

(1) The type of quarters you are required to occupy at the isolated official station will not accommodate your HHG; or

(2) Residence quarters which would accommodate your HHG are not available within reasonable daily commuting distance of the official station.

(b) The designation of an official station as isolated in accordance with paragraph (a) of this section shall not preclude a determination in individual instances that adequate housing is available for some employees stationed there based on housing which may be available within daily commuting distance and the size and other characteristics of each employee's immediate family. In such instances the station shall not be considered isolated with regard to you if your agency determines adequate family housing is available for you.

Note to § 302–8.101: Heads of agencies concerned are responsible for designating the isolated official station at which conditions exist for allowing extended storage of HHG at Government expense for some or all employees.

§ 302–8.102 Am I eligible for extended storage of HHG and personal effects?

Yes, you are eligible for extended storage of HHG and personal effects if:

(a) You are stationed at an isolated official station which your agency determines meets the criteria in § 302–8.101;

(b) You performed relocation travel or travel as a new appointee; and

(c) Your agency authorizes payment for extended storage of your HHG.

§ 302–8.103 Where may my HHG be stored?

Your HHG may be stored either in:

(a) Available Government-owned storage space; or

(b) Suitable commercial storage space obtained by the Government if:

(1) Government-owned space is not available, or

(2) Commercial storage space is more economical or suitable because of location, transportation costs, or for other reasons.

§ 302–8.104 What are the allowable costs for storage?

Allowable costs for storage include the cost of:

(a) Necessary packing;

(b) Crating;

(c) Unpacking;

(d) Uncrating;

(e) Transportation to and from place of storage;

(f) Charges while in storage; and

(g) Other necessary charges directly relating to the storage as approved by your agency.

§ 302–8.105 May I transport a portion of my HHG to the official station and store the remainder at Government expense?

Yes, you may transport a portion of your HHG to the official station and store the remainder at Government expense, if authorized by your agency. The combined weight, however, of the HHG stored and transported must not exceed the maximum 18,000 pounds net weight.

§ 302–8.106 May I change from temporary to extended storage?

Yes, you may change from temporary to extended storage, if authorized by your agency.

§ 302–8.107 May I change from storage at personal expense to extended storage at Government expense?

Yes, you may change from storage at personal expense to extended storage at Government expense, if authorized by your agency.

§ 302–8.108 What is the authorized time period for extended storage of my HHG?

The authorized time period for extended storage of your HHG is for the duration of the assignment not to exceed 3-years. However:

(a) Your agency will conduct periodic reviews to determine whether current housing conditions at your isolated official station warrant continuation of storage;

(b) Eligibility for extended storage at Government expense will terminate on your last day of active duty at the isolated official station. However your HHG may remain in temporary storage for an additional period of time not to exceed 90 days, if approved by your agency.

(c) When eligibility ceases, storage at Government expense may continue until the beginning of the second month after the month in which your tour at the official station OCONUS terminates, unless to avoid inequity your agency extends the period.

Subpart C—Extended Storage During Assignment Outside the Continental United States (OCONUS)

§ 302–8.200 Am I eligible for extended storage during assignment OCONUS?

Yes, you are eligible for extended storage during assignment OCONUS if your agency authorizes it, and if:

(a) The official station is one to which you are not authorized to take, or at which you are unable to use, your HHG; or

(b) Your agency authorizes it as being in the public interest; or

(c) Your agency determines the estimated cost of storage would be less than the cost of round-trip transportation (including temporary storage) of the HHG to your new official station.

§ 302–8.201 Am I entitled to reimbursement for extended storage of HHG?

No, your agency will determine when it is in the Government's interest to reimburse you for extended storage of HHG OCONUS.

§ 302–8.202 Do provisions for the place, choice, or type of storage, allowable costs, or partial storage during assignment OCONUS differ from those prescribed for storage during assignment to isolated locations in CONUS?

No; the same allowable extended storage expenses provided in §§ 302–8.103 through 302–8.108 apply to extended storage OCONUS.

§ 302–8.203 What is the authorized time period for extended storage of my HHG?

Time limitations for extended storage of your HHG will be determined by your agency as follows:

(a) For the duration of the OCONUS assignment plus 30 days prior to the time the tour begins and plus 60 days after the tour is completed;

(b) Extensions may be allowed for subsequent service or tours of duty at the same or other overseas stations if you continue to be eligible as set forth in § 302–8.200; and

(c) When eligibility ceases, storage at Government expense may continue until the beginning of the second month after the month in which your tour at the official station OCONUS terminates, unless to avoid inequity your agency extends the period.

Subpart D—Storage During School Recess for Department of Defense Overseas Dependents School (DoDDS) Teachers

§ 302–8.300 Under what authority am I provided storage during school recess?

(a) *Description.* The Department of Defense Overseas Teachers Pay and Personnel Practices Act (20 U.S.C. 905) provides authority for the storage of the HHG of DoDDS teachers during the recess period between 2 consecutive school years.

(b) *Regulations.* See the DoD Joint Travel Regulations (JTR), Volume 2, published by the Per Diem, Travel and Transportation Allowance Committee and available on the world wide web at http://www.dtic.mil/perdiem.

§ 302–8.301 What obligations do I have if I do not report for service at the beginning of the next school year?

If you do not report for service at the beginning of the next school year, you must repay the Government for the cost of the extended storage of your HHG during the recess. Except for reasons beyond your control and acceptable to DoD, you shall be obligated to reimburse DoD the amount paid for the commercial storage, including related services. If, however, the property was stored in a Government facility, you shall pay DoD an amount equal to the reasonable value of the storage furnished, including related services.

Subpart E—Agency Responsibilities

Note to subpart E: Use of pronouns "we", "you", and their variants throughout this subpart refers to the agency.

§ 302–8.400 What policies must we establish for the allowance for extended storage of HHG?

You must establish policies and procedures governing this part including:

(a) When you will authorize payment;

(b) Who will determine whether payment is appropriate;

(c) How and when reimbursements will be paid;

(d) Which locations meet the criteria of this part for isolated official station at which conditions exist for allowing extended storage at Government expense for some or all employees;

(e) Who will determine the duration and place of extended storage.

§ 302–8.401 How should we administer the authorization and payment of extended storage of HHG?

You should limit payment of extended storage of HHG to only those expenses that are necessary and in the interest of the Government.

§ 302–8.402 May we allow the employee to determine options in the preference of his/her storage?

Yes, the employee may determine options in the preference of his/her storage. You may authorize the employee to:

(a) Transport a portion of his/her HHG to the official station and store the remainder at Government expense;

(b) Change from temporary to extended storage; and

(c) Change from storage at personal expense to extended storage at Government expense.

PART 302–9—ALLOWANCES FOR TRANSPORTATION AND EMERGENCY STORAGE OF A PRIVATELY OWNED VEHICLE

Subpart A—General Rules

Sec.

Subpart B—Transportation

General

POV Transportation at Time of Assignment

POV Transportation Subsequent to the Time of Assignment

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747 3 CFR, 1971–1975 Comp., p. 586.

Subpart A—General Rules

Note to subpart A: Use of pronouns "I", "you", and their variants throughout this subpart refers to the employee, unless otherwise noted.

§ 302–9.1 What is a "privately owned vehicle (POV)"?

A "privately owned vehicle (POV)" is a motor vehicle not owned by the Government and used by the employee or his/her immediate family for the primary purpose of providing personal transportation.

§ 302–9.2 What is an "official station" for purposes of this part?

An "official station" is defined in part 300–3 of this title. For purposes of this part, an "official station" may be within or outside the continental United States (OCONUS).

§ 302–9.3 What is a "post of duty" for purposes of this part?

For purposes of this part, a "post of duty" is an official station outside CONUS.

§ 302–9.4 What are the purposes of the allowance for transportation of a POV?

To reduce the Government's overall relocation costs by allowing transportation of a POV to your official station within CONUS when it is advantageous and cost effective to the Government, and to improve our overall effectiveness if you are transferred or otherwise reassigned to a post of duty at which it is in the interest of the Government for you to have use of a POV for personal transportation.

§ 302–9.5 What is the purpose of the allowance for emergency storage of a POV?

The purpose of the allowance for emergency storage of a POV is to protect a POV transported at Government expense to your post of duty when the head of your agency determines that the post of duty is within a zone from which your immediate family and/or household goods should be evacuated.

§ 302–9.6 What POV transportation and emergency storage may my agency authorize at Government expense?

Your agency may authorize the following POV transportation and emergency storage at Government expense:

(a)Transportation of a POV to a post of duty as provided in subpart B of this part.

(b) Transportation of a POV from a post of duty as provided in subpart C of this part.

(c) Transportation of a POV within CONUS as provided in subpart D of this part.

(d) Emergency storage of a POV as provided in subpart E of this part.

§ 302–9.7 Must my agency authorize transportation or emergency storage of my POV?

No; however, if your agency does authorize transportation of a POV to your post of duty and you complete your service agreement, your agency must pay for the cost of returning the POV. Your agency determines the conditions under which it will pay for transportation and emergency storage and the procedures a transferred employee must follow.

§ 302–9.8 What type of POV may I be authorized to transport, and if necessary, store under emergency circumstances?

Only a passenger automobile, station wagon, light truck, or other similar vehicle that will be used primarily for personal transportation may be authorized to transport, and if necessary store under emergency circumstances. You may not transport or store a trailer, airplane, or any vehicle intended for commercial use.

§ 302–9.9 For what transportation expenses will my agency pay?

When your agency authorizes transportation of your POV, it will pay for all necessary and customary expenses directly related to the transportation of the POV, including crating and packing expenses, shipping charges, and port charges for readying the POV for shipment at the port of embarkation, and for use at the port of debarkation.

§ 302–9.10 For what POV emergency storage expenses will my agency pay?

Your agency will pay all necessary storage expenses, including but not limited to readying the POV for storage,

local transportation to point of storage, storage, readying the POV for use after storage, and local transportation from the point of storage. Insurance on the POV is at your expense, unless it is included in the expenses allowed by this paragraph.

§ 302–9.11 May I receive an advance of funds for transportation and emergency storage of my POV?

Yes, you may receive advance funds in accordance with § 302–2.20 of this chapter and not to exceed the estimated amount of the expenses authorized under this part for transportation and emergency storage of your POV.

§ 302–9.12 May my agency determine that driving my POV is more advantageous and limit my reimbursement to what it would cost to drive my POV?

Yes, your agency decides whether it is more advantageous for you and/or a member of your immediate family to drive your POV for all or part of the distance or to have it transported. If your agency decides that driving the POV is more advantageous, your reimbursement will be limited to the allowances provided in part 302–4 of this chapter for the travel and transportation expenses you and/or your immediate family incur en route.

Subpart B—Transportation

General

§ 302–9.100 Who is eligible for transportation of a POV to a post of duty?

An employee who is authorized to transfer to the post of duty, or a new appointee or student trainee assigned to the post of duty.

§ 302–9.101 In what situations may my agency authorize transportation of a POV to my post of duty?

Your agency may authorize transportation when:

(a) At the time of your assignment, conditions warrant such authorization under § 302–9.140;

(b) Conditions that once precluded prior authorization have changed to warrant such authorization under § 302–9.170; or

(c) Subsequent to the time of your assignment, conditions warrant authorization under § 302–9.172 of a replacement POV.

§ 302–9.102 How many POV's may I transport to a post of duty?

You may transport one POV to a post of duty. However, this does not limit the transportation of a replacement POV when authorized under § 302–9.172.

§ 302–9.103 Do I have to ship my POV to my actual post of duty?

Yes, you must ship your POV to your actual post of duty. You may not transport the POV to an alternate location.

§ 302–9.104 What may I do if there is no port or terminal at the point of origin and/or destination?

If there is no port or terminal at the point of origin and/or destination, your agency will pay the entire cost of transporting the POV from your point of origin to your destination. If you prefer, however, you may choose to drive your POV from your point of origin at time of assignment to the nearest embarkation port or terminal, and/or from the debarkation port or terminal nearest your destination to your post of duty at any time. If you choose to drive, you will be reimbursed your one-way mileage cost, at the rate specified in part 301–4 of this title, for driving the POV from your authorized origin to deliver it to the port of embarkation, or from the port of debarkation to the authorized destination. For the segment of travel from the port of embarkation back to your authorized origin after delivering the POV to the port or from your authorized destination to the port of debarkation to pick up the POV, you will be reimbursed your one-way transportation cost. The total cost of round-trip travel, to deliver the POV to the port at the origin or to pick up the POV at the port at your destination, may not exceed the cost of transporting the POV to or from the port involved. You may not be reimbursed a per diem allowance for round-trip travel to and from the port involved.

POV Transportation at Time of Assignment

§ 302–9.140 Under what specific conditions may my agency authorize transportation of a POV to my post of duty upon my assignment to that post of duty?

Your agency may authorize transportation of a POV to your post of duty when:

(a) It has determined in accordance with § 302–9.503 that it is in the interest of the Government for you to have use of your POV at the post of duty;

(b) You have signed a service agreement; and

(c) You meet any specific conditions your agency has established.

§ 302–9.141 What is the "authorized point of origin" when I transport a POV to my post of duty?

Your "authorized point of origin" is as follows:

If you are a	Your "authorized point of origin" is your
(a) Transferee	Old official station.
(b) New appointee or student trainee.	Place of actual residence.

§ 302–9.142 What will I be reimbursed if I transport a POV from a point of origin that is different from the authorized point of origin?

If you transport a POV from a point of origin that is different from the authorized point of origin, you will be reimbursed the transportation costs you incur, not to exceed the cost of transporting your POV from your authorized point of origin to your post of duty.

§ 302–9.143 When I am authorized to transport a POV, may I have the manufacturer or the manufacturer's agent transport a new POV from the factory or other shipping point directly to my post of duty?

Yes, when you are authorized to transport a POV, you may have the manufacture or the manufacturer's agent transport a new POV from the factory or other shipping point directly to your post of duty provided:

(a) You purchased the POV new from the manufacturer or manufacturer's agent;

(b) The POV is transported FOB-shipping point, consigned to you and/or a member of your immediate family, or your agent; and

(c) Ownership of the POV is not vested in the manufacturer or the manufacturer's agent during transportation. In this circumstance, you will be reimbursed for the POV transportation costs, not to exceed the cost of transporting the POV from your authorized point of origin to your post of duty.

POV Transportation Subsequent to the Time of Assignment

§ 302–9.170 Under what specific conditions may my agency authorize transportation of a POV to my post of duty subsequent to the time of my assignment to that post?

Your agency may authorize transportation of a POV to your post of duty subsequent to the time of your assignment to that post when:

(a) You do not have a POV at your post of duty;

(b) You have not previously been authorized to transport a POV to that post of duty;

(c) You have not previously transported a POV outside CONUS during your assignment to that post of duty;

(d) Your agency has determined in accordance with § 302–9.503 that it is in the interest of the Government for you to have use of your POV at the post of duty; and

(e) You signed a service agreement at the time you were transferred in the interest of the Government, or assigned if you were a new appointee or student trainee, to your post of duty; and

(f) You meet any specific conditions your agency has established.

§ 302–9.171 If circumstances warrant an authorization to transport a POV to my post of duty after my assignment to the post of duty, must I sign a new service agreement?

No, if circumstances changed after arrival at your new post of duty to warrant authorization to transport a POV, you are not required to sign a new service agreement, provided a service agreement was signed at the time of your assignment to the post of duty. Violation of that service agreement, however, will result in your personal liability for the cost of transporting the POV.

§ 302–9.172 Under what conditions may my agency authorize transportation of a replacement POV to my post of duty?

Your agency may authorize transportation of a replacement POV to your post of duty when:

(a) You require an emergency replacement POV and you meet the following conditions:

(1) You had a POV which was transported to your post of duty at Government expense; and

(2) You require a replacement POV for reasons beyond your control and acceptable to your agency, such as the POV is stolen, or seriously damaged or destroyed, or has deteriorated due to conditions at the post of duty; and

(3) Your agency determines in advance of authorization that a replacement POV is necessary and in the interest of the Government; or

(b) You require a non-emergency replacement POV and you meet the following conditions:

(1) You have a POV which was transported to a post of duty at Government expense;

(2) You have been stationed continuously during a 4-year period at one or more posts of duty; and

(3) Your agency has determined that it is in the Government's interest for you to continue to have a POV at your post of duty.

§ 302–9.173 How many replacement POV's may my agency authorize me to transport to my post of duty at Government expense?

Your agency may authorize one emergency replacement POV within any 4-year period of continuous service. It may authorize one non-emergency replacement POV after every four years of continuous service beginning on the date you first have use of the POV being replaced.

§ 302–9.174 What is the "authorized point of origin" when I transport a POV, including a replacement POV, to my post of duty subsequent to the time of my assignment to that post of duty?

Your agency determines the authorized point of origin within the United States when you transport a POV, including a replacement POV, to your post of duty subsequent to the time of your assignment to that post of duty.

§ 302–9.175 When I am authorized to transport a POV, including a replacement POV, to my post of duty subsequent to the time of my assignment to that post of duty, may I have the manufacturer or the manufacturer's agent transport a new POV from the factory or other shipping point directly to my post of duty?

Yes, you may have the manufacture or manufacture's agent transport a new POV from the factory or other shipping point to your post of duty under the same conditions specified in § 302–9.143.

Subpart C—Return Transportation of a POV From a Post of Duty

§ 302–9.200 When am I eligible for return transportation of a POV from my post of duty?

You are eligible for POV transportation from your post of duty when:

(a) You were transferred to a post of duty in the interest of the Government; and

(b) You have a POV at the post of duty.

§ 302–9.201 In what situations will my agency pay to transport a POV from my post of duty?

Your agency will pay to transport a POV from your post of duty when:

(a) You are transferred back to the official station (including post of duty) from which you transferred to your current post of duty;

(b) You are transferred to a new official station within CONUS;

(c) You are transferred to a new post of duty, where your agency determines that use of a POV at that location is not in the interest of the Government;

(d) You separate from Government service after completion of an agreed period of service at the post of duty where your agency determined the use of a POV to be in the interest of the Government;

(e) You separate from Government service prior to completion of an agreed period of service at the post of duty where your agency determined the use of a POV to be in the interest of the Government, and the separation is for reasons beyond your control and acceptable to your agency; or

(f) Conditions change at your post of duty such that use of the POV no longer is in the best interest of the Government.

§ 302–9.202 When do I become entitled to return transportation of my POV from my post of duty to an authorized destination?

You become entitled to return transportation of your POV from your post of duty to an authorized destination when:

(a) Your agency determined the use of a POV at your post of duty was in the interest of the Government;

(b) You have the POV at your post of duty; and

(c) You have completed your service agreement.

§ 302–9.203 Is there any circumstance under which I may be authorized to transport my POV from a post of duty before completing my service agreement?

Yes, if conditions change at your post of duty such that use of your POV no longer is in the interest of the Government, or if you separate from Government service prior to completion of your service agreement for reasons beyond your control and acceptable to your agency, your agency may authorize return transportation to your authorized destination. When the return transportation is based on changed conditions, you are still required to complete your service agreement. If you do not, you will be required to repay the transportation costs.

§ 302–9.204 What is the "authorized point of origin" when I transport my POV from my post of duty?

The "authorized point of origin" when you transport your POV from your post of duty is the last post of duty to which you were authorized to transport your POV at Government expense.

§ 302–9.205 What is the "authorized destination" of a POV transported under this subpart?

The "authorized destination" of a POV transported under this subpart is illustrated in the following table:

If	The authorized destination of the POV you transport at Government expense is
(a) You are transferred to an official station within CONUS.	Your official station.

If	The authorized destination of the POV you transport at Government expense is
(b)(1) You are transferred to another post of duty and use of a POV at the new post is not in the interest of the Government;.	Your place of actual residence.
(2) You separate from Government service and are eligible for transportation of your POV from your post of duty; or.	Your place of actual residence.
(3) Conditions change at your post of duty such that use of your POV no longer is in the interest of the Government at that post of duty.	Your place of actual residence.

§ 302–9.206 What should I do if there is no port or terminal at my authorized point of origin or authorized destination when I transport a POV from my post of duty?

If there is no port or terminal at your authorized point of origin or authorized destination, your agency will pay the entire cost of transporting the POV from your authorized origin to your authorized destination. If you prefer, however, you may choose to drive your POV to the port of embarkation and/or from the port of debarkation. If you choose to drive, you will be reimbursed in the same manner as an employee under § 302–9.104.

§ 302–9.207 What will I be reimbursed if I transport my POV from a point of origin or to a destination that is different from my authorized origin or destination?

You will be reimbursed the transportation costs you actually incur, not to exceed what it would have cost to transport your POV from your authorized origin to the authorized destination.

§ 302–9.208 If I retain my POV at my post of duty after conditions change to make use of the POV no longer in the best interest of the Government, may I transport it at Government expense from the post of duty at a later date?

Yes, your agency will pay the transportation costs not to exceed the cost of transporting it to the authorized destination, provided you otherwise meet all conditions for transporting a POV.

§ 302–9.209 Under what conditions may my agency authorize me to transport from my post of duty a replacement POV purchased at that post of duty?

Your agency may authorize transportation of a replacement POV purchased at a post of duty from the same post of duty only if:

(a) At the time you purchased the replacement POV, you met the conditions in § 302–9.172; and

(b) Prior to purchase of the replacement POV, your agency authorized you to purchase a replacement POV at the post of duty.

Subpart D—Transportation of a POV Within the Continental United States (CONUS)

§ 302–9.300 When am I eligible for transportation of my POV within CONUS at Government expense?

You are eligible for transportation of your POV within CONUS at Government expenses when:

(a) You are an employee who transfers within CONUS in the interest of the Government; or

(b) You are a new appointee or student trainee relocating to your first official station within CONUS.

§ 302–9.301 Under what conditions may my agency authorize transportation of my POV within CONUS?

Your agency will authorize transportation of your POV within CONUS only when:

(a) It has determined that use of your POV to transport you and/or your immediate family from your old official station (or place of actual residence, if you are a new appointee or student trainee) to your new official station would be advantageous to the Government;

(b) Both your old official station (or place of actual residence, if you are a new appointee or student trainee) and your new official station are located within CONUS; and

(c) Your agency further determines that it would be more advantageous and cost effective to the Government to transport your POV to the new official station at Government expense and to pay for transportation of you and/or your immediate family by commercial means than to have you or an immediate family member drive the POV to the new official station.

§ 302–9.302 How many POV's may I transport within CONUS?

You may transport any number of POV's within CONUS under this subpart, provided your agency determines such transportation is advantageous and cost effective to the Government.

§ 302–9.303 If I am authorized to transport my POV within CONUS, where must the transportation originate?

If you are authorized to transport your POV within CONUS, the transportation must originate as illustrated in the following table:

If you are a	Your transportation must originate at your
(a) Transferee	Old official station.
(a) New appointee or Student trainee.	Place of actual residence.

§ 302–9.304 If I am authorized to transport my POV within CONUS, what must the destination be?

If you are authorized to transport your POV within CONUS your destination must be your new official station.

Subpart E—Emergency Storage of a POV

§ 302–9.400 When am I eligible for emergency storage of my POV?

You are eligible for emergency storage of your POV when:

(a) Your POV was transported to your post of duty at Government expense; and

(b) The head of your agency determines that your post of duty is within a zone from which your immediate family and/or household goods should be evacuated.

§ 302–9.401 Where may I store my POV if I receive notice to evacuate my immediate family and/or household goods from my post of duty?

If you receive notice to evacuate your immediate family and/or HHG for your post of duty, you may store your POV at a place determined to be reasonable by your agency whether the POV is already located at, or being transported to, your post of duty.

Subpart F—Agency Responsibilities

Note to subpart F: Use of pronouns "we", "you", and their variants throughout this subpart refers to the agency.

§ 302–9.500 What means of transportation may we authorize for POV's?

You may authorize:

(a) Commercial means of transportation for POV's if available at reasonable rates and under reasonable conditions; or

(b) Government means of transportation for POV's on a space-available basis.

§ 302–9.501 How should we administer the allowances for transportation and emergency storage of a POV?

To minimize costs and promote an efficient workforce, you should provide an employee use of his/her POV when it mutually benefits the Government and the employee.

§ 302–9.502 What governing policies must we establish for the allowances for transportation and emergency storage of a POV?

You must establish policies governing:

(a) When you will authorize transportation and emergency storage of a POV;

(b) When you will authorize transportation of a replacement POV;

(c) Who will determine if transportation of a POV to or from a post of duty is in the interest of the Government;

(d) Who will determine if conditions have changed at an employee's post of duty to warrant transportation of a POV in the interest of the Government;

(e) Who will determine if transportation of a POV wholly within CONUS is more advantageous and cost effective than having the employee drive the POV to the new official station; and

(f) Who will determine whether to allow emergency storage of an employee's POV, including where to store the POV.

§ 302–9.503 Under what condition may we authorize transportation of a POV to a post of duty?

You may authorize transportation of a POV to a post of duty only when you determine, after consideration of the factors in § 302–9.504, that it is in the interest of the Government for the employee to have use of a POV at the post of duty.

§ 302–9.504 What factors must we consider in deciding whether to authorize transportation of a POV to a post of duty?

When deciding whether to authorize transportation of a POV to a post of duty, you must consider if:

(a) Local conditions at the employee's post of duty warrant use of a POV;

(b) Use of the POV will contribute to the employee's effectiveness on the job;

(c) Use of a POV of the type involved will be suitable under local conditions at the post of duty; and

(d) The cost of transporting the POV to and from the post of duty will be excessive, considering the time the employee has agreed to serve.

§ 302–9.505 What must we consider in determining whether transportation of a POV within CONUS is cost effective?

When determining whether transportation of a POV within CONUS is cost effective, you must consider the:

(a) Cost of traveling by POV;

(b) Cost of transporting the POV;

(c) Cost of travel if the POV is transported;

(d) Productivity benefit you derive from the employee's accelerated arrival at the new official station.

PART 302–10—ALLOWANCES TRANSPORTATION OF MOBILE HOMES AND BOATS USED AS A PRIMARY RESIDENCE

Subpart A—Eligibility and Limitations

Subpart B—Computation of Distance

Subpart C—Computation of Allowances

Subpart D—Advance of Fund

Subpart E—Agency Responsibilities

Authority: 5 U.S.C. 5738; 20 U.S.C. 905 (a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

Subpart A—Eligibility and Limitations

Note to subpart A: Use of pronouns "I", "you", and their variants throughout this subpart refers to the employee.

§ 302–10.1 May I be reimbursed for transporting my mobile home instead of an HHG shipment?

Yes, if you are eligible for the transportation of HHG, you will be reimbursed for transporting a mobile home instead of an HHG shipment, not to exceed what the Government would incur for the transportation of your HHG and 90-days temporary storage.

§ 302–10.2 Are there any eligibility requirements?

Yes, to have a mobile home transported at Government expense, you must certify that the mobile home will be used at the new official station as your primary residence and/or the primary residence of your immediate family.

§ 302–10.3 What is the maximum amount my agency may authorize me to receive for transporting a mobile home?

The maximum amount your agency may authorize you to receive for transporting a mobile home shall not exceed the cost of transporting 18,000 pounds of HHG and 90 days of temporary storage.

§ 302–10.4 Are there any geographic limitations for transportation of a mobile home?

Yes, allowances for overland transportation of a mobile home may be made only for transportation within CONUS, within Alaska, and through Canada en route between Alaska and CONUS or through Canada between one CONUS point and another (e.g. between Buffalo, NY and Detroit, MI). Allowances for transportation within limits prescribed may be paid even though the transportation involved originates, terminates, or passes through locations not covered, provided the amount of the allowance shall be computed on the basis of that part of the transportation which is within CONUS, within Alaska, or through Canada en route between Alaska and CONUS or between one CONUS point and another. The cost to transport a mobile home

may not exceed the cost of shipping 18,000 pounds of HHG and 90 days of temporary storage.

§ 302–10.5 May I transport a mobile home over water?

Yes, you may transport a mobile home over water when both the points of origin and destination are within CONUS or Alaska.

§ 302–10.6 Are the allowances for transporting a mobile home in addition to the allowances for per diem, mileage, and transportation expenses, for me and my immediate family member(s)?

Yes, allowances for transporting a mobile home (including mileage when towed by you) are in addition to the reimbursement of per diem, mileage, and transportation expenses for you and your immediate family member(s). However, you must consider the fact that the mobile home may be moved at Government expense only if it will be used as your residence at the new official station, and allowances under parts 302–5, 302–6, and 302–11 of this chapter will be paid accordingly.

Subpart B–Computation of Distance

§ 302–10.100 What distance will my agency allow for points of origin and destination within CONUS and Alaska?

Your agency will allow for the distance shown in standard highway mileage guides or agency designated official table of distances or actual miles driven as determined from your odometer readings, between the authorized origin and destination.

§ 302–10.101 Must I furnish actual odometer readings on the travel claim?

No, you do not need to furnish odometer readings on the travel claim but you must indicate the total miles traveled. Any deviation from the distances indicated in standard highway mileage guides or agency official table of distances must be fully explained and acceptable to your agency.

Subpart C–Computation of Allowances

§ 302–10.200 What costs are allowable when a commercial carrier transports my mobile home overland or over water?

Your agency will allow the following costs for use of a commercial carrier transporting your mobile home:

(a) When transporting overland;

(1) The carrier's charge for actual transportation of the mobile home (not to exceed the applicable tariff for such movements approved by an appropriate regulatory body), provided any substantial deviation from standard highway mileage guides or agency official table of distances is explained;

(2) Ferry fares, bridge, road, and tunnel tolls;

(3) Taxes, charges or fees fixed by a State or other government authority for permits to transport mobile homes in or through its jurisdiction;

(4) Carrier's service charges for obtaining necessary permits; and

(5) Charges for a pilot (flag) car or escort services, when required by State or local law.

(b) When transporting over water cost must include, but not limited to the cost of:

(1) Fuel and oil used for propulsion of the boat;

(2) Pilots or navigators in the open water;

(3) A crew;

(4) Charges for harbor pilots;

(5) Docking fees incurred in transit;

(6) Harbor or port fees and similar charges related to entry in and navigation through ports; and

(7) Towing, whether in tow or towing by pushing from behind.

§ 302–10.201 What is the mileage allowance when you transport a mobile home overland by a POV?

The mileage allowance when you transport a mobile home overland by other than commercial means (e.g., towed by a POV) is eleven cents per mile. This is in addition to the mileage allowance prescribed for driving the POV under part 302–4 of this chapter.

§ 302–10.202 Am I entitled to any other allowances when I transport my mobile home by POV?

Yes, you are also entitled to the following allowances when you transport your mobile home by POV:

(a) Payment of mileage for use of a POV to transport yourself and/or immediate family member(s) as provided in § 302–4.30 of this chapter; and

(b) Preparation costs as provided in § 302–10.205.

§ 302–10.203 What are my allowances when a mobile home is transported partly by commercial carrier and partly by POV?

The allowances in §§ 302–10.200 through 302–10.202 apply to the respective portions of transportation by commercial carrier and POV when a mobile home is transported by both.

§ 302–10.204 What costs are allowed for preparing a mobile home for shipment?

Allowable costs for preparing a mobile home for shipment include but are not limited to:

(a) Blocking and unblocking (including anchoring and unanchoring);

(b) Labor costs of removing and installing skirting;

(c) Separating, preparing, and sealing each section for movement;

(d) Reassembling the two halves of a double-wide mobile home;

(e) Travel lift fees;

(f) Rental, installation, removal and transportation of hitches and extra axles with wheels and tires;

(g) Purchasing blocks in lieu of transporting blocks from old official station and cost of replacement blocks broken while mobile home was being transported;

(h) Packing and unpacking of HHG associated with the mobile home;

(i) Disconnecting and connecting utilities;

(j) Installation and removal of towing lights on trailer;

(k) Charges for reasonable extension of existing water and sewer lines; and

(l) Dismantling and assembling a portable room appended to a mobile home.

§ 302–10.205 Are there any costs for preparation that are not allowed?

Yes, costs for preparing a mobile home located outside Alaska or CONUS for movement or the costs for resettling outside Alaska or CONUS are not allowed.

§ 302–10.206 May my agency assume direct responsibility for the costs of preparing and transporting my mobile home?

Yes, your agency may assume direct responsibility for the costs of preparing and transporting your mobile home if it is determined to be in the Government's interest.

§ 302–10.207 Am I responsible for excess or non-allowable charges?

Yes, you are responsible for any excess preparation or transportation or non-allowable charges, such as:

(a) Costs for replacement parts, tires purchases, structural repairs, brake repairs or any other repairs or maintenance performed;

(b) Costs of insurance for valuation of mobile homes above carriers' maximum liabilities, or charges designated in the tariffs as "Special Service;"

(c) Cost of storage; and

(d) Costs of connecting/disconnecting appliances, equipment, and utilities involved in relocation and costs of converting appliances for operation on available utilities.

Subpart D—Advance of Funds

§ 302–10.300 May I receive an advance of funds when a commercial carrier transports the mobile home?

Yes, you may receive an advance of funds when you are responsible for

arranging and paying a commercial carrier to transport your mobile home. However, the advance may not exceed the estimated amount allowable.

§ 302–10.301 May I receive an advance of funds when payment is made directly to the carrier by my agency?

No, your agency will not authorize you an advance of funds when it pays the carrier directly.

Subpart E—Agency Responsibilities

Note to subpart E: Use of pronouns "we", "you", and their variants throughout this subpart refers to the agency.

§ 302–10.400 What policies must we establish for authorizing transportation of a mobile home?

You must establish policies for authorizing transportation of a mobile home that implements this part including when:

(a) It is considered in the best interest of the Government to assume direct responsibility for preparing and transporting an employee's mobile home;

(b) To authorize an advance of funds for a commercial carrier transporting an employee's mobile home based on constructive or estimated cost when the employee assumes direct responsibility for payment.

§ 302–10.401 Are the allowances for transporting a mobile home in addition to the allowances for per diem, mileage, and transportation expenses, for an employee and immediate family member(s)?

Yes, allowances for transporting a mobile home (including mileage when towed by the employee) are in addition to the allowances for per diem, mileage, and transportation expenses. However, you must consider the fact that the mobile home will be used as the employee's and/or immediate family member(s) primary residence at the new official station, and reduce the allowances under parts 302–5, 302–6, and 302–11 of this chapter.

§ 302–10.402 What costs must we pay a commercial carrier for transporting a mobile home?

The costs you must pay a commercial carrier for transporting a mobile home are prescribed in § 302–10.200.

§ 302–10.403 What costs must we allow for preparing a mobile home for shipment?

The costs you must allow for preparing a mobile home for shipment are prescribed in § 302–10.205.

SUBCHAPTER E—RESIDENCE TRANSACTION ALLOWANCES

PART 302–11—ALLOWANCES FOR EXPENSES INCURRED IN CONNECTION WITH RESIDENCE TRANSACTIONS

Subpart A—General Rules

Time Limitations

Subpart B—Title Requirements

Subpart C—Reimbursable Expenses

Subpart D—Request For Reimbursement

Settlement of Unexpired Lease

Subpart E—Agency Responsibilities

Authority: 5 U.S.C. 5738 and 20 U.S.C. 905(c).

Subpart A—General Rules

Note to subpart A: Use of pronouns "I", "you", and their variants throughout this subpart refers to the employee, unless otherwise noted.

§ 302–11.1 What is the purpose of an allowance for expenses incurred in connection with residence transactions?

The purpose of an allowance for expenses incurred in connection with residence transaction is to reimburse you when you transfer from an old official station to a new official station for expenses that you incur due to:

(a) The sale of one residence at your old official duty station, and/or the purchase of a residence at your new official duty station; or

(b) The settlement expenses for a lease which has not expired on your residence or mobile home lot which is used as your permanent residence at your old official station.

§ 302–11.2 Am I eligible to receive an allowance for expenses incurred in connection with my residence transactions?

You are eligible to receive an allowance for expenses incurred in connection with your residence transactions under this subpart if you have signed a service agreement as specified in § 302–3, subpart D of this chapter, and you are performing a permanent change of station where:

(a) Your old and new official stations are within the United States; or

(b) You transferred from an official station in the United States to a foreign area, and you are now transferring back to the United States and;

(1) You have completed your service agreement time period for your overseas tour of duty; and

(2) You are assigned to an official station in the United States that is more than 50 miles from your last official station in the United States, unless authorized otherwise in accordance with § 302–2.6 of this chapter.

§ 302–11.3 Must I sign a service agreement before receiving residence transaction allowances?

Yes, you must sign a service agreement before receiving residence transaction allowances.

§ 302–11.4 Who is not eligible to receive an allowance for expenses incurred in connection with residence transactions?

You are not eligible to receive an allowance for expenses incurred in connection with residence transactions under this subpart if you are:

(a) A new appointee; or

(b) An employee assigned under the Government Employees Training Act (5 U.S.C. 4109).

§ 302–11.5 To be reimbursed for expenses incurred in my residence transactions, must I occupy the residence at the time I am notified of my transfer?

Yes, to be reimbursed for expenses incurred in your residence transactions, you must occupy the residence at the time you are notified of your transfer, unless your transfer is from a foreign area to an official station within the United States other than the one you left when you transferred out of the United States, as specified in § 302–11.2(b).

§ 302–11.6 For which expenses will I be reimbursed if I qualify for a residence transaction expense allowance?

If you qualify for a residence transaction expense allowance, you may be reimbursed for the:

(a) Expenses of selling your old residence and purchasing a new residence in the United States; or

(b) Settlement of an unexpired lease at your old official station in the United States from which transferred to another official station in the United States or when assigned to a foreign post of duty; and

(c) Expenses of purchasing a new residence in the United States upon return to the United States upon completion of the foreign tour of duty and the return is to a different official station, and is 50 miles distance from the official station which you transferred from.

§ 302–11.7 When are expenses for my settlement of an unexpired lease reimbursable?

When your unexpired lease (including month to month) is for residence quarters at your old official station, you may be reimbursed for settlement expenses for an unexpired lease, including but not limited to broker's fees for obtaining a sublease or charges for advertising if:

(a) Applicable laws or the terms of the lease provide for payment of settlement expenses; or

(b) Such expenses cannot be avoided by sublease or other arrangement; or

(c) You have not contributed to the expenses by failing to give appropriate lease termination notice promptly after you have definite knowledge of your transfer; or

(d) The broker's fees or advertising charges are not in excess of those customarily charged for comparable services in that locality.

§ 302–11.8 Must I sell a residence at the old official station to be eligible to purchase a residence at the new official station?

No, you do not have to sell the residence at your old official station to be eligible for residence purchase transactions at your new official station.

Time Limitations

§ 302–11.21 How long do I have to submit my claim for reimbursement of expenses incurred in connection with my residence transactions?

Your claim for reimbursement should be submitted to your agency as soon as possible after the transaction occurred. However, the settlement dates for the sale and purchase or lease termination transactions for which reimbursement is requested must occur not later than 2 years after the day you report for duty at your new official station. (See § 302–11.23.)

§ 302–11.22 May the 2-year time limitation be extended by my agency?

Yes, your agency may extend the 2-year limitation for up to two additional years for reason beyond your control and acceptable to the agency.

§ 302–11.23 When must I request to have my initial time period extended?

To have your initial time period extended, you must submit a request to your agency not later than 30 calendar days after the expiration date unless this

30-day period is specifically extended by your agency.

Subpart B—Title Requirements

§ 302–11.100 For which residence may I receive reimbursement for under this subpart?

You may receive reimbursement for the one residence from which you regularly commute to and from work on a daily basis and which was your residence at the time you were officially notified by competent authority to transfer to a new official station.

§ 302–11.101 Must the title to the property for which I am requesting an allowance for residence transactions be in my name?

The title to the property for which you are requesting an allowance for residence transaction must be:

(a) Solely in your name; or

(b) Solely in the name of one or more of your immediate family members; or

(c) Jointly in your name and in the name of one or more of your immediate family members.

§ 302–11.102 How will the Government determine who holds title to my property?

The Government will determine who holds title to your property based on:

(a) Whose name(s) actually appears on your title document (e.g., the deed); or

(b) Who holds equitable title interest in your property as specified in § 302–11.105.

§ 302–11.103 How will I be reimbursed if I or a member of my immediate family do not hold full title to the property for which I am requesting reimbursement?

If you or a member of your immediate family do not hold full title to the property for which you are requesting reimbursement, you will be reimbursed on a pro rata basis to the extent of your actual title interest plus your equitable title interest in the residence.

§ 302–11.104 When must I and/or a member(s) of my immediate family have acquired title interest in my residence to be eligible for the allowance for expenses incurred in connection with the sale of my residence?

To be eligible for the allowance for expenses incurred in connection with the sale of your residence, you and/or a member(s) of your immediate family must have acquired title or equitable title interest in the residence as illustrated in the following table:

Type of transfer	Date
1. Between official stations in the United States.	1. Prior to the date notified of the transfer.
2. Returning from completion of an foreign tour of duty to a different official station in the United States, which is 50 miles distance from the official station from which transferred to the foreign official station.	2. Prior to the date notified that you would be transferred to a different location in the United States, which is 50 miles distance from the official station you transferred from the foreign area.

§ 302–11.105 How is it determined if I hold "equitable title interest" in my residence?

"Equitable title interest" in your residence is determined by your agency if:

(a) The title is held in trust, and:

(1) The property is your residence;

(2) You and/or a member(s) of your immediate family are the only beneficiary(ies) of the trust during either of your lifetimes;

(3) You and/or a member(s) of your immediate family retain the right to distribute the property during your lifetimes;

(4) You and/or a member(s) of your immediate family retain the right to manage the property;

(5) You and/or a member(s) of your immediate family are the only grantor/settlor of the trust, or retain the right to direct distribution of the property upon dissolution of the trust or death; and

(6) You provide your agency with a copy of the trust document; or

(b) The title is held in the name of a financial institution, and:

(1) The property is your residence;

(2) You and/or a member(s) of your immediate family executed a financing agreement (e.g., mortgage) with the financial institution;

(3) State or local law requires that lending parties take title to perfect (i.e., protect) a security interest in the property, or the financial institution requires that it take possession of title as a condition of the financing agreement; and

(4)You provide your agency with a copy of the financing document; or

(c) The title is held both in the names of:

(1) You solely, or jointly with one or more members of your immediate family, or one or more members of your immediate family;

(2) An individual accommodation party as defined in § 302–11.106 who is not a member of your immediate family; and

(3) The conditions apply:

(i) The property is your residence.

(ii) You and/or a member(s) of your immediate family have the right to use the property and to direct conveyance of the property.

(iii) The lender requires signature of the accommodation party on the financing document.

(iv) You and/or a member of your immediate family, are liable for payments under the financing arrangement (e.g., mortgage).

(v) The accommodation party's name is on the title.

(vi) The accommodation party does not have a financial interest in the property unless the employee and/or a members(s) of the immediate family default on the financing arrangement.

(vii) You must provide documentation of the accommodation that is acceptable by your agency; or

(d) The title is held by the seller of the property and the following conditions are met:

(1) The property is your residence;

(2) You and/or member(s) of your immediate family has the right to use the property and to direct conveyance of the property;

(3) You and/or member(s) of your immediate family must have signed a financing agreement with the seller of the property (*e.g.*, a land contract) providing for fixed periodic payments and transfer of title to the employee and/or a member(s) of the immediate family upon completion of the payment schedule; and

(4) You provide your agency with a copy of the financing agreement; or

(e) Another equitable title situation exists where title is held in your name only or jointly with you and one or more members of your immediate family or with you and an individual who is not an immediate family member, and the following conditions are met:

(1) The property is your residence.

(2) You and/or a member(s) of your immediate family has the right to use the property and to direct conveyance of the property.

(3) Only you and/or a member(s) of your immediate family has made payments on the property.

(4) You and/or a member(s) of your immediate family received all proceeds from the sale of the property.

(5) You must provide suitable documentation to your agency that all conditions in paragraphs (e)(1) through (e)(4) of this section are met.

§ 302–11.106 What is an accommodation party?

An accommodation party is an individual who signs an employee's financing agreement (e.g., a mortgage) to lend his/her name (i.e., credit) to the arrangement.

Subpart C—Reimbursable Expenses

§ 302–11.200 What residence transaction expenses will my agency pay?

Provided that they are customarily paid by the seller of a residence at the old official station or by the purchaser of a residence at the new official station, your agency will pay the following expenses:

(a) Your broker's fee or real estate commission that you pay in the sale of your residence at the last official station, not to exceed the rates that are generally charged in the locality of your old official station;

(b) The customary cost for an appraisal;

(c) The costs of newspaper, bulletin board, multiple-listing services, and other advertising for sale of the residence at your old official station that is not included in the broker's fee or the real estate agent's commission;

(d) The cost of a title insurance policy, costs of preparing conveyances, other instruments, and contracts and related notary fees and recording fees; cost of making surveys, preparing drawings or plats when required for legal or financing purposes; and similar expenses incurred for selling your residence to the extent such costs:

(1) Have not been included in other residence transaction fees (*i.e.*, brokers' fees or real estate agent fees);

(2) Do not exceed the charges, for such expenses, that are normally charged in the locality of your residence;

(3) Are usually furnished by the seller;

(e) The costs of searching title, preparing abstracts, and the legal fees for a title opinion to the extent such costs:

(1) Have not been included in other related transaction costs (*i.e.*, broker's fees or real estate agency fees); and

(2) Do not exceed the charges, for such expenses, that are customarily charged in the locality of your residence

(f) The following "other" miscellaneous expenses in connection with the sale and/or purchase of your residence, provided they are normally paid by the seller or the purchaser in the locality of the residence, to the extent that they do not exceed specifically stated limitations, or if not specifically stated, the amounts customarily paid in the locality of the residence:

(1) FHA or VA fees for the loan application;

(2) Loan origination fees and similar charges such as loan assumption fees, loan transfer fees or other similar charges not to exceed 1 percent of the loan amount without itemization of the lender's administrative charges (unless requirements in § 302–11.201 are met), if the charges are assessed in lieu of a loan origination fee and reflects charges for services similar to those covered by a loan origination fee;

(3) Cost of preparing credit reports;

(4) Mortgage and transfer taxes;

(5) State revenue stamps;

(6) Other fees and charges similar in nature to those listed in paragraphs (f)(1) through (f)(5) of this section, unless specifically prohibited in § 302–11.202;

(7) Charge for prepayment of a mortgage or other security instrument in connection with the sale of the residence at the old official station to the extent the terms in the mortgage or other security instrument provide for this charge. This prepayment penalty is also reimbursable when the mortgage or other security instrument does not specifically provide for prepayment, provided this penalty is customarily charged by the lender, but in that case the reimbursement may not exceed 3 months' interest on the loan balance;

(8) Mortgage title insurance policy, paid by you, on a residence you purchased for the protection of, and required by, the lender;

(9) Owner's title insurance policy, provided it is a prerequisite to financing or the transfer of the property; or if the cost of the owner's title insurance policy is inseparable from the cost of other insurance which is a prerequisite;

(10) Expenses in connection with construction of a residence, which are comparable to expenses that are reimbursable in connection with the purchase of an existing residence;

(11) Expenses in connection with environmental testing and property inspection fees when required by Federal, State, or local law; or by the lender as a precondition to sale or purchase; and

(12) Other expenses of sale and purchase made for required services that are customarily paid by the seller of a residence at the old official station or if customarily paid by the purchaser of a residence at the new official station.

§ 302–11.201 When may my reimbursement for loan assumption fees or other similar fees exceed the 1 percent as specified in § 302–11.200(f)(2)?

Reimbursement may exceed 1 percent (as specified in § 302–11.200(f)(2) only when you provide evidence that the higher rate:

(a) Does not include prepaid interest, points, or a mortgage discount; and

(b) Is customarily charged in the locality where the residence is located.

§ 302–11.202 What residence transaction expenses will my agency not pay?

Your agency will not pay:

(a) Any fees that have been inflated or are higher than normally imposed for similar services in the locality;

(b) Broker fees or commissions paid in connection with the purchase of a home at the new official station;

(c) Owner's title insurance policy, "record title" insurance policy, mortgage insurance or insurance against loss or damage of property and optional insurance paid for by you in connection with the purchase of a residence for your protection;

(d) Interest on loans, points, and mortgage discounts;

(e) Property taxes;

(f) Operating or maintenance costs;

(g) Any fee, cost, charge, or expense determined to be part of the finance charge under the Truth in Lending Act, Title I, Pub. L. 90–321, as amended, and Regulation Z issued by the Board of Governors of the Federal Reserve System (12 CFR part 226), unless specifically authorized in § 302–11.200;

(h) Expenses that result from construction of a residence, except as provided in § 302–11.200(e)(10); and

(i) Losses, see § 302–11.304.

Subpart D—Request For Reimbursement

§ 302–11.300 Is there a limit on how much my agency will reimburse me for residence transactions?

Yes, your agency will reimburse you no more than:

(a) Ten percent of the actual sales price for the sale of your residence at the old official station; and

(b) Five percent of the actual purchase price of the residence for the purchase of a residence at the new official station.

§ 302–11.301 How must I request reimbursement for the expenses I incur for my residence transactions?

To request reimbursement for the expenses you incur for your residence transaction, you must:

(a) Send your claim for reimbursement and documentation of expenses to your old official station for review and approval unless otherwise specified by your agency, and

(b) Follow your agency's procedures and submit appropriate voucher(s) along with any claim applications that your agency may require with appropriate documents specified in § 302–11.302.

§ 302–11.302 What documentation must I submit to my agency to request reimbursement for the sale of a former residence or the purchase of a new one?

To request reimbursement for the sale of a former residence or the purchase of

a new one, you must submit to your agency:

(a) Copies of your sales agreement when selling a residence;

(b) Your purchase agreement when a purchasing a residence;

(c) Property settlement documents;

(d) Loan closing statements; and

(e) Invoices or receipts for other bills paid.

§ 302–11.303 Will the Government reimburse me for expenses incurred in connection with my residence transactions that are paid by someone other than me or a member of my immediate family?

No, the Government will not reimburse you for expenses incurred in connection with your residence transactions if they are paid by someone other than you or a member of your immediate family.

§ 302–11.304 Will my agency reimburse me for losses due to market conditions or prices at the old and new official station?

No, losses incurred due to market conditions or prices at your old and new duty station are not reimbursable when incurred by you due to:

(a) Failure to sell a residence at the old official station at the price asked, or at its current appraised value, or at its original cost; or

(b) Failure to buy a dwelling at the new official station at a price comparable to the selling price of the residence at the old official station; or

(c) Any losses that are similar in nature to (a) or (b).

§ 302–11.305 Will I receive reimbursement for any residence transaction expenses incurred prior to being officially notified of my transfer?

No, reimbursement of any residence transaction expenses (or settlement of an unexpired lease) that occurs prior to being officially notified (generally in the form a change of station travel authorization) is prohibited.

§ 302–11.306 How can I know if my expenses are reasonable and will be reimbursed by the Government?

You are responsible for the determination of reasonableness for your claimed expenses. To determine if your expenses are reasonable, you should, in coordination with your agency, contact the local real estate association, or, if not available, at least three different realtors in the locality in which your expenses will be incurred and request:

(a) The current schedule of closing costs which applies to the area in which you are buying or selling;

(b) Information concerning local custom and practices with respect to charging of closing costs which relate to either your sale or purchase and whether such costs are customarily paid by the seller or purchaser; and

(c) Information on the local terminology used to describe the costs specified in paragraph (b) of this section.

§ 302–11.307 May I receive an advance of funds for my residence transaction expenses?

No, you may not receive an advance of funds for your residence transaction expenses.

§ 302–11.308 How much will I receive for reimbursement when I purchase or sell land in excess of what reasonably relates to the residence site?

When you purchase or sell land in excess of what reasonably relates to the residence site, your reimbursement will be limited to a pro rata reimbursement of the land reasonably related to the residence site.

§ 302–11.309 What residence transaction expense are reimbursable if an employee violates the terms of his/her service agreement?

If the employee violates his/her service agreement, no residence transaction expenses will be paid, and any amounts paid prior to such violation shall be a debt due the United States until they are paid by the employee.

Settlement of Unexpired Lease

§ 302–11.320 How must I request reimbursement for settlement of an unexpired lease?

To request reimbursement for settlement of an unexpired lease, you must itemize expenses (list all expenses separately) on a travel voucher and submit the voucher to your agency.

§ 302–11.321 How will I be reimbursed when I share a lease with someone else?

When you share a lease with someone else you will be reimbursed on a pro rata basis for that portion of the lease that you are responsible for.

Subpart E—Agency Responsibilities

Note to subpart E: Use of pronouns "we", "you", and their variants throughout this subpart refers to the agency.

§ 302–11.400 What policies and procedures must we establish?

You must establish internal policies and procedures to implement this part.

§ 302–11.401 Under what conditions may we authorize or approve a residence transaction expense allowance?

You may authorize or approve a residence transaction expense allowance when an employee is performing a permanent change of station in the interest of the Government and has signed a service agreement (other than a new appointee or an employee assigned under the Government Employees Training Act (5 U.S.C. 4109.); and

(a) The old and new official stations are located in the United States; or

(b) The employee has completed an agreed upon tour of duty overseas and is returning to the United States to an official station that is at least 50 miles away from the employees last official station in the United States; or

(c) When the employee has been permanently assigned to a temporary official station.

§ 302–11.402 Who is not eligible to receive residence transaction expense allowances?

The following are not eligible to receive residence transaction expense allowances:

(a) New appointees; and

(b) Employees assigned under the Government Employee's Training Act (5 U.S.C. 4109).

§ 302–11.403 What policies must we establish before accepting documentation from an employee for reimbursement of residence transaction expenses?

You must establish policies that will define what documentation is acceptable from an employee when requesting reimbursement of residence transaction expenses.

§ 302–11.404 What controls must we establish for paying allowances for expenses incurred in connection with residence transactions?

When paying allowances for expenses incurred in connection with residence transactions, you must:

(a) Determine who will authorize and approve residence transactions expenses on the employee's travel authorization;

(b) Determine who will review applications for reimbursement of residence transaction expenses;

(c) Determine who will authorize extensions beyond the 2-year limitation for completing sales and purchase or lease termination transactions, under §§ 302–11–420 and 302–11.421;

(d) Prescribe a claim application form which meets your internal administrative requirements;

(e) Require employees to submit a travel claim with appropriate documentation to support his/her payment of the expenses claimed, which must include as a minimum;

(1) The sales agreement,

(2) The purchase agreement,

(3) Property settlement documents,

(4) Loan closing statements, and

(5) Invoices or receipts for other bills paid; and

(f) Require employees to submit travel claims to his/her old official station for review and approval of the claim unless agency review and approval functions are performed elsewhere except as provided in § 302–11.405.

§ 302–11.405 Which agency must review and approve the employee's application when the employee transfers between agencies?

The hiring agency in the locality of the employee's old official station must review and approve the employee's application when the employee transfers between agencies, unless the hiring agency does not have an appropriate installation there. In that case, the losing agency at the old official station must review and approve the expenses.

§ 302–11.406 How must we administer an employee's claim?

To administer an employee's claim:

(a) You must.

(1) Review the employee's claim to determine whether the expenses claimed are reasonable in amount and customarily paid by the buyer/seller in the locality where the property is located;

(2) Disallow any portion of the employee's claim that is inflated or are higher than normal for similar services in the locality;

(3) Execute final administrative approval of payment of a claim by an appropriate agency approving official; and

(4) Return disapproved applications to the employee with a memorandum of explanation.

(b) The approving official must determine if:

(1) The aggregate amount of expenses claimed in connection with a sale or purchase of a residence is within the prescribed limitation for either;

(2) All conditions and requirements under which allowances may be paid have been met; and

(3) The expenses themselves are those which are reimbursable.

Note to § 302–11.406: You must not pay the expenses listed in § 302–11.202 or § 302–11.304.

§ 302–11.407 What documentation must we require the employee to submit before paying residence transaction expenses?

Before paying residence transaction expenses, you must require the employee to submit:

(a) A copy of his/her financial documents which prove that only the employee and or a member(s) of the immediate family made payments on the property;

(b) A copy of his/her financial documents which prove that he/she and/or a member(s) of the immediate family received all proceeds from the sale of the property;

(c) Documentation that is acceptable by you in verifying any interest that the employee has in the property; and

(d) Any additional documents that you need to verify payments.

Time Limitations

§ 302–11.420 How long can we authorize an extension for completion of the sale and purchase or lease termination transactions?

You may authorize an additional period of time, not to exceed 2 years, for completion of the sale and purchase or lease termination transactions.

§ 302–11.421 What must we consider when authorizing an extension of time limitation?

When authorizing an extension of time limitation, you must determine that the:

(a) Employee has extenuating circumstances which have prevented him/her from completing his/her sale and purchase or lease termination transactions in the initial authorized time frame of two years; and

(b) Employee's residence transactions are reasonably related to his/her transfer of official station.

Unexpired Lease

§ 302–11.430 When must we reimburse an employee for expenses incurred due to settlement of an unexpired lease?

You must reimburse an employee in lieu of residence transaction expenses when the employee meets the requirements of § 302–11.10 for expenses incurred due to settlement of an unexpired lease.

§ 302–11.431 How must we require an employee to request reimbursement for expenses of an unexpired lease settlement?

You must require that the employee submit an appropriate travel claim requesting reimbursement for expenses of an unexpired lease settlement with:

(a) An itemization of all expenses claimed supported by documentation showing that the employee indeed paid all lease settlement fees; and

(b) A total amount for all expenses claimed.

Title Requirements

§ 302–11.440 How must we determine who holds title to property for reimbursement purposes?

To determine who holds title to property for reimbursement purposes, you must verify:

(a) Whose name(s) actually appears on the title document (e.g., the deed); or

(b) Who holds equitable title interest in the property.

§ 302–11.441 How must we determine if an employee holds equitable title interest in his/her property?

To determine if an employee holds equitable title interest in his/her property, you must follow the guidelines in § 302–11.405.

Request For Reimbursements

§ 302–11.450 May we advance an employee funds for expenses incurred in connection with residence transactions?

No, you may not advance an employee funds for expenses incurred in connection with residence transactions.

§ 302–11.451 What is the maximum amount that we may reimburse for the sale or purchase of an employee's residence?

The maximum amount that you may reimburse for the sale or purchase of an employee's residence is:

(a) Ten percent of the actual sale price for the sale of the employee's residence at the old official station: and

(b) Five percent of the actual purchase price of the residence for the purchase of a residence at the new official station.

PART 302–12—USE OF A RELOCATION SERVICES COMPANY

Subpart A—Employee's Use of a Relocation Services Company

Sec.

Authority: 5 U.S.C. 5738 and 20 U.S.C. 905(c).

Subpart A—Employee's Use of a Relocation Services Company

Note to subpart A: Use of pronouns "I", "you", and their variants throughout this subpart refers to the employee.

§ 302–12.1 Am I eligible to use a relocation services company?

Yes, if you are an employee who is authorized to transfer and such transfer includes residence transaction.

§ 302–12.2 Who determines if I may use a relocation services company?

Your agency must determine if you may use a relocation services company.

§ 302–12.3 Under what conditions may I use a relocation services company?

You may use a relocation services company if you:

(a) Meet all conditions required for you to be eligible for an allowance contained in this chapter for which a service provided by the relocation services company would serve as a substitute, and you are authorized to use a specific relocation service provided by the company as a substitute;

(b) Have signed a service agreement; and

(c) Meet any specific conditions your agency has established.

§ 302–12.4 For what relocation services expenses will my agency pay?

Your agency will pay the relocation services company's fees/expenses for the services you are authorized to use. If your agency pays the relocation services company for actual expenses the company incurs on your behalf, payment to the company is limited to what you would have received under the direct reimbursement provisions of this chapter.

§ 302–12.5 If I use a contracted-for relocation service that is a substitute for reimbursable relocation allowance, will I be reimbursed for the relocation allowance as well?

No, if you use a contracted-for relocation service that is a substitute for reimbursable relocation allowance, you will not be reimbursed for the relocation as well.

§ 302–12.6 What expenses will my agency pay if I use a relocation services company to ship household goods in excess of the maximum weight allowance?

If you use a relocation services company to ship HHG in excess of the maximum weight allowance. your agency will pay the portion of the fee attributable to 18,000 pounds net weight. You must pay the rest.

§ 302–12.7 What expenses will my agency pay if I use a relocation services company to sell or purchase a residence for which I and/or a member(s) of my immediate family do not have full title?

If you use a relocation services company to sell or purchase a residence for which you and/or a member(s) of your immediate family do not have full title, your agency will pay the portion of the relocation services company's fee attributable to your pro rata share of the residence, in accordance with § 302–11.103 of this chapter. You must pay any portion of the fee attributable to other than your pro rata share of the residence.

§ 302–12.8 If my agency authorizes me to enter a homesale program, must I accept a buyout offer from the relocation services company?

No, if your agency authorizes you to enter a homesale program, your agency must give you the option to accept or reject an offer from the relocation services company.

§ 302–12.9 What are the income tax consequences if I use a relocation services company?

You may incur income taxes on relocation services provided by a relocation services company and paid for by your agency. Section 82 of the Internal Revenue Code states there shall be included in gross income (as compensation for services) any amount received or accrued, directly or indirectly, by an individual as a payment for or reimbursement of expenses of moving from one residence to another residence which is attributable to employment. You will receive a relocation income tax (RIT) allowance if your agency determines that such expenses are taxable. The Government does not assume responsibility for payment of your taxes, however, and you may wish to consult a tax professional on income tax reporting.

Subpart B—Agency's Use of a Relocation Services Company

Note to subpart B: Use of pronouns "we", "you", and their variants throughout this subpart refers to the agency.

§ 302–12.100 What are "relocation services"?

"Relocation services" are services provided by a private company under a contract with an agency to assist a transferred employee in relocating to the new official station. Examples include homesale programs, home marketing assistance, home finding assistance, and property management services.

§ 302–12.101 May we enter into a contract with a relocation services company for the company to provide relocation services?

Yes, you may enter into a contract with a relocation services company for the company to provide relocation services.

§ 302–12.102 What contracted relocation services may we provide at Government expense?

You may pay for contracted relocation services that are substitutes for reimbursable relocation allowances authorized throughout this chapter. For example, you may pay for homesale services as a substitute for residence sale expenses, or household goods management services as a substitute for transportation of household goods.

§ 302–12.103 May we separately contract for each type of relocation service?

Yes, you may separately contract for each type of relocation service or you

may combine several types of relocation services in a single contract.

§ 302–12.104 What is the purpose of contracting for relocation services?

The purpose of contracting for relocation services is to improve the treatment of employees who are directed to relocate to facilitate the retention of a well-qualified workforce.

§ 302–12.105 How must we administer a relocation services contract?

You must balance the positive effects that availability of relocation services has on employee mobility and morale with any increased costs your agency may experience as a result of providing relocation services.

§ 302–12.106 What policies must we establish when offering our employees the services of a relocation services company?

When offering your employees the services of a relocation services company, you must establish policies governing:

(a) The conditions under which you will authorize an employee to use a relocation services company;

(b) Which employees you will allow to use a relocation services company;

(c) What relocation services you will offer an employee; and

(d) Who will determine in each case if an employee may use a relocation services company and what services will be offered.

§ 302–12.107 What rules must we follow when contracting for relocation services?

You must follow the rules contained in the Federal Acquisition Regulations (FAR) (48 CFR) and/or other procurement regulations applicable to your agency.

§ 302–12.108 What are the income tax consequences that we must consider when offering relocation services?

Amounts you pay to a relocation services company on behalf of an employee may be taxable to the employee. In some cases, such as certain homesale programs, the amounts may not be taxable. You must determine the taxability of such payments, and pay a relocation income tax (RIT) allowance in accordance with part 302–17 of this chapter on payments you determine to be taxable to the employee. You may contact the: Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service, 1111 Constitution Avenue, NW., Room 5501, Washington, DC 20224, for information on the income tax consequences of payments you make to a relocation services company.

§ 302–12.109 What must we consider in deciding whether to use the fixed-fee or cost-reimbursable contracting method?

You must consider the following factors in deciding whether to use the fixed-fee or cost-reimbursable contracting method:

(a) *Risk of alternative methods.* Under a fixed fee contract, the relocation services company bears all risks not expressly contained in the contract. Under a cost-reimbursable contract, you must assume some or all risks and, therefore, must assume some management responsibilities under the contract as well. For example, under a fixed fee homesale program you are not directly liable for losses incurred if a residence does not sell immediately, while under a cost-reimbursable homesale program you assume some or all risks of selling the residence.

(b) *Cost of alternative methods.* Under the fixed fee method of contracting, the fee includes a cost component for risks assumed by the relocation services company. Under the cost-reimbursable method of contracting, you are directly responsible for some or all of the costs associated with management of the contract. In deciding whether to use cost-reimbursable contracting you, therefore, must consider the cost of resources you would require (including personnel costs) to manage a cost-reimbursable relocation services contract.

(c) *Effect on the obligation of funds.* You must obligate funds for a relocation in the fiscal year in which the purchase order is awarded under the contract. Under the fixed fee contracting method, the amount of the relocation services fee is fixed and you have a basis for determining the amount of funds to obligate. Under the cost-reimbursable contracting method, you must obligate funds based on an estimate of the costs that will be incurred. When opting for cost-reimbursable contracting you, therefore, should establish a reliable method of computing fund obligation estimates.

§ 302–12.110 May we take title to an employee's residence?

No, you may not take title to an employee's residence except as specifically provided by statute. The statutes which form the basis for the provisions of this part do not provide such authority.

§ 302–12.111 Under a homesale program, may we establish a maximum home value above which we will not pay for homesale services?

Yes, if a home exceeding the maximum value above which you will not pay is sold under your homesale program, the employee will be responsible for any additional costs. You must establish a maximum amount commensurate with your agency's experience. You may consider, among other factors, budgetary constraints, the value range of homes in areas where you have offices, and the value range of homes previously entered in your program.

§ 302–12.112 Under a homesale program, may we pay an employee for losses he/she incurs on the sale of a residence?

No, under a home sale program, you may not pay an employee for losses he/she incurs on the sale of a residence, but this does not preclude you reimbursing a relocation service's company for losses incurred while the contractor holds the property.

§ 302–12.113 Under a homesale program, may we direct the relocation services company to pay an employee more than the fair market value of his/her residence?

No, under a homesale program, you may not direct the relocation services company to pay an employee more than the fair market value (as determined by the residence appraisal process) of his/her home.

§ 302–12.114 May we use a relocation services contract for services which we are contractually bound to obtain under another travel services contract?

No, you may not use a relocation services contract to which you are contractually bound to obtain the services of another relocation service provider or to circumvent the travel and transportation expense payment system contract if you are a user of that contract.

PART 302–14—HOME MARKETING INCENTIVE PAYMENTS

Subpart A—Payment of Incentive to the Employee

Subpart B—Agency Responsibilities

Authority: 5 U.S.C. 5756.

Subpart A—Payment of Incentive to the Employee

Note to subpart A: Use of pronouns "I", "you", and their variants throughout this subpart refers to the employee.

§ 302–14.1 What is a "homesale program"?

A "homesale program" is a program offered by an agency through a contractual arrangement with a relocation services company. The relocation services company purchases a transferred employee's residence at fair market (appraised) value and then independently markets and sells the residence.

§ 302–14.2 What is the purpose of a home marketing incentive payment?

The purpose of a home marketing incentive payment is to reduce the Government's relocation costs by encouraging transferred employees to participate in their employing agency's homesale program to independently and aggressively market, and find a bona fide buyer for their residence. This significantly reduces the fees/expenses their agencies must pay to relocation services companies and effectively lowers the cost of such programs.

§ 302–14.3 Am I eligible to receive a home marketing incentive payment?

Yes, you are eligible to receive a home marketing incentive payment if you are an employee who is authorized to transfer and you otherwise meet requirements for sale of your residence at Government expense.

§ 302–14.4 Must my agency pay me a home marketing incentive?

No, your agency determines when it is in the Government's interest to offer you a home marketing incentive.

§ 302–14.5 Under what circumstances will I receive a home marketing incentive payment?

You will receive a home marketing incentive payment when:

(a) You enter your residence in your agency's homesale program;

(b) You independently and aggressively market your residence;

(c) You find a bona fide buyer for your residence as a result of your independent marketing efforts;

(d) You transfer the residence to the relocation services company;

(e) Your agency pays a reduced fee/expenses to the relocation services company as a result of your independent marketing efforts;

(f) You meet any additional conditions your agency has established, including but not limited to, mandatory marketing periods, list price guidelines, closing requirements, and residence value caps; and

(g) Your agency has established a home marketing incentive program.

§ 302–14.6 How much may my agency pay me for a home marketing incentive?

Your agency will determine the amount of your home marketing incentive payment. The incentive payment, however, may not exceed the lesser of:

(a) Five percent of the price the relocation services company paid when it purchased the residence from you; or

(b) The savings your agency realized from the reduced fee/expenses it paid as a result of you finding a bona fide buyer.

§ 302–14.7 Are there tax consequences when I receive a home marketing incentive payment?

Yes, the home marketing incentive payment is considered income. Consequently, you will be taxed, and your agency will withhold income and employment taxes, on the home marketing incentive payment. You will not, however, receive a withholding tax allowance (WTA) to offset the withholding on your home marketing incentive payment, nor will you receive a relocation income tax (RIT) allowance payment for substantially all of your Federal, state and local income taxes on the incentive payment.

Subpart B—Agency Responsibilities

Note to subpart B: Use of pronouns "we", "you", and their variants throughout this subpart refers to the agency.

§ 302–14.100 How should we administer our home marketing incentive payment program?

Your goal in using an incentive payment program is to reduce your overall relocation costs. You must not make a home marketing incentive payment that exceeds the savings you realize from the reduced fees/expenses you pay the relocation services company.

§ 302–14.101 What policies must we establish to govern our home marketing incentive payment program?

You must establish policies to govern:

(a) The conditions under which you will authorize a home marketing incentive payment for an employee;

(b) The amount of the home marketing incentive payment(s) you will offer (or) the method you will use to compute your home marketing incentive payments); and

(c) Who will determine in each case whether a home marketing incentive payment is authorized.

§ 302–14.102 What factors should we consider in determining whether to establish a home marketing incentive payment program?

In determining whether to establish a home marketing incentive payment program, you should consider:

(a) Whether the program will increase the percentage of residences sold for which employees find a bona fide buyer. You should establish a benchmark for the percentage of residences for which you expect employees to find a bona fide buyer resulting in lower homesale costs to you. If your historical percentage of employee-generated sales is below your benchmark, a home marketing incentive payment program may benefit you; and

(b) The expected net savings from a home marketing incentive payment program.

§ 302–14.103 What factors should we consider in determining the amount of a home marketing incentive payment?

In determining the amount of a home marketing incentive payment, you should consider the:

(a) Amount of savings from reduced fee/expenses paid to the relocation services company. The home marketing incentive payment program is intended to reduce your relocation costs. The amount of each home marketing incentive payment you make, therefore, must not exceed the savings you realize from the reduced fee you pay to the relocation services company; and

(b) Employee's efforts in marketing the residence. The purpose of a home marketing incentive payment program is to encourage a transferred employee who participates in a homesale program to independently and aggressively market his/her residence and find a bona fide buyer.

PART 302–15—ALLOWANCE FOR PROPERTY MANAGEMENT SERVICES

Subpart A—General Rules for the Employee

Sec.

Subpart B—Agency Responsibilities

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

Subpart A—General Rules For The Employee

Note to subpart A: Use of pronouns "I", "you", and their variants throughout this subpart refers to the employee.

§ 302–15.1 What are property management services?

"Property management services" are programs provided by private companies for a fee, which help an employee to manage his/her residence at the old official station as a rental property. These services typically include, but are not limited to, obtaining a tenant, negotiating the lease, inspecting the property regularly, managing repairs and maintenance, enforcing lease terms, collecting the rent, paying the mortgage and other carrying expenses from rental proceeds and/or funds of the employee, and accounting for the transactions and providing periodic reports to the employee.

§ 302–15.2 What are the purposes of the allowance for property management services?

The purpose of the allowance for property management services is reduce overall Government relocation costs when used instead of sale of the employee's residence at Government expense. When authorized in connection with an employee's transfer to a foreign area post of duty, relieve the employee of the costs of maintaining a home in the United States while stationed at a foreign area post of duty.

§ 302–15.3 Am I eligible for payment for property management services under this part?

Yes, you are eligbile for payment for property management services when:

(a) You transfer in the interest of the Government; and

(b) You and/or a member(s) of your immediate family hold(s) title to a residence which you are eligible to sell at Government expense under part 302–11 or part 302–12 of this chapter.

§ 302–15.4 Who is not eligible for payment for property management services?

New appointees, employees assigned under the Government Employees Training Act (5 U.S.C. 4109), and employees transferring wholly outside the United States are not eligible for payment for property management services. However, relocations wholly outside the United States do not affect previously authorized property management services as long as the employee continues to meet the requirements of § 302–15.6 and any other conditions established by the agency.

§ 302–15.5 Is my agency required to authorize payment for property management services?

No, your agency is not required to authorize payment for property management services. However, your agency determines:

(a) When you meet the conditions set forth in § 302–15.3;

(b) When to authorize payment for these services; and

(c) What procedures you must follow when it authorizes such payment.

§ 302–15.6 Under what circumstances may my agency authorize payment under this part?

(a) For a relocation to an official station in the United States, your agency may authorize payment under this part when:

(1) You are being returned from a foreign area post of duty to a different official station than the one from which you were transferred for your foreign tour of duty;

(2) Your agency has determined that property management services is more advantageous and cost effective for the Government than having to sell your residence;

(3) You have signed a service agreements; and

(4) You meet any additional conditions that your agency has established.

(b) For relocations to official stations outside the United States, your agency will authorize payment under this part when you meet conditions set forth in paragraphs (a)(3) and (4) of this section.

§ 302–15.7 For what property may my agency authorize payment under this part?

Under this part, payment may be authorized only for your residence at the last official station in the United States from which you transferred.

§ 302–15.8 When my agency authorizes payment for me under this part, am I obligated to use such services, or may I elect instead to sell my residence at Government expense?

You are not obligated to use your authorized property management services allowance. You have the option of choosing to sell your residence at Government expense or to use the property management services allowance.

§ 302–15.9 Must I repay property management expenses my agency paid under this part if I elect to sell my former residence in the United States at Government expense when I am transferred from my current foreign post of duty to an official station in the United States other than the one I left?

No, you are not required to repay any property management expenses paid by your agency if you elect to sell your former residence in the United States when transferred from your post of duty to an official station in the United States. The authority for your agency to pay for property management services under this part when you are transferred to a foreign post of duty arises from your transfer to the foreign post of duty. It is separate from, and in addition to, the authority to sell your residence at Government expense when you are transferred to an official station in the

United States other than the official station from which you were transferred to the foreign post of duty.

§ 302–15.10 How long may my agency pay under this part?

Your agency may pay:

(a) For transfers within the United States for a period not to exceed 2 years from your effective date of transfer, with up to a 2-year extension, under the same conditions required in § 302–11.21 of this chapter; or

(b) From the time you transfer to a foreign area post of duty until you:

(1) Transfer back to an official station in the United States; or

(2) Complete a service agreement at your post of duty and remain there, but do not sign a new service agreement; or

(3) Separate from Government service.

§ 302–15.11 If my agency authorized, and I elected to receive, payment for property management expenses, may I later elect to sell my residence at Government expense?

Yes, you may change your selection from receiving property management expenses to selling your residence at Government expense provided:

(a) Your agency allows you to change your election of payment from property management expenses to the sale of your residence at Government expense; and

(b) Payment for sale of your residence at Government expense is offset in accordance with your agency's policy established under § 302–15.70(d).

§ 302–15.12 If my agency is paying for property management services under this part, and my service agreement expires, what must I do to ensure that payment for property management services continues?

You must sign a new service agreement (see § 302–2.13 of this chapter) to continue to this benefit.

§ 302–15.13 What are the income tax consequences when my agency pays for my property management services?

When your agency pays for your property management services, you will be taxed on the amount of expenses your agency pays for property management services whether it reimburses you directly or whether it pays a relocation service company to manage your residence. Your agency must pay you a relocation income tax (RIT) allowance for the additional Federal, State and local income taxes you incur on property management expenses it reimburses you or pays on your behalf.

Note to § 302–15.13: You may wish to consult with a tax advisor to determine whether you will incur any additional tax liability, unrelated to your agency's payment of your property management expenses, as a result of maintaining your residence as a rental property.

Subpart B—Agency Responsibilities

Note to subpart B: Use of pronouns "we", "you", and their variants throughout this subpart refers to the agency.

§ 302–15.70 What governing policies must we establish for the allowance for property management services?

You must establish policies and procedures governing:

(a) When you will authorize payment for property management services for an employee who transfers in the interest of the Government;

(b) Who will determine, for relocations to official stations in the United States, whether payment for property management services is more advantageous and cost effective than sale of an employee's residence at Government expense;

(c) If and when you will allow an employee who was offered and accepted payment for property management services to change his/her mind and elect instead to sell his/her residence at Government expense in accordance with paragraph (d) of this section; and

(d) How you will offset expenses you have paid for property management services against payable expenses for sale of the employee's residence when an eligible employee who elected payment for property management services later changes his/her mind and elects instead to sell his/her residence at Government expense.

SUBCHAPTER F—MISCELLANEOUS ALLOWANCES

PART 302–16—ALLOWANCE FOR MISCELLANEOUS EXPENSES

Subpart A—General

Sec.

Subpart B—Employee's Allowance for Miscellaneous Expenses

Subpart C—Agency Responsibilities

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

Subpart A—General

Note to subpart A: Use of pronouns "I", "you", and their variants throughout this subpart refers to the employee, unless otherwise noted.

§ 302–16.1 What are miscellaneous expenses?

(a) Miscellaneous expenses are costs associated with:

(1) Discontinuing your residence at your old official station, and/or

(2) Establishing a residence at your new official station.

(b) Expenses allowable under paragraphs(a)(1) or (a)(2) of this section include, but are not limited to the following:

General expenses	Fees/deposits	Losses
Appliances	For disconnecting/connecting appliances, equipment, utilities (except for mobile homes see § 302–10.20), conversion of appliances for operation on available utilities.	
Rugs, draperies, and curtains	For cutting and fitting such items, moved from one residence quarters to another.	
Utilities (See § 302–10.20 for mobile homes).	Deposits or fees not offset by eventual refunds.	

General expenses	Fees/deposits	Losses
Medical, dental, and food locker contracts	.....	Forfeiture losses not transferable or refundable.
Private Institutional care contracts (such as that provided for handicapped or invalid dependents only).	.....	Forfeiture losses not transferable or refundable.
Privately-owned automobiles	Registration, Driver's license, and use taxes imposed when bringing into certain jurisdictions.	
Transportations of pets	Only costs associated with dogs and cats are included. Other animals (horses, fish, birds, various rodents, etc.) are excluded because of their size, exotic nature, or restrictions on shipping, host country restrictions and special handling difficulties. Costs are limited to transportation and handling costs, required to meet the more stringent rules of air carriers, not included are inoculations, examinations, boarding quarantine or other costs in the moving process.	

§ 302–16.2 What is the purpose of the miscellaneous expenses allowance (MEA)?

The miscellaneous expenses allowance (MEA) is to help defray some of the costs incurred due to relocating. The MEA is related to expenses that are common to living quarters, furnishings, household appliances, and to other general types of costs inherent in relocation of a place of residence. (See part 302–10 of this chapter for specific costs normally associated with relocation of a mobile home dwelling that are covered under transportation expenses.)

§ 302–16.3 Who is and is not eligible for a MEA?

See the following table for eligibility of MEA:

Employees eligible for MEA	Employees not eligible for MEA
(a) Your agency authorized/approved a relocation or a TCS; and.	(a) A new appointee.
(b) You discontinued and established a residence in connection with your relocation or TCS; and.	(b) Authorized SES "last move home" benefits,
(c) You meet the applicable eligibility conditions in part 302–1 of this chapter; and.	(c) Assigned under the Government Employees Training Act (5 U.S.C. 4109), or
(d) You signed the required service agreement in part 302–1 of this chapter.	(d) Returning from an overseas assignment for separation from Government service.

§ 302–16.4 Must my agency authorize payment of a MEA?

Yes, if you meet the applicable eligibility conditions in § 302–16.3, your agency must authorize payment of a MEA.

Subpart B—Employee's Allowance for Miscellaneous Expenses

§ 302–16.100 How will I receive the MEA?

You will be reimbursed your MEA in accordance with your agency's internal travel policy.

§ 302–16.101 May I receive an advance of funds for MEA?

No, your agency must not authorize an advance of funds for MEA.

§ 302–16.102 What amount may my agency reimburse me for miscellaneous expenses?

The following amounts will be paid for miscellaneous expenses without support or documentation of expenses:

(a) Either $500 or the equivalent of one week's basic gross pay, whichever is the lesser amount, if you have no immediate family relocating with you; or

(b) $1,000 or the equivalent of two weeks' basic gross pay, whichever is the lesser amount, if you have immediate family members relocating with you.

§ 302–16.103 May I claim an amount in excess of that prescribed in § 302–16.102?

Yes, you may claim an amount in excess of that prescribed in § 302–16.12 if authorized by your agency; and

(a) Supported by acceptable statements of fact, paid bills or other acceptable evidence justifying the amounts claimed; and

(b) The aggregate amount does not exceed your basic gross pay (at the time you reported for duty, at your new official station) for:

(1) One week if you are relocating without an immediate family; or

(2) Two weeks if you are relocating with an immediate family.

Note to § 302–16.103: The amount authorized cannot exceed the maximum rate of grade GS–13 provided in 5 U.S.C. 5332 at the time you reported for duty at your new official station.

§ 302–16.104 Must I document my miscellaneous expenses to receive reimbursement?

You must show documentation of your miscellaneous expenses only when an amount exceeds that prescribed in § 302–16.101.

§ 302–16.105 What standard of care must I use in incurring miscellaneous expenses?

You must exercise the same care in incurring expenses that a prudent person would exercise if relocating at personal expense.

Subpart C—Agency Responsibilities

Note to subpart C: Use of pronouns "we", "you", and their variants throughout this subpart refers to the agency.

§ 302–16.200 What governing policies must we establish for MEA?

For MEAs, you must establish policies and procedures governing:

(a) Who will determine whether payment for an amount in excess of the flat MEA is appropriate; and

(b) How you will pay a MEA in accordance with §§ 302–16.3 and 302–16.4.

§ 302–16.201 How should we administer the authorization and payment of miscellaneous expenses?

You should limit payment of miscellaneous expenses to only those expenses that are necessary.

§ 302–16.202 Are there any restrictions to the types of costs we may cover?

Yes, a MEA cannot be used to reimburse:

(a) Costs or expenses incurred which exceed maximums provided by statute or in this subtitle;

(b) Costs or expenses incurred but which are disallowed elsewhere in this subtitle;

(c) Costs reimbursed under other provisions of law or regulations;

(d) Costs or expenses incurred for reasons of personal taste or preference and not required because of the move;

(e) Losses covered by insurance;

(f) Fines or other penalties imposed upon the employee or members of his/her immediate family;

(g) Judgements, court costs, and similar expenses growing out of civil actions; or

(h) Any other expenses brought about by circumstances, factors, or actions in which the move to a new duty station was not the proximate cause.

§ 302–16.203 What are examples of types of costs not covered by the MEA?

Examples of costs which are not reimbursable from this allowance are:

(a) Losses in selling or buying real and personal property and cost related to such transactions;

(b) Cost of additional insurance on household goods while in transit to the new official station or cost of loss or damage to such property;

(c) Additional costs of moving household goods caused by exceeding the maximum weight limitation;

(d) Costs of newly acquired items, such as the purchase or installation cost of new rugs or draperies;

(e) Higher income, real estate, sales, or other taxes as the result of establishing residence in the new locality;

(f) Fines imposed for traffic infractions while en route to the new official station locality;

(g) Accident insurance premiums or liability costs incurred in connection with travel to the new official station locality, or any other liability imposed upon the employee for uninsured damages caused by accidents for which he/she or a member of his/her immediate family is held responsible;

(h) Losses as the result of sale or disposal of items of personal property not considered convenient or practicable to move;

(i) Damage or loss of clothing, luggage, or other personal effects while traveling to the new official station locality;

(j) Subsistence, transportation, or mileage expenses in excess of the amounts reimbursed as per diem or other allowances under this regulation;

(k) Medical expenses due to illness or injuries while en route to the new official station or while living in temporary quarters at Government expense under the provisions of this chapter; or

(l) Costs incurred in connections with structural alterations (remodeling or modernizing of living quarters, garages or other buildings to accommodate privately-owned automobiles, appliances or equipment; or the cost of replacing or repairing worn-out or defective appliances, or equipment shipped to the new location).

PART 302–17—RELOCATION INCOME TAX (RIT) ALLOWANCE

Sec.

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

§ 302–17.1 Authority.

Payment of a relocation income tax (RIT) allowance is authorized to reimburse eligible transferred employees for substantially all of the additional Federal, State, and local income taxes incurred by the employee, or by the employee and spouse if a joint tax return is filed, as a result of certain travel and transportation expense and relocation allowances which are furnished in kind, or for which reimbursement or an allowance is provided by the Government. Payment of the RIT allowance also is authorized for income taxes paid to the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the U.S. possessions in accordance with a decision of the Comptroller General of the United States (67 Comp. Gen. 135 (1987)). The RIT allowance shall be calculated and paid as provided in this part.

§ 302–17.2 Coverage.

(a) *Eligible employees.* Payment of a RIT allowance is authorized for employees transferred on or after November 14, 1983, in the interest of the Government from one official station to another for permanent duty. The effective date of an employee's transfer is the date the employee reports for duty at the new official station as provided in part 300.3 of this title.

(b) *Individuals not covered.* The provisions of this part are not applicable to the following individuals or employees:

(1) New appointees;

(2) Employees assigned under the Government Employees Training Act (see 5 U.S.C. 4109); or

(3) Employees returning from overseas assignments for the purpose of separation.

§ 302–17.3 Types of moving expenses or allowances covered and general limitations.

The RIT allowance is limited by law as to the types of moving expenses that can be covered. The law authorizes reimbursement of additional income taxes resulting from certain moving expenses furnished in kind or for which reimbursement or an allowance is provided to the transferred employee by the Government. However, such moving expenses are covered by the RIT allowance only to the extent that they are actually paid or incurred, and are not allowable as a moving expense deduction for tax purposes. The types of expenses or allowances listed in paragraphs (a) through (i) of this section, are covered by the RIT allowance within the limitations discussed.

(a) *En route travel.* Travel (including per diem) and transportation expenses of the transferred employee and immediate family for en route travel from the old official station to the new official station. (See part 302–4 of this chapter.)

(b) *Household goods shipment.* Transportation (including temporary storage) expenses for movement of household goods from the old official station to the new official station. (See part 302–7 of this chapter.)

(c) *Extended storage expenses.* Allowable expenses for extended storage of household goods belonging to an employee transferred on or after November 14, 1983, through October 11, 1984, to an isolated location in the continental United States. (See part 302–8, of this chapter extended storage expenses are not covered by the RIT allowance for transfers on or after October 12, 1984.) (See § 302–17.4(c) of this chapter.)

(d) *Mobile home movement.* Expenses for the movement of a mobile home for use as a residence when movement is authorized instead of shipment and temporary storage of household goods. (See part 302–10 of this chapter.)

(e) *Househunting trip.* Travel (including per diem) and transportation

expenses of the employee and spouse for one round trip to the new official station to seek permanent residence quarters. (See part 302–5 of this chapter.)

(f) *Temporary quarters.* Subsistence expenses of the employee and immediate family during occupancy of temporary quarters. (See part 302–6 of this chapter.)

(g) *Real estate expenses.* Allowable expenses for the sale of the residence (or expenses of settlement of an unexpired lease) at the old official station and for purchase of a home at the new official station for which reimbursement is received by the employee. (See part 302–11 of this chapter.)

(h) *Miscellaneous expense allowance.* A miscellaneous expense allowance for the purpose of defraying certain expenses associated with discontinuing a residence at one location and establishing a residence at the new location in connection with an authorized or approved permanent change of station. (See part 302–16 of this chapter.)

(i) *Relocation services.* Payments, or portions thereof, made to a relocation service company for services provided to a transferred employee (see part 302–12 of this chapter), subject to the conditions stated in this paragraph and within the general limitations of this section applicable to other covered expenses.

(1) *For employees transferred on or after November 14, 1983, through October 11, 1984.* The amount of a broker's fee or real estate commission, or other real estate sales transaction expenses which normally are reimbursable to the employee under § 302–11.200 of this chapter, but have been paid by a relocation service company incident to an assigned sale from the employee, provided that such payments constitute income to the employee. For the purposes of this regulation, an assigned sale occurs when an employee obtains a binding agreement for the sale of his/her residence and assigns the inherent rights and obligations of that agreement to a relocation company that is providing services under contract with the employing agency. For example, if the employee incurs an obligation to pay a specified broker's fee or real estate commission under the terms of the sales agreement, this obligation along with the sales agreement is assigned to the relocation company and may, upon payment of the obligation by the relocation company, constitute income to the employee. (See § 302–12.7 of this chapter entitled "Income tax consequences of using relocation companies.")

(2) *For employees transferred on or after October 12, 1984.* Expenses paid by a relocation company providing relocation services to the transferred employee pursuant to a contract with the employing agency to the extent such payments constitute income to the employee. (See § 302–12.7 of this chapter.)

Note: See reference shown in parentheses for reimbursement provisions for each allowance listed in paragraphs (a) through (i) of this section. See section 217 of the Internal Revenue Code (IRC) and Internal Revenue Service (IRS) Publication 521 entitled "Moving Expenses" and appropriate State and local tax authority publications for additional information on the taxability of moving expense reimbursements and the allowable tax deductions for moving expenses.

§ 302–17.4 Exclusions from coverage.

The provisions of this part are not applicable to the following:

(a) Any tax liability that may result from payments by the Government to relocation companies on behalf of employees transferred on or after November 14, 1983, through October 11, 1984, other than the payments for those expenses specified in § 302–17.3(i)(1).

(b) Any tax liability incurred for local income taxes other than city income tax as a result of moving expense reimbursements for employees transferred on or after November 14 1983, through October 11, 1984. (See definition in § 302–17.5(b).)

(c) Any tax liability resulting from reimbursed expenses for any extended storage of household goods except as specifically provided for in § 302–17.3(c).

(d) Any tax liability resulting from paid or reimbursed expenses for shipment of a privately owned automobile.

(e) Any tax liability resulting from an excess of reimbursed amounts over the actual expense paid or incurred. For instance, if an employee's reimbursement for the movement of household goods is based on the commuted rate schedule and his/her actual moving expenses are less than the reimbursement, the tax liability resulting from the difference is not covered by the RIT allowance. (See § 302–17.8(c)(2)(i).)

(f) Any tax liability resulting from an employee's decision not to deduct moving expenses for which a tax deduction is allowable under the Internal Revenue Code or appropriate State and local tax codes. (See §§ 302–17.8(b)(1) and 302–17.8(c)(2).)

(g) Any tax liability resulting from the payment of recruitment, retention, or relocation bonuses authorized by the Office of Personnel Management pursuant to 5 U.S.C. 5753 and 5754, or any other provisions which allow relocation payments that are not reimbursements for travel, transportation, and other expenses incurred in relocation.

§ 302–17.5 Definitions and discussion of terms.

For purposes of this part, the following definitions will apply:

(a) *State income tax.* A tax, imposed by a State tax authority, that is deductible for Federal income tax purposes as a State income tax under section 164(a)(3) of the IRC. "State" means any one of the several States of the United States and the District of Columbia.

(b) *Local income tax.* A tax, imposed by a recognized city or county tax authority, that is deductible for Federal income tax purposes as a local (city or county) income tax under section 164(a)(3) of the IRC; except, that for employees transferred on or after November 14, 1983, through October 11, 1984, local income tax shall be construed to mean only city income tax. For purposes of this regulation:

(1) *City* means any unit of general local government which is classified as a municipality by the Bureau of the Census, or which is a town or township that in the determination of the Secretary of the Treasury possesses powers and performs functions comparable to those associated with municipalities, is closely settled, and contains within its boundaries no incorporated places as defined by the Bureau of the Census (31 CFR 215.2(b)(1)).

(2) *County* means any unit of local general government which is classified as a county by the Bureau of the Census (31 CFR 215.2(e)).

(c) *Covered moving expense reimbursements or covered reimbursements.* As used herein, these terms include those moving expenses listed in § 302–17.3 as being covered by the RIT allowance and which may be furnished in kind, or for which reimbursement or an allowance is provided by the Government.

(d) *Covered taxable reimbursements.* Covered moving expense reimbursements minus the tax deductions allowable under the IRC and IRS regulations for moving expenses. (See determination in § 302–17.8(c).)

(e) *Year 1 or reimbursement year.* The calendar year in which reimbursement or payment for moving expenses is

made to, or for, the employee under the provisions of this part. All or part of these reimbursements (see § 302–17.6) are reported to the IRS as income (wages, salary, or other compensation) to the employee for that tax year under the provisions of the IRC and IRS regulations, and are subject to Federal tax withholding. The withholding tax allowance (WTA) (see paragraph (f)(1) of this section) is calculated in Year 1, to cover the employee's Federal tax withholding obligations each time covered moving expense reimbursements are made that result in a Federal tax withholding obligation. For purposes of this part, an advance of funds for any of the covered moving expenses is not considered to be a reimbursement or a payment until the travel voucher settlement for such expenses takes place. If an employee's reimbursement for moving expenses is spread over more than one year, he/she will have more than one Year 1.

(f) *Year 2.* The calendar year in which a claim for the RIT allowance is paid.

(1) Generally, Year 2 will be the calendar year immediately following Year 1 and in which the employee files a tax return reflecting his/her tax liability for income received in Year 1. However, there may be instances where the employee's claims submission and/or payment of the RIT allowance is delayed beyond the calendar year immediately following Year 1. (Year 1 will always be the calendar year that reimbursements are received; see paragraph (e) of this section.) Year 2 will be the calendar year in which the RIT allowance is actually paid.

(2) The RIT allowance is calculated in Year 2 and paid to cover the additional tax liability (resulting from moving expense reimbursements received in Year 1) not covered by the WTA paid in Year 1. If an employee's covered taxable reimbursements are spread over more than one year, he/she will have more than one Year 2.

(g) *Federal withholding tax rate (FWTR).* The tax rate applied to incremental income to determine the amount to be withheld for Federal income tax from salary or other compensation such as moving expense reimbursements. Because moving expense reimbursements constitute supplemental wages for Federal income tax purposes, the 20 percent flat rate of withholding is generally applicable to such reimbursements. (See § 302–17.7(c).) Agencies should refer to the Treasury Financial Manual, TFM 3–5000, and applicable IRS regulations for complete and up-to-date information on this subject.

(h) *Earned income.* For purposes of the RIT allowance, "earned income" shall include only the gross compensation (salary, wages, or other compensation such as reimbursement for moving expenses and the related WTA (see paragraph (n) of this section) and any RIT allowance (see paragraph (m) of this section) paid for moving expense reimbursement in a prior year) that is reported as income on IRS Form W–2 for the employee (employee and spouse, if filing jointly), and if applicable, the net earnings (or loss) for self-employment income shown on Schedule SE of the IRS Form 1040. Earned income may be from more than one source. (See § 302–17.8(d).)

(i) *Marginal tax rate (MTR).* The tax rate (for example, 33 percent) applicable to a specific increment of income. The Federal, Puerto Rico, and State marginal tax rates to be used in calculating the RIT allowance are provided in appendices A through D of this part. (See § 302–17.8(e)(3) for instructions on local marginal tax rate determinations.)

(j) *Combined marginal tax rate (CMTR).* A single rate determined by combining the applicable marginal tax rates for Federal (or Puerto Rico, when applicable), State, and local income taxes, using formulas provided in § 302–17.8(e)(5).

(k) *Gross-up.* Payment for the estimated additional income tax liability incurred by an employee as a result of reimbursements or payments by the Government for the covered moving expenses listed in § 302–17.3.

(l) *Gross-up formulas.* The formulas used to determine the amount of the gross-up for the WTA and the RIT allowance. The gross-up formulas used herein compensate the employee for the initial tax, the tax on tax, etc. Note that the WTA gross-up formula in § 302–17.7(d) is different than the RIT gross-up formula prescribed in § 302–17.8(f).

(m) *RIT allowance.* The amount of payment computed and paid in Year 2 to cover substantially all of the estimated additional tax liability incurred as a result of the covered moving expense reimbursements received in Year 1.

(n) *Withholding tax allowance (WTA).* The withholding tax allowance (WTA), paid in Year 1, covers the employee's Federal income tax withholding liability on covered taxable reimbursements received in Year 1. The amount is computed by applying the withholding gross-up formula prescribed in § 302–17.7(d) (using the Federal withholding tax rate) each time that a Federal withholding obligation is incurred on covered moving expense reimbursements received in Year 1. Grossing-up the Federal withholding amount protects the employee from using part of his/her moving expense reimbursement to pay Federal withholding taxes. (See § 302–17.7.)

(o) *State gross-up.* Payment for the estimated additional State income tax liability incurred by an employee as a result of reimbursements or payments by the Government for the covered moving expenses listed in § 302–17.3 that are deductible for Federal income tax but not for State income tax purposes.

(p) *State gross-up formula.* The formula prescribed in § 302–17.8(f)(3) to be used in determining the amount to be included in the RIT allowance to compensate an employee for the additional State income tax incurred in States that do not allow the deduction of moving expenses.

§ 302–17.6 Procedures in general.

(a) This regulation sets forth procedures for the computation and payment of the RIT allowance and defines agency and employee responsibilities. This part does not require changes to those internal fiscal procedures established by the individual agencies pursuant to IRS regulations, or the Treasury Financial Manual, provided that the intent of the statute authorizing the RIT allowance and this part are not disturbed.

(b) The total amount reimbursed or paid to the employee, or on his/her behalf, for travel, transportation, and other relocation expenses and allowances is includable in the employee's gross income pursuant to the IRC and certain State or local government tax codes. Some moving expenses for which reimbursements are received may be deducted from income by the employee as moving expense deductions, subject to certain limitations prescribed by the IRS or pertinent State or local tax authorities. Reimbursements for nondeductible moving expenses are subject to income tax. (See IRS Publication 521 entitled "Moving Expenses" and the appropriate State and local tax codes for detailed information.)

(c) Usually, if the employee is reimbursed for nondeductible moving expenses, the amount of these reimbursements is subject to withholding of Federal income tax in accordance with IRS regulations at the time of reimbursement. Under existing fiscal procedures, the amount of the employee's withholding obligation is usually deducted either from reimbursements for the moving expenses at the time of reimbursement

or from the employee's salary. (See Treasury Financial Manual.)

(d) Payment of a WTA established herein will offset deductions for the Federal income tax withholding on moving expense reimbursements, and on the WTA itself, from the employee's moving expense reimbursements or from salary.

(e) The total amount of the RIT allowance can be computed after the end of Year 1 as soon as the earned income level, income tax filing status, total covered taxable reimbursements, and the applicable marginal tax rates can be determined. Employee claims for the RIT allowance should be submitted in accordance with this part and the employing agency's procedures.

(f) Procedures are prescribed in §§ 302–17.7 and 302–17.8 for computation and payment of the WTA and the RIT allowance. These procedures are built on existing fiscal procedures and IRS regulations regarding reporting of employee income from reimbursements and withholding of taxes on supplemental wages.

§ 302–17.7 Procedures for determining the WTA in Year 1.

(a) *General rules.* The WTA is designed to cover only the employee's withholding tax obligation for Federal income taxes on income resulting from covered moving expense reimbursements. (See definition in § 302–17.5(c).) Other withholding tax obligations, if any, such as for social security taxes or for State and/or local income taxes on income resulting from moving expense reimbursements shall not be included in the calculation of the WTA payment. The amount of the WTA is equal to the Federal income tax withholding obligation incurred by the employee on covered moving expense reimbursements (which are not offset by deductible moving expenses) and on the WTA itself. Each time covered moving expense reimbursements are paid to or on behalf of the employee, the WTA shall be calculated, accounted for, and reported as provided in paragraphs (b) through (g) of this section.

(b) *Determination of amount of reimbursement subject to withholding.* Under IRS regulations, income resulting from reimbursements for nondeductible moving expenses is subject to withholding of Federal income taxes. (See IRS Publication 521, "Moving Expenses.") There are some moving expenses which may be reimbursed but are not covered taxable reimbursements (see definition in § 302–17.5(d)) for purposes of the WTA and RIT allowance calculations, such as extended storage of household goods. (See exclusions in § 302–17.4.) Therefore, the actual amount of the covered taxable reimbursements may be different than the amount of nondeductible moving expenses subject to Federal income tax withholding. The difference in these amounts should not be substantial; therefore, the amount of nondeductible moving expenses subject to Federal income tax withholding, as determined by the agency pursuant to IRS regulations, may be used in calculating the WTA. (Note that the RIT calculation procedure in § 302–17.8 requires determination of covered taxable reimbursements.)

(c) *Determination of Federal withholding tax rate (FWTR).* Moving expense reimbursements constitute supplemental wages for Federal income tax purposes. Therefore, an agency must withhold at the withholding rate applicable to supplemental wages. Currently, the supplemental wages withholding rate is 28 percent. The supplemental wages withholding rate should be used in calculating the WTA unless under an agency's withholding procedures a different withholding rate is used pursuant to IRS tax regulations. In such cases, the applicable withholding rate shall be substituted for the supplemental wages withholding rate in the calculation shown in paragraph (d) of this section.

(d) *Calculation of the WTA.* The WTA is calculated by substituting the amounts determined in paragraphs (b) and (c) of this section into the following WTA gross-up formula:

Formula:

$$Y = \frac{X}{1-X}\ (N)$$

Where:
Y = WTA
X = FWTR (generally, 28 percent)
N = nondeductible moving expenses/ covered taxable reimbursements

Example:
If:
X = 28 percent
N = $20,000
Then:

$$Y = \frac{.28}{1.00-.28}\ ($20{,}000)$$

Y = .3889 ($20,000)
Y = $7778.00

(e) *WTA payment and employee agreement for repayment.* (1) The WTA may be calculated several times within Year 1 if reimbursements for moving expenses are made on more than one travel voucher. Each time an employee is reimbursed for moving expenses which are subject to Federal tax withholding in accordance with the IRS regulations, the WTA will be calculated and paid unless the employee fails to comply with the requirements in paragraph (e)(2) of this section.

(2) The employee shall be required to agree in writing to repay any excess amount paid to him/her in Year 1 (see §§ 302–17.8(f)(5) and 302–17.9(b)(3)), and submit the required certified tax information and claim for his/her RIT allowance within a reasonable length of time (as determined by the agency) after the close of Year 1. Failure of the employee to comply with this requirement will preclude the agency's payment of the WTA. The entire WTA will be considered an excess payment if the RIT allowance claim is not submitted in a timely manner to settle the RIT allowance account.

(f) *Determination of employee's withholding tax on WTA.* Since the amount of the WTA is considered income to the employee, it is subject to the same tax withholding requirements as all other moving expense reimbursements. (See Treasury Financial Manual, Section 4080, Moving Expense Reimbursements, for withholding requirements.)

(g) *End of year reporting.* At the end of the year, agencies generally are required to issue IRS Form(s) W–2 for each employee showing total gross compensation (including moving expense reimbursements) and the applicable amount of Federal taxes withheld. For tax reporting purposes, the WTA is to be treated as a moving expense reimbursement. The total amount of the employee's WTA's paid during the year as well as the amount of moving expense reimbursements should be included as income on the employee's Form W–2. The Federal tax withholding amount applicable to the moving expense reimbursements and the WTA should also be included on the employee's Form W–2. The amount of the WTA's also will be furnished to the employee along with the amount of moving expense reimbursements on IRS Form 4782 or another itemized listing provided for the employee's use in preparing his/her tax return (see IRS regulations for further guidance) and in claiming the RIT allowance as provided in § 302–17.8.

§ 302–17.8 Rules and procedures for determining the RIT allowance in Year 2.

(a) *Summary/overview of procedures.* The RIT allowance will be calculated and claimed in Year 2. This can be accomplished as soon as the employee can determine earned income (as defined herein), income tax filing status, covered taxable reimbursements for

Year 1, and the applicable marginal tax rates. The RIT allowance is then calculated using the gross-up formula under procedures prescribed herein. Since the RIT allowance is considered income, appropriate withholding taxes on the RIT allowance are deducted and the balance constitutes the net payment to the employee. Rules, procedures, and the prescribed tax tables for these calculations are provided in paragraphs (b) through (g) of this section, and in appendices A, B, and C of this part.

(b) *General rules and assumptions.* (1) The procedures prescribed herein for calculations and payment of the RIT allowance are based on certain assumptions jointly developed by GSA and IRS, and tax tables developed by IRS. This approach avoids a potentially controversial and administratively burdensome procedure requiring the employee to furnish extensive documentation, such as certified copies of actual tax returns and reconstructed returns, in support of a claim for a RIT allowance payment. Specifically, the following assumptions have been made:

(i) The employee will claim allowable moving expense deductions for the same tax year in which the corresponding moving expense reimbursements are included in income;

(ii) Changes to the IRC, applicable to the 1987 and subsequent tax years, require that allowable moving expense deductions must be taken as an itemized deduction from gross income rather than as an adjustment to gross income as in previous tax years. It is assumed that employees will receive the benefit of allowable moving expense deductions to offset income either by itemizing their moving expense deductions or through the increased standard deductions.

(iii) Prior to the Tax Reform Act of 1986, it was assumed that the employee's (and spouse's, if a joint return is filed) earned income, filing status, and CMTR determined for Year 1 (and used in determining the RIT allowance in Year 2) would remain the same or would not be substantially different in the second and subsequent tax years. However, the Tax Reform Act of 1986 substantially changed the Federal tax structure making it necessary to compute a separate CMTR for Year 1 and for Year 2. (See paragraph (e) of this section.) The formula for calculating the RIT allowance to be paid in 1988 and subsequent years is shown in paragraph (f) of this section. It is assumed that within the accuracy of the calculation, the State and local tax rates for Year 1 and Year 2 will remain the same or will not be substantially different. Therefore, the State and local tax rates for Year 1 shall be used in calculating the CMTR for Year 2.

(2) The prescribed procedures, which yield an estimate of an employee's additional tax liability due to moving expense reimbursements, are to be used uniformly. They are not to be adjusted to accommodate an employee's unique circumstance which may differ from the assumed circumstances stated in paragraph (b)(1) of this section.

(3) An adjustment of the RIT allowance paid in Year 2 for the covered taxable reimbursements received in Year 1 is required if the tax information certified to on the RIT allowance claim is different than that shown on the actual Federal tax return filed with IRS for Year 1 or changed for any reason after filing of the tax return, so as to affect the CMTR's used in the RIT allowance calculation. (See § 302–17.10 for claims procedures.)

(c) *Determination of covered taxable reimbursements.* (1) Generally, the amount of the covered taxable reimbursements is the difference between (i) the amount of covered moving expense reimbursements for the allowances listed in § 302–17.3 that was included in the employee's income in Year 1, and (ii) the maximum amount of allowable moving expenses that may be claimed as a moving expense deduction by the employee on his/her Federal tax return under IRS tax regulations to offset the income resulting from moving expense reimbursements for Year 1. The covered taxable reimbursements will be determined as if the employee had itemized and deducted all allowable moving expense deductions. (See assumption made in paragraph (b)(1)(ii) of this section.) If the employee is precluded from claiming moving expense deductions because he/she does not meet IRS requirements for the distance test, then the amount of covered taxable reimbursements is the same as the amount of covered moving expense reimbursements. (See § 302–17.5(d).)

(2) For purposes of calculating the RIT allowance, the following special rules apply to the determination of moving expense deductions to offset moving expense reimbursements reported as income:

(i) The total amount of reimbursement (which was reported as income) for the expenses of en route travel for the employee and family (see § 302–17.3(a)) and transportation (including up to 30 days temporary storage) of household goods (see § 302–17.3(b)) to the new official station shall be used as a moving expense deduction. (See also § 302–17.4(e) and (f).)

(ii) The total amount of reimbursement for a househunting trip, temporary quarters (up to 30 days at new station) and real estate transaction expenses (see § 302–17.3(e), (f), (g), and (i)), up to the maximum allowable deduction under IRS tax regulations, shall be used as a moving expense deduction. For example, an employee and spouse filing a joint return and residing in the same household at the end of the tax year may deduct up to $3,000 for these expenses. (No more than $1,500 of the $3,000 may be claimed for a househunting trip and temporary quarters expenses combined.) If the employee was reimbursed $1,350 for a househunting trip and temporary quarters expenses and $9,000 for real estate expenses, the moving expense deductions would be $1,350 for the househunting trip and temporary quarters expenses and $1,650 for real estate expenses. If the employee's reimbursement was $1,850 for the househunting trip and temporary quarters expenses and $9,000 for real estate expenses, the moving expense deductions would be $1,500 for the househunting trip and temporary quarters expenses and $1,500 for real estate expenses. If the employee had no reimbursement for a househunting trip and temporary quarters, the full $3,000 would be applied to the $9,000 reimbursement for real estate expenses. (See IRS Publication 521, "Moving Expenses," for these and other maximums which vary by situation and filing status.)

(3) Procedures and examples are provided herein as if all moving expense reimbursements are received in one year with all moving expense deductions applied in that same year to arrive at the covered taxable reimbursements. However, when reimbursements span more than one year, the amount of covered taxable reimbursements must be determined separately for each reimbursement year (Year 1). The maximum moving expense deductions apply to the entire move. Under IRS tax regulations, the employee has some discretion as to when he/she claims these deductions (e.g., in the year of the move when the expense was paid or in the year of reimbursement, if these actions do not occur in the same year). However, for purposes of the RIT allowance procedures, the moving expense deductions will be applied in the year that the corresponding reimbursement is made. For example, if an employee incurred and was reimbursed $1,000 for a househunting trip and temporary quarters in 1989 and an additional $1,000 for temporary

quarters in 1990, this employee, according to his/her particular situation and tax filing status, may deduct $1,500 of these expenses in moving expense deductions. In calculating the RIT allowance for 1989, $1,000 of the $1,500 deduction is used to offset the $1,000 reimbursement in 1989 resulting in zero covered taxable reimbursements for the househunting trip and temporary quarters for 1989. The remaining $500 (balance of the $1,500 not used in determining covered taxable reimbursements for 1989) will be used to offset the $1,000 temporary quarters reimbursement in 1990 (second Year 1), leaving $500 of the temporary quarters reimbursement as a covered taxable reimbursement for 1990.

(4) Although the WTA amount is included in income (see § 302–17.7), it shall not be included in the amount of covered taxable reimbursements. Under the procedures and formulas established herein, the proper amount of the RIT allowance is calculated using the RIT gross-up formula with the WTA and any prior RIT allowance payments excluded from covered taxable reimbursements.

(5) Agencies are cautioned that there may be moving expenses reimbursed to the employee that are not covered by the RIT allowance. (See exclusions in § 302–17.4; also see discussion in § 302–17.7 regarding covered taxable reimbursements versus nondeductible expenses.)

(d) *Determination of income level and filing status.* In order to determine the CMTR's needed to calculate the RIT allowance, the employee must determine the appropriate amount of earned income (as prescribed herein) that was or will be reported on his/her Federal tax return for the tax year in which the covered taxable reimbursements were received (Year 1). Such amount will also include the spouse's earned income if a joint filing status is claimed. For purposes of this regulation, appropriate earned income shall include only the amount of gross compensation reported on IRS Form(s) W–2, and, if applicable, the net earnings (or loss) from self-employment income as shown on Schedule SE of IRS Form 1040. (See § 302–17.5(h).) (Note that moving expense reimbursements including the WTA amounts and any RIT allowance paid for a prior Year 1 are to be included in earned income and should be shown as income on the Form W–2; if they are not, other appropriate documentation shall be furnished by the agency.) (*See* § 302–17.7(g).) The amount of earned income as determined under this paragraph and the tax filing status (for example, from lines 1 through 5 on the 1987 IRS Form 1040) shall be contained in a certified statement on, or attached to, the voucher claiming the RIT allowance. (See § 302–17.10.) If a joint filing status is claimed and the spouse's earned income is included, the spouse must sign the certified statement. If the spouse does not sign the statement, earned income will include only the employee's earned income and the RIT allowance will be calculated on that basis. This condition will not apply if an employee is allowed, under IRS rules, to file a joint return as a surviving spouse.

(e) *Determination of the CMTR's.* The gross-up formula used to calculate the RIT allowance in paragraph (f) of this section, requires the use of two CMTR's—one for Year 1 in which reimbursements were received and the other for Year 2 in which the RIT allowance is paid. CMTR's are single tax rates calculated to represent the Federal, State, and/or local income tax rates applicable to the earned income determined for Year 1. (*See* paragraph (d) of this section.) The CMTR's will be determined as follows:

(1) *Federal marginal tax rates.* The Federal marginal tax rates for Year 1 and Year 2 are determined by using the income level and filing status determined under paragraph (d) of this section and contained in the certified statement by the employee (or employee and spouse) on the RIT allowance claim, and applying the prescribed Federal tax tables contained in appendices A and C of this part. For example, if the income level for the 1989 tax year (Year 1) was $84,100 for a married employee filing a Federal joint return, the Federal marginal tax rate would be 33 percent for Year 1 (1989) (see appendix A of this part) and 28 percent for Year 2 (1990) (see appendix C of this part). These rates would be used regardless of how much of the $84,100 was attributable to reimbursement for the employee's relocation expenses. (Note that these marginal rates are different from the withholding tax rate used for the WTA.) If the employee incurs only Federal income tax (i.e., there are no State or local taxes), the Federal marginal tax rates determined from appendices A and C of this part are the CMTR's to be used in the RIT gross-up formula provided in § 302–17.8(f). In such cases, the provisions of paragraphs (e)(2) and (3) of this section, do not apply.

(2) *State marginal tax rate.* (i) If the employee incurs an additional State income tax (see definition in § 302–17.5(a)) liability as a result of moving expense reimbursements, the appropriate State tax table in appendix B of this part is to be used to determine the applicable State marginal tax rate that will be substituted into the formula for determining the CMTR for both Year 1 and Year 2. The appropriate State tax table will be the one that corresponds to the tax year in which the reimbursements are paid to the employee (Year 1). The income level determined in paragraph (d) of this section for Federal taxes shall be used to identify the appropriate income bracket in the State tax table. The applicable State marginal tax rate is obtained from the selected income bracket column for the State where the employee is required to pay State income tax on moving expense reimbursements. The tax rates shown in the table apply to all employees regardless of their filing status, except where a separate rate is shown for a single filing status.

(ii) The lowest income bracket shown in the State tax tables in appendix B of this part is $20,000–$24,999. In cases where the employee's (employee's and spouse's, if filing jointly) earned income as determined under paragraph (d) of this section is less than this income bracket, an appropriate State marginal tax rate shall be established by the employing agency from the applicable State tax code or regulations issued pursuant thereto. Such State marginal tax rate shall be representative of the earned income level in question but in no case more than the marginal tax rate established in appendix B of this part for the $20,000–$24,999 income bracket for the particular State in which an additional tax obligation has been incurred.

(iii) The prescribed State marginal tax rates generally are expressed as a percent of taxable income. However, if the applicable State marginal tax rate is stated as a percentage of the Federal income tax liability, the State tax rate must be converted to a percent of taxable income to be used in the CMTR formulas in paragraph (e)(5) of this section. This is accomplished by multiplying the applicable Federal tax rate for Year 1 by the applicable State tax rate. For example, if the Federal tax rate is 33 percent for Year 1 and the State tax rate is 25 percent of the Federal income tax liability, the State tax rate stated as a percent of taxable income would be 8.25 percent. The State tax rate thus determined for Year 1 will be used in determining the CMTR for both Year 1 and Year 2.

(iv) An employee may incur a State income tax liability on moving expense reimbursements in more than one State at the same or different marginal tax rates (i.e., double taxation). For example, an employee may incur taxes on moving expense reimbursements in

one State because of residency in that State, and in another State because that particular State taxes income earned within its jurisdiction irrespective of whether the employee is a resident. In such cases, a single State marginal tax rate must be determined for use in the CMTR formulas in paragraph (e)(5) of this section. The general rules in paragraph (e)(2)(iv) (A) through (C) of this section apply in determining the applicable single State marginal tax rate in such cases.

(A) If two or more States impose an income tax on an employee's moving expense reimbursement, but no two States tax the same portion of the reimbursement, then the reimbursement is not subject to double taxation. In this situation, the average of the applicable State marginal tax rates, as determined under paragraphs (e)(2) (i) through (iii) of this section, shall be treated as being imposed on the entire reimbursement, and shall be used in the CMTR formula.

(B) If two or more States impose an income tax on the moving expense reimbursement, and more than one State taxes the same portion of the reimbursement, but those States allow an adjustment or credit for income taxes paid to the other State(s), then the reimbursement is not subject to double taxation. In this situation, the highest of the applicable State marginal tax rates, as determined under paragraphs (e)(2) (i) through (iii) of this section, shall be used in the CMTR formula.

(C) If two or more States impose an income tax on the moving expense reimbursement, and more than one State taxes the same portion of the reimbursement without allowing an adjustment or credit for income taxes paid to the other, then the reimbursement is subject to double taxation. In this situation, the sum of the applicable State marginal tax rates, as determined under paragraphs (e)(2) (i) through (iii) of this section, shall be used in the CMTR formula.

(3) *Local marginal tax rate.* Because of the impracticality of establishing a single marginal tax rate table for local income taxes that could be applied uniformly on a nationwide basis, appropriate local marginal tax rates shall be determined as provided in paragraphs (e)(3)(i) through (iii) of this section.

(i) If the employee incurs an additional local income tax (see definition § 302–17.5(b)) liability as a result of moving expense reimbursements, he/she shall certify to such fact when claiming the RIT allowance (see certification statement in § 302–17.10) by specifying the name of the locality imposing the income tax and the applicable marginal tax rate determined from the actual marginal tax rate table or schedule prescribed by the taxing locality. The marginal tax rate shall be the one applicable to the taxable income portion of the amount of earned income determined under paragraph (d) of this section for the employee (and spouse, if filing jointly). The same tax rate shall be used in calculating the CMTR for both Year 1 and Year 2. The employing agency shall establish procedures to determine whether the employee-certified local marginal tax rate is appropriate for the employee's income level and filing status and approve its use in the CMTR formulas. (See also § 302–17.10(b)(2).)

(ii) If the local marginal tax rate is stated as a percentage of Federal or State income tax liability, such rate must be converted to a percent of taxable income for use in the CMTR formulas. This is accomplished by multiplying the applicable Federal or State tax rate for Year 1 as determined in paragraph (e)(1) or (2) of this section by the applicable local tax rate. For example, if the State tax rate for Year 1 is 6 percent and the local tax rate is 50 percent of State income tax liability, the local tax rate stated as a percentage of taxable income would be 3 percent. The local tax rate thus determined for Year 1 will be used in determining the CMTR for both Year 1 and Year 2.

(iii) The situations described in paragraph (e)(2)(iv) of this section with respect to State income taxes may also be encountered with local income taxes. If such situations do occur, the rules prescribed for determining the single State marginal tax rate shall also be applied to determine the single local marginal tax rate for use in the CMTR formulas.

(4) *Marginal tax rates for the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the U.S. possessions*—(i) *The Commonwealth of Puerto Rico.* A Federal employee who is relocated to or from a point, or between points, in the Commonwealth of Puerto Rico may be subject to income tax on the employee's salary (including moving expense reimbursements) by both the U.S. Government and the government of Puerto Rico. However, under the current law of Puerto Rico, such employee receives a credit on his/her Puerto Rico income tax for the amount of taxes paid to the United States. The rules in paragraphs (e)(4)(i)(A) through (C) apply in determining the marginal tax rate applicable for transfers to, from, or between points in Puerto Rico.

(A) The applicable Puerto Rico marginal tax rate shall be determined by using the income level determined in paragraph (d) of this section for Federal taxes and the employee's filing status. The Puerto Rico marginal tax rate for Year 1 will be used in computing the CMTR for both Year 1 and Year 2. The Puerto Rico tax tables are contained in appendix D of this part.

(B) If the applicable Puerto Rico marginal tax rate is higher than the applicable Federal marginal tax rate, then the total amount of taxes paid by the employee to both jurisdictions is equal to the employee's total income tax liability to the Commonwealth of Puerto Rico before any credit is given for taxes paid to the United States. The Federal marginal tax rate, therefore, is of no consequence and will be disregarded. In such cases, the formula in paragraph (e)(5)(iii) of this section will be used to compute the CMTR. The CMTR formula shall include only the Puerto Rico marginal tax rate, the State marginal tax rate as determined under paragraph (e)(2) of this section (when applicable), and the local marginal tax rate as determined under paragraph (e)(3) of this section. For purposes of applying the Puerto Rico CMTR formula in paragraph (e)(5)(iii) of this section, the State marginal tax rate will be applicable if both Puerto Rico and one or more of the States impose an income tax on the moving expense reimbursement, and more than one of these entities taxes the same portion of the reimbursement without allowing an adjustment or credit for income taxes paid to the other. In this situation, the S component of the CMTR formula will be the applicable State marginal tax rate as determined under paragraph (e)(2) of this section.

(C) If the applicable Puerto Rico marginal tax rate is equal to or lower than the applicable Federal marginal tax rate, then the total amount of taxes paid by the employee to both jurisdictions is equal to the employee's total Federal income tax liability. The Puerto Rico marginal tax rate, therefore, is of no consequence in such cases and will be disregarded. The CMTR will be computed using the formula in paragraphs (e)(5) (i) and (ii) of this section. This formula will include the Federal marginal tax rate as determined under paragraph (e)(1) of this section, the State marginal tax rate as determined under paragraph (e)(2) of this section (when applicable), and the local marginal tax rate as determined under paragraph (e)(3) of this section. The State marginal tax rate will be applicable if one or more States impose tax on the moving expense reimbursement.

(ii) *The Commonwealth of the Northern Mariana Islands and the U.S. possessions.* A Federal employee who is relocated to or from a point, or between points, in the Commonwealth of the Northern Mariana Islands or the U.S. possessions (Guam, American Samoa, and the U.S. Virgin Islands) is subject to both Federal income tax and income tax assessed by the Commonwealth of the Northern Mariana Islands or the U.S. possession, as applicable. However, the income tax system and rates for the Commonwealth of the Northern Mariana Islands and for the U.S. possessions are identical to the U.S. Federal income tax system and rates. This constitutes a "mirror tax" system. A tax credit or exclusion is provided by one of the taxing jurisdictions (either the U.S., the Commonwealth of the Northern Mariana Islands, or the U.S. possession, as appropriate) to prevent double taxation. The marginal tax rate for the Commonwealth of the Northern Mariana Islands or the U.S. possession, therefore, is of no consequence since it is identical to the Federal marginal income tax rate and is completely offset by a corresponding credit or exclusion. Thus, the Commonwealth's or the possession's tax rate will not be factored into the CMTR formula. The CMTR will be computed as provided in paragraphs (e)(5) (i) and (ii) based solely on the Federal marginal tax rate; when applicable, the State(s) marginal tax rate; and the local marginal tax rate.

(5) *Calculation of the CMTR's.* As stated above, the gross-up formula for calculating the RIT allowance requires the use of two CMTR's. However, the required CMTR's cannot be calculated by merely adding the Federal, State, and local marginal tax rates together because of the deductibility of State and local income taxes from income for Federal income tax purposes. The State tax tables prescribed in appendix B of this part are designed to use the same income amount as that determined for the Federal taxes, which reflects, among other things, State and local tax deductions. The formulas prescribed below for calculating the CMTR's are designed to adjust the State and local tax rates to compensate for their deductibility from income for Federal tax purposes.

(i) *Calculation of the CMTR for Year 1.* The following formula shall be used to calculate the CMTR for Year 1.

CMTR Formula: $X = F + (1-F)S + (1-F)L$

Where:

X = CMTR for Year 1
F = Federal tax rate for Year 1
S = State tax rate for Year 1
L = local tax rate for Year 1

(A) *Federal, State, and local taxes incurred.* If the employee incurs Federal, State, and local income taxes on moving expense reimbursements, the CMTR formula may be solved as follows:

Example:
If:

F = 33 percent of income
S = 6 percent of income
L = 3 percent of income

Then:

$X = .33 + (1.00-.33).06 + (1.00-.33).03$
$X = .3903$

(B) *Federal and State income taxes only.* If the employee incurs tax liability on moving expense reimbursements for Federal and State income taxes but none for local income tax, the value of "L" is zero and the CMTR formula may be solved as follows:

Example:
If:

F = 33 percent of income
S = 6 percent of income
L = Zero

Then:

$X = .33 + (1.00-.33).06$
$X = .3702$

(C) *Federal and local income taxes only.* If the employee incurs a tax liability on moving expense reimbursements for Federal and local income taxes but none for State income tax, the value of "S" is zero and the CMTR formula may be solved as follows:

Example:
If:

F = 33 percent of income
S = Zero
L = 3 percent of income

Then:

$X = .33 + (1.00-.33).03$
$X = .3501$

(ii) *Calculation of the CMTR for Year 2.* The calculation of the CMTR for Year 2 is the same as described for Year 1, except that the Federal tax rate for Year 2 is used in place of the Federal tax rate for Year 1. State and local tax rates remain the same as for Year 1. The following formula shall be used to determine the CMTR for Year 2:

CMTR Formula: $W = F + (1-F)S + (1-F)L$

Where:

W = CMTR for Year 2 F
F = Federal tax rate for Year 2
S = State tax rate for Year 1
L = local tax rate for Year 1

(iii) *Calculation of CMTR's for Puerto Rico.* The following formula shall be used to calculate the CMTR for transfers to, from, or between points in Puerto Rico. (This formula is different from the formulas provided in paragraphs (e)(5) (i) and (ii) of this section since the Federal marginal tax rate is disregarded.)

CMTR Formula: $X = P + S + L$

Where:

X = CMTR for Year 1 and Year 2
P = Puerto Rico tax rate for Year 1
S = State tax rate for Year 1, when applicable (See § 302–17.8(e)(4)(i)(B).)
L = Local tax rate for Year 1

(f) *Determination of the RIT allowance.* The RIT allowance to cover the tax liability on additional income resulting from the covered taxable reimbursements received in Year 1 is calculated in Year 2 as provided below:

(1) The RIT allowance is calculated by substituting the amount of covered taxable reimbursements for Year 1, the CMTR's for Year 1 and Year 2, and the total amount of the WTA's paid in Year 1 into the gross-up formula as follows:
Formula:

$$Z = \frac{X}{1-W}(R) - \frac{1-X}{1-W}(Y)$$

Where:

Z = RIT allowance payable in Year 2
X = CMTR for Year 1
W = CMTR for Year 2
R = covered taxable reimbursements
Y = total WTA's paid in Year 1

Example:
If:

X = .3903
W = .3448
R = $21,800
Y = $5,450

Then:

$$Z = \frac{.3903}{1.00-.3448}(\$21{,}800) - \frac{1.00-3903}{1.00-.3448}(\$5{,}450)$$

Z = .5957($21,800)–09.9306($5,450)
Z = $12,986.26–09$5,071.77
Z = $7,914.49

(2) There may be instances when a WTA was not paid in Year 1 at the time moving expense reimbursements were made. In cases where there is no WTA to be deducted, the value of "Y" is zero and the formula stated in paragraph (f)(1) of this section, for calculating the amount of the RIT allowance (Z) due the employee in Year 2 may be solved as shown in the following example:
Example:
If:
X = .3903
W = .3448
R = $21,800
Y = Zero
Then:

$$Z = \frac{.3903}{1.00-.3448}\ ($21,800)$$

Z = .5957 ($21,800)
Z = $12,986.26

(3) Certain States do not allow the deduction of all or part of the covered moving expenses that are deductible for Federal income tax purposes. The State gross-up to cover the additional State income tax liability resulting from the covered moving expense reimbursements received in Year 1 that are deductible for Federal income tax purposes but not for State income tax purposes is calculated in Year 2 as follows:

(i) The State gross-up is calculated by substituting the amount of covered moving expense reimbursements that are deductible for Federal income tax purposes but not for State income tax purposes, the Federal tax rate for Year 1, the State tax rate for Year 1, and the combined marginal tax rate for Year 2 into the State gross-up formula as follows:
Formula:

$$A = \frac{S(1-F)}{1-W}\ (N)$$

Where:
A = State gross-up
F = Federal tax rate for Year 1
S = State tax rate for Year 1
W = CMTR for Year 2
N = covered moving expense reimbursements that are deductible for Federal income tax purposes but not for State income tax purposes
Example:
If:
F = .33
S = .06
W = .3448
N = $9,250
Then:

$$A = \frac{.06\ (1.00-.33)}{1.00-.3448}\ ($9,250)$$

A = .0614 ($9,250)
A = $567.95

(ii) Add the State gross-up to the RIT allowance as calculated using the formula in paragraph (f)(1) of this section. The result is the RIT allowance adjusted for those States that do not allow moving expense deductions.
Example:

RIT allowance payable in Year	$7,914.49
Plus adjustment factor	+567.95
Total	$8,482.44

(4) If the amount of the RIT allowance is greater than zero, it is payable to the employee on the travel voucher as a relocation or moving expense allowance. The RIT allowance amount is included in the employee's gross income for Year 2 and, therefore, subject to appropriate withholding taxes. (See net payment to employee in paragraph (g) of this section.) The RIT allowance amount will be reported on IRS Form W–2 for Year 2 (including applicable income tax withholding amounts) and on IRS Form 4782 for the employee's information.

(5) If the calculation of the RIT allowance results in a negative amount, the employee is obligated to repay this amount as a debt due the Government. (See §§ 302–17.7(e)(2) and 302–17.9(b).)

(6) Any changes to the employee's income level or filing status for Year 1 that would affect the marginal tax rates (Federal, State, or local) used in calculating the RIT allowance must be reported to the agency by the employee as provided in § 302–17.9(b)(2). (See also § 302–17.10 for certified statement regarding these changes.)

(g) *Determination of the net payment due employee in Year 2.* Since the amount of the RIT allowance is income to the employee in Year 2, it is subject to the same tax withholding requirements as all other moving expense reimbursements. Agencies should determine the appropriate amounts for withholding taxes under their internal tax withholding procedures. The amount of withholding taxes is deducted from the RIT allowance to arrive at the net payment to the employee.

§ 302–17.9 Responsibilities.

(a) *Agency.* Finance offices will calculate the amount of the gross-up for the WTA in Year 1 in accordance with procedures outlined herein and credit this amount to the employee at the time of reimbursement as provided in § 302–17.7(e). The WTA will be reflected on the employee's Form W–2 for Year 1. The RIT allowance may be calculated in Year 2 either by the employee or by the agency finance office based on information provided by the employee on the voucher, as directed by the agency's implementing policies and procedures. In addition, agencies shall prescribe appropriate and necessary implementing procedures as provided elsewhere in this part.

(b) *Employee.* (1) The employee is required to submit a claim for the RIT allowance and to file the tax information for Year 1 specified in § 302–17.10 with his/her agency in Year 2, regardless of whether any additional reimbursement for the RIT allowance is owed the employee. (See § 302–17.7(e) for employee agreement.)

(2) If any action occurs (i.e., amended tax return, tax audit, etc.) that would change the information provided in Year 2 by the employee to his/her agency for use in calculating the RIT allowance due the employee for Year 1 taxes, this information must be provided by the employee to his/her agency under procedures prescribed by the agency. (See § 302–17.10.)

(3) If the calculation of the RIT allowance results in a negative amount, the employee is obligated to repay this amount as a debt due the Government. (See §§ 302–17.7(e)(2) and 302–17.8(f)(5).)

§ 302–17.10 Claims for payment and supporting documentation and verification.

(a) *Claims forms.* Claims for payment of the RIT allowance shall be submitted by the employee in Year 2 on SF 1012 (Travel Voucher) or other authorized travel voucher form. When claiming payment for the RIT allowance, the employee shall furnish and certify to certain tax information that has been or will be shown on his/her actually prepared tax returns. The spouse must also sign statement if joint filing status is claimed and spouse's income is included on statement. This information shall be contained in a certified statement on, or attached to, the SF 1012 reading essentially as follows:

Certified Statement

I certify that the following information, which is to be used in calculating the RIT allowance to which I am entitled, has been (or will be) shown on the income tax returns filed (or to be filed) by me (or by my spouse and me) with the applicable Federal, State, and local (specify which) tax authorities for the 19___ tax year.

—Gross compensation as shown on attached IRS Form(s) W–2 and, if applicable, net earnings (or loss) from self-employment income shown on attached Schedule SE (Form 1040):

	Form(s) W–2	Schedule SE
Employee	$	$
Spouse (if filing jointly)	$	$
Total (Both columns)	.....	$

—Filing status: _____ (Specify one of the filing status items that was (or will be) claimed on IRS Form 1040.)

—Marginal tax rates from appendices A, B, and C of 41 CFR part 302–17 and local tax tables derived under procedures prescribed in 41 CFR part 302–17:

Federal for Year 1 _____
Federal for Year 2 _____
State (specify which): _____
Local (specify which): _____

The above information is true and accurate to the best of my knowledge. I (we) agree to notify the appropriate agency official of any changes to the above (i.e., from amended tax returns, tax audit, etc.) so that appropriate adjustments to the RIT allowance can be made. The required supporting documents are attached. Additional documentation will be furnished if requested.

I (we) further agree that if the 12-month service agreement required by 41 CFR 302–2.13 is violated, the total amount of the RIT allowance will become a debt due the United States Government and will be repaid according to agency procedures.

_____
Employee's signature

_____
Date

_____
Spouse's signature (if filing jointly)[1]

_____
Date

[1] If a joint filing status is claimed and spouse's income is included, the spouse must sign the statement. If the spouse does not sign the document, earned income will include only the employee's earned income as provided in 41 CFR 302–17.8(d). This condition will not apply if an employee is allowed, under IRS rules, to file a joint return as a surviving spouse.

(b) *Supporting documentation/verification.* The claim for the RIT allowance shall be supported by documentation attached to the voucher and by verification of State and local tax obligations as provided below:

(1) Copies of the appropriate IRS Forms W–2 and, if applicable, the completed IRS Schedule SE (Form 1040) shall be attached to the voucher to substantiate the income amounts shown in the certified statement. Employee (and spouse, if filing jointly) must agree to provide additional documentation to verify income amounts, filing status, and State and local income tax obligations if requested by the agency.

(2) In order to determine or verify whether a particular State or local tax authority imposes a tax on moving expense reimbursements, it is incumbent upon the appropriate agency officials to become familiar with the State and local tax laws that affect their transferring employees. In cases where the taxability of moving expense reimbursements is not clear, an agency may pay a RIT allowance which reflects only those State and local tax obligations that are clearly imposed under State and local tax law. Once the questionable State or local tax obligations are resolved, agencies may recompute the RIT allowance and make appropriate payment adjustments.

(c) *Fraudulent claims.* A claim against the United States is forfeited if the claimant defrauds or attempts to defraud the Government in connection therewith (28 U.S.C. 2514). In addition, there are two criminal provisions under which severe penalties may be imposed on an employee who knowingly presents a false, fictitious, or fraudulent claim against the United States (18 U.S.C. 287 and 1001). The employee's claim for payment of the RIT allowance shall accurately reflect the facts involved in every instance so that any violation of these provisions will be avoided.

§ 302–17.11 Violation of service agreement.

In the event the employee violates the terms of the service agreement required under § 302–2.13, no part of the RIT allowance or the WTA will be paid, and any amounts paid prior to such violation shall be a debt due the United States until they are repaid by the employee.

§ 302–17.12 Advance of funds.

No advance of funds is authorized in connection with the allowance provided in this part.

§ 302–17.13 Source references.

The following references or publications have been used as source material for this part.

(a) Internal Revenue Code (IRC), section 164(a)(3) (26 U.S.C. 164(a)(3)) pertaining to the deductibility of State and local income taxes, and section 217 (26 U.S.C. 217), pertaining to moving expenses.

(b) Internal Revenue Service Publication 521, "Moving Expenses."

(c) Internal Revenue Service, Circular E, "Employer's Tax Guide."

(d) Department of the Treasury Financial Manual, TFM 3–5000.

(e) 31 CFR 215.2 (5 U.S.C. 5516, 5517, and 5520).

Appendix A to Part 302–17—Federal Tax Tables for RIT Allowance

Federal Marginal Tax Rates by Earned Income Level and Filing Status—Tax Year 2000

[The following table is to be used to determine the Federal marginal tax rate for Year 1 for computation of the RIT allowance as prescribed in § 302–11.8(e)(1). This table is to be used for employees whose Year 1 occurred during calendar year 2000.]

Marginal tax rate (percent)	Single taxpayer		Heads of household		Married filing jointly/qualifying widows and widowers		Married filing separately	
	Over	But not over	Over	But not over	Over	But not over	Over	But not over
15	$7,417	$34,638	$13,375	$49,734	$17,421	$63,297	$8,603	$31,342
28	34,638	75,764	49,734	113,413	63,297	131,334	31,342	63,448
31	75,764	148,990	113,413	180,742	131,334	189,826	63,448	99,219
36	148,990	306,111	180,742	326,450	189,826	315,957	99,219	170,524
39.6	306,111	.....	326,450	.....	315,957	.....	170,524	.....

Appendix B to Part 302–17—State Tax Tables for RIT Allowance

STATE MARGINAL TAX RATES BY EARNED INCOME LEVEL—TAX YEAR 2000

[The following table is to be used to determine the State marginal tax rates for calculation of the RIT allowance as prescribed in § 302–11.8(e)(2). This table is to be used for employees who received covered taxable reimbursements during calendar year 2000.]

State (or district)	Marginal tax rates (stated in percents) for the earned income amounts specified in each column [1, 2]			
	$20,000–$24,999	$25,000–$49,999	$50,000–$74,999	$75,000 and over
Alabama	5	5	5	5
Alaska	0	0	0	0
Arizona	2.87	3.2	3.74	5.04
Arkansas	4.5	7	7	7
If single status [3]	6	7	7	7
California	2	4	8	9.3
If single status [3]	4	8	8	9.3
Colorado	4.75	4.75	4.75	4.75
Connecticut	4.5	4.5	4.5	4.5
Delaware	5.2	5.95	6.4	6.4
District of Columbia	8	9.5	9.5	9.5
Florida	0	0	0	0
Georgia	6	6	6	6
Hawaii	7.2	8.2	8.75	8.75
If single status [3]	8.2	8.75	8.75	8.75
Idaho	7.8	8.2	8.2	8.2
Illinois	3	3	3	3
Indiana	3.4	3.4	3.4	3.4
Iowa	6.48	7.92	8.98	8.98
If single status [3]	6.8	7.92	8.98	8.98
Kansas	3.5	6.25	6.25	6.45
If single status [3]	6.25	6.45	6.45	6.45
Kentucky	6	6	6	6
Louisiana	2	4	4	6
If single status [3]	4	4	6	6
Maine	4.5	7	8.5	8.5
If single status [3]	7	8.5	8.5	8.5
Maryland	4.85	4.85	4.85	4.85
Massachusetts	5.95	5.95	5.95	5.95
Michigan	4.4	4.4	4.4	4.4
Minnesota	5.5	7.25	7.25	8
If single status [3]	7.25	7.25	8	8
Mississippi	5	5	5	5
Missouri	6	6	6	6
Montana	9	10	11	11
Nebraska	3.65	5.24	6.99	6.99
If single status [3]	5.24	6.99	6.99	6.99
Nevada	0	0	0	0
New Hampshire	0	0	0	0
New Jersey	1.4	1.75	2.45	6.37
If single status [3]	1.4	3.5	5.525	6.37
New Mexico	3.2	6	7.1	8.2
If single status [3]	6	7.1	7.9	8.2
New York	4	5.25	6.85	6.85
If single status [3]	5.25	6.85	6.85	6.85
North Carolina	6	7	7	7.75
North Dakota	6.67	9.33	12	12
If single status [3]	8	10.67	12	12
Ohio	3.580	4.295	5.012	7.228
Oklahoma	5	6.75	6.75	6.75
If single status [3]	6.75	6.75	6.75	6.75
Oregon	9	9	9	9
Pennsylvania	2.8	2.8	2.8	2.8
Rhode Island [4]	26.5	26.5	26.5	26.5
South Carolina	7	7	7	7
South Dakota	0	0	0	0
Tennessee	0	0	0	0
Texas	0	0	0	0
Utah	7	7	7	7
Vermont [5]	25	25	25	25
Virginia	5	5.75	5.75	5.75
Washington	0	0	0	0
West Virginia	4	4.5	6	6.5
Wisconsin	6.37	6.77	6.77	6.77

STATE MARGINAL TAX RATES BY EARNED INCOME LEVEL—TAX YEAR 2000—Continued

[The following table is to be used to determine the State marginal tax rates for calculation of the RIT allowance as prescribed in § 302–11.8(e)(2). This table is to be used for employees who received covered taxable reimbursements during calendar year 2000.]

State (or district)	Marginal tax rates (stated in percents) for the earned income amounts specified in each column [1, 2]			
	$20,000–$24,999	$25,000–$49,999	$50,000–$74,999	$75,000 and over
Wyoming	0	0	0	0

[1] Earned income amounts that fall between the income brackets shown in this table (e.g., $24,999.45, $49,999.75) should be rounded to the nearest dollar to determine the marginal tax rate to be used in calculating the RIT allowance.

[2] If the earned income amount is less than the lowest income bracket shown in this table, the employing agency shall establish an appropriate marginal tax rate as provided in § 302–11.8(e)(2)(ii).

[3] This rate applies only to those individuals certifying that they will file under a single status within the States where they will pay income taxes. All other taxpayers, regardless of filing status, will use the other rate shown.

[4] The income tax rate for Rhode Island is 26.5 percent of Federal income tax liability for all employees. Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in § 302–11.8(e)(2)(iii).

[5] The income tax rate for Vermont is 25 percent of Federal income tax liability for all employees. Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in § 302–11.8(e)(2)(iii).

Appendix C to Part 302–17—Federal Tables for RIT Allowance—Year 2

FEDERAL MARGINAL TAX RATES BY EARNED INCOME LEVEL AND FILING STATUS—TAX YEAR 2001

[The following table is to be used to determine the Federal marginal tax rate for Year 2 for computation of the RIT allowance as prescribed in § 302–11.8(e)(1). This table is to be used for employees whose Year 1 occurred during calendar years 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999 or 2000.]

Marginal tax rate (percent)	Single taxpayer		Heads of households		Married Filing jointly/qulifying widows & widowers		Married filing separately	
	Over	But not over	Over	But not over	Over	But not over	Over	But not over
15	$7,582	$35,363	$13,905	$51,016	$18,061	$65,011	$8,742	$32,028
28	35,363	77,472	51,016	116,612	65,011	133,818	32,028	65,470
31	77,472	154,524	116,612	180,660	133,818	193,566	65,470	99,363
36	154,524	317,548	180,660	324,522	193,566	323,455	99,363	169,100
39.6	317,548		324,522		323,455		169,100	

Appendix D to Part 302–17—Puerto Rico Tax Tables for RIT Allowance

PUERTO RICO MARGINAL TAX RATES BY EARNED INCOME LEVEL—TAX YEAR 1998

[The following table is to be used to determine the Puerto Rico marginal tax rate for computation of the RIT allowance as prescribed in § 302–11.8(e)(4)(i).]

Marginal tax rate (percent)	Single filing status		Any other filing status	
	Over	But not over	Over	But not over
12				$25,000
18		$25,000		
31	$25,000	50,000	$25,000	50,000
33	50,000		50,000	

Dated: October 30, 2001.

Stephen A. Perry,

Administrator of General Services.

[FR Doc. 01–27764 Filed 11–19–01; 8:45 am]

BILLING CODE 6820–34–P

Federal Register

Tuesday,
November 20, 2001

Part III

Environmental Protection Agency

40 CFR Part 148 et al.
Hazardous Waste Management System; Identification and Listing of Hazardous Waste: Inorganic Chemical Manufacturing Wastes; Land Disposal Restrictions for Newly Identified Wastes; and CERCLA Hazardous Substance Designation and Reportable Quantities; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 261, 268, 271, and 302

[SWH–FRL–7099–2]

RIN 2050–AE49

Hazardous Waste Management System; Identification and Listing of Hazardous Waste: Inorganic Chemical Manufacturing Wastes; Land Disposal Restrictions for Newly Identified Wastes; and CERCLA Hazardous Substance Designation and Reportable Quantities

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is listing as hazardous three wastes generated from inorganic chemical manufacturing processes. EPA is promulgating these regulations under the Resource Conservation and Recovery Act (RCRA), which directs EPA to determine whether certain wastes generated by inorganic chemical manufacturing industries may present a substantial hazard to human health or the environment. The effects of listing these three wastes as hazardous are to subject them to: comprehensive management and treatment standards under Subtitle C of RCRA; and emergency notification requirements for releases to the environment under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This final rule also adds the toxic constituents found in the wastes being listed as hazardous to the list of constituents that serves as the basis for classifying wastes as hazardous and establishing treatment standards for the wastes. Additionally, EPA is making final determinations not to list the remainder of wastes generated by inorganic chemical manufacturing processes that were described in our proposed listing determination.

Finally, EPA is applying universal treatment standards (UTS) under the Land Disposal Restrictions program to the inorganic chemical manufacturing wastes listed in this rulemaking. The listed wastes must be treated to meet these treatment standards for specific constituents prior to land disposal.

At this time, however, we are deferring final action on all elements of the proposal related to manganese, including the proposal to add manganese to Appendix VII of 40 CFR 261 as a basis for listing K178, to add manganese to Appendix VIII of 40 CFR 261, to add manganese to the UTS and to the BDAT standards for F039, and to set an RQ standard in § 302.4 for manganese.

EFFECTIVE DATE: This rule is effective on May 20, 2002.

ADDRESSES: Supporting materials to this final rule are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is F–2001–ICMF–FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The docket index and some supporting materials are available electronically. See the beginning of the Supplementary Information section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 920–9810 or TDD (703) 412–3323. For information on specific aspects of the rule, contact Ms. Gwen DiPietro, Office of Solid Waste (5304W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. [E-mail address and telephone number: *dipietro.gwen@epa.gov* (703–308–8285).] For technical information on the CERCLA aspects of this rule, contact Ms. Lynn Beasley, Office of Emergency and Remedial Response (5204G), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, [E-mail address and telephone number: *beasley.lynn@epa.gov* (703–603–9086).]

SUPPLEMENTARY INFORMATION: Whenever "we" is used throughout this document, it refers to the Environmental Protection Agency (EPA).

The docket index and some supporting documents in the docket for this proposal are available in electronic format on the Internet at:<*http://www.epa.gov/epaoswer/hazwaste/id/inorchem/pr2000.htm*>.

We will keep the official record for this action in paper form. The official record is the paper record maintained at the RCRA Information Center, also referred to as the Docket, at the address provided in the **ADDRESSES** section at the beginning of this document.

Acronyms Used in the Rule

AWQC—Ambient Water Quality Criteria
BDAT—Best Demonstrated Available Technology
BHP—Biodegradation, hydrolysis, and photolysis
CERCLA—Comprehensive Environmental Response, Compensation, and Liability Act
CFR—Code of Federal Regulations
CMBST—Combustion
CWA—Clean Water Act
DAF—Dilution and attenuation factor
ED—Environmental Defense
EPA/USEPA—United States Environmental Protection Agency
HSWA—Hazardous and Solid Waste Amendments
HWIR—Hazardous Waste Identification Rule
HQ—Hazard quotient
HBL—Health-based level
ICP—Inductively Coupled Plasma
IRIS—Integrated Risk Information System
K_d—Soil-water distribution coefficients
kg—Kilogram
LDR—Land Disposal Restrictions
mg—Milligrams
MT—Metric ton
MTR—Minimum technology requirement
ng—Nanograms
NPDES—National Pollutant Discharge Elimination System
NPRM—Notice of Proposed Rulemaking
NRC—National Response Center
NTTAA—National Technology Transfer and Advancement Act of 1995
OSWER—Office of Solid Waste and Emergency Response
PDF—Probability density function
ppm—Parts per million
RFA—Regulatory Flexibility Act
RfD—Reference dose
RQ—Reportable Quantity
RCRA—Resource Conservation and Recovery Act
RIC—RCRA Information Center
SBREFA—Small Business Regulatory Enforcement Fairness Act of 1996
SPLP—Synthetic Precipitation Leaching Procedure
TCDD—2,3,7,8-Tetrachlorodibenzo-p-dioxin
TEQ—Toxicity equivalence
TC—Toxicity Characteristic
TCLP—Toxicity Characteristic Leaching Procedure
TSDF—Treatment, storage, and disposal facility
μg—Micrograms
UMRA—Unfunded Mandates Reform Act of 1995
UTS—Universal treatment standards
USC—United States Code
WHO—World Health Organization

Contents of this Final Rule

I. Overview

A. Who Will Be Affected by This Final Rule?

Today's final action will affect those who handle the wastes that we are adding to EPA's list of hazardous wastes under the RCRA program. This action also will affect entities that need to respond to releases of these wastes as CERCLA hazardous substances. These potentially-affected entities are described in detail in the Economics Background Document placed in the docket in support of today's final rule. A summary is shown in Table I—1 below:

TABLE I—1: SUMMARY OF FACILITIES POTENTIALLY AFFECTED BY THE US EPA'S 2000 INORGANIC CHEMICAL MANUFACTURING WASTE LISTING FINAL RULE

SIC Code/ NAIC Code	Industry Sector Name	Number of U.S. Relevant Inorganic Mfg. Facilities
2816/ 325131.	Inorganic Pigments/Ingoranic Dye and Pigment Manufacturing.	1
2819/ 325188.	Industrial Inorganic Chemicals, not elsewhere classified/Other.	[1] 3

[1] Other SIC/NAICS codes may be used by impacted facilities (e.g., 3339/3331419).

The list of potentially affected entities in the above table may not be exhaustive. Our aim is to provide a guide for readers regarding entities likely to be regulated by this action. This table lists those entities that we are aware of that potentially could be affected by this action. However, this action may affect other entities not listed in the table. To determine whether your facility is regulated by this action, you should examine 40 CFR parts 260 and 261 carefully in concert with the final rules amending these regulations that are found at the end of this **Federal Register** document. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT.**

B. What Is the "Readable Regulations" Format?

Today's preamble and regulations are written in "readable regulations" format. The authors tried to use active rather than passive voice, plain language, a question-and-answer format, the pronouns "we" for EPA and "you" for the owner/generator, and other techniques to make the information in today's rule easier to read and understand. This format is part of our efforts toward regulatory improvement. We believe this format helps readers understand the regulations, which should then increase compliance, make enforcement easier, and foster better

relationships between EPA and the regulated community.

C. What Are the Statutory Authorities for This Final Rule?

Today's hazardous waste regulations are promulgated under the authority of sections 2002(a), 3001(b), 3001(e)(2), 3004(d)–(m) and 3007(a) of the Solid Waste Disposal Act, 42 U.S.C. 6912(a), 6921(b) and (e)(2), 6924(d)–(m) and 6927(a), as amended several times, most importantly by the Hazardous and Solid Waste Amendments of 1984 (HSWA). These statutes commonly are referred to as the Resource Conservation and Recovery Act (RCRA), and are codified at Volume 42 of the United States Code (U.S.C.), sections 6901 to 6992(k) (42 U.S.C. 6901–6992(k)).

Section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9602(a) is the authority under which the CERCLA aspects of this rule are promulgated.

D. How Does the ED v. Whitman Consent Decree Impact This Final Rule?

The 1984 Hazardous and Solid Waste Amendments (HSWA) to RCRA require EPA to make listing determinations for several specified categories of wastes, including "inorganic chemical industry wastes" (see RCRA section 3001(e)(2)). In 1989, Environmental Defense (ED) filed a lawsuit to enforce the statutory deadlines for listing decisions in RCRA section 3001(e)(2) (*ED* v. *Whitman*; D.D.C. Civ. No. 89–0598). To resolve the listing issues in the case, ED and EPA entered into a consent decree, which has been amended several times to revise deadlines for EPA action. Paragraph 1.g (as amended) of the Consent Decree addresses the inorganic chemical industry:

> EPA shall promulgate a final listing determination for inorganic chemical industry wastes on or before October 31, 2001. This listing determination shall be proposed for public comment on or before August 30, 2000. The listing determination shall include the following wastes: sodium dichromate production wastes, wastes from the dry process for manufacturing phosphoric acid, phosphorus trichloride production wastes, phosphorus pentasulfide production wastes, wastes from the production of sodium phosphate from wet process phosphoric acid, sodium chlorate production wastes, antimony oxide production wastes, cadmium pigments production wastes, barium carbonate production wastes, potassium dichromate production wastes, phenyl mercuric acetate production wastes, boric acid production wastes, inorganic hydrogen cyanide production wastes, and titanium dioxide production wastes (except for chloride process waste solids). However, such listing determinations need not include any wastes which are excluded from hazardous waste regulation under section 3001(b)(3)(A)(ii) of RCRA and for which EPA has determined that such regulation is unwarranted pursuant to section 3001(b)(3)(C) of RCRA.

Today's final rule satisfies EPA's duty under paragraph 1.g to promulgate listing determinations for inorganic chemical industry wastes. Moreover, compliance with the Consent Decree fulfills EPA's duty to make listing determinations for the inorganic chemical industry under section 3001(e)(2) of RCRA.

II. Summary of Today's Action

In today's notice, EPA is promulgating regulations that add three wastes generated by or closely related to the inorganic chemicals industries to the list of hazardous wastes in 40 CFR 261.32. Below are the wastestreams EPA is listing as hazardous with their corresponding EPA Hazardous Waste Numbers.

K176 Baghouse filters from the production of antimony oxide, including filters from the production of intermediates (*e.g.*, antimony metal or crude antimony oxide). (E) [1–2]

K177 Slag from the production of antimony oxide that is speculatively accumulated or disposed, including slag from the production of intermediates (*e.g.*, antimony metal or crude antimony oxide). (T)

K178 Solids from manufacturing and manufacturing-site storage of ferric chloride from acids formed during the production of titanium dioxide using the chloride-ilmenite process. (T)

EPA is listing these wastes as hazardous based on the criteria set out in 40 CFR 261.11. As described in the September 14, 2000 proposed rule (65 FR 55684), we assessed and considered these criteria for each of the residuals generated by the inorganic chemicals industries to determine which wastes warranted listing. This process involved reviewing more than 170 categories of residuals generated in the 14 inorganic chemical manufacturing sectors. Because of the large number of residuals, we first determined whether any of these residuals fell outside the scope of our Consent Decree obligations. We then evaluated the risks posed by each of the remaining residuals. In some cases we used quantitative or qualitative screening methods. For 18 wastes we conducted full-scale modeling to predict risks.

After assessing public comments submitted in response to our proposal, we are finalizing hazardous waste listings for the three wastes noted above. Two of the wastes were evaluated using full-scale risk assessment modeling and the resultant hazardous waste listings for these wastes are finalized based on 40 CFR 261.11(a)(3). The remaining waste (K176) warrants listing based on 40 CFR 261.11(a)(1) because it exhibits hazardous waste characteristics.

Upon the effective date of today's final rule, wastes meeting the listing descriptions will become hazardous wastes and must be managed in accordance with RCRA subtitle C requirements. (Based on our data, residuals newly listed as K176 exhibited one or more of the hazardous waste characteristics prior to the effective date of today's rule, and, as such, currently are subject to hazardous waste control.) Also, please note that the listing for K178 becomes has a different effective date; it does not become effective until authorized states revise their programs to add the listing. With certain limited exceptions, residuals from the treatment, storage, or disposal of these newly listed hazardous wastes also will be classified as hazardous wastes pursuant to the "derived-from" rule (40 CFR 261.3(c)(2)(i)). Also, with certain limited exceptions, any mixture of a listed hazardous waste and a solid waste is itself a RCRA hazardous waste (40 CFR 261.3(a)(2)(iii) and (iv), "the mixture rule").

Today's rule also takes final action on decisions not to list as hazardous, as discussed in the proposal, the wastes from the following sectors:

—wastes from the production of antimony oxide (with the exception of baghouse filters—K176, and slag—K177)
—wastes from the production of barium carbonate
—wastes from the production of boric acid
—wastes from the production of cadmium pigments
—wastes from the production of hydrogen cyanide
—wastes from the production of phenyl mercuric acetate
—wastes from the production of phosphoric acid
—wastes from the production of phosphorous trichloride
—wastes from the production of phosphorous pentasulfide
—wastes from the production of potassium dichromate

[1 2] As per 40 CFR 261.3(b), the code (E) indicates that this waste is being listed because it exhibits the toxicity characteristic; the code (T), designated for K176 and K177, indicates that these wastes are being listed because they are toxic wastes.

—wastes from the production of sodium chlorate
—wastes from the production of sodium dichromate
—wastes from the production of sodium phosphate
—wastes from the production of titanium dioxide (with the exception of a related waste from subsequent manufacture of ferric chloride acid—K178)

Descriptions of the specific wastestreams can be found in the listing background documents for each sector, available in the docket for the rulemaking. Responses to relevant comments regarding these listings can be found in the Response to Comments Background Document, also available in the docket.

We also are promulgating other changes to the RCRA regulations as a result of the final listing determinations. These changes include adding constituents to Appendix VII of part 261, and setting land disposal restrictions for the newly listed wastes. We are adding the following constituents to Appendix VII of 40 CFR 261 due to the fact that these constituents serve as the basis for new listings and can pose hazards to human health and the environment: arsenic and lead (K176), antimony (K177), and thallium (K178). Section IV.E of today's rule describes the changes to the land disposal restrictions establishing treatment standards for the specific constituents in the newly-listed hazardous wastes.

As explained below in section IV.B., we are deferring final action on all elements of our proposal that are specifically related to the waste constituent manganese. We received numerous comments related to the risk associated with manganese and the economic impact to many industries, including the steel industry, of adding manganese to the Universal Treatment Standards requirements and to 40 CFR 261, Appendix VIII. Although we continue to believe that manganese poses significant issues that ultimately should be resolved, the court-ordered schedule under which we are operating provides us with no flexibility to take additional time to explore these topics more fully. As a result, we have chosen to defer final action on adding manganese to Appendix VII of 40 CFR 261 as a basis for listing K178; on adding manganese to Appendix VIII of 40 CFR 261; on adding manganese to the treatment standards for K178, to the UTS and to the BDAT standards for F039; and on setting an RQ standard in § 302.4 for K178 that addresses manganese.

Also as a result of this final rule, these listed wastes become hazardous substances under CERCLA. Therefore, in today's rule we are designating these wastes as CERCLA hazardous substances, and adjusting the one-pound statutory default RQs for two of these wastestreams (K176 and K177). The CERCLA RQ adjustments for the K176 and K177 wastes were proposed in the September 14, 2000 proposed rule (65 FR 55684, 55773–55774). We did not propose an adjusted RQ for K178 at that time because we had not yet developed a "waste constituent RQ" for manganese, one of the constituents of concern in the K178 waste. Thus we are finalizing the statutory default RQ for K178 and are not finalizing an RQ adjustment for K178 in today's rule. These changes are described in section VII of today's final rule.

III. Summary of Proposed Rule

In the September 14, 2000 proposed rule (65 FR 55684), EPA proposed to list three wastes generated by the inorganic chemicals manufacturing industries as hazardous wastes under RCRA. The wastes that we proposed to list as hazardous were:

- K176—Baghouse filters from the production of antimony oxide.
- K177—Slag from the production of antimony oxide that is disposed of or speculatively accumulated.
- K178—Non-exempt, nonwastewaters from the production of titanium dioxide by the chloride-ilmenite process (this listing does not apply to chloride process waste solids from titanium tetrachloride production exempt under section 261.4(b)(7)).

A summary of these proposed listing determinations is presented below. More detailed discussions are provided in the preamble to the proposed rule and in the Background Documents included in the docket for the proposed rule.

In connection with the proposed K178 listing, EPA proposed to amend Appendix VIII of 40 CFR 261 to add manganese to the list of hazardous constituents.

We proposed to establish treatment standards for each of the three candidate listings. We also proposed to add manganese to the Universal Treatment Standards (UTS) Table in 268.48 and to the F039 treatment standards applicable to hazardous waste landfill leachate. The effect of adding manganese to the UTS Table would be to require all characteristic hazardous wastes that contain manganese as an underlying hazardous constituent above the UTS level to be treated for manganese prior to land disposal.

We proposed to add the three candidate hazardous wastes to the list of CERCLA hazardous substances. We also proposed adjusted Reportable Quantities (RQs) for two of the wastes (K176 and K177).

A. What Wastes Associated With the Inorganic Chemicals Manufacturing Industries Were Determined To Be Outside the Scope of the Consent Decree for the Proposed Rule?

As explained in the preamble to the proposed rule, the Consent Decree does not tell EPA which specific inorganic chemical manufacturing wastes it must evaluate, although it does identify sectors to be assessed. Paragraph 1.g of the Consent Decree contains one exemption (from the Agency's listing determination obligation) for wastes found to be exempt from hazardous waste regulation in previous EPA actions implementing the so-called "Bevill exemptions" for mineral processing wastes.

After identifying all of the residuals associated with inorganic chemical manufacturing through data collection and facility investigations, we reviewed the list of residuals and determined the scope of our efforts. We found that some residuals are exempt "Bevill" wastes and we, therefore, did not need to address them.[3] We found that other wastes are associated with the manufacture of other materials and not associated with the inorganic chemical manufacturing processes identified in the Consent Decree. With few exceptions, we chose not to evaluate any wastes that are outside the scope of the Consent Decree.

Wastes generated by each of the inorganic chemical manufacturing industries that we determined to be outside the scope of the Consent Decree and, therefore, did not evaluate for the proposed rule are identified and described in the discussions of sector-specific listing determination rationales presented in section III.F of the proposed rule (65 FR 55701, September 14, 2000). Except as discussed below in this preamble, we received no comments that persuaded us to change our positions on any of our proposed findings on the scope of the Consent Decree.

[3] Bevill exempt wastes include wastes generated by mining operations that are produced during extraction and beneficiation operations and an additional 20 categories of wastes generated during mineral processing operations that EPA has determined meet "high volume/low toxicity" criteria. The "Bevill" exemptions are codified at 40 CFR 261.4(b)(7).

B. Which Wastes Did EPA Propose To List as Hazardous?

1. Baghouse Filters From the Production of Antimony Oxide

We proposed to list as hazardous baghouse filters from the production of antimony oxide. We proposed to list this waste because it exhibits one or more of the characteristics of hazardous waste, and the waste is not consistently managed as a hazardous waste in compliance with RCRA Subtitle C regulations. The hazardous waste listing criterion at 40 CFR 261.11(a)(1) provides that EPA may list a waste as hazardous based upon the fact that it exhibits any of the hazardous waste characteristics. Sampling and analysis undertaken by EPA for this rule show that baghouse filters from the production of antimony oxide exhibit the toxicity characteristic for lead and/or arsenic. Information gathered from RCRA § 3007 questionnaire responses indicated that of the four antimony oxide production facilities generating baghouse filters, none designate their baghouse filters as hazardous waste. Two of the facilities send their baghouse filters to nonhazardous waste disposal facilities. The other two recycle the baghouse filters.

EPA proposed to list baghouse filters from the production of antimony oxide solely based upon the fact that the waste exhibits the toxicity characteristic and generators are not complying with hazardous waste regulations. The Agency did not conduct risk assessment modeling to estimate potential risks to human health from plausible waste management practices. We did not need to model risks posed by lead and arsenic because leachate levels for these constituents exceeded the toxicity characteristic levels. Moreover, in analyzing samples of the waste collected by EPA, we determined that antimony levels in the waste are high (total concentrations can equate to 12% of the waste). Leachate levels for antimony in baghouse filters are up to 48,000 times the drinking water HBL. In the preamble to the proposed rule, we indicated that such high levels of antimony would provide a long-term source of the metal for leaching into ground water and would likely result in risk if modeled.

2. Antimony Slag That Is Speculatively Accumulated or Disposed

We proposed to list as hazardous waste slag from the production of antimony oxide that is disposed of or speculatively accumulated. We based our decision to list this waste as hazardous on the results of modeling of an on-site industrial landfill disposal scenario and a ground-water exposure pathway. Our modeling showed significant risk for antimony with a hazard quotient [4] of 9.4 for life-time non-cancer risk for an exposed child. The antimony hazard quotient for adult non-cancer risk is 4.5.

As explained in the preamble to the proposed rule, our modeling approach for the risk assessment assumed that the antimony slag is placed in an unlined, industrial landfill. At the time of proposal, we knew of one antimony oxide production facility that was speculatively accumulating the slag, storing the waste in drums over several years. The facility operating permit issued by the state mining program required construction of a lined on-site land-based unit for storing the waste in the future. We did not take into account the liner described in the mining permit because our most recent information at that time indicated that construction had not yet been initiated and we believed that it was feasible that the facility could instead choose to landfill the waste offsite. We also noted more general concerns regarding the uncertain efficacy of engineered liners over the modeled risk assessment period, which covers 10,000 years. (See 65 FR 55703 for additional details.)

In addition to the risk assessment results, our proposed listing determination was based on the high total concentrations of antimony in this waste. Our sampling and analysis results showed that the antimony levels in the slag exceed ten percent (up to 127,000 mg/kg) of one waste, by weight. The SPLP antimony concentration exceeds the drinking water HBL by a factor greater than 35,000. We also considered the fact that antimony is persistent in the environment and will not degrade.

3. Non-wastewaters From The Production of Titanium Dioxide by the Chloride-Ilmenite Process

We proposed to list as hazardous waste certain solid wastes generated from the production of titanium dioxide using the chloride-ilmenite process. The proposed listing covered wastes generated at three facilities and included three components in the commingled solids stream: (1) Coke and ore solids removed from the gaseous titanium tetrachloride process stream commingled with a non-exempt vanadium waste; (2) solids removed from ferric chloride acid, if removed from the acid stream after the initiation of chemical manufacturing and/or ancillary operations; and (3) wastewater treatment sludges, to the extent they are generated from oxidation and finishing wastewaters.

Our risk assessment showed potential significant risks to human health and the environment from two constituents in these wastes, manganese and thallium, when managed in an industrial solid waste landfill. In the case of manganese, the high-end hazard quotient for risks to a child was 3.3. The high-end hazard quotient for risk to a child from thallium was 2.4. Our qualitative assessment of risks associated with a municipal solid waste landfill indicated these risks might be higher by an order of magnitude. Similarly, we qualitatively expressed concerns regarding measured levels of chlorinated dioxins and furans in these wastes.

We proposed to limit the scope of the listing to the non-exempt portions of these wastes (i.e., the portions of the wastes not covered by the Bevill exemption). We did not extend the scope of the listing to include exempt mineral processing wastes associated with the chloride-ilmenite process ("chloride process waste solids from titanium tetrachloride production," see 40 CFR 261.4(b)(7)(S))[5]. As explained in the preamble to the proposed rule, all exempt mineral processing wastes generated by inorganic chemical manufacturing facilities are outside the scope of the Consent Decree and were not evaluated as part of the Agency's listing determination for wastes generated by this industry.

C. Which Constituents Did EPA Propose To Add to Appendix VIII of 40 CFR part 261?

EPA proposed to add one constituent, manganese, to the list of hazardous constituents at 40 CFR part 261, Appendix VIII. We proposed to find that manganese was a constituent of concern in the titanium dioxide waste that EPA proposed to list as hazardous. Based on our assessment of the available toxicity data, we believed that manganese met the § 261.11(a) criteria for inclusion on Appendix VIII. Therefore, we proposed to add manganese to Appendix VIII of 40 CFR 261.

D. What Was the Proposed Status of Landfill Leachate From Previously Disposed Wastes?

We proposed to amend the existing exemption from the definition of

[4] Hazard quotient is defined as the ratio of the estimated dose of a given chemical to an individual to the reference dose for that chemical.

[5] See 65 FR 55750 for a more detailed explanation of which wastes generated during the production of titanium dioxide are exempt mineral processing wastes.

hazardous waste for landfill leachate generated from certain previously disposed hazardous waste (40 CFR 261.4(b)(15)) to include leachate collected from non-hazardous waste landfills that previously accepted the three proposed listed wastes (K176, K177, K178). We proposed to temporarily defer the application of the proposed new waste codes to such leachate to avoid disruption of ongoing leachate management activities.

The Agency proposed the deferral because information available to EPA at the time indicated that each of the wastes proposed to be listed as hazardous may have been managed previously in non-hazardous waste landfills. Leachate derived from the treatment, storage, or disposal of listed hazardous wastes is classified as hazardous waste by the derived-from rule in 40 CFR 261.3(c)(2). Without such a deferral, we were concerned about forcing pretreatment of leachate even though pretreatment is neither required by nor needed under the CWA.

E. What Were the Proposed Treatment Standards Under RCRA's Land Disposal Restrictions Standards?

We proposed to apply existing universal treatment standards (UTS) for the hazardous constituents of concern that were found to be present at concentrations exceeding the UTS in the proposed listed wastes. We proposed to apply the UTS to these wastes because the waste compositions were found to be similar to other wastes for which applicable treatment technologies have been demonstrated.

For K176 (baghouse filters from production of antimony oxide), we proposed treatment standards requiring treatment to the UTS levels for antimony, arsenic, cadmium, lead, and mercury. For K177 (slag from the production of antimony oxide that is disposed of or speculatively accumulated), we proposed to apply the UTS as treatment standards for antimony, arsenic and lead. In the case of both K176 and K177, we requested data and comment on the stabilization of antimony, given that available data indicated stabilization was effective treatment for wastes with initial antimony concentrations below those found in K176 and K177.

For K178 (nonwastewaters from the production of titanium dioxide by the chloride-ilmenite process), we proposed to apply the UTS as treatment standards for thallium and the chlorinated congeners of dibenzo-p-dioxin and dibenzofuran. In addition, we proposed the option of complying with the technology standard of combustion (CMBST) for the chlorinated dibenzo-p-dioxin and dibenzofuran constituents in K178. Since K178 has metal constituents of concern which would not be treated by the combustion process and would remain in the combustion treatment residual, we proposed to retain metal treatment standards for all circumstances (regardless of whether or not the waste is treated by combustion). This approach would require facilities to conduct compliance testing and analysis for all regulated metal constituents in the combustion treatment residuals prior to disposal.

Universal treatment standards were not previously developed for manganese. We proposed a manganese treatment standard of 3.6 mg/L TCLP, based on high temperature metals recovery technology. We also requested comment on an option of setting a treatment standard for manganese in nonwastewater forms of K178 that is identical to the UTS level for thallium (0.20 mg/L TCLP, based on stabilization). In the case of wastewater forms of K178, we proposed a treatment standard of 17.1 mg/L manganese, based upon sedimentation technology.

We proposed to add the proposed manganese treatment standard to the existing treatment standards for multi-source leachate (F039). In addition, we proposed to add manganese to the UTS Table at 40 CFR 268.48. These changes would require that all characteristic hazardous wastes that contain manganese as an underlying hazardous constituent above the UTS are treated for manganese before land disposal.

In the case of hazardous debris contaminated with proposed K176, K177, and K178, we proposed that the provisions in 40 CFR 268.45 apply to treatment and disposal of hazardous debris. Hazardous debris treated in accordance with the provisions of 40 CFR 268.45 may be land disposed in a hazardous waste disposal facility. As a result, debris contaminated with proposed K176, K177, and K178 have to be treated prior to land disposal, using specific debris treatment technologies such as extraction, destruction, or immobilization. Residuals generated from the treatment of contaminated debris would have to meet the applicable UTS limits for proposed K176, K177, and K178.

In addition, we proposed to apply the regulations at 40 CFR 268.49 to hazardous soil contaminated with proposed K176, K177, and K178. Soil contaminated with these wastes would have to be treated prior to land disposal, meeting either alternative treatment standards (i.e., 10 times UTS or 90 percent reduction in initial constituent concentrations) or the proposed standards in 40 CFR 268.40.

F. What Risk Assessment Approach Was Used for the Proposed Rule?

We conducted human health risk analyses to support our proposed listing determination decisions for those inorganic chemical wastes where initial screening analyses indicated that further assessment of potential human health risks was necessary. We used a variety of screening methodologies to assess a large number of wastes. This approach was necessary because of the time constraints imposed by the Consent Decree schedule and the large number of wastes that needed to be assessed. However, we believe that the screening methodologies assessed risks very conservatively and that wastes that were "screened out" are not likely to present significant risks.

We estimated risks using both "deterministic" and "probabilistic" human health risk analyses. A deterministic analysis produces a point estimate of risk or hazard by assigning a single value to each parameter used in the analysis. A probabilistic analysis generates a distribution of risk or hazard by allowing one or more of the parameters to take on more than one value, as determined by a probability distribution. We used probabilistic analysis to allow us to quantify individual risk at selected percentiles of the risk distribution (for example, 50th percentile, 90th percentile, 95th percentile). We based our listing decisions on the probabilistic risk estimates. The human health risks represent incremental risks to an individual and are expressed as estimates of excess lifetime cancer risk for carcinogenic (cancer-causing) contaminants and hazard quotients (HQs) for those contaminants that produce other, non-cancer, health effects.

The human health risk assessments that we conducted to support the inorganic chemicals listing determination included five primary tasks: (1) Conducting screening analyses and establishing whether there are constituents of concern in the wastes that warrant further analysis to determine their risk to human health; (2) establishing a scenario under which constituents of concern are released from a waste management unit and subsequently are transported in the environment to a human receptor; (3) estimating the concentrations of constituents to which the receptor might be exposed; (4) quantifying the receptor's exposure to constituents; and

(5) based on the constituent's toxicities, assessing the risks to the receptor. The establishment of exposure scenario assumptions depended on the way a particular waste is managed. For wastes managed on-site (e.g., disposed of in an on-site industrial landfill), we based our assessment of human exposures on the plausibility of ground water being used for drinking water within the vicinity of the facility. Where possible, we identified site-specific hydrogeological information and we determined actual distances from the facility, or waste management unit, to the nearest ground-water drinking water well. If we determined that no drinking water wells could plausibly be impacted by releases from the facility (e.g., we found that ground water was not a viable current or future drinking water resource), we assumed no human exposure via the ground-water pathway. In the case of wastes that could plausibly be managed off-site, we assumed that ground water is used for drinking water (or could be in the future) and we used national data on the distribution of distances from land disposal units to residential wells to assess human exposures and risk.

The preamble to the proposed rule provided a detailed discussion of EPA's risk assessment for the inorganic chemicals listing determination (see 65 FR 55684). A full description of all risk analyses conducted in support of our listing determinations finalized in today's rule can be found in the risk assessment background documents available in the rulemaking docket. (See "Risk Assessment for the Listing Determinations for Inorganic Chemical Manufacturing Wastes," August 2000.)

IV. What Is the Rationale for Today's Final Rule?

A. Final "No List" Determinations

The Agency proposed not to list as hazardous any of the wastes from twelve of the inorganic chemical manufacturing sectors we evaluated for the proposed rule. These sectors are: Barium carbonate, boric acid, cadmium pigments, hydrogen cyanide, phenyl mercuric acetate, phosphorous acid from the dry process, phosphorous pentasulfide, phosphorous trichloride, potassium dichromate, sodium chlorate, sodium dichromate and sodium phosphate from wet phosphoric acid production. We received no adverse comment on the proposed decisions for these wastes and did not independently learn of any information requiring us to change our position on any of these waste categories. Therefore, we are making final decisions not to list any wastes from these inorganic chemical manufacturing sectors. A few commenters asked us to clarify issues relating to these determinations that might have impacts outside the scope of this rulemaking. Responses to these comments appear in the Response to Comments document.

The Agency mistakenly referred to a selenium "standard" (0.0050 mg/L) in the barium carbonate section of the preamble for the proposed rule (65 FR 55701, September 14, 2000). This selenium level is more appropriately referred to as EPA's recommended Ambient Water Quality Criteria (AWQC) for protection of freshwater organisms from chronic effects (63 FR 68353 as corrected at 64 FR 19781). EPA issues the criteria for selenium and other constituents under the authority of the section 304(a) of the Clean Water Act (CWA), 33 U.S.C. 1314(a)(1). These recommended criteria provide guidance for States and Tribes in adopting water quality standards under section 303(d) of the CWA (EPA–822–F–98–006, Compilation of National Recommended Water Quality Criteria and EPA's Process for Deriving New and Revised Criteria, December 1998).

We also explained in the proposal that we had evaluated risks posed by a number of residual materials that appear to be recycled; we did not first determine whether these materials were "solid wastes" under the statute and implementing regulations. We received both supportive and critical comments on our approach to evaluating secondary materials that may be reused or recycled. As discussed in the proposed rule, these determinations are complex, time consuming and best made on a site-specific basis. We continue to believe that the approach used in the proposal is appropriate and, thus, have not made site-specific determinations on whether secondary materials are or are not solid wastes if we could more quickly determine that they did not pose a risk significant enough to warrant listing them as hazardous. The decision not to move forward with further evaluation of a specific secondary material because the risk is not within the range determined to be significant does not imply that the material is or is not a solid waste. Rather, this approach represents an efficient way for EPA to make listing determinations and ensure we meet the requirements of the Consent Decree.

We received comments regarding recent case law regarding the definition of solid waste, which limits our jurisdiction under Subtitle C of RCRA. However, as discussed above and in the proposal, we did not make site-specific or waste-specific decisions on whether or not secondary materials were solid wastes, since we believed that we could more quickly determine whether they pose a listable risk. As a result of our risk-based evaluation, we decided not to list most of the wastes that we evaluated. It was not necessary for these decisions to interpret these cases, which include *Association of Battery Recyclers v. EPA*, (208 F. 3d 1047 (D.C. Cir 2000)).

We are promulgating listings for three wastes. None of these decisions required us to address the limits of our statutory jurisdiction. In all cases we have information showing that some facilities dispose of the materials covered by the listings. Moreover, our listings do not apply to secondary materials that we currently consider to be outside of our Subtitle C jurisdiction (e.g., materials used as an effective substitute for commercial products, commercial chemical products being reclaimed, etc.). In one case (slag associated with antimony oxide production, listed as K177), we expressly conditioned the listing to make it clear that slags recycled by reclamation, an activity that we have traditionally considered to fall within our jurisdiction, will not be regulated by the listing, unless the entities involved engage in speculative accumulation. This, however, was a risk-based decision, and did not require us to re-examine the limits of our jurisdiction over solid wastes.

Finally, as mentioned above, we took the position in the proposal that various wastes were exempt from regulation—and outside of the scope of the Consent Decree—under the Bevill amendment regulations. We chose not to evaluate risks from these wastes. With the exception of comments relating to titanium dioxide wastes discussed below, we received no comments persuading us to change our position on the applicability of the Bevill exemption to any of the wastes discussed in the proposal.

B. Deferral of Final Action on Manganese-Related Elements of Proposed Rule

We are deferring final action on all elements of our proposal that are specifically related to the waste constituent manganese. We received numerous comments related to the risk associated with manganese and the economic impact to many industries, including the steel industry, of adding manganese to 40 CFR 261, Appendix VIII. In addition, a number of commenters argued against our proposal to establish a Universal Treatment Standard (UTS) for manganese because they believe that our proposal provided

insufficient notice of this action and that we had not adequately assessed the potential impact to industries other than those generating K178. Commenters also opposed our proposal to add manganese to the Appendix VIII list for the same reasons. They were particularly concerned about potential impacts on corrective action efforts at RCRA sites where manganese may be present. Although we continue to believe that manganese poses significant issues that ultimately should be resolved, the court-ordered schedule under which we are operating provides us with no flexibility to take additional time to explore these topics more fully. As a result, we have chosen to defer final action on adding manganese to Appendix VII of 40 CFR 261 as a basis for listing K178; on adding manganese to Appendix VIII of 40 CFR 261; on adding manganese to the treatment standards for K178, to the UTS and to the BDAT standards for F039; and on setting an RQ standard in § 302.4 for K178 that addresses manganese.

By deferring final action on manganese, we can take additional time to review and analyze the risk and impact issues raised by commenters without compromising our obligations under our consent decree to finalize our listing determinations for the inorganic chemical manufacturing industry. In today's rule we are finalizing our proposal to list K176, K177, and K178. The final K178 listing is based solely on thallium risks as a result of our deferral of the elements of the proposal associated with manganese.

C. Final Antimony Oxide Listing Determinations

In the proposal, we identified three waste categories associated with the production of antimony oxide that we determined warranted evaluation. We proposed to list two of these waste categories: baghouse filters from the production of antimony oxide and slag from the production of antimony oxide that is disposed of or speculatively accumulated. We concluded that the third waste category (empty supersacks) did not pose a substantial present or potential threat to human health or the environment and, therefore, did not warrant listing.

We are promulgating final listings for the two antimony oxide wastes that we proposed to list. As explained below, we are revising the listing language slightly in response to comments. The final listing descriptions are:

K176 Baghouse filters from the production of antimony oxide, including filters from the production of intermediates (e.g., antimony metal or crude antimony oxide). (E)

K177 Slag from the production of antimony oxide that is speculatively accumulated or disposed, including slag from the production of intermediates (e.g., antimony metal or crude antimony oxide). (T)

1. K176 Baghouse Filters

We are finalizing the K176 listing for baghouse filters from antimony oxide production, which includes filters from the production of intermediates (e.g., antimony metal or crude antimony oxide) (see section 3 below for further details about production of intermediates).

a. Proposed Rule

In the proposal, we stated that the baghouse filters are generated by all four of the antimony oxide manufacturers that were producing antimony oxide at the time of proposal. Two of the three filter samples we collected exhibit the toxicity characteristic (TC) for either arsenic or lead. However, none of the manufacturers acknowledged that the waste exhibits the TC. According to responses received from § 3007 questionnaires, two of the four facilities were not handling the waste as hazardous and were sending the filters to non-hazardous incineration or a Subtitle D (non-hazardous waste) landfill. The remaining two facilities were recycling all of their filters. Because the TC is not effectively ensuring proper management for this waste across the industry, we proposed to list the baghouse filters under 261.11(a)(1) on the basis that the waste exhibits a characteristic.

b. Significant Comments and Final Rule

One commenter supported our proposal to list this waste based on the potential for it to exhibit the toxicity characteristic. Another commenter disagreed with the proposed listing as applied to the filters produced at its Montana facility. This commenter raised three types of objections. First, the commenter stated that our sample of baghouse filters from the oxidation furnace did not fail the threshold limits for any element on the TCLP analysis and, therefore, should not be included within the scope of the listing. They noted that the only baghouse filter samples from the Montana facility to fail the TC were from the reduction furnace, not the oxidation furnace (see scope discussion under section 3 below for a discussion on the different types of furnaces).

We do not agree that we should exclude from the listing filters from the commenter's oxidation furnace because our sample of these filters did not exhibit the TC. Our sampling data for the Montana oxidation filters shows TCLP lead levels (2.8 mg/L) that are very close to the TC regulatory lead level (5.0 mg/L). The commenter submitted no additional data supporting the assertion that its oxidation furnace filters do not fail the TC. Given likely variability in the waste, it is quite possible that other samples would have exhibited the TC for lead. Further, we sampled filters from a similar oxidation furnace at a second production facility in La Porte, TX. The La Porte filters contain lead at levels exceeding the TC (8.5 mg/L). The lead levels for both the La Porte facility and the Montana facility are close, within the same order of magnitude. Therefore, based on these factors, we think it is reasonable to assume that the filters from oxidation furnaces will exceed the TC for lead frequently enough to warrant listing, even at the Montana facility. The criteria in 261.11(a)(1) provide generally that EPA can list a solid waste as hazardous if it exhibits any of the characteristics of hazardous waste. We believe our data sufficiently demonstrate that the oxidation filters meet the 261.11(a)(1) test.

Although not directly relevant to a listing under 261.11(a)(1), we also note that the leachable antimony content of the baghouse filters from both oxidation furnaces exceed EPA's antimony health-based level (HBL) for human drinking water consumption by a significant margin. The Montana oxidation furnace filters contain up to 15% antimony and leach 700 times above the drinking water HBL. The La Porte oxidation filters contain up to 9% antimony and leach 1,550 times above the drinking water HBL.[6]

Second, the commenter stated that it recycled all antimony-containing baghouse filters from both the oxidation and reduction furnaces to its reduction furnace to recover antimony and argued that the listing should not apply to such filters. However, as described above, at least two facilities reported disposing of their baghouse filters as non-hazardous wastes. Therefore, we continue to view non-hazardous disposal of baghouse filters as a plausible management scenario for the antimony oxide industry. As EPA acknowledged in the preamble to the proposed rule, some

[6] See Waste Characterization Reports for U.S. Antimony, Thompson Falls, MT and Laurel Industries, La Porte, TX that are in the docket for the proposed rule.

antimony-containing filters may be recycled in certain ways that would make them not solid wastes (and hence not regulated hazardous wastes). For example, when facilities process the antimony oxide product captured in these filters by reinserting the product-containing filters back into the furnace where the antimony oxide originated, without reclamation, these materials would not be solid wastes.[7] If any or all of the commenter's filters are recycled in ways that make them not solid wastes under the definition of solid waste regulations (see 40 CFR 261.2), they will not be subject to this listing.

Finally, the same commenter argued that its baghouse filters from the reduction furnace were from the production of antimony metal, not the production of antimony oxide. As explained below in section 3, we concluded that all of the baghouse filters associated with antimony oxide production remain within the scope of the listing, whether the filters are from the furnace producing the final antimony oxide or from the production of a process intermediate used during the production of antimony oxide. However, as discussed below, if the facility produces a batch of antimony metal which is not used in antimony oxide production, the wastes from that particular batch are not within the scope of the listing. If the facility adequately segregates these batches of antimony metal wastes from the listed wastes associated with antimony oxide production, they would not be listed wastes.

After considering all comments, we continue to consider all filters associated with antimony oxide production as a single class of waste and to find that they warrant listing under 261.11(a)(1), as follows:

K176 Baghouse filters from the production of antimony oxide, including filters from the production of intermediates (e.g., antimony metal or crude antimony oxide). (E)

c. Impact of Recent Revisions to the Mixture and Derived-From Rules on K176

The mixture rule (originally codified at 40 CFR 261.3 (a)(2(iii) and (iv)) subjects mixtures of listed hazardous and nonhazardous wastes to hazardous waste regulation. The rule, however, exempted wastes listed under 261.11(a)(1) because they exhibit a hazardous waste characteristic. Mixtures of such listed wastes generally cease to be regulated as hazardous wastes as soon as the mixture ceases to exhibit the characteristic that caused EPA to list the waste. (Mixtures of nonwastewaters listed because they exhibit a characteristic, however, needed to meet LDR requirements before being land disposed.)

In 1999, EPA proposed to eliminate this mixture-rule exemption for wastes listed under 261.11(a)(1) because they exhibit the Toxicity Characteristic. See 64 FR 63382 (November 19, 1999). In other words, mixtures of wastes listed because they exhibited the TC would continue to be regulated even if the mixture stopped exhibiting the TC. When EPA proposed to list K176, we noted that this proposed narrowing of the mixture rule exemption, if promulgated, would affect the K176 wastes.

EPA promulgated the revision to the mixture rule exception in May 2001. See 66 FR 27266 (May 16, 2001) and new section 40 CFR 261.3(g). As a result, mixtures of K176 and nonhazardous wastes ultimately will not be exempt if the mixture ceases to exhibit the TC. The K176 listing, however, will take effect before the narrowing of the mixture rule exemption. See the discussion of state authorization issues in section VI below.

2. K177 Slag

We are promulgating the K177 listing for slag from antimony oxide production that is speculatively accumulated or disposed, including slag from the production of intermediates (e.g., antimony metal or crude antimony oxide) (see section 3 below for further details about production of intermediates).

a. Proposed Rule

At the time we proposed this listing, all four operating antimony oxide production facilities produced slags from their oxidation furnaces during the production of the final antimony oxide product. All of the facilities reported further processing at least a portion of these slags on-site in different types of furnaces to obtain additional antimony to produce additional antimony oxide. In addition, three of the four facilities ultimately produced slags that were sent off-site for use in secondary lead smelting or antimony production. The remaining facility (Montana) ultimately produced a slag from its reduction furnace that had been accumulating on-site in drums for several years. At the time of proposal, this facility's mining permit required the facility to construct an on-site engineered and lined "slag storage pit" for the accumulated slag.

In the proposal, we assessed the risks posed by the on-site accumulation and the potential future use of the "storage pit" by modeling an on-site unlined landfill at the Montana facility. We documented domestic ground-water use in the area (four wells in the vicinity), and noted the presence of a residential drinking water well 1.4 miles directly down-gradient from the Montana facility. We stated that residences and wells might be built closer to the facility in the future. This approach was consistent with our modeling assumptions elsewhere in the proposed rule where we modeled potential ground-water exposure based on the potential for ground-water wells to exist and be impacted by on-site waste management practices (e.g., 65 FR 55755). Thus, while our modeling was conservative for the current ground-water usage patterns, it predicted risk for potential future receptors. The results of the risk assessment for the on-site disposal scenario for antimony and arsenic, as stated in the proposal, are presented in Table IV–1:

TABLE IV–1.—PROBABILISTIC RISK ASSESSMENT RESULTS FOR SPECULATIVELY ACCUMULATED ANTIMONY SLAG

Percentile	Antimony hazard quotient		Arsenic—Cancer risk	
	Adult risk	Child risk	Adult risk	Child risk
90%	2.2	4.6	4 E–07	3 E–07
95%	4.5	9.4	1 E–06	9 E–07

[7] As noted above, these filters capture product materials. EPA does not regulate reclamation of these products. See 50 FR 14216, April 11, 1985: "Under the final rules, commercial chemical products and intermediates, off-specification variants, spill residues, and container residues listed in 40 CFR 261.33 are not considered solid wastes when recycled except when they are recycled in ways that differ from their normal use—namely, when they are burned for energy recovery or used to produce a fuel."

Because the modeled hazard quotient for antimony exceeded our listing threshold of one for both children and adults at both the 90th and 95th percentiles, we proposed to list this waste. For a more complete description of this analysis, see "Risk Assessment for the Listing Determinations for Inorganic Chemical Manufacturing Wastes" (August 2000) in the docket for the proposed rule.

As noted in the proposal, the waste has high levels of total antimony and arsenic, and the leachable levels of antimony from this slag exceed the human oral ingestion HBL by a factor greater than 35,000. In addition, the modeling showed risk at the 90th and 95th percentiles even with elevated dilution and attenuation factors that are associated with this site (DAFs of 1,960 to 3,811 at the 5th and 10th percentiles).[8]. We reasoned that risks could be even greater in other potential management locations (e.g., if plans to place the drummed slag in the onsite "storage pit" were to change).

b. Significant Comments and Final Rule

One commenter questioned our risk assessment scenario for the slag. The commenter stated that, contrary to data we obtained from the Montana Ground water Information Center database, there are no residential wells within 4.5 miles down-gradient of the Montana facility. The commenter noted there is a private residential property with a well 1.5 miles up-gradient of the facility. In response to this comment, we further investigated the land use of the area surrounding the facility and determined that the commenter is correct that there is no current residential well in the down-gradient location described in the proposal.[9] However, as noted in the proposal, we did not model releases to a particular well. We used the presence of the well we identified to indicate that ground water is used as a resource in the area. The commenter provided documentation that ground water is used as a resource in the area. According to the commenter, eight to ten residential wells are in use in the area approximately 5 miles down-gradient from the facility, as well as the property 1.5 miles up-gradient. In addition, as we noted in the proposal, we do not see any barriers to people moving closer to the facility in the future, thereby becoming potential receptors. Should people move closer to the facility, ground water almost certainly will be used for drinking water. We note that the facility's mining permit indicates that on-site water production wells are used to supply the laboratory and administrative buildings, which also indicates that the use of ground water in the immediate area is plausible. Therefore, we believe that the management scenario we modeled for the proposal is still plausible.

In addition to wastes that are disposed, the listing captures those wastes that are speculatively accumulated. As noted in the proposal, current regulations classify some potentially recyclable materials that are stored on-site for more than certain timeframes set forth in 40 CFR 261.1(c)(8) as speculative accumulation and classify materials held in excess of these time frames as solid wastes. We believe that the length of time secondary materials are accumulated before being recycled is an important indicator of whether or not they are wastes. This is supported by damage cases where secondary materials that were accumulated over time caused harm. (See 50 FR 614.) EPA has consistently taken this approach towards long-term storage of potentially recyclable materials. "Under RCRA and the implementing regulations, permanent placement of hazardous waste, including perpetual "storage" falls into the regulatory category of land disposal.[10] (See also *American Petroleum Institute* v. *EPA*, 216 F. 3d 50 (D.C. Cir. 2000)). If slags have been speculatively accumulated (i.e., held beyond the timeframes specified in 40 CFR 261.1(c)(8) without recycling) as of the effective date of this final rule, these slags meet the listing description immediately.

As long as facilities legitimately recycle slags without speculatively accumulating them as defined in 40 CFR 261.1(c)(8), they will not be impacted by the listing. In the proposal, we discussed the fact that three of the four antimony oxide production facilities were sending slag that they could no longer process on-site to off-site recycling operations. Two of the facilities (La Porte, TX and New Jersey), both of which are still in operation, send their slag for use in secondary lead smelting, either for the high lead content in the slag or because the antimony is used as a hardening agent in lead. The third facility (Laredo, TX) reported that they sent their slag to an antimony recovery facility in Mexico. The Laredo facility is no longer operating. The fourth facility (Montana) had been holding slag in drums on-site, as described above.

Since the release of the proposal, we have been informed by representatives of the Montana facility and the State that the facility has begun to send slag that it cannot reclaim on-site to an off-site facility for recycling. As noted above, slags that are legitimately recycled without speculative accumulation will not be affected by the listing. However, stockpiling of slags has occurred and we believe the listing is still needed to ensure that continued or future storage will not threaten human health and the environment.

Moreover, we believe the listing is warranted because recycling in the future may be uncertain for facilities still producing antimony oxide in the United States. The current market for antimony oxide is weak. The world commodity price for antimony metal (the principal raw material for antimony oxide production) has been volatile but has mainly increased due to restrictions on Chinese exports. At the same time, the market price for antimony oxide remained relatively flat.[11] If the industry experiences continued economic distress, individual facilities that remain in operation may decide to accumulate slag on-site rather than incurring the costs of shipping the slags off-site for processing. In fact, we have learned that the still-operating New Jersey facility, which had reported recycling its slag in its response to our § 3007 questionnaire, shipped slag off-site to a landfill for disposal in 1999 and is presently accumulating new slag on-site. The facility told EPA Regional personnel that it hopes to recycle this on-site slag if antimony prices rise.[12]

Finally, the two commenters that use two-step processes to produce antimony oxide argued that slags from the first type of furnace in their processes should not be listed because the slags are not generated during the production of

[8] See Table 4–66, "Ground Water DAFs for Low Antimony Slag Managed in an Onsite Landfill—Thompson Falls, MT," in Risk Assessment for the Listing Determinations for Inorganic Chemical Manufacturing Wastes, August, 2000. Note that although there is not a direct correspondence between DAFs and risk, lower DAFs result in higher risk. Therefore, the 5th and 10th percentile DAFs are of particular interest relative to high end risks, e.g., at the 90th and 95th percentiles of the risk distribution.

[9] See docket—notes from calls with U.S. Forest Service at Lolo National Forest and Montana DEQ staff dated January 2001–February 21, 2001.

[10] "Above Ground Land Emplacement Facility, N.J. Law," Letter to Honorable James J. Florio, Chairman, Subcommittee on Commerce, Transportation, and Tourism, Committee on Energy and Commerce, House of Representatives, from J. Winston Porter, Administrator, EPA, dated March 26, 1986.

[11] See U.S. Geological Survey, Mineral Industry Surveys dated June 2000, December 2000 and June 2001 in the docket for the rulemaking.

[12] See phone log for conversation between Sue Burnell, EPA OSW and EPA Region 2 enforcement official, dated 7/3/01 in the docket for today's rulemaking.

antimony oxide. As explained below in section 3, we were only partially persuaded by this argument. We are listing all slags associated with the production of antimony oxide, including slags from the production of process intermediates for antimony oxide. However, we are excluding from the listing slags from batches where none of the material produced is used in the production of antimony oxide. See section 3 for further details.

Because of the documented practice of slag accumulation for long periods of time, the lack of certainty that any current recycling practices will continue absent this listing, and the results of our risk analysis, the listing is warranted to ensure that disposal of all slags associated with the production of antimony oxide as nonhazardous waste does not occur. Therefore, we are finalizing the listing under 40 CFR 261.11(a)(3) as:

K177 Slag from the production of antimony oxide that is speculatively accumulated or disposed, including slag from the production of intermediates (e.g., antimony metal or crude antimony oxide). (T)

3. Scope Issues—Production of Intermediates

Two commenters raised questions with regard to the scope of the antimony oxide listings as they pertain to the generation of intermediates in the production of antimony oxide. Both of these commenters operate two-step antimony oxide processes and both claim that slag from the furnace producing the process intermediate should not be included within the scope of the listing.

The first commenter, which operates the Montana facility, questioned whether the waste materials generated from its reduction furnace fall within the scope of the listing. The commenter's position is that these wastes are generated during the production of antimony metal rather than antimony oxide and, therefore, are outside the scope of the listing. The commenter makes a subsequent argument that because the wastes from this furnace are outside the scope of the listing, our samples of the filters and slags from the reduction furnace should not be used to support either waste listing.

We were partially persuaded by the commenter's views. This commenter's facility includes both reduction and oxidation furnaces. The reduction furnace uses a variety of feedstocks to produce antimony metal. The oxidation furnace uses the antimony metal produced in the reduction furnace as feedstock to produce antimony oxide product. The commenter's production process runs on a batch basis and the facility tracks the antimony metal production output from the reduction furnace based on where it is used.[13] Approximately 90% of the antimony metal produced in the reduction furnace is sent to the oxidation furnace for the production of antimony oxide.[14] In this case, when the antimony metal goes on to the oxidation furnace for antimony oxide production, we consider the antimony metal to be a process intermediate in the production of antimony oxide and we consider the two furnaces to be steps in a single, integrated process designed to produce antimony oxide. We consider the reduction furnace slag and the filters from these batches to be wastes from the production of antimony oxide falling within the scope of the Consent Decree and the listing determination. To eliminate any possible confusion, we have amended the language of the listings to expressly include filters and slag from the production of intermediates, although we think a straightforward reading of the proposed language would have included these wastes anyway.

However, in the less frequent case, when none of the antimony metal from a particular batch produced in the reduction furnace is sent to the oxidation furnace for antimony oxide production, we do not consider this batch of antimony metal to be a process intermediate associated with antimony oxide production. Likewise, the wastes—both slags and filters—generated during such batches would not be associated with the production of antimony oxide. Although we have authority to consider such wastes for listing, we are not taking final action to list these wastes today. We note that we are not required to do so under the Consent Decree.

As noted above, the commenter also asserted that our samples of the reduction furnace slag from this facility did not represent slag from the production of antimony oxide. However, we believe that it is reasonable to assume that our sample came from slags associated with the production of antimony oxide. As noted above, 90% of the antimony metal produced in the reduction furnace is used as an intermediate to produce antimony oxide. All of the slag associated with these batches falls within the scope of the listing. Further, all but a tiny fraction (less than one percent) of the antimony metal that is not used to make antimony oxide is produced on a contract furnace basis for another company. The two companies have an agreement that the metal and the slag generated during this contract production are sent to the second company. This agreement was in place when we sampled the reduction furnace slag and we received no information at the time (or subsequently) indicating that the material was sampled was to be shipped off-site. Therefore, we believe we have a reasonable basis for concluding that the reduction furnace slags that we sampled were associated with antimony oxide production.[15]

If the facility commingles listed and nonlisted slags or filters, the mixture will be subject to regulation as hazardous waste under the RCRA mixture rule, 40 CFR 261.3(a)(2)(iii) and (iv). If the facility can segregate slags and filters that are not associated with antimony oxide production, however, those wastes will not be regulated under this listing. To segregate the wastes, the facility should take steps such as changing filters before and after producing a batch of antimony metal produced on a contract basis.

The second commenter, associated with the facility that has ceased operating since the time of proposal, asserted that the listing should not cover slag formerly produced in the blast furnace at the recently closed Laredo, Texas facility. The commenter explained that the blast furnace produced low grade or "crude" antimony oxide that was then inserted into the main antimony oxide furnace to produce salable antimony oxide.[16] To the best of our knowledge, this is the only other facility that produced antimony oxide using a two-step process involving the production of an intermediate (e.g., metal or crude antimony oxide). The commenter argued that EPA had not evaluated blast furnace type operations within the proposed rule. The commenter stated that "a blast furnace is designed to

[13] See Montana DEQ Hard Rock Program, Operating Permit/Field Inspection Report of U.S. Antimony, dated June 7, 2000 in the docket for today's rulemaking.

[14] See docket for notes from calls with U.S. Antimony dated February 28, 2001 and March 29, 2001.

[15] This same Montana facility has a historic slag pile. Current information suggests that the slag is from the production of antimony metal that was not in any way associated with the production of antimony oxide. (It was generated prior to initiation of antimony oxide production at the facility.) If the information proves to be correct, the pile would not be subject to the listing, even if actively managed after the effective date. See docket for notes on call with U.S. Antimony dated March 8, 2001.

[16] See docket for notes from call with Cookson, dated March 14, 2001.

liberate antimony from its source; therefore, the resulting slag is much lower in antimony content than the slags produced at later stages of the process."

In response, we first note that the company operating the Laredo facility did not identify the historic pile in its § 3007 survey. Thus, we did not collect data on this pile and did not assess it in the proposal. Next, we note that all of the crude antimony oxide from the Laredo blast furnace was used on-site to produce salable antimony oxide. Therefore, its slag is a waste associated with antimony oxide production. Moreover, we believe that the Laredo blast furnace closely resembles the Montana reduction furnace whose slag we evaluated for listing. Both the Laredo blast furnace and the Montana reduction furnace use antimony source materials plus coke or coal to make an intermediate product. The coke and coal serve as fuel and reducing agent. Kirk-Othmer's Encyclopedia of Chemical Technology categorizes both types of furnaces as pyrometallurgical processes for the recovery of antimony, supporting our belief that these processes operate on very similar principles, using similar raw materials and creating similar wastes.[17] In the course of making listing determinations, we rely on process descriptions, functions, and waste characterization to determine whether processes are sufficiently similar to be evaluated together. We have never taken the position that all facilities covered by a single listing investigation must have identical operations; rather, we evaluate, as a category, facilities that engage in similar operations. Based on this general practice we looked at the function of the Laredo blast furnace and the type and composition of its waste compared to the Montana process and slag that we modeled for the antimony oxide slag listing. As stated above, both the Laredo and Montana furnaces produce an antimony intermediate which is used in further production of antimony oxide. In addition, both processes produce a similar waste, slag, containing the same type of constituents. Therefore, we have concluded that it is reasonable to consider the Laredo blast furnace to be in the same general category of antimony oxide operations that we assessed for listing.

The commenter argues that its blast furnace produced slags with lower antimony content than the slags we assessed for the listing and that their slag, therefore, should not be covered by the K177 listing. The commenter asserted that its blast furnace slag does not present risks warranting listing. We disagree with this characterization of the Laredo slag as being significantly different from the modeled slag. The commenter indicated that the total level of antimony in the Laredo slags was in the range of 1 to 3% of the waste, by weight. In our risk modeling of the Montana site, we used two samples of the Montana slag that contained 1% antimony (sample AC–1–AO–01) and 12% antimony (sample AC–1–AO–06), respectively. Both samples were included in the distribution used to develop the probabilistic risk assessment results, upon which the listing is based. There is approximately a factor of 2 difference in the SPLP measurements between the 1% antimony slag and the 12% antimony slag samples from the Montana facility. Since the results from our risk assessment exceed our level of concern (HQ=1) by considerably more than a factor of 2, there would still be risks of concern had we used only the slag with the lower amount of antimony (i.e., 1%). Therefore, we find the Laredo slag has the potential to pose significant risk. This, in concert with the site differences in hydrogeologic conditions as described below and in the Response to Comments Background Document, supports including the Laredo slag within the K177 listing.

The commenter provided a comparison of the input parameters for our risk assessment at the Montana facility and the parameters which could be applied to the facility in Laredo. The commenter first argued that the maximum Laredo TCLP value was at least an order of magnitude below the SPLP levels used in the Montana risk assessment and, therefore, antimony risks from the Laredo facility would also be an order of magnitude lower than the Montana risks. They believed these lower risks would fall below our threshold for listing (i.e., HQ of one). The commenter then discussed the site conditions at the Laredo facility and argued that those conditions would lower the risk results even further.

We believe that there are some important factors that the commenter did not consider in its analysis and the combined effect of these factors may not result in the lower risks assumed by the commenter. First, the leachate concentrations of antimony from the Laredo slag are significant and exceed health-based levels by orders of magnitude. The single SPLP level reported by the commenter for antimony in the Laredo slag is 2.1 mg/L. The antimony TCLP levels reported by commenter for the slag range from 2.8–25.9 mg/L. These SPLP and TCLP levels are 350–4,100 times EPA's antimony HBL for drinking water (0.006 mg/L). The magnitude of these HBL exceedences suggests that, had we modeled the Laredo slag using the site conditions at Laredo or a regional off-site area, we likely would have found significant risks to human health.

Second, our analysis of the Montana site used site-specific parameters due to the on-site waste management practice. The unique conditions at the Montana site resulted in extremely large dilution and attenuation factors (DAFs) for the risk assessment (for antimony, the DAFs were 1,960 to 3,811 at the 5th and 10th percentiles[18]). A DAF represents the ratio of the leachate concentration to the model-predicted ground-water concentration. The Montana site has high DAFs because it has a porous sand and gravel aquifer that readily dilutes the antimony concentrations in the waste leachate. This situation at the Montana site favors lower risk results. Therefore, had the modeling been conducted using different hydrogeological parameters, such as those described for the Laredo facility by the commenter, we expect the risks would be higher than the results from the Montana site. For example, given the maximum antimony leachate levels reported by the commenter for the Laredo slag, a DAF of over 4,000 would be required to bring the exposure level below the HBL (0.006 mg/L). The hydrogeologic conditions described by the commenter are less favorable than those at the Montana site for generating rapid dilution of the waste leachate and, therefore, such a large DAF is unlikely either at the commenter's site or at any reasonable regional off-site location.

In addition, we do not believe that the analysis of risks from the Laredo slag can be limited to on-site disposal. The off-site disposal scenario is plausible based on the commenter's previous off-site use of the slag in roadbed construction, as well as discussions with the commenter and the State of Texas regarding the potential use of additional slag in off-site roadbed aggregate as part of a site-wide remediation effort. Therefore, considering only the on-site factors at the Laredo facility as discussed by the

[17] Kirk-Othmer citation.

[18] See Table 4–66, "Ground Water DAFs for Low Antimony Slag Managed in an Onsite Landfill—Thompson Falls, MT," in Risk Assessment for the Listing Determinations for Inorganic Chemical Manufacturing Wastes, August, 2000. Note that although there is not a direct correspondence between DAF's and risk, lower DAF's result in higher risk. Therefore, the 5th and 10th percentile DAF's are of particular interest relative to high end risks, e.g., at the 90th and 95th percentiles of the risk distribution.

commenter does not address all our concerns for the slag. Typical off-site scenarios do not support large DAFs, as evidenced by the modeling results for other sectors in this listing rule. For example, the modeling of titanium dioxide wastes in off-site landfills resulted in DAFs for antimony on the order of 3 to 9 at the 5th and 10th percentiles.[19] It is unlikely that the hydrogeological conditions for the regional area near Laredo will result in a DAF that will support the commenter's claim that the risks from the Laredo slag would be lower than what was modeled for the listing.

The Laredo slag also accounts for a much greater volume compared to the volume modeled for the Montana slag. According to the commenter, the waste volume for the Laredo slag is 60,000 MT (plus an additional 60,000 MT of contaminated soil), whereas we modeled a total of 600 MT for the Montana facility. We would expect this greater volume of waste to contribute to increased risks from disposal both on-site and off-site. Finally, the State of Texas has independently determined that this facility poses significant risk and has issued a corrective action order to clean up the site because of antimony contamination. As part of this order, the State is requiring remediation of the historic pile, suggesting that the waste poses risks.

Based on the combination of factors described above, we believe that the commenter did not present a sufficient basis for excluding the historic slag from the blast furnace in Laredo from the K177 listing.

4. Scope—Offsite Recycling

A third commenter requested clarification that slags from lead smelters who had taken antimony oxide slag to recycle the lead content would not be subject to the listing. In response, we note that throughout the proposed rule, we chose not to evaluate risks of wastes generated by facilities that used secondary materials from Consent Decree processes in their production processes. (We did, however, evaluate risks posed when recycling of secondary materials involved use as a fuel or "use constituting disposal.") Generally, we considered any wastes produced by a second facility manufacturing a different product to be wastes from a different industrial process, and chose not to evaluate them. Consequently, wastes produced by lead smelters that use antimony oxide slags as feedstocks are not part of today's listing. Since antimony oxide slags that are recycled without speculative accumulation are not within the scope of the listing, the antimony oxide slags sent to the lead smelters are not subject to the listing. However, if the antimony oxide slags are speculatively accumulated prior to use at a lead smelter, than the antimony oxide slags would be subject to the listing and the lead smelter slags would be captured by the derived from rule.

D. Final Titanium Dioxide Listing Determination

1. Overview of Listing Determination

Our proposed rule described our assessment of the various wastes generated by the three titanium dioxide processes used in the United States.[20] We proposed to list one waste, nonwastewaters from the production of titanium dioxide by the chloride-ilmenite process, with an exemption for solids previously identified in 261.4(b)(7) as exempt mineral processing waste. We proposed not to list all other titanium dioxide wastes. These wastes are described further in the proposal and in the Titanium Dioxide Listing Background Document (August 2000) which is available in the docket for the proposed rule.

Today's final rule lists some of the waste material encompassed by the proposed K178 listing. The final rule focuses on solids removed from ferric chloride after the initiation of ferric chloride production and does not, as originally proposed, include the wastewater treatment sludge or the vanadium portion of the reactor solids generated during the production of titanium dioxide by the chloride-ilmenite process. Moreover, as explained above, we no longer base this listing on risks posed by manganese.

2. Overview of K178 Comments

Comments relating to manganese are discussed above in section IV.B. Comments on other issues are summarized here. Three titanium dioxide manufacturers, one trade organization, and one ferric chloride acid distributer submitted comments on our proposed listing determination for the titanium dioxide manufacturing sector. The comments addressed a wide range of topics pertaining to the proposed K178 listing, including interpretations of our Bevill determination, choice of management scenarios for modeling, the validity of specific elements of our modeling, scope of the listing, and toxicity of manganese. One commenter submitted extensive new analytical data characterizing the materials potentially impacted by the listing. This commenter also developed additional K_d measurements for thallium. After closure of the comment period, this same commenter provided important new information regarding its management practices for the materials potentially impacted by the listing (all post-comment period communications are available in the docket for today's rule).

We discuss the key comments influencing our final decision in the following discussion. We developed a separate document containing our responses to all public comments (see Response to Public Comments: Final Listing Determination for Inorganic Chemical Manufacturing Wastes in the docket for today's rule).

3. Overview of K178 Waste Subcategories

At proposal, we indicated that three subcategories of solids (non-exempt nonwastewaters) from the chloride-ilmenite process would be captured by the K178 listing. These three subcategories of solids were identified as: (1) Exempt coke and ore solids (condenser solids for the purposes of this discussion) removed from the gaseous titanium tetrachloride product stream that are commingled with a non-exempt vanadium stream, (2) solids generated during wastewater treatment which are not exempt to the extent they are derived from oxidation and finishing wastewaters, and (3) non-exempt ferric chloride solids removed from the ferric chloride acid stream. Three U.S. plants, all owned by E.I. du Pont de Nemours (DuPont), operate the chloride-ilmenite process. The three plants, located in Edge Moor, Delaware; Johnsonville, Tennessee; and DeLisle, Mississippi, each generate the condenser solids and wastewater treatment sludge subcategories. The Delaware facility is the only facility currently generating the non-exempt ferric chloride residues.

4. Management Scenarios

We based our proposal to list K178 wastes on the ground-water ingestion risks shown in our analysis of plausible management scenarios for the nonexempt wastes contained in the combined solids (Iron Rich ™)

[19] See Table 6–24, "Comparison of DAFs for Antimony in Ilmenite Process Wastewater Treatment Sludge for 100 Percent and 10 Percent Waste Quantities," in Risk Assessment for the Listing Determinations for Inorganic Chemical Manufacturing Wastes, August, 2000. Note that although there is not a direct correspondence between DAF's and risk, lower DAF's result in higher risk. Therefore, the 5th and 10th percentile DAF's are of particular interest relative to high end risks, e.g., at the 90th and 95th percentiles of the risk distribution.

[20] The three processes include the chloride, sulfate and the chloride-ilmenite processes.

generated at the Delaware facility. Prior to the proposal, the Delaware facility reported actual or intended use of the Iron Rich ™ at landfills and in other types of land-based uses in the general vicinity of the plant. Such uses included use as daily or final cover at various landfills, use in construction of berms and dikes, and use as fill material at municipal landfills and elsewhere. We chose to model risks for disposal in an off-site industrial landfill because this seemed a reasonable representation of the varied potential disposal or land-based use scenarios. We modeled hydrogeological conditions representative of conditions within a 100-mile radius of the Delaware facility. We also qualitatively assessed an off-site municipal landfill scenario. We found risks of concern via the ground-water pathway for both the industrial and the municipal landfill practices. Although the Delaware plant had been stockpiling their Iron Rich ™ onsite, the facility has no active landfill capacity, and thus we focused our assessment on the off-site disposal scenario. Both the Tennessee and Mississippi facilities operate on-site landfills. Moreover, both of these facilities segregate their wastewater treatment solids from their condenser solids. We modeled risks from the disposal of wastewater treatment sludge, comprised of exempt and non-exempt solids, in an on-site landfill at the Tennessee facility for potential releases to surface water, but we did not find risks of concern for this scenario (see 65 FR 55761).

In meetings and comments submitted after the close of the comment period, DuPont stated that it had reevaluated the potential for beneficial off-site uses of the Iron Rich ™. DuPont indicated that, in contrast to their plans described prior to proposal and in their initial comments, the company now would not pursue these beneficial use options because of the potential risks that their modeling had predicted could arise from dioxin contaminants in the material as it is currently formulated.[21] DuPont stated that it is looking into the availability of effective treatment processes to reduce the concentrations of organics in the material and confirmed that the Delaware facility was planning to dispose of the Iron Rich ™ in an off-site landfill located outside of the corridor near the plant (e.g., a commercial landfill in South Carolina was identified as a potential disposal site).

Given the recent indications from DuPont that it no longer intends to try to market the Iron Rich ™, and that they are now landfilling the material off-site, we believe that our initial assumptions for management of these wastes are valid. Thus, our evaluation of the risks presented by the waste solids in an industrial or municipal landfill is appropriate and represents a reasonable approach to assessing risks for a listing determination.

DuPont also argued that EPA ignored the fact that the two other plants (in Tennessee and Mississippi) disposed of their solids in on-site landfills, and that EPA's analysis of the wastes at the Tennessee plant showed no risks of concern. As described in more detail below, we are finalizing a listing only for the ferric chloride residues and not the wastewater treatment sludge or condenser solids. This means that the only plant that generates the listed waste is the Delaware facility. Therefore, the management practices at the Tennessee or Mississippi plants are not directly relevant to the potential risks from the listed solids and we did not need to determine whether or not it was likely that these plants would dispose of their solids off-site.

5. Scope Issues—Exempt Mineral Processing Wastes

a. Condenser Solids

As explained in the proposal, we consider the solids from the initial reaction of coke and ore which are separated from the gaseous product stream in the condenser unit to be Bevill-exempt. However, at the time of proposal we thought that facilities commingled these exempt solids after they had been removed from the process with a separate, non-exempt waste stream containing vanadium impurities (generated during titanium tetrachloride purification). We thought gaseous titanium tetrachloride was recovered from this mixture of commingled wastes and returned to the process, and that solid materials, consisting of the condenser coke and ore solids, as well as the non-titanium tetrachloride portion of the vanadium impurities stream, remained outside the process and were ultimately disposed of as a waste. We proposed that the solids derived from the vanadium impurities stream would be covered by the K178 listing.

DuPont and other commenters clarified that the vanadium impurities stream is returned via closed pipes to the condenser unit, and is not, as we previously had thought, commingled with the coke and ore solids after they are removed from the condenser. Commenters clarified that the vanadium impurities stream contains significant levels of titanium tetrachloride; insertion of this stream into the condenser allows for the recovery of this product value. Solid impurities from the vanadium stream drop out of the condenser with the solids from the initial coke and ore reaction. Commenters also clarified that the cooler temperature of the vanadium impurities stream facilitates the operation of the condenser unit. Further, they explained that chloride and chloride-ilmenite plants have been configured in this manner for at least 20 years. Based on these factors, they argued that the vanadium impurities stream is not a waste until it exits the condenser with the solids from the coke and ore reaction.

We now understand that the residuals from the vanadium impurities stream leaves the process as an integral component of the coke and ore solids. Consequently, we no longer consider the vanadium impurities stream to be a separate waste. Moreover, because the residuals from the vanadium impurities stream are not a separable stream when they leave the process, it is now clear that they are Bevill-exempt because they are an integral component of the coke and ore solids.

For these reasons, we have decided to modify our proposed position on the Bevill status of the vanadium impurities stream. The residuals that exit the condenser are part of the solids from the production of titanium tetrachloride exempt under 40 CFR 261.4(b)(7)(S). This supersedes all earlier positions expressed on the Bevill status of the vanadium impurities stream as we now are aware that we previously misunderstood the details of the process.

However, as noted in the proposed rule, we may in the future consider whether we should reassess the status of these wastes as exempt mineral processing wastes. We believe that there may be a need to assess whether future regulatory action is justified for the solids from titanium dioxide manufacturing because they contain significant concentrations of manganese and dioxin. The impacts associated with the presence of these two constituents were not considered at the time the Bevill exemptions were promulgated.

b. Wastewater Treatment Sludge

In the proposal, we explained that the Bevill exemption extends to the portion of the wastewater treatment sludge

[21] "Summary of Meeting Between EPA's Office of Solid Waste and Representatives from DuPont, April 3, 2001. See also letters dated April 16, 2001 and April 27, 2001 to Lillian Bagus, EPA from Gregg Martin, DuPont regarding "Edge Moor Iron Rich ™ Staging Area Screening Assessment."

derived from treatment of titanium tetrachloride wastewaters (and conversely does not exempt the portion of the sludge derived from treatment of titanium dioxide wastewaters). Our position on this issue remains unchanged. Comments supporting this position were submitted by various manufacturers and trade organizations. We did not receive any negative comments on this topic. We continue to believe that this interpretation is consistent with the language of the 1989 Bevill exemption. Consequently, sludge containing solids from the production of titanium tetrachloride are exempt. Sludge containing solids from oxidation and finishing operations are non-exempt. All three facilities commingle their wastewaters and, therefore, generate commingled sludges that are partially Bevill exempt and partially non-exempt. The portion of the wastewater treatment sludge that is non-exempt varies at each facility.

c. Ferric Chloride Residues

Solids are removed from ferric chloride acid at all three DuPont facilities. At the Mississippi and Tennessee plants, the solids are the condenser solids described previously. They are removed from the ferric chloride acid prior to any additional processing of the acid and are exempt mineral processing wastes.[22] The Delaware facility's process is slightly different, generating two separate solids streams, the exempt condenser solids, as well as ferric chloride residues generated from subsequent manufacture of ferric chloride. The Delaware plant sells its ferric chloride as a wastewater and water treatment agent. Prior to sales, the Delaware plant adds a processing chemical (chlorine) to the acid stream, then filters the acid to remove solids. As described in our proposal, the residue removed from the ferric chloride after chlorine addition is generated from the production of ferric chloride. DuPont is no longer engaged in the manufacture of titanium tetrachloride at this point. The residue, therefore, is not a mineral processing waste exempt under 261.4(b)(7)(ii)(S).

Although we did not consider the ferric chloride residues to be wastes generated during the process of producing titanium dioxide, we included them within the scope of the proposed K178 listing to be promulgated under section 3001(e) of RCRA because these residues were being commingled with other non-exempt residues we planned to list under this authority.

In public comments, DuPont argued that the addition of chlorine does not affect the chemical composition of the resultant filtered residues and that the simple addition of chlorine is not a significant enough chemical step to determine that the processing of acid has begun. DuPont contends that we mistakenly assumed that the addition of chlorine to the ferric chloride stream generates or affects the unreacted coke and ore solids that are separated from that solution. DuPont noted that these solids already have been separated from titanium tetrachloride in the titanium dioxide production process, are carried along with the "waste acid" through the point of chlorine injection, are not affected by the chlorine injection, and are Bevill-exempt whether separated from the ferric chloride solution before or after chlorine injection. DuPont believes we should recognize that the ferric chloride solids retain their same character and exempt status after the addition of chlorine.

DuPont also contends that the proposal to include the solids from the ferric chloride, which are added to the Iron Rich™ and also collect in ferric chloride product storage tanks and impoundments, would contradict EPA's prior Bevill determinations. DuPont noted that during prior Bevill determinations, EPA sampled these solids and agreed that they were exempt. They argue the exempt status of these solids was understood not only by the facility and EPA but also by the regulating state agency.

DuPont further contends that the proposal also would contradict the Agency's standards for distinguishing mineral processing from chemical manufacturing, 54 FR 36592, 36616 (September 1, 1989), and its clarification of "uniquely associated" wastes in the Phase IV LDR rule. DuPont argued that the solids, when disposed of, are solid wastes that originate from mineral processing operations.

We disagree with these comments. We believe that wastes from the production of ferric chloride are not wastes that are exempt under the Bevill exemption regulations. They are not extraction and beneficiation wastes because the input material (waste acid containing solids from the titanium dioxide manufacturing process) has gone through mineral processing. Once mineral processing begins, all subsequent operations are not considered extraction/beneficiation. See 54 FR at 36619, September 1, 1989. Even if they were considered mineral processing wastes, they are not wastes from any of the 20 specific mineral processing wastes exempted under 261.4(b)(7)(ii). As explained in the proposal, we believe that once the Delaware facility adds chlorine to the waste acid stream, it is engaged in the manufacture of ferric chloride, not the manufacture of titanium tetrachloride, the material for which wastes are exempt under 261.4(b)(7)(ii)(S).

In support of our position, we note that the manufacture of ferric chloride is in no way necessary to the manufacture of titanium tetrachloride or titanium dioxide. The facility does not use any of the ferric chloride in any step of the process that produces either of the two titanium products.

Regarding the Delaware plant, the commenter asserts that the addition of chlorine in the process of making ferric chloride does not alter the solids in the waste acid that it later filters out and mingles with all of its other process solids. This is irrelevant. The issue for the purpose of the Bevill exemption is whether the facility is making titanium tetrachloride or some other product. In determining whether a waste falls within the scope of Bevill exemption for one of the 20 mineral processing wastes, we have never engaged in extending the Bevill applicability to the production of a different product based on an analysis of the similarities or dissimilarities of the waste material.

Moreover, we disagree with this assertion. The waste matrix of concern contains both solids and a measurable amount of liquid waste acid. While we are not convinced that the solids are unaffected by the addition of chlorine, clearly the liquid acid portion of the waste solids has been chemically altered by the addition of chlorine (i.e., the purpose of the chlorine addition is to shift the balance between ferrous and ferric chloride in the acid.[23] Therefore, we believe that at a minimum the acid component of the ferric chloride residue waste matrix does undergo some chemical change as a result of the ferric chloride manufacturing process.

The commenter also observes that we sampled the waste solids from the production of ferric chloride in the mid-1980's, and, when we established the exemption for solid titanium tetrachloride wastes in 1991, we did not assert that these solids were not covered by the exemption. The commenter may be correct that our mid-1980's sample of commingled solids included some

[22] § 261.4(b)(7)(ii)(S): Chloride process waste solids from titanium tetrachloride production.

[23] See section 4.1 of DuPont's November 13, 2000 comments, as well as letter dated May 8, 2001 to Lillian Bagus, EPA, and Stephen Hoffman, EPA, from Gregg Martin, DuPont, regarding "Proposed K178 Hazardous Waste Listing of Ferric Chloride Solids".

solids filtered out of ferric chloride production. However, we did not know, at the time that we promulgated the titanium tetrachloride exemption, that the plant filtered out the solids after it added chlorine to the waste acid (i.e., began the manufacture of ferric chloride). The regulatory language, however, is sufficiently clear: EPA defined the exemption as applying to solids from the manufacture of titanium tetrachloride, not ferric chloride production.

Finally, the commenter asserts that the ferric chloride residues meet our three criteria for classification as an exempt manufacturing waste. The criteria as noted at 54 FR 36614–36620 (September 1, 1989) are: (1) Excluded Bevill wastes must be a solid waste as defined by EPA; (2) excluded solid waste must be uniquely associated with mineral industry operations; and (3) the solid waste must originate from mineral processing operations as defined by five specific criteria.

We disagree. We agree with the commenter that the ferric chloride residues are "solid wastes" under the first criterion. However, the waste ferric chloride residues do not meet the second criterion. For a waste to be "uniquely associated" with the titanium tetrachloride mineral processing operation, the process that generates the waste must be necessary to the production of titanium tetrachloride. As explained above, the Delaware plant does not need to make ferric chloride to manufacture titanium tetrachloride, the only material produced there that gives rise to Bevill-exempt wastes. The plant uses no portion of the ferric chloride produced. Since the ferric chloride residues fail to meet this criterion, we have no need to determine whether they meet the third criterion. Moreover, we would take the position that the ferric chloride residues were not exempt even if we agreed that they "originated" in the production of titanium tetrachloride. Residues removed after the facility begins the manufacture of the distinct ferric chloride product (by the addition of chlorine) are not solids from the manufacture of titanium tetrachloride.

After the close of the comment period, representatives of the commenter told us that the Delaware plant planned to reconfigure its operations.[24] The plant plans to remove the bulk of the residues from the waste acid prior to adding chlorine. The plant also might remove a much smaller amount of solids from the ferric chloride product stream after it adds chlorine. Under such a configuration, we would not consider solids removed from the waste acid prior to the addition of chlorine to be residues from the manufacturing of ferric chloride. They would be solids from the manufacturing of titanium tetrachloride and would be exempt under 261.4(b)(7)(ii)(S). They would not be subject to today's listing. Any residues that the facility removed after it added chlorine to the waste acid stream, however, would continue to be residues from the production of ferric chloride and would continue to be subject to today's listing.

6. Comments Related to the Constituents of Concern and Modeling Issues

a. Toxicity of Manganese

We received comments from DuPont and other commenters on our proposal to list K178 on the basis of human health risks stemming from manganese toxicity. These comments are available in the docket for today's rule. EPA is deferring those elements of our proposal related to manganese. See section IV.B. of the preamble for further clarification.

b. Presence of Thallium in DuPont Wastes

DuPont submitted comments arguing that thallium is not present in its wastes and that thallium should not be used as a basis for listing. DuPont criticized our analysis for thallium in the Delaware Iron Rich™ sample, arguing that our thallium TCLP value for Iron Rich™ is artificially high and that our thallium SPLP value for Iron Rich™ is suspect. In light of these comments, we re-examined our analysis and determined that our thallium TCLP and SPLP results are valid. See Response to Comment Background Document for a more detailed discussion of our evaluation of the validity of DuPont's criticism of our analysis for thallium.

DuPont also argued that its own sampling and analysis of Iron Rich™ shows that thallium is not present in the levels suggested by EPA. DuPont provided analytical data characterizing eight Iron Rich™ samples (plus one duplicate). These samples were collected from the filter press where we collected our sample of Iron Rich™ (DPE–SO–01) and thus are comparable to our sample. All 8 samples and the duplicate were analyzed for total, TCLP and SPLP concentrations of 20 metals, including thallium. We carefully reviewed DuPont's data package. DuPont conducted metals analyses using two analytical methods: inductively coupled plasma with mass spectroscopy (ICP–MS, SW–846 Method 6020B) and inductively coupled plasma (ICP, SW–846 Method 6010B). Our review of these data for DuPont's Iron Rich™ samples showed that there are numerous analytical problems with DuPont's ICP–MS analyses (see Assessment of Analytical Data Submitted by DuPont in Response to Proposed Inorganic Chemical Industry Hazardous Waste Determination for K178 (October 2001), available in today's docket). Due to these problems, we chose not to consider the ICP–MS results and have assessed only DuPont's more reliable ICP results. Table IV–2 compares our ICP results.

TABLE IV–2.—THALLIUM IN IRON RICH™, DELAWARE

Analysis	EMI–1 ~ 8	EPA Sample (DPE–SO–01)
Total–6010 B (mg/kg)	<7.1	3.7 (23.6 DuPont split)
TCLP–6010 B (mg/L)	<0.250	0.28 (0.27 EPA duplicate)
SPLP–6010 B (mg/L)	<0.050	0.012

As Table IV–2 indicates, DuPont did not detect total or TCLP/SPLP thallium in its Iron Rich™ samples (EMI–1 to EMI–8 and EMI–6–Dup), although their laboratory did not achieve detection limits as low as our laboratory achieved. We detected total and SPLP thallium in our Iron Rich™ sample (DPE–SO–01) at levels that are lower than DuPont's detection limits for total and SPLP thallium analysis; we also detected TCLP thallium at a level close to

[24] Letter to Lillian Bagus, EPA from Gregg W. Martin, DuPont regarding "Edge Moor Iron Rich™ Staging Area Screening Assessment", dated April 16, 2001. See also DuPont/EPA April 3, 2001 meeting notes.

DuPont's detection limit for TCLP thallium analysis. Thus, DuPont's data fail to demonstrate that our SPLP analyses are suspect with regard to thallium. DuPont's newly submitted ICP total, TCLP and SPLP thallium results are very similar to our ICP total, TCLP and SPLP thallium results. The results of earlier analytical work by DuPont also show that our values were not artificially high. DuPont's split total thallium value (23.6 mg/kg) for Iron Rich ™ (collected and analyzed at the same time our sample was collected prior to proposal) was even higher than our total thallium result (3.7 mg/kg). Note that our laboratory, in the course of analyzing the Iron Rich ™ sample, conducted a second thallium analysis with a 10-fold dilution which resulted in a total thallium concentration of 18.4 mg/kg.

DuPont also argues that, based on process knowledge, DuPont does not expect thallium to be present in its wastes at the levels suggested by EPA for any of the three chloride-ilmenite facilities. DuPont said its analyses of ores used in the prior year indicate that thallium generally is not present at levels above 0.050 mg/kg. The highest thallium level in ore detected by DuPont was 0.171 mg/kg, which DuPont estimates would correspond to a solids level of 0.350 mg/kg. DuPont's arguments are not convincing because: (1) No ore analyses were presented for review; (2) DuPont did not describe whether it's limited review was representative of the ores associated with our sampling event or ongoing operations; and (3) DuPont did not assess its other primary raw material, petroleum coke, for thallium. Sampling data from prior analyses submitted by DuPont confirm that thallium has been present in the Iron Rich ™ [25] and similar wastes [26] at levels significantly above what DuPont estimated from its ore analyses.

In summary, we disagree with DuPont's assertion that thallium is not present in its waste.

[25] See Attachment to DuPont Edge Moor's § 3007 survey entitled "Split Metals Analyses from Region III Package," Sample No. 3228296, Iron Rich, with total thallium concentration reported at 23.6 mg/kg. See also January 6, 2000 letter to Michael (sic, Max) Diaz, EPA from Jonathan Bacher, VFL, regarding DuPont Iron-Rich Utilization, VFL Technology Approval Application, Attachment I: STL Product Analysis, Sample Number 91941001, with total thallium concentration reported at 28.6 mg/kg.

[26] See Exhibit 13–4 of "Report to Congress on Special Wastes from Mineral Processing," July 1990. See also Tables 3.19, 3.21, and 3.27 of the Titanium Dioxide Listing Background Document for the Inorganic Chemical Listing Determination, August 2000.

c. Thallium Distribution Coefficient

DuPont submitted comments challenging our assumptions for the thallium soil-water distribution coefficient (K_d). We found that these comments had merit. As a result, we have modified our proposed findings for the non-exempt wastewater treatment sludge and ferric chloride residues with respect to the industrial solid waste landfill scenario. The impact of these comments was less marked for the municipal solid waste landfill scenario for ferric chloride residues.

The Risk Assessment Background Document for the proposed rule stated that a literature search of sorption studies found no published data on the K_d for thallium. In lieu of published data, we relied on a graphical presentation of data shown in an unpublished draft report in order to establish a range over which to vary K_d and then assumed a log uniform distribution within that range. Out of concern for the absence of published data, DuPont conducted a study of thallium K_d and submitted the data and study documentation to EPA. The DuPont study was done on three different soil types representing a range of soil conditions. Although the data are not inconsistent with the range of K_d values we used in the risk assessment, the DuPont data fall in the upper half of the K_d distribution. Moreover, the DuPont data exhibit a clear concentration dependence and, for two of the three soil types, the data lie in the upper quartile of the K_d distribution at the relatively low concentrations actually found in the Iron Rich™ leachate. In addition, DuPont submitted modeling analyses that show that the model-predicted ground-water concentrations are relatively sensitive to the value of K_d within the range of K_d's of the DuPont data, with higher K_d values producing lower ground-water thallium concentrations.

After examining the data presented by DuPont, we agree that the K_d values from this study appear to be more appropriate to use in assessing risks from the wastes in question. Given this, the dilution and attenuation of thallium in the waste leachate from the non-exempt ferric chloride residues and the non-exempt wastewater treatment sludge is likely to be greater than (and consequently, the risks less than) that estimated in the risk assessment for the proposed rule. However, as explained elsewhere in today's notice, we continue to believe that the ferric chloride residues pose risk due to thallium in municipal solid waste landfills.

d. Ground-Water Mounding

DuPont submitted comments regarding the assumptions we used in our ground-water modeling for infiltration and recharge rates. We agree that these assumptions are somewhat problematic, although we disagree with the remedies suggested by the commenter. This issue was important in our formulation of our final decisions for both the non-exempt wastewater treatment sludge and ferric chloride residues for the industrial landfill scenario, but not for the municipal landfill scenario.

As explained in the Risk Assessment Background Document for the proposed rule, the ground-water modeling analysis at proposal for the combined nonexempt nonwastewaters from the Delaware facility used a set of infiltration and recharge rates that were generated based on a water balance through an assumed unlined landfill under a variety of climatic and soil conditions. However, depending on the characteristics of the underlying aquifer, the infiltration and recharge rates derived from the water balance may exceed the capacity of the subsurface to absorb the water. As a result, mounding of the water table may occur in the ground-water model beneath the landfill. DuPont submitted comments on the proposed rule stating that this model-induced mounding is excessive and can lead to ground-water velocities that are unrealistically high. In their comments, DuPont implemented several different approaches to mitigate the impact of mounding on the model-predicted ground-water concentrations, including modifying the EPACMTP ground-water model. These alternative approaches give larger dilution and attenuation factors (DAF's) than the approach used in the unmodified model for the proposed rule.

We evaluated DuPont's comments and conclude that excessive mounding of ground water can, in fact, occur with the model. However, as discussed in the comment response document for today's rule, we disagree with the alternative approaches suggested by the commenter. These approaches primarily involve substantial reductions in the rate of waste leachate infiltration and, for this reason, they result in higher DAF's. We think a preferable approach within the current model framework is to implement a screening procedure to eliminate incompatible combinations of infiltration and recharge rates and aquifer characteristics. To evaluate what the impact of one such procedure might be, we implemented a simple procedure on a trial basis whereby all instances in

which the water table was calculated to rise above the ground surface were eliminated. As described in the Response to Comments Background Document, this procedure resulted in a large number of combinations being eliminated. However, the DAF's at the 5th and 10th percentiles of the distribution were not greatly affected (i.e., they were within a factor of two of the DAF's modeled in the proposed rule).[27] Therefore, we believe that the mounding phenomena, while not infrequent, also is not of such magnitude that it modifies our primary conclusion regarding the potential risks posed by these wastes. As indicated elsewhere in today's notice, EPA continues to be concerned by potential risks from co-disposal with municipal solid waste in a municipal solid waste landfill, given the TCLP test results.

7. Wastewater Treatment Sludge

a. What Was Our Proposed Listing Determination?

Wastewater treatment sludge is one component of the proposed listing for non-exempt nonwastewaters generated from the chloride-ilmenite process. We based our proposal to list this waste component as hazardous on our modeling of the combined nonwastewaters generated at the Delaware facility, which showed that manganese and thallium leach from the combined waste at levels that may pose significant risk to human health from ground-water ingestion.

Wastewater treatment sludges are generated at each of DuPont's chloride-ilmenite facilities from the treatment of commingled wastewaters. The wastewaters are generated from the production of titanium tetrachloride, as well as from the production of titanium dioxide. As described previously in this notice, we proposed an interpretation of the Bevill exemption for this sludge that stated that the portion of the wastewater treatment sludge derived from treatment of titanium tetrachloride wastewaters would be eligible for exemption, while the portion of the sludge derived from titanium dioxide wastewaters (e.g., oxidation and finishing wastewaters) would be nonexempt and subject to the proposed listing determination.

DuPont submitted comments arguing that the combined solids listing should not include wastewater treatment sludges because they have lower levels of hazardous constituents and, therefore, do not contribute significantly to the risk posed by the combined wastestream. Moreover these wastes are generated separately from the condenser solids and ferric chloride solids. The Delaware facility commingles them with the other two types of solids. The Tennessee and Mississippi facilities dispose of them separately, as could the Delaware site (as we assume that they would do if we excluded them from the listing due to cost savings). Consequently, we assessed these sludges as if they were a separate wastestream. As explained below, we concluded that, as a separate wastestream, the wastewater treatment sludges do not present significant risks, and we are not taking final action to list them.

b. What Was the Technical Basis for the Proposed Listing?

To support our proposed listing determination, we collected one sample of chloride-ilmenite wastewater treatment sludge from the Tennessee facility. This sample was taken from a pond used to dewater wastewater treatment sludge prior to landfilling (i.e., the "Hillside Pond"). This sample contains both exempt and non-exempt wastewater treatment sludge. In addition, we collected a sample of the commingled Iron Rich™ from the Delaware facility. This sample also contains both exempt and non-exempt wastewater treatment sludge. Wastewater treatment sludge accounts for ten percent of the commingled Iron Rich™. We did not sample the wastewater treatment sludge generated at the Mississippi facility. As stated in the proposal, we believe that our sampling and modeling of the sludges generated at the Tennessee and Delaware sites provides an appropriate surrogate for the waste generated at the Mississippi facility, given the similar nature of the processes at all three facilities.

Table IV–3 provides a summary of the analytical data for the Iron Rich™ and Hillside Pond samples that were used to support the proposed listing.

TABLE IV–3.—CHARACTERIZATION OF WASTEWATER TREATMENT SLUDGE FROM THE CHLORIDE-ILMENITE PROCESS, TITANIUM DIOXIDE

Constituent of concern	Iron Rich™ (Delaware) (10% WWT solids)			Hillside Pond WWT solids (Tennessee)		HBL (mg/L)	AWQC (mg/L)	
	Total (mg/kg)	TCLP (mg/L)	SPLP (mg/L)	Total (mg/kg)	SPLP (mg/L)		Human health	Aquatic life
Antimony	0.9	[2]0.021	0.02	0.7	0.021	0.006	0.014	n/a
Arsenic	2.2	<0.0035	[2]0.001	2.8	<[1]0.0035	0.0007	1.8E–05	0.15
Barium	178	[2]2.4	0.92	49.6	0.12	1.1	n/a	n/a
Boron	30	1.7	0.61	24.5	0.45	1.4	n/a	n/a
Lead	309	[2]0.032	[2]0.0032	42.4	[2]0.002	0.015	.....	0.0025
Manganese	10,600	252	16.3	2,890	1.5	0.7	0.05	n/a
Nickel	91.8	0.5	<0.005	59.8	0.007	0.31	0.61	0.052
Thallium	3.7	0.28	0.012	7.2	<0.0022	0.001	0.0017	n/a
Vanadium	240	[2]0.0003	<0.005	1,060	<0.005	0.14	n/a	n/a

n/a: not applicable
[1] One half the detection limit was used as a screening level.
[2] Results are less than the typical laboratory reporting limit, but are greater than the calculated instrument detection limits.

We used our SPLP results for the Hillside Pond sample to screen the on-site waste management scenarios at the Tennessee site (i.e., industrial landfill and impoundments). The primary constituents of concern in the SPLP extract were antimony and manganese. Our assessment of potential releases of these constituents to ground-water, which would discharge into the nearby river did not show sufficient risk to human health or aquatic life to serve as

[27] Although there is not a direct correspondence between DAFs and risk, lower DAFs result in higher risks. Therefore, the 5th and 10th percentile DAFs are of particular interest relative to high end risks, e.g., at the 90th and 95th percentiles of the risk distribution.

a basis for listing. In addition, we used our SPLP results for the Iron Rich™ which contained 10 percent wastewater treatment sludge to model an off-site industrial landfill scenario for the Delaware waste. Based on the risk associated with this scenario for manganese and thallium, and the commingled nature of the wastes, we proposed to include the non-exempt portion of the wastewater treatment sludge within the scope of the listing, which would have applied to all three facilities.

As described in the Titanium Dioxide Background Document, our analytical data also showed that chlorinated dioxins and furans are present in the Hillside Pond wastewater treatment sludge (402 ppt TCDD TEQ), as well as in the Iron Rich™ (57 ppt TCDD TEQ). However, we concluded, based on engineering assessment of the process, that the vast majority of the dioxins and furans were associated with the Bevill-exempt portions of the wastewater treatment sludges. Therefore, we did not assess potential risks from the dioxins and furans from the non-exempt wastewater treatment sludge.

c. What Is the Basis for the Final "No List" Determination?

In its comments, DuPont argued that its wastewater treatment sludges do not have the same composition as the Iron Rich™ which served as the basis for the proposed listing. DuPont argued that the analytical data for the Iron Rich™ sample is not characteristic of wastewater treatment sludge because Iron Rich™ consists predominantly of coke and ore solids. DuPont argued that the coke and ore solids and the wastewater treatment sludges are not chemically similar.

In particular, DuPont argued that the wastewater treatment sludges generated at its three chloride-ilmenite facilities do not contain manganese or thallium (the two constituents for which we proposed to list the waste as hazardous) at levels of concern. To support its conclusion, DuPont collected 53 samples of its wastewater treatment sludges and conducted total and SPLP leachate analyses of the samples for 20 metals, including manganese and thallium. DuPont used these analytical results to argue that our risk assessment would show significantly less risk if we were to assess the wastewater treatment sludges alone (rather than as a component of the Iron Rich™). (As explained below, DuPont's new totals and SPLP leachate data contained new information on arsenic and antimony that caused us to reassess risks from those constituents as well.)

DuPont also provided sampling and analytical data for its wastewaters from oxidation and finishing in an attempt to demonstrate that the non-exempt sludges derived from treatment of these wastewaters would not contain significant levels of manganese or thallium.

We assessed these new data in the context of the management scenarios we evaluated for the proposal and in light of the other comments (described above) that we believed had merit (e.g., thallium K_d, ground-water mounding). We reassessed the industrial landfill scenario using DuPont's new SPLP data for off-site management of the Delaware wastewater treatment sludge and on-site management of the Tennessee and Mississippi wastewater treatment sludges. We reassessed the municipal landfill scenario using DuPont's new totals data for off-site management of the Delaware wastewater treatment sludge. Because, however, of our decision to defer action on manganese (see section IV.B), the following discussion focuses instead on thallium, antimony and arsenic. The results of these assessments are set out below.

We also assessed DuPont's oxidation and finishing wastewater data but determined that we could not draw meaningful conclusions about the hypothetical concentration of constituents of concern in theoretical wastewater treatment sludges that might form from separate disposal of oxidation and finishing wastewater treatment sludges, if DuPont were to isolate them.

(1) Assessment of Industrial Landfill Scenario for Wastewater Treatment Sludges

Thallium: In its comments, DuPont contends that thallium is not present in its wastewater treatment sludges. DuPont provided data intended to support its claim that its wastewater treatment sludges do not contain thallium. Analytical results submitted by DuPont for the wastewater treatment sludges generated at all three facilities indicate that samples analyzed by DuPont contain no leachable thallium at levels above the HBL. However, as explained in our report, Assessment of Analytical Data Submitted by DuPont in Response to Proposed Inorganic Chemical Industry Hazardous Waste Determination for K178 (October 2001) which can be found in the docket for today's rule, we have significant concerns with the laboratory results provided by DuPont with regard to the presence of total and leachable thallium in the wastewater treatment sludges. Due to our concerns regarding the validity of DuPont's SPLP analytical results for thallium, we cannot agree that DuPont's data demonstrate that thallium is not present in the wastewater treatment sludges. For example, DuPont's ICP (SW6010) thallium data for the Tennessee plant showed thallium detected at levels below the method detection limit; the average concentration of these tentative detections is 0.014 mg/L. While we generally would not rely on these type of tentative data for the purposes of listing a waste, these results contradict DuPont's claim that the wastewater treatment sludge does not contain thallium at levels comparable to those we detected in the Iron Rich™ sample. Therefore, we are continuing to use our measurement of 0.012 mg/L in Iron Rich™ as the thallium concentration for our risk assessment. Table IV–4 provides a summary of the validated thallium SPLP data.

TABLE IV.–4.—THALLIUM SPLP RESULTS FOR DUPONT WASTEWATER TREATMENT SLUDGES AND IRON RICH™ (MG/L)

Waste description	DuPont	EPA
Delaware wastewater treatment sludge ...	<0.053	NA
Tennessee pond sludges	*<0.053	<0.0022
Mississippi pond sludges	<0.053	NA
Delaware Iron Rich™	<0.050	0.012

Thallium HBL = 0.001 mg/L.
NA: not analyzed.
*Thallium was detected in some samples at levels below the method detection limit.

As described previously, DuPont argued that our thallium modeling results overestimate mobility, particularly as impacted by the thallium K_d values we used. DuPont's data indicate that at low concentrations (e.g., on the order of 0.01 mg/L), thallium K_d's lie within the upper end of the range we used in the risk assessment for the proposed rule (>300 to ~800 L/kg for the DuPont data vs. 1 to 1000 in the proposed rule). Taking these data into account, we expect that the hazard quotient for thallium in the wastewater treatment sludges (which we had estimated in the Iron Rich reduced volume analysis for the proposed rule as 0.9 and 1.6 for a child at the 90th and 95th percentiles, respectively) would be reduced to below our listing threshold for the industrial landfill scenario. Consequently, we have changed our position on thallium risks from wastewater treatment sludges in industrial landfill scenarios. We no longer believe that thallium in these wastes poses significant risks.

Arsenic: The data that we collected to support the proposal at the Delaware and Tennessee facilities showed arsenic levels exceeding the HBLs. However, arsenic screened out when we assessed the ground water to surface water pathway at the Tennessee facility. Similarly, our modeling of ground-water risks at the Delaware facility did not predict risks of concern.

Analytical data DuPont submitted in its comments indicate that the combined wastewater treatment sludges generated at the company's DeLisle, Mississippi facility have arsenic levels (as measured by the SPLP) significantly above those that we observed from our sampling and analysis of the Iron Rich™ generated at the Delaware facility and the Hillside Pond sludge generated at the Tennessee facility. (See our review of these data in Appendix C of Assessment of Analytical Data Submitted by DuPont in Response to Proposed Inorganic Chemical Industry Hazardous Waste Determination for K178, October 2001.) DuPont's data show that the average arsenic SPLP levels in the wastewater treatment sludges generated at the Mississippi facility range between 0.031 and 0.11 mg/L, while the HBL for arsenic is 0.0007 mg/L.

We do not predict that these data would support a hazardous waste listing determination. Based on other modeling for potential ground-water releases at the Mississippi site, the wastes are unlikely to present significant risks. The Mississippi site-specific modeling for the proposed rule yielded relatively high dilution and attenuation factors (DAF) for metals. For example, the 10th percentile DAFs ranged from 865 to 8,859 (see Table 4–64 in the risk assessment background document in the docket for the proposal, Risk Assessment for the Listing Determinations for Inorganic Chemical Manufacturing Wastes: Background Document, August 2000). Therefore, it is unlikely that the arsenic levels found in the Mississippi facility's wastewater treatment sludges would present a significant risk, particularly given that we believe these wastewater treatment sludges will continue to be managed on-site. The facility reported in its § 3007 survey that the landfill is not scheduled to close until 2014. Given this readily available management capacity, we do not expect the facility would change their current practices and incur costs associated with shipment and offsite commercial waste management. Therefore, we have decided not to list the wastewater treatment sludges based on the presence of arsenic in the sludges generated at the Mississippi plant.

Antimony: As with arsenic, the data we collected in support of the proposal at the Delaware and Tennessee facilities showed antimony levels exceeding the HBLs. Antimony screened out when we assessed the ground water to surface water pathway at the Tennessee facility; our modeling of ground-water risks at the Delaware facility did not predict risks of concern.

Analytical data submitted by DuPont in comments indicate that the combined wastewater treatment sludges generated at the DeLisle plant have average antimony levels (0.026 mg/L, as measured by the SPLP) comparable to those we observed in our sampling and analysis of the Iron Rich™ (0.02 mg/L) and Johnsonville wastewater treatment sludge (0.021 mg/L). We do not believe these levels pose risk that warrants listing as hazardous waste.

(2) Assessment of Municipal Landfill Scenario for Wastewater Treatment Sludges

We assessed the municipal landfill scenario as plausible for the Delaware wastewater treatment sludges. (See the discussion below related to the plausibility of this scenario for ferric chloride solids, another component of the combined solids generated by the Delaware facility.) For the reasons set out above, we assumed that the comparable Tennessee and Mississippi sludges will continue to be managed on site in existing DuPont landfills. Although DuPont did not conduct TCLP analyses of the Delaware wastewater treatment sludges, we were able to assess the total constituent analyses and conclude that these solids would not likely pose risk if managed in a municipal landfill.

Thallium: DuPont did not detect thallium in any of its eight samples of the Delaware wastewater treatment sludges, with the exception of one value of 0.22 mg/kg that was qualified as questionable due to detection of thallium in associated analytical blanks. For the purposes of a worst case screening analysis, we used this qualified value as a theoretical maximum concentration, and then calculated a corresponding maximum theoretical TCLP concentration of 0.011 mg/L. To determine whether the commenter's concerns regarding the thallium distribution coefficient would reduce this hazard quotient below the listing threshold, we assessed the commenter's modeling runs. In their late comments, DuPont provided the results of a Monte Carlo run for thallium using a K_d of 300 L/kg (which DuPont stated was the appropriate value for this leachate concentration), which increased the 10th percentile DAF that corresponds to our modeling run of 3.9 to 119, a 30-fold increase; this DAF would reduce the theoretical TCLP concentration well below the thallium HBL of 0.001 mg/L. Therefore, we are not concerned that thallium in the Delaware wastewater treatment sludges is likely to pose risk in a municipal solid waste landfill scenario.

Antimony: In lieu of TCLP antimony data, we assessed the total antimony levels in DuPont's SW–846 Method 6010 analyses of combined exempt and non-exempt wastewater treatment sludge: antimony levels ranged from 1.9 to 3.8 mg/kg and were detected in all eight of the sludge samples. Each of these values was detected above the instrument detection limits, but below the method detection limit. See Appendix C of Assessment of Analytical Data Submitted by DuPont in Response to Proposed Inorganic Chemical Hazardous Waste Determination for K178, October 2001. Although we generally would not rely on this type of tentative data for the purposes of listing a waste, we used these values as worst case concentrations for the purposes of screening out the municipal solid waste landfill scenario for the non-exempt portion of the wastewater treatment sludge.

Initially, we calculated a maximum theoretical TCLP value using the maximum total antimony value reported for the wastewater treatment sludge (i.e., 3.8 mg/L divided by 20), yielding a worst case TCLP value of 0.19 mg/L. While this value clearly exceeds the antimony HBL of 0.006 mg/L, we recognized that the wastewater treatment sludge is comprised of exempt and non-exempt components, and that some proportion of this HBL exceedance would be associated with the exempt solids that are outside the scope of this listing determination. To isolate the portion of the risk that is associated with the non-exempt wastewater treatment sludges derived from treatment of oxidation and finishing wastewaters, we used DuPont's antimony analytical data for its major oxidation and finishing wastewater (RIN 13, dryer scrubber water) [28] to estimate what the concentration of antimony would be in the wastewater treatment sludge if (1) all of the antimony in this wastewater were concentrated in the sludge, and (2) this wastewater was the only source of antimony contributing to the sludge antimony concentration. We

[28] See Appendix C of Assessment of Analytical Data Submitted by DuPont in Response to Proposed Inorganic Chemical Industry Hazardous Waste Determination for K178, October 2001.

estimated this maximum theoretical total concentration of antimony from oxidation and finishing wastewaters in the wastewater treatment sludge to be 0.036 mg/kg (see Response to Comments Background Document in the docket for today's rule for the details of this calculation). This concentration is significantly lower than the measured antimony levels in the total wastewater treatment sludge samples, indicating that the non-exempt portion of the wastewater treatment sludge does not contribute much antimony loading to the overall sludge volume. Finally, to complete this screening analysis, we projected a maximum theoretical TCLP value of 0.002 mg/L from the maximum non-exempt antimony sludge concentration by dividing the total value by 20. This TCLP maximum value is below the HBL of 0.006 mg/L. We conclude from this analysis that it is unlikely that the non-exempt portion of the wastewater treatment sludge would pose risk from antimony if the waste were placed in a municipal solid waste landfill.

Arsenic: Although we have TCLP data for the combined Delaware facility wastestreams that make up Iron Rich, we have no TCLP data for the wastewater treatment sludge component of this waste. Also, DuPont did not conduct TCLP analysis of this waste in its post-proposal sampling effort. In lieu of such data, we estimated TCLP leachate values for the sludge by starting with the total arsenic levels in DuPont's data for Delaware wastewater treatment sludge and calculating a theoretical maximum TCLP value. Specifically, DuPont's ICP analysis indicated that arsenic was present in four of eight samples at levels above the instrument detection limit, but below the method detection limit. The average of these four values was 4.0 mg/kg. Although we generally would not rely on this type of tentative data for the purposes of listing a waste, we used these values as worst case concentrations for the purposes of our screening analysis. The theoretical maximum TCLP value associated with this average total concentration is 0.2 mg/L (4.0 mg/kg /20). We then used this value (instead of the measured Iron Rich™ TCLP value) to extrapolate risk from the risk values calculated for the proposal. This worst case analysis indicated that there could be risk (i.e., 2E–04) higher than our listing threshold; however, this analysis seriously overstated the potential risk associated with placing the non-exempt portion of the Delaware wastewater treatment sludge in a municipal solid waste landfill for a number of reasons. The actual risk associated with arsenic in this waste would likely not exceed the listing threshold if we conducted full-scale risk assessment without so many compounding conservative assumptions. These assumptions include: (1) We do not have actual TCLP data for this wastewater treatment sludge and have made worst case assumptions by assuming all the arsenic would leach out; (2) this screening analysis overestimates risk because it was based on the entire volume of Iron Rich, while the wastewater treatment sludge volume only accounts for 10 percent of the Iron Rich, and the non-exempt portion of the wastewater treatment sludge volume is very small; (3) this analysis relies on total arsenic concentrations that we estimated from analytical results that were below the method detection limit, which increases their uncertainty; (4) correcting the ground-water mounding problem identified by the commenter (see section 6.d above) also would tend to lower the estimated risk. After considering all of these factors, we do not believe we have sufficient evidence to list the non-exempt portion of the wastewater treatment sludge based on arsenic risk. The details of this analysis are provided in the docket for today's rule.

(3) What Is the Final Listing Determination for Wastewater Treatment Sludges?

We have made a final decision not to list the non-exempt wastewater treatment sludges because we do not believe this waste is likely to pose risk in either an industrial solid waste landfill or a municipal solid waste landfill, the plausible management scenarios for this waste.

8. Ferric Chloride Residues

Since we concluded that the vanadium component of the combined waste solids was Bevill-exempt, and found that the wastewater treatment sludge component did not pose risks justifying a listing, we assessed the last component of the combined solids separately. As explained below, we concluded that this component does pose significant risks, and we are taking action to list it today.

a. Where Are Non-Exempt Ferric Chloride Residues Generated?™

Ferric chloride residues that are subject to today's listing are generated at the Delaware plant wherever solids settle or are removed from the acid stream *after* initiation of ferric chloride manufacturing. Examples include residues that accumulate in acid storage tanks or surface impoundments. Ferric chloride residues also have been accumulating at the Delaware site in the facility's Cherry Island staging area as a component of Iron Rich™. To the extent that the accumulated Iron Rich™ is actively managed after the effective date of today's rule, those residues also will be subject to the listing.

In addition, while the Delaware facility is the only site currently impacted by this final listing, if other chloride-ilmenite plants began *manufacturing* ferric chloride for sales, any residues separated from their ferric chloride after initiation of ferric chloride manufacturing also would be subject to the listing.

Several commenters requested that we clarify whether the listing will impact solids that may settle out of or be removed from ferric chloride after the acid has been sold and transferred off-site. We intended to list only solids from the *manufacture* of ferric chloride. Our listing covers only residues generated while ferric chloride is being made and additional residues that settle out while the product is stored on-site at the ferric chloride manufacturing facilities (since that on-site storage is associated so closely with the manufacturing of the product). We did not intend for the listing to extend to residues that might be generated after this product is sent off-site. We have no data on management practices used off-site to ascertain how frequently ferric chloride purchasers or intermediates store ferric chloride purchased from various sources in the same tank. Nor do we have any analytical data to characterize any residues that might settle out from these off-site storage tanks. Therefore, we are clarifying that the listing does not include residues removed from ferric chloride after sale and transfer off-site. Note that residues generated off-site from storage and use of the ferric chloride acid product are not subject to the Consent Decree requirements for today's final rule because ferric chloride use was not covered by the Consent Decree. We also note that such residues would be subject to regulatory control if they exhibit any of the hazardous waste characteristics.

b. Summary of Available Data

We conclude that the ferric chloride residues closely resemble the Iron Rich™ samples that we collected, as well as those Iron RichTM samples collected by DuPont. Coke and ore solids are removed from the titanium tetrachloride process in several steps at the Delaware facility (all other chloride and chloride-ilmenite plants generate these solids in one step). The bulk of the solids are removed in a primary solids

separation step at the Delaware facility, and the ferric chloride residues are removed in the subsequent condenser step.[29] The only difference between these streams is that: (1) The ferric chloride residue contains the contribution of vanadium impurities (described previously in section 5.a above); and (2) the ferric chloride residue would also contain potentially higher concentrations of iron chlorides. The risks we are assessing are not related to either vanadium or iron chloride compounds. Both categories of waste are commingled to form Iron Rich™. DuPont described both categories of waste as being "coke and ore" and provided no arguments to the effect that the ferric chloride residues were more or less contaminated than the primary solids. We, therefore, conclude that the data characterizing the commingled Iron RichTM, which is 80 percent primary solids and 10 percent ferric chloride residues, is an appropriate surrogate for the ferric chloride residues. (The remaining 10 percent of the total volume consists of the wastewater treatment sludges discussed above).

Table IV–5 summarizes the available and valid EPA and DuPont analytical data (focusing on ICP analytical results, as described previously) for Iron Rich™ for the three metals that we modeled for the proposed listing and are assessing in this final rule (antimony, arsenic, and thallium).[30]

As explained below, DuPont's new data do not persuade us that this waste does not present significant risks. Even with DuPont's data, we continue to predict significant risks in offsite municipal landfills.

Finally, we noted that DuPont's data on antimony and arsenic show higher concentrations than our data. We reviewed this data and concluded that it did not support a listing based on an offsite industrial landfill scenario. DuPont's TCLP data for antimony and arsenic are somewhat uncertain, if valid, it would tend to corroborate our listing.

TABLE IV–5. SUMMARY OF ANALYTICAL DATA FOR IRON RICH™

[As surrogate for ferric chloride residues]

Constituent	Analysis	DuPont analyses								EPA sample DPE–SO–01	Health based level (mg/L)
		EMI–1	EMI–2	EMI–3	EMI–4	EMI–5	EMI–6	EMI–7	EMI–8[a]		
Antimony	Total	3.5	3.66	3.55	<2.2	<2.2	3.96	3.11	3.17	0.9	
	TLCP	0.17	<0.155	<0.155	<0.155	<0.155	<0.155	<0.155	<0.155	0.021	0.006
	SPLP	0.0571	<0.031	0.044	0.041	0.056	0.048	<0.031	0.0248	0.02	
Arsenic	Total	<3.1	4.33	<3.1	<3.1	<3.1	<3.1	4.96	<3.1	2.2	
	RCLP	<0.22	<0.22	<0.22	<0.22	<0.22	<0.22	<0.26	<0.22	<0.0035	0.0007
	SPLP	<0.043	<0.043	<0.043	<0.043	<0.043	<0.043	<0.043	<0.043	0.001 (1)	
Thallium	Total	<7.1	<7.1	<7.1	<7.1	<7.1	<7.1	<7.1	<7.1	3.7	
										23.6 Dupont split analysis. 18.4, EPA analysis at 10x dilution.	
	TCLP	<0.250	<0.250	<0.250	<0.250	<0.250	<0.250	<0.250	<0.250	0.28	0.001
										0.27 EPA duplicate analysis.	
	SPLP	<0.050	<0.050	<0.050	<0.050	<0.050	<0.050	<0.050	<0.050	0.012	

(1) Results are less than the typical laboratory reporting limit, but are greater than the calculated instrument detection limits.

c. Assessment of Industrial Solid Waste Landfill Scenario for Ferric Chloride Residues

To respond to DuPont's comments, we reexamine our proposed findings regarding significant risk in an off-site industrial solid waste landfill scenario for the ferric chloride residues generated at the Delaware facility. As discussed earlier, this plant is the only generator of the ferric chloride residues from the production of ferric chloride and this plant has no on-site capacity for landfilling. The plant is currently shipping the waste off-site for Subtitle D landfilling; clearly our modeled management scenario continues to be relevant.

The proposal described risk associated with the entire volume of Iron Rich™, as well as with a reduced volume (10%) of waste, in an off-site industrial landfill scenario. DuPont reported that the ferric chloride residues account for 10 percent of the Iron Rich™ volume. Therefore, we believe that the reduced volume analysis conducted for the proposed rule (see 65 FR 55763) is an appropriate framework to use in reexamining risks for the ferric chloride residues.

Our reexamination, using DuPont's SPLP results is presented below.

Thallium: DuPont's thallium SPLP detection limits (<0.050 mg/L) exceed our analytical result of 0.012 mg/L. We do not believe DuPont's data refutes ours. While we found risk at proposal associated with our analytical results, we believe the commenter's previously discussed concerns regarding the thallium distribution coefficient (see section 6.c above) have merit. DuPont's data indicate that at low concentrations (e.g., on the order of 0.01 mg/L), thallium K_d's lie within the upper end of the range we used in the risk assessment for the proposed rule. Specifically, DuPont's data indicate that the K_d's range from >300 to ~800 L/kg, while the K_d values we used in our modeling for the proposal ranged from 1 to 1,000, with a median of 30. Taking these data into account, we expect that the hazard quotient for thallium in the ferric chloride residues (which we had estimated in the Iron Rich™ reduced volume analysis for the proposed rule as 0.9 and 1.6 for a child at the 90th and 95th percentiles, respectively) would be reduced to below our listing threshold for the industrial landfill scenario because the higher K_d's measured by DuPont would result in more attenuation in the modeled aquifer, and consequently lower ground-water concentrations and, therefore, less risk.

[29] DuPont described the process at p. 3.4 of their 11/13/2000 comments as follows: "In equipment downstream of the reactor, crude gaseous titanium tetrachloride is extracted from the majority of high boiling metal chlorides and un-reacted coke and ore solids by condensation, drying, and gravity separation. Following this separation, the hot gas is then condensed to obtain a crude liquid titanium tetrachloride. The crude liquid must be further purified to extract titanium tetrachloride from the remaining non-titanium metal chlorides (particularly vanadium chlorides) and remaining suspended solids (e.g., iron chloride and un-reacted coke and ore)."

[30] As discussed in section IV.B, we are not taking final action on manganese in today's rule.

Antimony: DuPont's average SPLP antimony results for eight samples of Iron Rich™ was 0.038 mg/L, which is slightly higher than but consistent with our result of 0.02 mg/L. Using this average value in our modeling framework, we estimate that we would generate a hazard quotient of 0.76, still below our listing threshold. (The ground-water model we used for the proposed rule is linear with respect to leachate concentrations over a limited range, and thus when the only variable being adjusted is leachate concentration, we can proportionately adjust the corresponding risk value to project what the risks would be if we were to re-run the model.) While using DuPont's maximum value likely would raise the projected hazard quotient to 1.1, slightly above the listing threshold of unity, we do not feel that these results are sufficiently compelling to cause us to expand the basis for listing to include antimony on Appendix VII for K178. In particular, if we had run our probabilistic model using DuPont's eight values in our leachate concentration distribution, the impact of the maximum value would have been reduced and the resultant hazard quotient likely would not have exceeded one.

Arsenic: DuPont's arsenic SPLP detection limits (<0.043 mg/L) are too high to make any conclusions regarding risk or comparability to our 0.001 mg/L result for the Iron Rich™. Using our data, we did not find risk supporting a proposed listing determination associated with arsenic at the concentrations we measured in the industrial solid waste scenario.

d. Assessment of Municipal Solid Waste Landfill Scenario for Ferric Chloride Residues

The proposal also described qualitatively that risks would be higher if modeled in a municipal solid waste landfill scenario. We continue to believe this scenario supports our decision to list this waste. The practical difference between the Agency's modeling of a municipal landfill scenario and an industrial solid waste landfill scenario is the leachate input parameter. As described in the proposed rule (see 65 FR 55695), we believe that the TCLP is the most appropriate leaching procedure to use for wastes in the municipal landfill scenario, while the industrial landfill scenario is better modeled using SPLP results.

After the proposal, when we modified our conclusion concerning the industrial solid waste landfill scenario, we took a closer look at risks from the municipal solid waste landfill. Using the reduced volume analysis described in the proposal, as well as EPA's TCLP results described in Table IV–5, we estimated risk results for the municipal solid waste landfill scenario, as presented in Table IV–6:

TABLE IV–6.—GROUND-WATER PATHWAY RISK ASSESSMENT RESULTS FOR K178 MUNICIPAL LANDFILL SCENARIO EXTRAPOLATED FROM REDUCED (10%) VOLUME ANALYSIS EPA DATA

Constituents of concern	Hazard quotients			
	90th% adult	90th% child	95th% adult	95th% child
Antimony	0.113	0.21	0.21	0.42
Thallium	9.3	21	18.7	37.3

Note: Arsenic was not included in the reduced volume analysis for the proposal because of the low risk shown in the full volume analysis.

We then examined DuPont's new analytical data, and substituted it for ours where warranted. We also took into account the revisions to our ground-water modeling warranted by DuPont's comments on the K_d for thallium and ground-water mounding (as described above). We still find significant risks associated with thallium for a municipal landfill scenario. The following discussion expands upon this conclusion.

Thallium: DuPont's thallium TCLP detection limits (<0.250 mg/L) are too high to make any conclusions regarding risk or comparability to our 0.28 mg/L TCLP result. As discussed above in section 6.b, we are unconvinced by DuPont's concerns regarding the validity of our analytical data. Consequently, we have chosen to use our data in our reevaluating. The extrapolated hazard quotient of 37.3 in the table above is well above our listing threshold of one. To determine whether the commenter's concerns regarding the thallium distribution coefficient would reduce this hazard quotient below the listing threshold, we assessed the commenter's modeling runs. In their late comments, DuPont provided the results of a Monte Carlo run for thallium using a K_d of 300 L/kg, which increased the 10th percentile DAF that corresponds to our modeling run of 3.9 to 119, a 30-fold increase; this DAF would not reduce the hazard quotient below the listing threshold. In previous submittals, DuPont provided the results of their K_d measurements, and identified one of the three soil matrices analyzed as being particularly comparable to the soils in the plant vicinity (i.e., Baptistown NJ loam). For the concentration range of concern (i.e., 0.28 mg/L), DuPont's graphical analysis of the measurement data indicates that the thallium K_d for the Baptistown loam is approximately 200 L/kg. If DuPont had used this value in its Monte Carlo analysis, the resultant DAF would have been lower than 119, and the resultant hazard quotient would have still exceeded the hazard quotient threshold for listing of one. Furthermore, data for the Lynge, Denmark sandy loam show a K_d that is even lower (~140 L/kg) at this concentration level. In addition, as stated previously, we do not think that the ground-water mounding issue raised by the commenter is of sufficient magnitude to change our conclusions. For these reasons, we continue to conclude that, in this scenario, thallium still poses significant risks that serve as a basis for listing.

Antimony: One of DuPont's Iron Rich™ samples (EMI–1) contained antimony in the TCLP results (0.17 mg/L) above DuPont's analytical detection limit and above the health-based limit (0.006 mg/L), while the remaining seven DuPont samples did not contain antimony above the detection limit (<0.155 mg/L). Because of the proximity of the detected value to the detection limit, it is not possible to determine whether the result is an anomaly. DuPont's Sample EMI–1 results, if used in our modeling analysis, would generate a hazard quotient above our listing threshold (3.4 for the 95th% child scenario). We are choosing not to expand the basis for listing to include antimony on Appendix VII for K178 because of the uncertainty in the analytical data provided by DuPont. Furthermore, the thallium results provide sufficient basis to support a hazardous waste listing.

Arsenic: The arsenic TCLP result for one of the eight DuPont samples (EMI–7) exceeds the Agency's HBL by a factor of 371. Because of the proximity of the detection limits for DuPont's other samples to the detected value, we cannot determine whether or not this result is an anomaly. In addition, we did not conduct modeling for arsenic in our reduced volume analysis and, therefore, cannot (in the time remaining before the consent decree deadline) project risk associated with the ferric chloride residues waste volume. We are choosing not to expand the basis for listing to include arsenic on Appendix VII for K178 because of the uncertainty in the analytical data provided by DuPont. Furthermore, the thallium results provide sufficient basis to support a hazardous waste listing.

In summary, our modeling, using both our analytical data as well as DuPont's indicates that the ferric chloride residues warrant being listed as hazardous waste due to potential thallium risks associated with the municipal landfill scenario.

e. Dioxin Content as an Additional Supporting Risk Factor

As described in the proposal, our data demonstrate that Iron Rich™ contains levels of polychlorinated dibenzo-p-dioxins and dibenzofurans that exceed our soil ingestion level for these compounds. Dioxin and furan concentrations are commonly converted to an equivalent concentration (TEQ) of 2,3,7,8-tetrachlorodibenzo-p-dioxin, the most toxic of the PCDDs and PCDFs. Using the toxicity equivalent factors developed by the World Health Organization,[31] we estimate that Iron Rich™ contains 58 parts per trillion of TCDD equivalents, a concentration that exceeds our soil ingestion health-based limit.

In a meeting with EPA[32], DuPont indicated that the company's analyses of its wastes showed an average TCDD equivalent concentration of 1.1 parts per billion, twenty times higher than our measured values in a sample collected at the DuPont Delaware facility. DuPont conducted a limited risk assessment of potential releases of the Iron Rich™ currently stockpiled on DuPont's Cherry Island property to the adjacent Delaware River.[33] Based on the dioxin risks predicted by this modeling, DuPont indicated that it will undertake significant changes in waste management practices to minimize potential releases of the Iron Rich™ to the environment, and is investigating the effectiveness of various process changes to reduce dioxin levels in its waste.

We continue to believe that the presence of dioxins and furans in the ferric chloride residues is a supporting basis for listing this waste as hazardous. While we have elsewhere stated that the dioxin content in the titanium dioxide wastes is closely linked to the Bevill exempt solids, the ferric chloride residues subject to today's listing would be eligible for Bevill exemption if it were not for the processing (i.e., addition of trim chlorine) that signifies that the facility has initiated production of ferric chloride. Solids from production of ferric chloride are not eligible for the special mineral processing exemption provided for solids from titanium tetrachloride production. Therefore, we conclude that the ferric chloride solids contain significant concentrations of dioxins and furans.

9. Conclusions

We believe we have sufficient basis to list non-exempt ferric chloride residues as hazardous wastes. Our data indicate that thallium is readily mobilized from this waste in a municipal landfill scenario, at levels that are likely to exceed health-based thresholds in drinking water. While the commenter provided information that suggests the risks may be somewhat reduced from those we described at proposal, the risks for thallium in the municipal scenario continue to exceed our listing thresholds. Therefore, we are finalizing the listing as:

K178 Residues from manufacturing and manufacturing-site storage of ferric chloride from acids formed during the production of titanium dioxide using the chloride-ilmenite process (T)

We view this separate waste as a waste from the production of ferric chloride, not a waste from the production of titanium dioxide. Therefore, we do not consider it to be subject to either the Consent Decree or section 3001(e)(2) of RCRA.

10. RCRA Versus HSWA Listing

At proposal, we took the position that we were promulgating all of the listings under section 3001(e) of RCRA, a provision added by the Hazardous and Solid Waste Amendments of 1984 (HSWA). Rules promulgated under HSWA authorities take effect in all states at the same time. Because of the changes to the scope of the K178 listing in response to public comments, we are now classifying the K178 listing determination as a non-HSWA listing because, as explained above in the discussion of the Bevill exemption, we consider it to be a waste from the production of ferric chloride, not a waste from the production of titanium dioxide.

Section 3001(e)(2) of RCRA, a HSWA provision, specifies a list of industries for which the Agency is to assess and make listing determinations on the wastes generated by those industries. The ED Consent Decree identifies the scope of our obligations under section 3001(e)(2). It does not require EPA to assess wastes from the production of ferric chloride. Consequently, EPA is using its "pre-HSWA" listing authority under section 3001(b)(1) to identify these ferric chloride residues as listed hazardous wastes. As such, this non-HSWA listing will become effective in authorized states as a matter of state law once the states adopt the listing; it will become effective under federal law when EPA approves revisions to the states' programs.

E. What Is the Status of Landfill Leachate Derived From Newly-Listed K176, K177, and K178 Wastes?

As noted in the proposed rule, actively managed landfill leachate and gas condensate generated at non-hazardous waste landfills derived from previously-disposed and newly-listed wastes could be classified as K176, K177, or K178. We proposed to temporarily defer the application of the new waste codes to such leachate to avoid disruption of ongoing leachate management activities while the Agency decides if any further integration is needed of the RCRA and CWA regulations consistent with RCRA section 1006(b)(1).

We are finalizing the revisions to the temporary deferral in § 261.4(b)(15) with no change from the proposed rule. One commenter supported the proposed deferral; however, the commenter was concerned about uncertainties for landfill operators in leachate management requirements based on different approaches used in recent listings. The commenter sought a single

[31] Van den Berg, M.L. Birnbaum, A.T.C. Bosveld, et al. 1998. Toxic Equivalency Factors (TEFs) for PCBs, PCDDs, PCDFs for Humans and Wildlife. Environmental Health Perspectives 106: 775–792.

[32] "Summary of Meeting Between EPA's Office of Solid Waste and Representatives from Dupont, April 3, 2001. Also, see letters to Lillian Bagus, EPA from Gregg W. Martin, DuPont re "Edge Moor Iron Rich™ Staging Area Screening Assessment," dated April 16, 2001, and "Edge Moor Iron Rich Staging Area Screening Assessment Unit Correction," dated April 27, 2001.

[33] Letters to Lillian Bagus, EPA from Gregg W. Martin, DuPont dated April 16, 2001 and April 27, 2001.

solution to the derived-from issue for leachate and suggested that the opportunity exists under either the CWA effluent guidelines or the Hazardous Waste Identification Rule (HWIR).

As we noted in the proposal, we believe a temporary deferral is warranted. We believe that it is appropriate to defer regulation on a case-by-case basis to avoid disrupting leachate management activities, and to allow us to decide whether any further integration of the two programs is needed.[34] While the commenter suggested there were "uncertainties" in leachate management requirements, no specific problems were identified. In any case, a broader exemption for landfill leachate under another regulatory program is beyond the scope of the current rulemaking.

We also received one other related comment concerning the existing exclusion for industrial wastewater discharges that are regulated under the National Pollutant Discharge Elimination System (NPDES) Permit Program. Such discharges are specifically excluded from regulation as hazardous wastes under 40 CFR 261.4(a)(2). The commenter apparently is concerned about discharges of landfill leachate, and suggested that EPA should issue regulations to ensure that landfills have adequate leak detection/leachate collection systems and that these systems are not infiltrated by ground water. The commenter is concerned that leachate may be diluted with ground water in these systems to meet discharge standards.

The regulation in 40 CFR 261.4(a)(2) excludes any industrial wastewater point source discharges that are "subject to regulation under section 402 of the Clean Water Act, as amended." This language follows closely the statutory exclusion from the definition of solid waste (section 1004(27) of RCRA). The regulations do not include any limitations on the types of landfills that might use such a permitted discharge.

The commenter did not present any reason why regulations might be needed to ensure dilution from local ground water does not occur prior to collection. We also note that regulations are already in place for the design and operation of leachate collection systems for Subtitle C hazardous waste landfills (40 CFR 264, subpart N) and municipal solid waste landfills that accept hazardous wastes from conditional exempt small quantity generators (40 CFR 258.40). The goal of those regulations is to prevent leachate from infiltrating ground water. Determining whether these or other types of landfills need additional controls addressing leak detection and leachate control systems and their impact on their NPDES discharges is a major effort well beyond the scope of this rulemaking.

[34] EPA's Office of Water recently examined the need for national effluent limitations guidelines and pretreatment standards for wastewater discharges (including leachate) from certain types of landfills (see proposed rule at 63 FR 6426, February 6, 1998) EPA decided such standards were not required and did not issue pretreatment standards for Subtitle D landfill wastewaters sent to POTWs (see 65 FR 3008, January 19, 2000).

F. What Are the Final Treatment Standards Under RCRA's Land Disposal Restrictions for the Newly-Listed Hazardous Wastes?

1. What Are EPA's Land Disposal Restrictions (LDRs)?

RCRA requires us to establish treatment standards for all hazardous wastes destined for land disposal. These are the "land disposal restrictions" or LDRs. For any hazardous waste identified or listed after November 8, 1984, we must promulgate LDR treatment standards within six months of the date of identification or final listing (RCRA section 3004(g)(4), 42 U.S.C. 6924(g)(4)). RCRA also requires us to set as these treatment standards "* * * levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized." (RCRA section 3004(m)(1), 42 U.S.C. 6924(m)(1).)

Once a hazardous waste is prohibited from land disposal, the statute provides only two options for legal land disposal: meet the treatment standard for the waste prior to land disposal, or dispose of the waste in a land disposal unit that satisfies the statutory "no migration" test. A "no migration" unit is one from which there will be no migration of hazardous constituents for as long as the waste remains hazardous. (RCRA sections 3004 (d), (e), (f), and (g)(5).) The antimony oxide wastes identified for listing as hazardous in this rule under HSWA authorities will be subject to all the land disposal restrictions on the date that the federal listing becomes effective (six months after promulgation of this final rule). The non-HSWA ferric chloride (K178) listing will not be subject to LDR restrictions until authorized states revise their regulations and obtain EPA approval of revisions to their authorized state programs.

We gathered data on waste characteristics and current management practices for wastes that will be listed by this action. These data can be found in the administrative record for this final rule. An examination of the constituents that are the basis of the listings shows that we have previously developed numerical treatment standards for most of the constituents. We have determined that it is technically feasible and justified to apply existing universal treatment standards (UTS) to the hazardous constituents in K176, K177, and K178 that were found to be present in these wastes at concentrations exceeding the treatment standards, because the waste compositions are similar to other wastes for which applicable treatment technologies have been demonstrated.[35] A list of the regulated hazardous constituents and their associated treatment limits can be found below in Table IV–7 and in the regulatory Table 268.40—Treatment Standards for Hazardous Wastes.

We have provided in the BDAT Background Document a review of technologies that can be used to meet the numerical concentration limits for K176, K177, and K178, assuming optimal design and operation. Where we are promulgating numerical concentration limits, the use of other technologies capable of achieving the treatment standards is allowed, except for those treatment or reclamation practices constituting land disposal or impermissible dilution (see 40 CFR 268.3).

EPA would like to take this opportunity to reiterate how treatment standards are established and the role of risk-based standards in treatment standard development. This policy is well documented in past LDR rulemakings, including the Phase IV rulemaking (May 26, 1998; 63 FR 28556). Dilution and attenuation are typically considered in the risk assessment, but are not used in the development of treatment standards. The treatment standards represent a calculation of the expected performance range of an applicable technology operating on a difficult to treat waste such that 99 percent of the batches meet the standard. All land disposal restriction treatment standards must satisfy the requirements of RCRA section 3004(m) by specifying levels or methods of treatment that "'substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from that waste so that

[35] Also see LDR Phase II final rule, 59 FR 47982, September 19, 1994, for a further discussion of UTS.

short-term and long-term threats to human health and the environment are minimized.'''' As EPA has discussed many times, the RCRA section 3004(m) requirements may be satisfied by technology-based standards or risk-based standards. This conclusion was upheld in Hazardous Waste Treatment Council v. EPA, 886 F.2d 355, 362–64 (D.C. Cir. 1989), where technology-based LDR treatment standards were upheld as a permissible means of implementing RCRA section 3004(m) provided they did not require treatment beyond the point at which threats to human health and the environment are minimized.

2. What Are the Treatment Standards for K176? (Baghouse Filters From the Production of Antimony Oxide, Including Filters From the Production of Intermediates (e.g., Antimony Metal or Crude Antimony Oxide))

The identified constituents for which treatment is required prior to land disposing this waste are antimony, arsenic, cadmium, lead, and mercury. No commenters challenged either the applicability or achievability of the universal treatment standards proposed for K176 wastes. We are promulgating the proposed standards without change. The nonwastewaters treatment standard for antimony is 1.15 mg/L TCLP; arsenic is 5.0 mg/L TCLP; cadmium is 0.11 mg/L TCLP; lead is 0.75 mg/L TCLP; and mercury is 0.025 mg/L TCLP. In the event that there are wastewater treatment residuals from treatment of K176 (which under the derived-from rule also will be considered K176), the wastewater treatment standards are as follows: antimony is 1.9 mg/L; arsenic is 1.4 mg/L; cadmium is 0.69 mg/L; lead is 0.69 mg/L; and mercury is 0.15 mg/L.

3. What Are the Treatment Standards for K177? (Slag From the Production of Antimony Oxide that Is Speculatively Accumulated or Disposed, Including Slag From the Production of Intermediates (e.g., Antimony Metal or Crude Antimony Oxide))

The identified constituents for which treatment is required prior to land disposing this waste are antimony, arsenic, and lead. We proposed the UTS levels for these constituents as the treatment standards for K177 wastes. No commenters challenged either the applicability or achievability of the universal treatment standards proposed to be transferred to K177 wastes. We are promulgating the proposed standards without change. The nonwastewater treatment standard for antimony is 1.15 mg/L TCLP, for arsenic is 5.0 mg/L TCLP, and for lead is 0.75 mg/L TCLP. In the event that there are wastewater treatment residuals from treatment of K177 (which under the derived-from rule also would be considered K177), the wastewater treatment standard for antimony is 1.9 mg/L, for arsenic is 1.4 mg/L, and for lead is 0.69 mg/L.

4. What Are the Treatment Standards for K178? (Solids From Manufacturing and Manufacturing-Site Storage of Ferric Chloride From Acids Formed During the Production of Titanium Dioxide Using the Chloride-Ilmenite Process)

The constituents of concern in this waste described in our proposal were thallium, manganese, and the chlorinated congeners of dibenzo-p-dioxin and dibenzofuran. We proposed to apply the UTS levels to thallium and the chlorinated congeners of dibenzo-p-dioxin and dibenzofuran, as indicated in Table IV–7. In addition, we proposed the option of complying with the technology standard of combustion (CMBST) for the chlorinated dibenzo-p-dioxin and dibenzofuran (dioxins and furans) constituents present in K178. For manganese we proposed, as our leading option, a nonwastewater treatment standard of 3.6 mg/L TCLP based upon a high temperature metals recovery technology and wastewater treatment standard of 17.1 mg/L manganese, based upon sedimentation technology. After considering the comments described below, today we are promulgating the treatment standards as proposed for thallium and the chlorinated congeners of dibenzo-p-dioxin and dibenzofuran. We are deferring action on all aspects of the regulation of manganese at this time as explained earlier in section IV.B.

TABLE IV–7.—TREATMENT STANDARDS FOR K178

Regulated hazardous constituent		Wastewaters	Nonwastewaters
Common name	CAS [1] No.	Concentration in mg/L [2], or technology code [3]	Concentration in mg/kg [4] unless noted as "mg/L TCLP", or technology Code
1,2,3,4,6,7,8-Heptachlorodibenzo-p-dioxin	35822–39–4	0.000035 or CMBST [5]	0.0025 or CMBST [5]
1,2,3,4,6,7,8-Heptachlorodibenzofuran	67562–39–4	0.000035 or CMBST [5]	0.0025 or CMBST [5]
1,2,3,4,7,8,9-Heptachlorodibenzofuran	55673–89–7	0.000035 or CMBST [5]	0.0025 or CMBST [5]
HxCDDs (All Hexachlorodibenzo-p-dioxins)	34465–46–8	0.000063 or CMBST [5]	0.001 or CMBST [5]
HxCDFs (All Hexachlorodibenzofurans)	55684–94–1	0.000063 or CMBST [5]	0.001 or CMBST [5]
1,2,3,4,6,7,8,9-Octachlorodibenzo-p-dioxin (OCDD)	3268–87–9	0.000063 or CMBST [5]	0.005 or CMBST [5]
1,2,3,4,6,7,8,9-Octachlorodibenzofuran (OCDF)	39001–02–0	0.000063 or CMBST [5]	0.005 or CMBST [5]
PeCDDs (All Pentachlorodibenzo-p-dioxins)	36088–22–9	0.000063 or CMBST [5]	0.001 or CMBST [5]
PeCDFs (All Pentachlorodibenzofurans)	30402–15–4	0.000035 or CMBST [5]	0.001 or CMBST [5]
TCDDs (All tetrachlorodi-benzo-p-dioxins)	41903–57–5	0.000063 or CMBST [5]	0.001 or CMBST [5]
TCDFs (All tetrachlorodibenzofurans)	55722–27–5	0.000063 or CMBST [5]	0.001 or CMBST [5]

TABLE IV–7.—TREATMENT STANDARDS FOR K178—Continued

Regulated hazardous constituent		Wastewaters	Nonwastewaters
Common name	CAS [1] No.	Concentration in mg/L [2], or technology code [3]	Concentration in mg/kg [4] unless noted as "mg/L TCLP", or technology Code
Thallium	7440–28–0	1.4	0.20 mg/L TCLP

[1] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.

[2] Concentration standards for wastewaters are expressed in mg/L and are based on analysis of composite samples.

[3] All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in 40 CFR 268.42 Table 1—Technology Codes and Descriptions of Technology-Based Standards.

[4] Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR part 264, subpart O or 40 CFR part 265, subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

[5] For these wastes, the definition of CMBST is limited to: (1) combustion units operating under 40 CFR 266, (2) combustion units permitted under 40 CFR part 264, Subpart O, or (3) combustion units operating under 40 CFR 265, Subpart O, which have obtained a determination of equivalent treatment under 268.42(b).

a. Comments Regarding Dioxins and Furans

Comments were received on the appropriateness of the proposed treatment standards for dibenzo-p-dioxin and dibenzofuran, and manganese. However, no data were received or arguments made to demonstrate that the proposed standards were not achievable.

A commenter argued that application of the octachlorodibenzo-p-dioxin (OCDD) and octachlorodibenzofuran (OCDF) standards should be deferred pending anticipated lawsuits challenging the Chlorinated Aliphatics final rule (65 FR 67068, November 8, 2000) in which EPA promulgated Universal Treatment Standards for these constituents. However, this aspect of the final rule was not challenged. EPA is promulgating treatment standards for dioxin congeners, including OCDD and OCDF, in K178 wastes as proposed, because treatment of these constituents is necessary to reduce the risks to human health or the environment that these constituents pose.

The commenter also stated that EPA should not set standards for OCDD and OCDF, because the constituents are not toxic. As explained in more detail in the Response to Comments document, we disagree with the commenter and are promulgating the proposed standards for all dioxins and furans including the OCDD and OCDF congeners. A full discussion of the toxicity of these compounds also was presented in the final chlorinated aliphatics final listing determination at 65 FR 67108. We conclude OCDD and OCDF are toxic.

We are promulgating treatment standards for dioxin and furan congeners in K178, because toxic dioxin and furan congeners are present in this waste at concentrations well above the promulgated treatment standards for these underlying hazardous constituents. For example, OCDF was measured in EPA record sample of the combined Iron Rich™ wastestream at 58 µg/kg dry weight, well above its treatment standard of 5 µg/kg (see Tables 2–9 and 2–10 in EPA's Best Demonstrated Available Technology (BDAT) Background Document for Inorganic Chemical Production Wastes—K176, K177, K178 (for the final rule)). If OCDD and OCDF were to be excluded from the K178 treatment standard, they would go untreated. Absent treatment standards for dioxins, the newly listed wastes would have less stringent treatment standards by application of 40 CFR 268.9(b) than the wastes are currently subject to, because these wastes are generally corrosive. Having demonstrated the presence of these constituents at levels that require treatment, we are acting to protect human health and the environment from the release of the significant levels found in the untreated waste form.

b. Comments Regarding Thallium

Comments relative to thallium centered on its occurrence in the wastes. If the occurrence of thallium is as the commenter's data indicates, then little of the K178 generated waste would require treatment for thallium. However, we found that the commenter's analysis obtained higher detection limits than we did. Our record sampling showed thallium concentrations in this waste of 0.28 mg/L TCLP (65 FR 55761, September 14, 2000). This is a level that would require treatment. Consequently, we believe it is appropriate to set treatment standards for thallium for K178. In instances when the waste exhibits thallium concentrations below the treatment standard, no treatment for thallium will be necessary prior to land disposal. Therefore, we are promulgating the inclusion of thallium in the final treatment standards.

c. Comments Regarding Manganese

For comments concerning manganese see the Response to Comment Background Document. Because EPA decided to defer final action on all aspects of manganese regulation at this time, manganese related comments are not being addressed at this time.

d. What Final Changes Are Being Made to F039?

The F039 waste code applies to hazardous waste landfill leachates in lieu of the treatment standards established for the original waste codes associated with each of the wastes from which the leachate is derived, when multiple waste codes would otherwise apply. F039 wastes are subject to numerical treatment standards. We proposed to add manganese to the constituents regulated by F039 to maintain the implementation benefits of having one waste code for multi-source leachate. In today's final rule, we have decided to defer regulation of manganese in F039 wastes at this time.

e. Manganese as an Underlying Hazardous Constituent

We had proposed to add manganese to the table of Universal Treatment Standards (UTS) at 40 CFR 268.48. We are not, however, promulgating the addition of manganese to the UTS at 40 CFR 268.48 at this time. Had the proposal been promulgated, all characteristic wastes that have manganese as an underlying hazardous constituent above the UTS levels listed at 40 CFR 268.48 would have required

treatment of manganese before land disposal.

G. Is There Treatment Capacity for the Newly Listed Wastes?

1. Introduction

Under the land disposal restrictions (LDR) determinations, the Agency must demonstrate that adequate commercial capacity exists to manage listed hazardous wastes in compliance with BDAT standards before the Agency can restrict the listed waste from further land disposal. The Agency performs capacity analyses to determine the effective date of the LDR treatment standards for the proposed listed wastes. This section summarizes the results of EPA's capacity analysis for the wastes covered by today's rule. For a detailed discussion of capacity analysis-related data sources, methodology, and detailed responses to comments for each waste covered in this rule, see Background Document for Capacity Analysis for Land Disposal Restrictions: Inorganic Chemical Production Wastes (Final Rule) (October 2001) (i.e., the Capacity Background Document).

EPA's decisions on whether to grant a national capacity variance are based on the availability of alternative treatment or recovery technologies capable of achieving the prescribed treatment standards. Consequently, the methodology focuses on deriving estimates of the quantities of newly-listed hazardous waste that will require either commercial treatment or the construction of new on-site treatment or recovery as a result of the LDRs. The resulting estimates of required commercial capacity are then compared to estimates of available commercial capacity. If adequate commercial capacity exists, the waste is restricted from further land disposal unless it meets the LDR treatment standards prior to disposal. If adequate capacity does not exist, RCRA section 3004(h)(2) authorizes EPA to grant a national capacity variance for the waste for up to two years or until adequate alternative treatment capacity becomes available, whichever is sooner.

2. What Are the Capacity Analysis Results for K176, K177, and K178?

In conducting the capacity analysis for the wastes newly-listed by today's rule, we examined data on waste characteristics and management practices gathered for the inorganic chemical hazardous waste listing determinations. We also examined data on available treatment or recovery capacity for these wastes. The sources for these data are the public comments, the RCRA § 3007 Survey for the Inorganics listing determination distributed in the spring of 1999, record sampling and site visits (see the docket for today's rule for more information on these survey instruments and facility activities), the available treatment capacity data submission that was collected in the 1990's, and the 1995 and 1997 Biennial Reports.

For K176 and K177 wastes, we used the information from the surveys, sampling, and site visits which indicate that there is no quantity of the wastewater form of K176 or K177 that is expected to be generated and therefore, there is no quantity of the wastewater form of K176 or K177 that will require alternative commercial treatment. These wastes are typically present in a nonwastewater form. EPA determines that required alternative treatment capacity for K176 nonwastewaters is estimated to be eight tons per year. There is sufficient available capacity to manage the K176 waste.

For K177 waste, one commenter indicated that a facility of antimony oxide production in Laredo, TX is currently storing approximately 60,000 tons of slag in a pile. This facility has ceased operation in the United States. As discussed earlier (section IV), EPA has determined that this slag will qualify as K177 on the effective date of this rulemaking. In addition, the facility has a volume of contaminated soil roughly equivalent to the volume of the slag pile. If the slag and soil are excavated and handled after the effective date, the volume of waste potentially subject to regulation is 120,000 tons. This site is already under a corrective action order with the State of Texas to clean up the site because of antimony contamination. As part of this effort, the State expects to require remediation of the historic waste pile. In cases involving corrective action, it is possible to treat and/or manage hazardous waste without triggering LDR treatment standards. If the slag of contaminated soil is not removed from the land via excavation (e.g., in situ treatment), then the LDR standards will not be applied to these wastes. In addition, if hazardous slag or contaminated soil is excavated, LDR standards will only apply if the subsequent management is considered "land disposal" for the purposes of the LDR program.

The K177 listing is conditional: if a facility legitimately recycles its wastes without speculatively accumulating them and without use constituting disposal, it will not be regulated as a listed waste. Thus, the listing and the LDRs may not apply to these materials. Therefore, the facility may require little off-site commercial treatment capacity for its K177 waste and soil contaminated with K177 waste. Additional information regarding these wastes is presented in the Capacity Background Document.

With the above discussion, EPA determines that required alternative treatment capacity for K177 nonwastewaters is estimated to be 20 tons per year. Additionally, there is a potential that capacity will be needed for the waste pile containing an estimated 60,000 tons of slag (K177) and estimated 60,000 tons of contaminated soil from one facility. Even if the additional 120,000 tons of K177 slag and contaminated soil from the facility must be managed off-site as hazardous waste and the waste is not legitimately recycled or left in place, we anticipate that commercially available stabilization, as well as other technologies, can be used to meet the treatment standards applicable to the waste. We estimate that the commercially available stabilization capacity is at least eight million tons per year based on the 1995 Biennial Report. Thus we find there is sufficient capacity to treat the K177 hazardous wastes that will require treatment.

EPA proposed not to grant a national capacity variance for K176 or K177 wastewaters or nonwastewaters. No commenters challenged either the variance determination or available treatment or disposal capacity for wastewater or nonwastewater forms of these wastes. Nor does the potential treatment of the additional K177 slags and soils described above appear to require a capacity variance. Therefore, EPA is finalizing its decision not to grant a capacity variance for wastewater and nonwastewater forms of K176 and K177.

For ferric chloride residues (K178) waste, our data indicate that the waste is typically generated as a nonwastewater. We did not identify any wastewater forms of these wastes and therefore did not anticipate that alternative management for wastewaters is required. For nonwastewaters, when listed as hazardous, the waste can no longer be land disposed without meeting applicable treatment standards. In the proposed rule, we initially estimated that approximately 7,300 tons per year may require alternative treatment (derived from public information since data on amounts of treatment solids were originally reported as confidential in the § 3007 Survey).

In public comments to the proposed rule, one commenter estimated that the quantity of K178 generated nationwide is as high as 167,000 tons per year, which is much higher than that initially estimated by EPA in the proposed rule. The commenter provided few details explaining the discrepancy, and therefore EPA cannot agree with the commenter regarding this estimate. Further, the finalized listing definition is narrower in scope than the proposed listing, only one facility (rather than three) is expected to generate the waste, and the one facility may be able to segregate its waste to reduce the total quantity of K178 that must be treated. However, even if EPA used the commenter's higher waste quantity in its capacity assessment, sufficient capacity would be available to treat generated K178 wastes.

The commenter also requested a national capacity variance for the proposed K178 wastes. The commenter claimed that because K178 must be treated for dioxin, insufficient treatment capacity is available because only a single facility in the U.S. currently is permitted to treat dioxin-containing wastes. EPA disagrees with this assessment. EPA notes that the proposed land disposal restrictions for K178 are identical to those finalized for F032 (wood preserving wastes, 62 FR 26000, May 12, 1997) and K174 (chlorinated aliphatics wastes, 65 FR 67110, November 8, 2000). These treatment standards (as well as the treatment standards proposed for K178) can be met by the technology-specific standard of CMBST, defined as, (1) combustion units operating under 40 CFR 266, (2) combustion units permitted under 40 CFR part 264, subpart O, or (3) combustion units operating under 40 CFR 265. subpart O, which have obtained a determination of equivalent treatment under 268.42(b). Additionally, EPA verified through telephone conversations that several facilities can, in fact, accept wastes with such a treatment standard (this information is presented in the Capacity Background Document). These facilities have sufficient capacity to treat the single generator's ferric chloride residues.

From the available information, the affected facility may manage K178 waste in surface impoundments (i.e., in wastewater treatment systems that contain land based units). If the waste is managed in unretrofitted impoundments,[36] it would thus be land disposed in a prohibited manner. These impoundments can be retrofitted, closed, or replaced with tank systems. If impoundments continue to be used to manage K178 waste, the units will be subject to RCRA Subtitle C requirements. In addition, any hazardous wastes managed in the affected impoundment after the effective date of today's rule are subject to land disposal prohibitions.[37] However, a facility may continue to manage newly listed K178 in surface impoundments, provided they are in compliance with the appropriate standards for surface impoundments (40 CFR parts 264 and 265 subpart K) and the special rules regarding surface impoundments (40 CFR 268.14). EPA notes that those provisions require basic ground-water monitoring (40 CFR parts 264 and 265 subpart F) and recordkeeping. Surface impoundments that are newly subject to RCRA subtitle C minimum technology requirements due to promulgation of a new hazardous waste listing are afforded up to 48 months after promulgation of the new listing to retrofit the surface impoundments to meet minimum technological requirements (see RCRA section 3005(j)(6)(A), 40 CFR 265.221 (h)). (Note that in this case, the listing is "non-HSWA," so the minimum technology deadline would be 48 months after EPA approves a revision to an authorized state program that adopt this listing.)

In our assessment for the proposed rule, we assumed that facilities can segregate waste-streams and separately manage the newly-proposed K178 waste. Based on the finalized listing definition for K178, we continue to expect that the generating facility can segregate its waste-streams. However, the quantity is far lower than discussed in the proposal since the final listing is narrower than the proposed listing and only one facility is expected to generate the waste. We now estimate that approximately 45 tons per year may require alternative treatment. Even if the facility cannot segregate its wastestreams (and, therefore, generates a higher quantity of waste requiring treatment), we expect that available treatment capacity exists to manage such a higher quantity of generated waste.

In addition to the amount generated from year to year, the facility that generates K178 commented that they have stockpiled a significant quantity of Iron-Rich on-site, which would be listed as hazardous waste K178 following the effective date. According to the comment, the estimated quantity is 500,000 tons. EPA believes that it is unlikely that the entire quantity will require offsite treatment capacity after the effective date. For example, the facility could work with the State Implementing Agency to close the unit in place without actively managing the units. Even if the entire 500,000 ton quantity becomes subject to the K178 listing after the effective date, we expect that commercial facilities could store this quantity of material and subsequently manage it using treatment such as combustion or non-combustion technologies over a period of several years should the demand for such capacity arise. In addition, because this is a non-HSWA rule and will take effect only after authorized states adopt parallel listings under state law and EPA authorizes revisions to the codified state programs, there will be additional time (beyond six months) for the facility to identify and implement management options for the stored K178 waste. We anticipate that commercially available combustion capacity is adequate to meet the demands. For more information on the Agency's research on combustion capacity for K178, please refer to the Capacity Background Document.

As discussed earlier for K178 treatment standards, we are promulgating numerical treatment standards for K178 wastes. We anticipate that commercially available incineration, followed by stabilization if necessary, can be used to meet these treatment standards. We also are promulgating the specified technology standard of combustion (CMBST) as an alternative compliance option for hazardous organic constituents in the K178 wastes. The units treating the waste by using CMBST will be subject to certain standards, and facilities will have to meet the treatment standard for the regulated metal constituent prior to disposal. We assume that facilities will achieve compliance with the final treatment standards using incineration, stabilization, or both. Based on an evaluation of 1995 and 1997 BRS data, well over one million tons of liquid, sludge, and solid commercial combustion capacity are available. The quantity of commercially available stabilization capacity is at least eight million tons per year based on an evaluation of 1995 Biennial Report data. Additional discussion of the applicability of these estimates for treating wastes with characteristics

[36] A unretrofitted impoundment is one not satisfying the minimum technology requirements (MTR) specified in sections 3004(o) and 3005(j)(11).

[37] See RCRA § 3004(m)(1) "Simultaneously with the promulgation of regulations under subsection (d), (e), (f), or (g) prohibiting one or more methods of land disposal of a particular hazardous waste * * * promulgate regulations specifying those levels or methods of treatment * * *"

similar to K178 is presented in the Capacity Background Document.

Based on the foregoing, we conclude that sufficient treatment capacity is available to manage newly-listed K178 wastes. Therefore, EPA is finalizing its decision not to grant a capacity variance for wastewater and nonwastewater forms of K178. For K176, K177, and K178 wastes, the customary time period of six months is sufficient to allow facilities to determine whether their wastes are affected by this rule, to identify on-site or commercial treatment and disposal options, and to arrange for treatment or disposal capacity, if necessary. Moreover, since this listing is a non-HSWA rule, the LDR standards will take effect only after authorized states adopt parallel listings under state law and EPA authorizes revisions to the codified state programs. Therefore, LDR treatment standards for the affected wastes covered under today's rule become effective when the listing determinations become effective—the earliest possible date. This conforms to RCRA section 3004(h)(1), which indicates that land disposal prohibitions must take effect immediately when there is sufficient protective treatment capacity available for the waste.

Further, soil and debris contaminated with these newly identified wastes may be subject to the LDRs (see LDR Treatment Standards for Soil in LDR Phase IV Final Rule, 63 FR 28602, May 26, 1998; 40 CFR 268.45 Treatment Standards for Hazardous Debris). EPA proposed not to grant a national capacity variance for soil and debris contaminated with the newly listed wastes (K176, K177, and K178). EPA received no comments regarding this issue. We believe that the vast majority of contaminated soil and debris contaminated with these wastes, if generated, will be managed on-site and, therefore, will not require substantial commercial treatment capacity. Therefore, we are not granting a national capacity variance for hazardous soil and debris contaminated with these newly identified wastes. LDR treatment standards for K176, K177, and K178 hazardous soil and debris will therefore become effective when these listing determinations become effective.

Based on the 1999 RCRA § 3007 Survey for the Inorganics listing determination, followed by record sampling and site visits, no respondents submitted any data about underground injection management of the newly-listed wastes. Also, based on the 1999 RCRA § 3007 Survey followed by record sampling and site visits, no respondents submitted any data indicating that mixtures of radioactive wastes and the newly-listed inorganic chemical wastes are generated. EPA did not receive comments indicating that these wastes are underground injected or that they are mixed with radioactive wastes or with both radioactive wastes and soil or debris. Therefore, EPA is not granting a national capacity variance for underground injected wastes, mixed radioactive wastes, or soil and debris contaminated with these mixed radioactive wastes. LDR treatment standards for K176, K177, and K178 underground injected and mixed wastes (if any exists) will therefore become effective when these listing determinations become effective.

Finally, EPA may consider a case-by-case extension to the effective date based on the requirements outlined in 40 CFR 268.5, which includes a demonstration that adequate alternative treatment, recovery, or disposal capacity for the petitioner's waste cannot reasonably be made available by the effective date due to circumstances beyond the applicants' control, and that the petitioner has entered into a binding contractual commitment to construct or otherwise provide such capacity.

3. What Is the Capacity Analysis Result due to the Proposed Revision of the F039 Standard?

With respect to the revision to F039, as discussed earlier in section IV.B., we are no longer adding manganese to the list of constituents for F039. Consideration of capacity for treatment of this waste is no longer relevant.

V. When Must Regulated Entities Comply With the Provisions in Today's Final Rule?

A. Effective Date

The effective date of today's rule is May 20, 2002. Provisions promulgated under HSWA authorities will take effect in both the federal regulations and authorized state programs at that time. The K178 listing, promulgated under section 3001(b), an non-HSWA authority, will not take effect in any authorized state until that state promulgates a rule adopting the listing. It will not take effect under federal law until EPA authorizes the revision to the state program. The LDR requirements for K178 also will not apply immediately in authorized states. See the discussion in the state authorization section below.

B. Section 3010 Notification

Pursuant to RCRA § 3010, the Administrator may require all persons who handle hazardous wastes to notify EPA of their hazardous waste management activities within 90 days after the wastes are identified or listed as hazardous. This requirement may be applied even to those generators, transporters, and treatment, storage, and disposal facilities (TSDFs) that have previously notified EPA with respect to the management of other hazardous wastes. The Agency has decided to waive this notification requirement for persons who handle wastes that are covered by today's hazardous waste listings and already have (1) notified EPA that they manage other hazardous wastes, and (2) received an EPA identification number. The Agency has waived the notification requirement in this case because it believes that most, if not all, persons who manage the wastes listed as hazardous in today's rule already have notified the Agency and received an EPA identification number. However, any person who generates, transports, treats, stores, or disposes of these newly listed wastes and has not previously received an EPA identification number must obtain an identification number pursuant to 40 CFR 262.12 to generate, transport, treat, store, or dispose of these hazardous wastes by February 19, 2002 for K176 and K177. In authorized states, for K178, identification numbers will not be required until the state revises its rules to establish a K178 listing. After the state regulations are revised, identification numbers would be obtained from the authorized state pursuant to its applicable requirements.

C. Generators and Transporters

Persons who generate newly identified hazardous wastes may be required to obtain an EPA identification number if they do not already have one (as discussed in section VIII.B, above). If generating or transporting these wastes after the effective date of this rule, generators of the wastes listed today will be subject to the generator requirements set forth in 40 CFR part 262. These requirements include standards for hazardous waste determination (40 CFR 262.11), compliance with the manifest (40 CFR 262.20 through 262.23), pre-transport procedures (40 CFR 262.30 through 262.34), generator accumulation (40 CFR 262.34), record keeping and reporting (40 CFR 262.40 to 262.44), and import/export procedures (40 CFR 262.50 through 262.60). We note that the generator accumulation provisions of 40 CFR 262.34 allow generators to accumulate hazardous wastes without obtaining interim status or a permit only in certain specified units; the regulations also place a limit on the maximum amount of time that wastes

can be accumulated in these units. If these wastes are actively managed in surface impoundments or other units that are not tank systems, containers, drip pads, or containment buildings as outlined in 40 CFR 262.34, accumulation of these wastes is subject to the permitting requirements of 40 CFR parts 264 and 265, and the generator is required to obtain interim status and seek a permit (or modify interim status or a permit, as appropriate). Also, persons who transport newly identified hazardous wastes will be required to obtain an EPA identification number (if they do already have one) as described above and will be subject to the transporter requirements set forth in 40 CFR part 263.

D. Facilities Subject to Permitting

The listings for antimony oxide wastes, K176 and K177, in today's rule are issued pursuant to HSWA authority. Therefore, EPA will regulate the management of the newly identified hazardous wastes until states are authorized to regulate these wastes. EPA will apply Federal regulations to these wastes and to their management in both authorized and unauthorized states. The listing for the titanium dioxide waste, K178, in today's rule is issued pursuant to non-HSWA authority. Therefore, the listing will not become effective at the state level until adopted by the state and at the federal level when the revision to the state program is authorized by EPA. Facilities located in states authorized for the RCRA program should check with their state offices to determine when the K178 listing becomes effective in the state.

1. K176 and K177: Facilities Newly Subject to RCRA Permit Requirements

Facilities that treat, store, or dispose of K176 and K177 wastes that are subject to RCRA regulation for the first time by this rule (that is, facilities that have not previously received a permit pursuant to section 3005 of RCRA and are not currently operating pursuant to interim status), might be eligible for interim status (see section 3005(e)(1)(A)(ii) of RCRA). To obtain interim status based on treatment, storage, or disposal of such newly identified wastes, eligible facilities are required to comply with 40 CFR 270.70(a) and 270.10(e) by providing notice under section 3010 and submitting a Part A permit application no later than May 20, 2002. Such facilities are subject to regulation under 40 CFR Part 265 until a permit is issued.

In addition, under section 3005(e)(3) and 40 CFR 270.73(d), not later than November 20, 2002, land disposal facilities newly qualifying for interim status under section 3005(e)(1)(A)(ii) also must submit a Part B permit application and certify that the facility is in compliance with all applicable ground-water monitoring and financial responsibility requirements. If the facility fails to submit these certifications and a permit application, interim status will terminate on that date.

2. K178: Facilities Newly Subject to RCRA Permit Requirements

Facilities that treat, store, or dispose of K178 waste that are subject to RCRA regulation for the first time by this rule (that is, facilities that have not previously received a permit pursuant to section 3005 of RCRA and are not currently operating pursuant to interim status), might be eligible for interim status (see section 3005(e)(1)(A)(ii) of RCRA). To obtain interim status based on treatment, storage, or disposal of this newly identified waste, eligible facilities are required to comply with 40 CFR 270.70(a) and 270.10(e) by providing notice under section 3010 and submitting a Part A permit application no later than 180 days after the K178 listing becomes effective. Once the K178 listing becomes effective, such facilities are subject to regulation under 40 CFR part 265 until a permit is issued.

In addition, under section 3005(e)(3) and 40 CFR 270.73(d), not later than 365 days after the K178 listing becomes effective, land disposal facilities newly qualifying for interim status under section 3005(e)(1)(A)(ii) also must submit a Part B permit application and certify that the facility is in compliance with all applicable ground-water monitoring and financial responsibility requirements. If the facility fails to submit these certifications and a permit application, interim status will terminate on that date.

3. K176 and K177: Existing Interim Status Facilities

Pursuant to 40 CFR 270.72(a)(1), all existing hazardous waste management facilities (as defined in 40 CFR 270.2) that treat, store, or dispose of the newly identified K176 and K177 wastes and are currently operating pursuant to interim status under section 3005(e) of RCRA, must file an amended Part A permit application with EPA no later than the effective date of today's rule, (i.e., May 20, 2002). By doing this, the facility may continue managing the newly listed wastes. If the facility fails to file an amended Part A application by that date, the facility will not receive interim status for management of the newly listed hazardous wastes and may not manage those wastes until the facility receives either a permit or a change in interim status allowing such activity (40 CFR 270.10(g)).

4. K178: Existing Interim Status Facilities

Pursuant to 40 CFR 270.72(a)(1), all existing hazardous waste management facilities (as defined in 40 CFR 270.2) that treat, store, or dispose of the newly identified K178 waste and are currently operating pursuant to interim status under section 3005(e) of RCRA, must file an amended Part A permit application with EPA no later than the effective date of the K178 listing, (i.e., once the state adopts or is authorized for the K178 listing). By doing this, the facility may continue managing the newly listed waste. If the facility fails to file an amended Part A application by the required date, the facility will not receive interim status for management of the newly listed hazardous waste and may not manage the waste until the facility receives either a permit or a change in interim status allowing such activity (40 CFR 270.10(g)).

5. K176 and K177: Permitted Facilities

Facilities that already have RCRA permits must request permit modifications if they want to continue managing newly listed K176 and K177 wastes (see 40 CFR 270.42(g)). This provision states that a permittee may continue managing the newly listed wastes by following certain requirements, including submitting a Class 1 permit modification request by the date on which the waste or unit becomes subject to the new regulatory requirements (i.e., the effective date of today's rule), complying with the applicable standards of 40 CFR Parts 265 and 266 and submitting a Class 2 or 3 permit modification request within 180 days of the effective date.

Generally, a Class 2 modification is appropriate if the newly listed wastes will be managed in existing permitted units or in newly regulated tank or container units and will not require additional or different management practices than those authorized in the permit. A Class 2 modification requires the facility owner to provide public notice of the modification request, a 60-day public comment period, and an informal meeting between the owner and the public within the 60-day period. The Class 2 process includes a "default provision," which provides that if the Agency does not reach a decision within 120 days, the modification is automatically authorized for 180 days. If the Agency does not reach a decision by

the end of that period, the modification is permanently authorized (see 40 CFR 270.42(b)).

A Class 3 modification is generally appropriate if management of the newly listed wastes requires additional or different management practices than those authorized in the permit or if newly regulated land-based units are involved. The initial public notification and public meeting requirements are the same as for Class 2 modifications. However, after the end of the 60-day public comment period, the Agency will grant or deny the permit modification request according to the more extensive procedures of 40 CFR Part 124. There is no default provision for Class 3 modifications (see 40 CFR 270.42(c)).

Under 40 CFR 270.42(g)(1)(v), for newly regulated land disposal units, permitted facilities must certify that the facility is in compliance with all applicable 40 CFR Part 265 ground-water monitoring and financial responsibility requirements no later than May 20, 2002. If the facility fails to submit these certifications, authority to manage the newly listed wastes under 40 CFR 270.42(g) will terminate on that date.

6. K178: Permitted Facilities

Facilities that already have RCRA permits must request permit modifications if they want to continue managing newly listed K178 waste (see 40 CFR 270.42(g)). This provision states that a permittee may continue managing the newly listed waste by following certain requirements, including submitting a Class 1 permit modification request by the date on which the waste or unit becomes subject to the new regulatory requirements (i.e., the effective date of the K178 listing), complying with the applicable standards of 40 CFR parts 265 and 266 and submitting a Class 2 or 3 permit modification request within 180 days of the effective date.

Generally, a Class 2 modification is appropriate if the newly listed waste will be managed in existing permitted units or in newly regulated tank or container units and will not require additional or different management practices than those authorized in the permit. A Class 2 modification requires the facility owner to provide public notice of the modification request, a 60-day public comment period, and an informal meeting between the owner and the public within the 60-day period. The Class 2 process includes a "default provision," which provides that if the Agency does not reach a decision within 120 days, the modification is automatically authorized for 180 days. If the Agency does not reach a decision by the end of that period, the modification is permanently authorized (see 40 CFR 270.42(b)).

A Class 3 modification is generally appropriate if management of the newly listed waste requires additional or different management practices than those authorized in the permit or if newly regulated land-based units are involved. The initial public notification and public meeting requirements are the same as for Class 2 modifications. However, after the end of the 60-day public comment period, the Agency will grant or deny the permit modification request according to the more extensive procedures of 40 CFR part 124. There is no default provision for Class 3 modifications (see 40 CFR 270.42(c)).

Under 40 CFR 270.42(g)(1)(v), for newly regulated land disposal units, permitted facilities must certify that the facility is in compliance with all applicable 40 CFR part 265 ground-water monitoring and financial responsibility requirements no later than the effective date of the K178 listing. If the facility fails to submit these certifications, authority to manage the newly listed waste under 40 CFR 270.42(g) will terminate on that date.

7. K176, K177 and K178: Units

Units in which newly identified hazardous wastes are generated or managed will be subject to all applicable requirements of 40 CFR 264 for permitted facilities or 40 CFR 265 for interim status facilities, unless the unit is excluded from such permitting by other provisions, such as the wastewater treatment tank exclusions (40 CFR 264.1(g)(6) and 265.1(c)(10)) and the product storage tank exclusion (40 CFR 261.4(c)). Examples of units to which these exclusions could never apply include landfills, land treatment units, waste piles, incinerators, and any other miscellaneous units in which these wastes may be generated or managed.

8. K176 and K177: Closure

All units in which newly identified hazardous wastes are treated, stored, or disposed after the effective date of this regulation that are not excluded from the requirements of 40 CFR 264 and 265 are subject to both the general closure and post-closure requirements of subpart G of 40 CFR 264 and 265 and the unit-specific closure requirements set forth in the applicable unit technical standards subpart of 40 CFR 264 or 265 (e.g., subpart N for landfill units). In addition, EPA promulgated a final rule that allows, under limited circumstances, regulated landfills, surface impoundments, or land treatment units to cease managing hazardous waste but to delay subtitle C closure to allow the unit to continue to manage non-hazardous waste for a period of time prior to closure of the unit (see 54 FR 33376, August 14, 1989). Units for which closure is delayed continue to be subject to all applicable 40 CFR 264 and 265 requirements. Dates and procedures for submittal of necessary demonstrations, permit applications, and revised applications are detailed in 40 CFR 264.113(c) through (e) and 265.113(c) through (e).

9. K178: Closure

All units in which a newly identified hazardous waste is treated, stored, or disposed after the effective date of the listing that are not excluded from the requirements of 40 CFR 264 and 265 are subject to both the general closure and post-closure requirements of subpart G of 40 CFR 264 and 265 and the unit-specific closure requirements set forth in the applicable unit technical standards subpart of 40 CFR 264 or 265 (e.g., subpart N for landfill units). In addition, EPA promulgated a final rule that allows, under limited circumstances, regulated landfills, surface impoundments, or LTUs to cease managing hazardous waste but to delay Subtitle C closure to allow the unit to continue to manage non-hazardous waste for a period of time prior to closure of the unit (see 54 FR 33376, August 14, 1989). Units for which closure is delayed continue to be subject to all applicable 40 CFR 264 and 265 requirements. Dates and procedures for submittal of necessary demonstrations, permit applications, and revised applications are detailed in 40 CFR 264.113(c) through (e) and 265.113(c) through (e).

VI. How Will This Rule Be Implemented at the State Level?

A. Applicability of Rule in Authorized States

Under section 3006 of RCRA, EPA may authorize a qualified State to administer and enforce a hazardous waste program within the State in lieu of the federal program and to issue and enforce permits in the State. A State may receive authorization by following the approval process described under 40 CFR 271.21. See 40 CFR part 271 for the overall standards and requirements for authorization. EPA continues to have independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. An authorized State also continues to have independent authority to bring enforcement actions under State law.

After a State receives initial authorization, new Federal requirements promulgated under RCRA authority existing prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that State until the State adopts and receives authorization for equivalent State requirements. In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new Federal requirements and prohibitions promulgated pursuant to HSWA provisions take effect in authorized States at the same time that they take effect in unauthorized States. As such, EPA carries out HSWA requirements and prohibitions in authorized States, including the issuance of new permits implementing those requirements, until EPA authorizes the State to do so.

Authorized States are required to modify their programs when EPA promulgates Federal requirements that are more stringent or broader in scope than existing Federal requirements. RCRA section 3009 allows the States to impose standards more stringent than those in the Federal program. See also § 271.1(i). Therefore, authorized States are not required to adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent than existing Federal requirements.

B. Authorization of States for Today's Final Rule

EPA is promulgating today's rule under both HSWA and non-HSWA authorities. EPA is promulgating the two listings for antimony oxide wastes, K176 and K177, under section 3002(e)(2) of RCRA, which is a requirement added by the HSWA amendments. In addition, the requirements of the Land Disposal Restriction (LDR) program promulgated today are imposed under sections 3004(g)-(m), which also are HSWA requirements. Therefore, we will add the new requirements for K176, K177 and the LDRs to Table 1 at 40 CFR 271.1(j), which identifies Federal program requirements promulgated pursuant to HSWA. After the effective date, EPA will implement these portions of the rule in all States, including authorized States, until the States are authorized for the new provisions.

Note: There will be a delay in the effectiveness of the LDRs for K178, as discussed further below.

Once authorized States modify their programs to adopt equivalent rules and receive authorization for such rules from EPA, those rules become RCRA Subtitle C requirements that apply in the States in lieu of the equivalent federal requirements.

For the portions of the rule that are promulgated pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final RCRA authorization under RCRA sections 3006(g) or (b) on the basis that State regulations are, respectively, substantially equivalent or fully equivalent to EPA's regulations. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21 and 271.24. Note that all HSWA interim authorizations will expire on January 1, 2003 (see 40 CFR 271.24(c)).

As explained earlier in this preamble, in May 2001 we promulgated a revision to the mixture rule that revised an exemption previously available to wastes listed because they exhibited the toxicity characteristic. As a result, mixtures of K176 and non-hazardous wastes will be regulated as hazardous wastes even if the mixture does not exhibit the TC. Although today's K176 listing is being promulgated under a HSWA authority, so it will take effect in six months in all states (unless a state already has a more stringent listing rule), the revision to the mixture rule was not promulgated under any HSWA authority. That revision will not take effect until authorized states revise their programs to adopt the change to the mixture rule and EPA approves the revision.

In the preamble to the May, 2001 rule, we stated that the mixture rule changes were not more stringent than or broader in scope than existing rules, so that authorized states were not required to adopt them. In other words, no state is required to promulgate an exemption for wastes that were listed solely for a characteristic. Moreover, at that time, there were no wastes listed because they exhibited the TC. The narrowing of the mixture rule exemption for TC listed wastes had no apparent impact. That narrowing, however, will impact mixtures containing today's K176 listing, keeping them in the Subtitle C regulatory program where previously they would have largely been exempt from the program. The portion of the May 2001 mixture rule that eliminated the exemption for TC listed wastes is more stringent than any state program which includes a mixture rule exemption that gives relief to wastes listed because they exhibit the TC. Accordingly, authorized states that exempt mixtures of wastes listed for a characteristic where the mixtures do not exhibit a characteristic must narrow their exemptions to eliminate relief for mixtures of TC listed wastes, as provided by 271.21. The revised mixture rule exemption is codified at 261.3(g).

As noted earlier in this preamble, the final listing for K178 includes wastes from the production of ferric chloride, not wastes from the production of titanium dioxide. Ferric chloride manufacturing is not one of 14 inorganic chemical sectors identified in the Consent Decree. The decree describes the full scope of EPA's obligations to assess wastes under section 3001(e)(2). Consequently, EPA is not exercising any authority under 3001(e)(2) to list residues from the production of ferric chloride. EPA is promulgating this new listing under its pre-HSWA listing authority in section 3001(b)(1). Therefore, the K178 listing only will become effective under RCRA in an authorized State once the State amends its regulations and the amended regulations are authorized by EPA. For States without RCRA authorization, the listing requirements for K178 become effective on the effective date of today's rule.

All of the provisions of today's final rule are considered to be more stringent than or broader in scope than the base RCRA program. Therefore, authorized States are required to adopt and become authorized for both the HSWA and non-HSWA portions of the rule.

All Land Disposal Restriction rules are adopted under HSWA statutory authority, regardless of the statutory authority for the corresponding waste listing. However, consistent with prior rules establishing LDR requirements for new, non-HSWA listings, the treatment standards and prohibitions for K178 will not have immediate regulatory effect. LDR rules can only apply to "hazardous wastes." The ferric chloride solids will not be hazardous wastes under RCRA until a State adopts a rule listing them as hazardous wastes and EPA authorizes the State's new rule. Therefore, the LDR provisions for K178 will become effective state-by-state, when EPA actions authorizing State regulations that list K178 take effect. See, e.g., 55 FR 22520, 22667 (June 1, 1990 (LDR "first third" rule)).

VII. What Are the Reportable Quantity Requirements for the Newly-Listed Wastes Under the Comprehensive Environmental Response, Compensation, and Liability Act?

All hazardous wastes listed under RCRA and codified in 40 CFR 261.31 through 261.33, as well as all solid waste that are not excluded from regulation as a hazardous waste under 40 CFR 261.4(b) and that exhibits one or more of the characteristics of a RCRA hazardous waste (as defined in 40 CFR

261.21 through 261.24), are hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended (see CERCLA section 101(14)(C)). CERCLA hazardous substances are listed in Table 302.4 at 40 CFR 302.4 along with their reportable quantities (RQs). If a hazardous substance is released in an amount that equals or exceeds its RQ, the release must be reported immediately to the National Response Center (NRC) pursuant to CERCLA section 103.

A. When Do I Have To Report My Releases?

Under CERCLA section 103(a), the person in charge of a vessel or facility from which a hazardous substance has been released in a quantity that is equal to or exceeds its RQ must immediately notify the NRC as soon as that person has knowledge of the release. The toll-free telephone number of the NRC is 1–800–424–8802; in the Washington, DC, metropolitan area, the number is (202) 267–2675. In addition to this reporting requirement under CERCLA, section 304 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) requires owners or operators of certain facilities to report releases of extremely hazardous substances and CERCLA hazardous substance to State and local authorities. Immediately after the release of an RQ or more of an extremely hazardous substance or a CERCLA hazardous substance, EPCRA section 304 notification must be given to the community emergency coordinator of the local emergency planning committee for any area likely to be affected by the release, and to the State emergency response commission of any State likely to be affected by the release.

Under section 102(b) of CERCLA, all hazardous substances (as defined by CERCLA section 101(14)) have a statutory RQ of one pound, unless and until the RQ is adjusted by regulation. In today's final rule, we: (1) List the following three wastestreams as RCRA hazardous wastes; (2) designate these wastestreams as CERCLA hazardous substances; and (3) adjust the one-pound statutory RQs for two of these wastestreams. The wastestreams are as follows:

K176 Baghouse filters from the production of antimony oxide, including filters from the production of intermediates (e.g., antimony metal or crude antimony oxide).

K177 Slag from the production of antimony oxide that is speculatively accumulated or disposed, including slag from the production of intermediates (e.g., antimony metal or crude antimony oxide).

K178 Solids from manufacturing and manufacturing-site storage of ferric chloride from acids formed during the production of titanium dioxide using the chloride-ilmenite process.

B. What Was the Basis for the RQ Adjustment?

Our methodology for adjusting the RQs of individual hazardous substances begins with an evaluation of the intrinsic physical, chemical, and toxicological properties of each hazardous substance. The intrinsic properties examined—called "primary criteria"—are aquatic toxicity, mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, chronic toxicity, and potential carcinogenicity.

Generally, for each intrinsic property, EPA ranks hazardous substances on a scale, associating a specific range of values on each scale with an RQ value of 1, 10, 100, 1,000, or 5,000 pounds. The data for each hazardous substance are evaluated using various primary criteria; each hazardous substance may receive several tentative RQ values based on its particular intrinsic properties. The lowest of the tentative RQs becomes the "primary criteria RQ" for that substance.

After the primary criteria RQ are assigned, substances are evaluated further for their susceptibility to certain degradative processes, which are used as secondary adjustment criteria. These natural degradative processes are biodegradation, hydrolysis, and photolysis (BHP). If a hazardous substance, when released into the environment, degrades relatively rapidly to a less hazardous form by one or more of the BHP processes, its RQ (as determined by the primary RQ adjustment criteria), generally is raised one level. Conversely, if a hazardous substance degrades to a more hazardous product after its release, the original substance is assigned an RQ equal to the RQ for the more hazardous substance, which may be one or more levels lower that the RQ for the original substance.

The standard methodology used to adjust the RQs for RCRA hazardous wastestreams differs from the methodology applied to individual hazardous substances. The procedure for assigning RQs to RCRA wastestreams is based on an analysis of the hazardous constituents of the wastestreams. The constituents of each RCRA hazardous wastestream are identified in 40 CFR part 261, Appendix VII. We determine an RQ for each constituent within the wastestream and establish the lowest RQ value of these constituents as the adjusted RQ for the wastestream.

We proposed to promulgate a one pound RQ for constituents in K176 and a 5000 pound RQ level for constituents in K177. We did not propose any adjustment for K178 because we had not yet developed a primary "waste constituent RQ" for manganese, one of the constituents of concern. We did not receive any comments on our proposed RQs. In today's final rule, we assign a one-pound adjusted RQ to the K176 wastestream, and an adjusted RQ of 5,000 pounds to the K177 wastestream. The adjusted RQs for these wastestreams are based on the lowest RQ value of the constituents present in each wastestream and are presented in Table VII–1 below.

TABLE VII—1. ADJUSTED RQS FOR WASTESTREAMS K176 AND K177

Wastestream	Wastestream constituent	Wastestream constituent RQ (lb.)	Wastestream RQ (lb.)
K176	arsenic	1	1
	lead	10	
K177	antimony	5,000	5,000

We are deferring action on the manganese elements of the proposal, as described in section IV.B. The statutory RQ of 1 for K178 may be adjusted in the future.

C. What if I Know the Concentration of the Constituents in My Waste?

If you know the concentration levels of all the hazardous constituents in a particular inorganic chemical manufacturing waste you may apply the mixture rule (see 40 CFR 302.6(b)) to the actual concentrations. You would need to report a release of any of the wastes when an RQ or more of any of their respective hazardous constituents is released.

VIII. Administrative Assessments

A. Executive Order 12866

Under Executive Order 12866, [58 FR 51,735 (October 4, 1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel, legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Agency estimated the costs of today's final rule to determine if it is a significant regulatory action as defined by the Executive Order. The analysis considered compliance costs and economic impacts for inorganic chemical producers affected by this rule. We estimate the total cost of the rule to be between $$115,200 to $171,000 annually. This analysis suggests that this rule is not economically significant according to the definition in E.O. 12866. However, pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because it raises novel, legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

Detailed discussions of the methodology used for estimating the costs, economic impacts and the benefits attributable to today's final rule for listing hazardous wastes from inorganic chemical production, followed by a presentation of the cost, economic impact and benefit results, may be found in the background document: Economic Analysis of the Final Rule For Listing Hazardous Waste From Inorganic Chemical Production, which was placed in the docket for today's final rule.

1. Methodology Section

To estimate the cost and economic impacts to potentially affected firms and benefits to society from this final rulemaking, we evaluated § 3007 survey responses from inorganic chemical producers, firm financial reports, and chemical production data. For the final rule, we conducted a cost and economic impact analysis for actual inorganic chemical producing facilities rather than the model facilities we evaluated for the proposed rule. Also for the final rule, we evaluated a single scenario focused on actually affected facilities rather than the two scenarios we assessed for the proposal. The additional scenario in the proposal included facilities where the Agency completed quantitative risk assessment involving fate and transport modeling of potential releases of wastes generated by these facilities to evaluate potential effects on human health and the environment but for which no listings were proposed.

To estimate the incremental cost of this rulemaking, we reviewed baseline management practices and costs to affected firms. Where more than one baseline management method was used (e.g., municipal incineration and landfilling), we accounted for the costs of either more than one form of baseline management or selected and accounted for the cost associated with the least expensive baseline management (which would overestimate rather than underestimate the cost of the rule).

We modeled the most likely post-regulatory waste management scenarios resulting from the listings (e.g., disposal in a Subtitle C hazardous waste landfill for K178, recycling or land disposal for K176 and K177) and the estimated cost of complying with these post-regulatory management scenarios. The difference between the baseline management cost and the post-regulatory cost is the incremental cost of the rulemaking.

To estimate the economic impact of today's final rulemaking, we compared the incremental cost of the rulemaking with model firm sales and either net profit or product value. The Agency also considered the ability of potentially affected firms to pass on compliance costs to customers in the form of higher prices.

2. Results

Volume Results. Data reviewed by the Agency indicates that there are three inorganic chemical producers affected by today's final rule. The data report that these firms generated 72.4 metric tons of inorganic chemical production waste annually that are affected by today's final rule. Because today's listing description for K178 is limited to nonexempt ferric chloride residues, the Agency believes that the affected volume of K178 will be limited to 45.4 metric tons rather than the 11,797 tons of these solids that are generated annually.[38] The estimated volume of wastes associated with the production of antimony oxide has not changed.

EPA is aware that there also are historically generated materials the management of which could result in increased costs due to the K177 and K178 listings, if these materials are actively managed after the effective date of this final rule. These materials include: 1) 120,000 tons of historically generated antimony oxide slag and contaminated soil in Laredo, Texas, 2) 500,000 tons of stockpiled Iron Rich™ in Edge Moor, Delaware, and 3) an unknown quantity of ferric chloride surface impoundment solids in Edge Moor, Delaware. EPA has not included these volumes in its economic analysis of this rule because it is assumed that these materials will not be actively managed after the effective date of this rule.

Cost Results. We estimate the total annual incremental costs from today's final rule to be between $115,200 to $171,000 for all facilities. Sectors costs are summarized in Table VIII–1 .

[38] Prior to proposal, the commenter had provided data that ferric chloride filter solids make up to 10 percent of 120,000 to 140,000 tons of "Iron Rich"' generated annually by the facility. See Titanium Dioxide Listing Background Document for the Inorganic Chemical Listing Determination, August 2000, p. 53. Using the midpoint of this range and the maximum percentage of Iron Rich" composition, EPA used a value of 13,000 tons (11,797 metric tons) of solids for its economic analysis supporting the proposal. During post-proposal meetings with EPA, the commenter indicated it would be technically feasible and cost-effective to modify its process so that all but 45 tons of solids would be Bevill-exempt post-rule.

TABLE VIII–1. ESTIMATED INCREMENTAL COST BY INORGANIC CHEMICAL SECTOR

Sector	Volume of Affected Waste (tons)	Estimated Incremental Annual Cost (1999 $)	Number of Affected Facilities
Antimony Oxide	27	$730 to $14,000	2
Titanium Dioxide	45.4	$114,500 to $157,000	1
Total	72.4	$115,200 to $171,000	3

Economic Impact Results. To estimate potential economic impacts resulting from today's final rule, we used first order economic impacts measures such as the estimated incremental costs of complying with the new listing regulations and expressed these costs as a percentage of the affected firms' sales and reported or estimated profits.[39] We used these measures to evaluate potential impacts to affected inorganic chemical producers. For affected inorganic chemical producers in the antimony oxide and titanium dioxide sectors, we estimated the incremental annual costs of this rulemaking to be less than one percent of affected firms' sales. For one of the antimony oxide producers, the incremental costs of the rule are less than one percent of their profit. The other antimony oxide producer reports negative earnings. For the titanium dioxide producer, the incremental costs of rule are less than one percent of the firm's profit. More detailed information on this estimate can be found in the economic analysis placed into today's docket.

3. Public Comment

A number of commenters expressed concern that EPA's economic analysis did not account for incremental costs associated with adding manganese to the Universal Treatment Standard (UTS) table at 40 CFR § 268.48. Commenters stated that the addition of manganese to the UTS list could add substantial costs to the treatment of characteristic wastes, delay hazardous waste site cleanups, and adversely impact affected generators of these wastes. Because EPA is not adding manganese to the UTS list in this rulemaking, the commenters' concerns about these potential costs and impacts will not occur as a result of today's final rule.

One public commenter stated that EPA had significantly underestimated the cost of the proposed K178 listing to the company. The commenter stated that our economic analysis failed to include the costs of incinerating the waste and retrofitting surface impoundments. The commenter also stated that we did not estimate correctly the volume of waste affected by the listing. EPA disagrees with these comments because they do not reflect cost-minimizing post-regulatory behavior on the part of the affected entity. In our economic analysis for the proposed rule, we modeled full segregation of the ferric chloride residues from the production of titanium dioxide (chloride-ilmenite process). EPA believes that the affected entity will undertake process modifications to segregate the potentially affected volumes of its wastes into Bevill-exempt (i.e., not hazardous waste) and nonexempt components prior to the rule's effective date. We, therefore, modeled the volume of ferric chloride residues, which is a relatively small volume of waste compared to the original material we believed would be listed. Although we believe that incineration of the remaining volume would not have been necessary, because non-thermal treatment technologies such as solvent extraction and chemical dechlorination present cost-effective alternatives to combustion, we modeled incineration as selected treatment for this waste for our upper-bound of the cost range. In the event that the ferric chloride residues exhibit a hazardous waste characteristic when generated, the generator would have an obligation to treat dioxins and furans, if any, present in the waste. In this case, the only incremental cost attributable to the rule is the difference between Subtitle C hazardous waste landfill and Subtitle D nonhazardous landfill disposal. The commenter did not provide any data or reasoning about why source segregation of this material is either technically infeasible or economically impractical.

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, a small entity is defined as: (1) A small business that has fewer than 1000 or 100 employees per firm depending upon the SIC code the firm primarily is classified in[40]; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

There is one potentially affected inorganic chemical producing firm that is a small entity. This firm is located in the antimony oxide sector. We have determined that this firm will incur costs of less than one percent of the firm's sales. Although this firm has reported negative earnings, the maximum incremental annual cost of the rule is approximately $430 which represents approximately 1 percent of the negative earnings. This firm also has the opportunity of recycling both its slag and baghouse filters which would

[39] When profit information is either unavailable or highly variable from year to year, the Agency has chosen to use a profit surrogate in completing the economic impact analysis of this final rule. According to Dun and Bradstreet's Industry Norms and Key Business Indicators (1995) the average net after tax profit for inorganic chemical producers in the 2819 SIC code was 6.3 percent. When needed, this percentage is applied to reported sales of affected firms in order to estimate their profits.

[40] The Small Business Administration has classified firms in the manufacturing sector (SIC Codes 20–39) and wholesale trade sector (SIC Codes 50–51) as small businesses within the sector based on the number of employees per firm. See Small Business Size Standards, 61 FR 3280, 3289 (January 31, 1996). Thus, to determine if a inorganic chemical producer is a small business, the primary SIC code of the firm would have to be determined. The small entities in today's rulemaking are in two SIC codes: (1) 2812 Alkalies and Chlorine, size standard 1000 employees and (2) 5082 Construction and Mining (except Petroleum) Machinery and Equipment size standard 100 employees.

remove these materials from the scope of today's listing. The Agency does not believe that these costs will impose a significant impact on this firm's operations. The Agency also believes that one firm in the antimony oxide sector does not constitute a substantial number of small entities.

After considering the impact of both of these factors from today's final rule on the small entity, I certify that this action will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Worksheet (ICW) document has been prepared (ICR No. 1968.01) and a copy may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave. N.W.; Washington, DC 20460 or by calling (202) 260–2740. A copy may also be downloaded off the internet at *http://www.epa.gov/icr*. The information requirements are not effective until OMB approves them.

The effect of listing the wastes described earlier is to subject industry to management and treatment standards under the Resource Conservation and Recovery Act (RCRA). However, this final rule represents only an incremental increase in burden for generators and subsequent handlers of the newly listed wastes, and affects the following existing RCRA information collection requirements: Notification, Generator, Generator Standards, and Biennial Report (the chart below provides details). This final rule does not contain any new information collection requirements, nor does it modify any existing information collection requirements.

As a result of the final rule, EPA estimates that four (4) facilities will be newly subject to existing RCRA information collection requirements for the newly listed wastes. The exhibit below presents the estimated annual hour and cost burden for these four facilities to comply with the existing recordkeeping and reporting requirements associated with generating and managing hazardous wastes. We estimate that the four facilities would incur an annual burden of approximately 77 hours and $3,630 in carrying out existing information collection requirements for their newly listed wastes. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The OMB control number for the information collection requirements in this rule will be listed in an amendment to 40 CFR part 9 in a subsequent FR document after OMB approves the ICR.

EXHIBIT 1.—ANNUAL HOUR AND COST BURDEN UNDER EXISTING ICRS FOR NEWLY LISTED INORGANIC CHEMICAL WASTES [1]

ICR name and number	Annual labor hours	Annual labor cost	Annual capital cost	Annual O & M cost	Total annual cost
Notification (261)	1	$68.00	$0.00	$0.00	$68.00
Manifest (801)	25	1,182.00	0.00	6.00	1,186.00
Generators (820)	49	2,212.00	0.00	4.00	2,218.00
Biennial Report (976)	2	157.00	0.00	2.00	159.00
Total	77	3,619.00	0.00	12.00	3,631.00

[1] EPA has proposed to list these wastes as hazardous (see 65 *FR* 55684).

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. In any event, EPA has determined that this rule does not

contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The total expenditure to the private sector in any one year is less than $2 million (for more information see the Economic Analysis of the Final Rule For Listing Hazardous Waste From Inorganic Chemical Production) and less than $300,000 per year for State, local and tribal governments. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 12898: Environmental Justice

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all populations in the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health or environmental impacts as a result of EPA's policies, programs, and activities and that all people live in safe and healthful environments. In response to Executive Order 12898 and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17).

Today's final rule covers wastes from inorganic chemical production. It is not certain whether the environmental problems addressed by this rule could disproportionately affect minority or low-income communities. Today's final rule is intended to reduce risks of hazardous wastes and to benefit all populations. As such, this rule is not expected to cause any disproportionately high and adverse impacts to minority or low-income communities versus non-minority or affluent communities.

In making hazardous waste listing determinations, we base our evaluations of potential risk from the generation and management of solid wastes on an analysis of potential individual risk. In conducting risk evaluations, our goal is to estimate potential risk to any population of potentially exposed individuals (e.g., home gardeners, adult farmers, children of farmers, anglers) located in the vicinity of any generator or facility handling a waste. Therefore, we are not putting poor, rural, or minority populations at any disadvantage with regard to our evaluation of risk or with regard to how the Agency makes its final hazardous waste listing determinations.

In deciding today to list wastes as hazardous (i.e., baghouse filters from the production of antimony oxide, including filters from the production of intermediates (e.g., antimony metal or crude antimony oxide); slag from the production of antimony oxide that is speculatively accumulated or disposed, including slag from the production of intermediates (e.g., antimony metal or crude antimony oxide); and, residues from manufacturing and manufacturing-site storage of ferric chloride from acids formed during the production of titanium dioxide using the chloride-ilmenite process), all populations potentially exposed to these wastes or potentially exposed to releases of the hazardous constituents in the wastes will benefit from the final listing determination. In addition, listing determinations take effect at the national level. The wastes being listed as hazardous will be hazardous regardless of where they are generated and regardless of where they may be managed. Although the Agency understands that the final listing determinations may affect where these wastes are managed in the future (in that hazardous wastes must be managed at subtitle C facilities), the Agency's decision to list these wastes as hazardous is independent of any decisions regarding the location of waste generators and the siting of waste management facilities.

Similarly, in cases where the Agency is not listing a solid waste as hazardous because the waste does not meet the criteria for being identified as a hazardous waste, these decisions are based upon an evaluation of potential individual risks located in proximity to any facility handling the waste. Therefore, any population living in close proximity to a facility that produces a solid waste that the Agency did not list as hazardous would not be adversely affected either because the waste is already being managed as a hazardous waste in the Subtitle C system or because the solid waste does not pose a sufficient risk to the local population.

F. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866 and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. Today's final rule is intended to avoid releases of hazardous constituents to the environment at levels that will cause unacceptable risks. We considered risks to children in our risk assessment. The more appropriate and safer management practices in this final rule are projected to reduce risks to children potentially exposed to the constituents of concern.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No Indian tribes own or operate facilities generating wastes affected by this rulemaking. Further, no regulated entities affected by this rulemaking are located in areas subject to Indian tribal government jurisdiction. Thus, Executive Order 13175 does not apply to this rule.

H. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final rule directly affects inorganic chemical producers. There are no State and local government bodies that incur direct compliance costs by this rulemaking. State and local government implementation expenditures are expected to be less than $300,000 in any one year.[41] Thus, the requirements of section 6 of the Executive Order do not apply to this rule. This final rule would preempt State and local law that is less stringent for these inorganic chemical production wastes as hazardous wastes. Under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 to 6992k, the relationship between the States and the national government with respect to hazardous waste management is established for authorized State hazardous waste programs [42 U.S.C. 6926 (§ 3006)] and retention of State authority [42 U.S.C. 6929 (§ 3009)]. Under § 3009 of RCRA, States and their political subdivisions may not impose requirements less stringent for hazardous waste management than the national government. By publishing and inviting comment on the proposed rule, we provided State and local officials notice and an opportunity for appropriate participation. Thus, we complied with the requirements of section 4 of the Executive Order.

[41] For more information, please refer to Chapter 6 of the background document Economic Analysis of the Final Rule For Listing Hazardous Waste From Inorganic Chemical Production, which was placed in the docket for today's final rule.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This final rulemaking involves technical standards. EPA has selected the Toxicity Characteristic Leaching Procedure (TCLP) for treatment standards associated with hazardous metal constituents in wastes listed in today's final rule. The TCLP is the standard test method used to evaluate the toxicity characteristic for the definition of hazardous waste (see 40 CFR 261.24) and treatment standards for metal constituents under the Land Disposal Restrictions (see 40 CFR 268.40 and 268.48.). The Agency has used the TCLP in completing its treatment standards for the same hazardous metal constituents across a range of listed and characteristic hazardous wastes. The performance level for leachability is based on the Best Demonstrated Commercially-Available Technology (BDAT). The use of the TCLP for the same constituents assures uniformity and consistency in the treatment of hazardous waste in fulfillment of the Congressional Mandate to minimize long-term threats to human health or the environment. 42 U.S.C. § 6924(m). The use of any voluntary consensus standard would be impractical with applicable law because it would require a different leaching method than is currently used to determine hazardous characteristics. The use of different chemical methods to assess hazardousness of the waste and compliance with treatment standards would create disparate results between hazardous waste identification and effective treatment of land disposed hazardous wastes. We have not, therefore, used any voluntary consensus standards. In the proposed rulemaking, EPA solicited public comment to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation. EPA did not receive public comment on any voluntary consensus standards that could be used in this regulation.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. § 804(2). The portions of this rule that will take effect earliest will be effective May 20, 2002.

K. Executive Order 13211: Energy Effects

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The scope of this rule is limited in nature to three affected facilities. In addition the total annual cost of this rule is between $115,200 to $171,000. These costs represent less than 1 percent of the affected facilities sales and are not expected adversely impact energy use and management in the United States.

List of Subjects

40 CFR 148

Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements, Water supply.

40 CFR 261

Environmental protection, Hazardous materials, Waste treatment and disposal, Recycling.

40 CFR Part 268

Environmental protection, Hazardous materials, Waste management, Reporting and recordkeeping requirements, Land disposal restrictions, Treatment standards.

40 CFR Part 271

Environmental protection, Administrative practice and procedure,

Confidential business information, Hazardous material transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 302

Environmental protection, Air pollution control, Chemicals, Emergency Planning and Community Right-to-Know Act, Extremely hazardous substances, Hazardous chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: October 31, 2001.

Christine T. Whitman,

Administrator.

For the reasons set forth in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

1. The authority citation for part 148 continues to read as follows:

Authority: Sec. 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

2. Section 148.18 is amended by revising paragraph (k) and adding paragraph (l) to read as follows:

§ 148.18 Waste-specific prohibitions—newly listed and identified wastes.

* * * * *

(k) Effective May 20, 2002, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Numbers K176, K177, and K178 are prohibited from underground injection.

(l) The requirements of paragraphs (a) through (k) of this section do not apply:

(1) If the wastes meet or are treated to meet the applicable standards specified in subpart D of 40 CFR part 268; or

(2) If an exemption from a prohibition has been granted in response to a petition under subpart C of this part; or

(3) During the period of extension of the applicable effective date, if an extension has been granted under § 148.4.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

4. Section 261.4 is amended by revising paragraph (b)(15) to read as follows:

§ 261.4 Exclusions.

* * * * *

(b) * * *

(15) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, K172, K174, K175, K176, K177, and K178, if these wastes had been generated after the effective date of the listing;

(ii) The solid wastes described in paragraph (b)(15)(i) of this section were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate do not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under sections 307(b) or 402 of the Clean Water Act.

(v) As of February 13, 2001, leachate or gas condensate derived from K169–K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. After November 21, 2003, leachate or gas condensate derived from K176, K177, and K178 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation (*e.g.*, shutdown of wastewater treatment system), provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this paragraph (b)(15)(v) after the emergency ends.

* * * * *

5. In § 261.32, the table is amended by adding in alphanumeric order (by the first column) under the subgroup "Inorganic Chemicals" to read as follows:

§ 261.32 Hazardous waste from specific sources.

* * * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazardous code
* * * * * * *		
Inorganic chemicals:		
* * * * * * *		
K176	Baghouse filters from the production of antimony oxide, including filters from the production of intermediates (e.g., antimony metal or crude antimony oxide).	(E)
K177	Slag from the production of antimony oxide that is speculatively accumulated or disposed, including slag from the production of intermediates (e.g., antimony metal or crude antimony oxide).	(T)
K178	Residues from manufacturing and manufacturing-site storage of ferric chloride from acids formed during the production of titanium dioxide using the chloride-ilmenite process.	(T)
* * * * * * *		

Appendix VII to Part 261—Basis for Listing Hazardous Waste

6. Appendix VII to part 261 is amended by adding the following wastestreams in alphanumeric order (by the first column) to read as follows:

EPA hazardous waste No.	Hazardous constituents for which listed
* * * * * * *	
K176	Arsenic, Lead.
K177	Antimony.
K178	Thallium.

PART 268—LAND DISPOSAL RESTRICTIONS

7. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart C—Prohibitions on Land Disposal

8. Section 268.36 is added to read as follows:

§ 268.36 Waste specific prohibitions—inorganic chemical wastes

(a) Effective May 20, 2002, the wastes specified in 40 CFR part 261 as EPA Hazardous Wastes Numbers K176, K177, and K178, and soil and debris contaminated with these wastes, radioactive wastes mixed with these wastes, and soil and debris contaminated with radioactive wastes mixed with these wastes are prohibited from land disposal.

(b) The requirements of paragraph (a) of this section do not apply if:

(1) The wastes meet the applicable treatment standards specified in subpart D of this part;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition;

(3) The wastes meet the applicable treatment standards established pursuant to a petition granted under § 268.44;

(4) Hazardous debris has met the treatment standards in § 268.40 or the alternative treatment standards in § 268.45; or

(5) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to these wastes covered by the extension.

(c) To determine whether a hazardous waste identified in this section exceeds the applicable treatment standards specified in § 268.40, the initial generator must test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains regulated constituents in excess of the applicable subpart D levels, the waste is prohibited from land disposal, and all requirements of this part are applicable, except as otherwise specified.

9. In § 268.40, the Table is amended by adding in alphanumeric order new entries for K176, K177, and K178 as follows:

§ 268.40 Applicability of treatment standards.

* * * * *

TREATMENT STANDARDS FOR HAZARDOUS WASTES

[Note: NA means not applicable]

Waste code	Waste description and treatment/regulatory Subcategory [1]	Regulated hazardous constituent	Common name / CAS [2] No.	Wastewaters: Concentration in mg/L [3], or Technology Code [4]	Nonwastewaters: Concentration in mg/kg [5] unless noted as "mg/L TCLP", or Technology Code
*	*	*	*	*	*
K176	Baghouse filters from the production of antimony oxide, including filters from the production of intermediates (e.g., antimony metal or crude antimony oxide).	Antimony	7440–36–0	1.9	1.15 mg/L TCLP
		Arsenic	7440–38–2	1.4	5.0 mg/L TCLP
		Cadmium	7440–43–9	0.69	0.11 mg/L TCLP
		Lead	7439–92–1	0.69	0.75 mg/L TCLP
		Mercury	7439–97–6	0.15	0.025 mg/L TCLP
K177	Slag from the production of antimony oxide that is speculatively accumulated or disposed, including slag from the production of intermediates (e.g., antimony metal or crude antimony oxide).	Antimony	7440–36–0	1.9	1.15 mg/L TCLP
		Arsenic	7440–38–2	1.4	5.0 mg/L TCLP
		Lead	7439–92–1	0.69	0.75 mg/L TCLP
K178	Residues from manufacturing and manufacturing-site storage of ferric chloride from acids formed during the production of titanium dioxide using the chloride-ilmenite process.	1,2,3,4,6,7,8- Heptachlorodibenzo-p-dioxin. (1,2,3,4,6,7,8-HpCDD)	35822–39–4	0.000035 or CMBST [11].	0.0025 or CMBST [11]
		1,2,3,4,6,7,8- Heptachlorodibenzofuran (1,2,3,4,6,7,8-HpCDF)	67562–39–4	0.000035 or CMBST [11].	0.0025 or CMBST [11]
		1,2,3,4,7,8,9- Heptachlorodibenzofuran (1,2,3,4,7,8,9-HpCDF)	55673–89–7	0.000035 or CMBST [11].	0.0025 or CMBST [11]
		HxCDDs (All Hexachlorodibenzo-p-dioxins).	34465–46–8	0.000063 or CMBST [11].	0.001 or CMBST [11]

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

[Note: NA means not applicable]

Waste code	Waste description and treatment/ regulatory Subcategory [1]	Regulated hazardous constituent	Common name / CAS [2] No.	Wastewaters: Concentration in mg/L [3], or Technology Code [4]	Nonwastewaters: Concentration in mg/kg [5] unless noted as "mg/L TCLP", or Technology Code
		HxCDFs (All Hexachlorodibenzofurans).	55684–94–1	0.000063 or CMBST [11].	0.001 or CMBST [11]
		1,2,3,4,6,7,8,9-Octachlorodibenzo-p-dioxin. (OCDD)	3268–87–9	0.000063 or CMBST [11] 0.005 or.	0.005 or CMBST [11]
		1,2,3,4,6,7,8,9-Octachlorodibenzofuran. (OCDF)	39001–02–0	0.000063 or CMBST [11].	0.005 or CMBST [11]
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	36088–22–9	0.000063 or CMBST [11].	0.001 or CMBST [11]
		PeCDFs (All Pentachlorodibenzofurans)	30402–15–4	0.000035 or CMBST [11].	0.001 or CMBST [11]
		TCDDs (All tetrachlorodi-benzo-p-dioxins).	41903–57–5	0.000063 or CMBST [11].	0.001 or CMBST [11]
		TCDFs (All tetrachlorodibenzofurans).	55722–27–5	0.000063 or CMBST [11].	0.001 or CMBST [11]
		Thallium	7440–28–0	1.4	0.20 mg/L TCLP

* * * * * * *

Footnotes to Treatment Standard Table 268.40:

[1] The waste descriptions providedin this table do not replace waste descriptions in 49 CFR part 261. Descriptions of Treatment/Regulatory Subcategories are provided, as needed, to distinguish between applicability of different standards.

[2] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.

[3] Concentration standards for wastewaters are expressed in mg/L and are based on analysis of composite samples.

[4] All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in 40 CFR 268.42 Table 1—Technology Codes and Descriptions of Technology-Based Standards.

[5] Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR part 264, Subpart O or 40 CFR part 265, Subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

[11] For these wastes, the definition of CMBST is limited to: (1) Combustion units operating under 40 CFR 266, (2) combustion units permitted under 40 CFR part 264, Subpart O, or (3) combustion units operating under 40 CFR 265, Subpart O, which have obtained a determination of equivalent treatment under 268.42(b).

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

10. The authority citation for Part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

11. Section 271.1(j) is amended by adding the following entries to Table 1 and Table 2 in chronological order by date of publication to read as follows.

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
* *	* *	* *	*
10/31/01	Listing of Inorganic Chemical Manufacturing Wastes.	[*insert Federal Register page numbers*].	5/20/02.
* *	* *	* *	*

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	FEDERAL REGISTER reference
* * * * * * *			
5/20/02	Prohibition on land disposal of K176, K177, and K178 wastes, and prohibition on land disposal of radioactive waste mixed with K176, K177, and K178 wastes, including soil and debris.	3004(g)(4)(C) and 3004(m)	11/20/02.
* * * * * * *			

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

12. The authority citation for Part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

13. In § 302.4, Table 302.4 is amended by adding the following new entries in alphanumeric order at the end of the table to read as follows:

§ 302.4 Designation of hazardous substances

* * * * *

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synomyms	Statutory			Final RQ	
			RQ	Code †	RCRA waste No.	Category	Pounds (Kg)
* * * * * * *							
K176			*1	4	K176	X	1 (0.454)
Baghouse filters from the production of antimony oxide, including filters from the production of intermediates (e.g., antimony metal or crude antimony oxide)							
K177			*1	4	K177	D	5,000 (2270)
Slag from the production of antimony oxide that is speculatively accumulated or disposed, including slag from the production of intermediates (e.g., antimony metal or crude antimony oxide)							
K178			*1	4	K178	X	1 (0.454)
Residues from manufacturing and manufacturing-site storage of ferric chloride from acids formed during the production of titanium dioxide using the chloride ilmenite process.							
* * * * * * *							

† Indicates the statutory source as defined by 1, 2, 3, and 4 below.
4—Indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA section 3001.
1* Indicates that the 1-pound RQ is a CERCLA statutory RQ.

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Tuesday,
November 20, 2001

Part IV

Department of Commerce

National Telecommunications and Information Administration

Public Telecommunications Facilities Program: Closing Date; Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 000410097–1269–03]

RIN 0660–ZA11

Public Telecommunications Facilities Program: Closing Date

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of closing date for solicitation of applications.

SUMMARY: Subject to the availability of FY 2002 funds, the National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, announces the solicitation of applications for planning and construction grants for public telecommunications facilities under the Public Telecommunications Facilities Program (PTFP).

DATES: Pursuant to 15 CFR 2301.8(b), the NTIA Administrator hereby establishes the closing date for the filing of applications for PTFP grants. The closing date selected for the submission of applications for FY 2002 is February 5, 2002. Applications must be received prior to 7 p.m. February 5, 2002. Applications submitted by facsimile or electronic means are not acceptable.

ADDRESSES: To obtain an application package, submit completed applications, or send any other correspondence, write to: NTIA/PTFP, Room H–4625, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: William Cooperman, Director, Public Broadcasting Division, telephone: (202) 482–5802; fax: (202) 482–2156. Information about the PTFP can also be obtained electronically via Internet *(http://www.ntia.doc.gov/ptfp)*.

SUPPLEMENTARY INFORMATION:

I. Closing Date

Applicants for matching grants under the PTFP must file their applications on or before 7 p.m., Tuesday, February 5, 2002. Issuance of grants is subject to the availability of FY 2002 funds. At this time, the Congress is considering the President's request to appropriate $43.5 million for the PTFP. NTIA intends to divide the funds appropriated by the Congress into two parts. One portion of the appropriation will be set aside to fund applications submitted in response to this Notice. The remainder of the appropriation will be set aside to fund additional phases of multi-phase projects initially funded in FY 2000 and FY 2001. Further notice will be made in the **Federal Register** about the final status of funding for this program at the appropriate time. In awarding grants, NTIA will strive to maintain an appropriate balance between traditional grants and those to stations converting to digital broadcasting. Information regarding digital television Broadcast Other projects is included in Section VII of this document. Section VII also describes revisions of the PTFP Rules which will be applicable only for the 2002 Grant Round for applications in the Broadcast Other category. The amount of a grant award by NTIA will vary, depending on the approved project. For fiscal year 2001, NTIA awarded $42 million in funds to 105 projects. The awards ranged from $6,300 to $1,800,000.

II. Application Forms

All applicants must use the official application form for the FY 2002 grant cycle. This form expires on October 31, 2003, and no previous versions of the form may be used. Each page of the application form has the expiration date of 10/31/2003 printed on the bottom line. To apply for a PTFP grant, an applicant must file an original and five copies of a timely and complete application on the application form. Applicants for television projects are requested to supply one additional copy of their application (an original and six copies), if this does not create a hardship on the applicant. The current application form is available on the Internet and will be provided to applicants as part of the application package upon request.

Notwithstanding any other provision of the 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 requirements of the Paperwork Reduction Act (PRA), unless that collection displays a currently valid Office of Management and Budget (OMB) control number. The PTFP application form has been cleared under OMB control no. 0660–0003.

III. Authority

The Public Telecommunications Facilities Program is authorized by The Public Telecommunications Financing Act of 1978, as amended, 47 U.S.C. 390–393, 397–399(b).

IV. Catalog of Federal Domestic Assistance (CFDA)

CFDA No. 11.550, Public Telecommunications Facilities Program.

V. Regulations

The applicable Rules for the PTFP were published on November 8, 1996 (61 FR 57966). In accordance with provisions provided in 15 CFR part 2301, section 2301.26, certain requirements of the PTFP are modified in this Notice for FY 2002. Copies of the 1996 Rules are posted on the NTIA Internet site and NTIA will make printed copies available to applicants upon request. Parties interested in applying for financial assistance should refer to these rules and to the authorizing legislation (47 U.S.C. 390–393, 397–399b) for additional information on the program's goals and objectives, eligibility criteria, evaluation criteria, and other requirements.

Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the Closing Date and Time. NTIA *will not* accept mail delivery of applications posted on the Closing Date or later and received after the above deadline. However, if an application is received after the Closing Date due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the Closing Date, or (2) significant weather delays or natural disasters, NTIA will, upon receipt of proper documentation, consider the application as having been received by the deadline.

Applicants submitting applications by hand delivery are notified that, due to security procedures in the Department of Commerce, all packages must be cleared by the Department's security office. Entrance to the Department of Commerce Building for security clearance is on the 15th Street side of the building. Applicants whose applications are not received by the deadline are hereby notified that their applications will not be considered in the current grant round and will be returned to the applicant. See 15 CFR 2301.8(c); but see also 15 CFR 2301.26. NTIA will also return any application which is substantially incomplete, or when the Agency finds that either the applicant or project is ineligible for funding under 15 CFR 2301.3 or 2301.4. The Agency will inform the applicant of the reason for the return of any application.

All persons and organizations on the PTFP's mailing list will be sent a notification of the FY 2002 Grant Round. Copies of the application forms, Final Rules, Closing Date notification and application guidelines will be available on the NTIA Internet site: *www.ntia.doc.gov/ptfp*. Those not on

the mailing list or who desire a printed copy of these materials may obtain copies by contacting the PTFP at the telephone and fax numbers, at the Internet site, or at mailing address listed above. Prospective applicants should read the Final Rules carefully before submitting applications. Applicants whose applications were deferred in FY 2001 will be mailed information regarding the reactivation of their applications. Applicants whose *television* projects were deferred from FY 2001 should carefully review Section VII. Television Broadcasting and Digital Conversion, regarding policies which apply to the reactivation of their applications.

Indirect costs for *construction* applications are not supported by this program. The total dollar amount of the indirect costs proposed in a *planning* application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award.

Special Note: NTIA has established a policy which is intended to encourage stations to increase from 25 percent to 50 percent the matching percentage for those proposals that call for equipment replacement, improvement, or augmentation (PTFP Policy Statement, 56 FR 59168 (1991)). The presumption of 50 percent funding will be the general rule for the replacement, improvement or augmentation of equipment. (This 50 percent presumption, however, does not apply to television projects as explained in Section VII. Television Broadcasting and Digital Conversion.) A showing of extraordinary need (i.e. small community-licensee stations or a station that is licensed to a large institution (e.g., a college or university) documenting that it does not receive direct or in-kind support from the larger institution) or an emergency situation will be taken into consideration as justification for grants of up to 75 percent of the total project cost for such projects.

A point of clarification is in order: NTIA expects to continue funding projects to activate stations or to extend service at up to 75 percent of the total project cost. NTIA will do this because applicants proposing to provide first service to a geographic area ordinarily incur considerable costs that are not eligible for NTIA funding. The applicant must cover the ineligible costs including those for construction or renovation of buildings and other similar expenses.

Since NTIA has limited funds for the PTFP program, the PTFP Final Rules (published November 8, 1996) modified NTIA's policy regarding the funding of planning applications. Our policy now includes the general presumption to fund planning projects at no more than 75 percent of the project costs. NTIA notes that most of the planning grants awarded by PTFP in recent years include matching in-kind services and funds contributed by the grantee. The new NTIA policy, therefore, codifies what already has become PTFP practice. NTIA, however, is mindful that planning grants are sometimes the only resource that emerging community groups have with which to initiate the planning of new facilities in unserved areas. We, therefore, will continue to award up to 100 percent of total project costs in cases of extraordinary need (e.g. small community group proposing to initiate new public telecommunication service).

We take this opportunity to restate the policy published in the November 22, 1991, PTFP Policy Statement (56 FR 59168 (1991)), regarding applicants' use of funds from the Corporation for Public Broadcasting (CPB) to meet the local match requirements of the PTFP grant. NTIA continues to believe that the policies and purposes underlying the PTFP requirements could be significantly frustrated if applicants routinely relied upon another Federally supported grant program for local matching funds. Accordingly, NTIA has limited the use of CPB funds for the non-Federal share of PTFP projects to circumstances of "clear and compelling need" (15 CFR 2301.6(c)(2)). NTIA intends to maintain that standard and to apply it on a case-by-case basis.

VI. Radio Broadcasting

For the FY 2002 grant round, NTIA is proposing no changes from prior years in its support of radio applications. The changes outlined in the next section of this document on Television Broadcasting and Digital Conversion apply only to digital television applications. The eligibility or priority of radio projects, eligibility of radio equipment and the 50% presumption of funding for radio equipment replacement applications remain as they were in the FY 2001 grant round. NTIA will take great care to ensure that its funding of radio applications reflects its responsibilities under 47 U.S.C. 393(c) that "a substantial amount" of each year's PTFP funds should be awarded to public radio.

NTIA encourages the use of digital technologies for public radio facilities. NTIA has funded projects for digital STLs and audio production equipment which will assist public radio stations as they prepare for conversion to digital technologies. These digital projects are funded as equipment replacement, improvement or augmentation projects with the presumption of a 50 percent Federal share as discussed earlier in Section V of this document, Regulations, unless a showing of extraordinary need for a higher percentage has been made pursuant to § 2301.6(b)(ii) of the PTFP Rules.

For fiscal year 2001, NTIA awarded $2.7 million in funds to 36 grants for public radio projects. The awards ranged from $6,300 to $428,449.

VII. Television Broadcasting and Digital Conversion

The FCC's adoption of the Fifth Report and Order in April 1997 requires that all public television stations begin the broadcast of a digital signal by May 1, 2003. This deadline is so close that, last year, NTIA continued several new policies initially instituted in FY 2000 regarding applications for projects to convert public television stations to digital transmission capability. NTIA believes that the policies worked well and resulted in receipt of 111 digital television conversion applications during FY 2001. These applications requested $96 million in FY 2001 funds and an additional $46 million for subsequent years of multi-year projects permitted by the new policies. Those policies are being continued for the FY 2002 Grant Round and are included in full in this document.

NTIA recognizes that meeting the FCC's deadline is one of the greatest challenges facing America's public television stations. Over 350 stations must overcome both technical and financial challenges in order to complete conversion to digital broadcasting within the FCC's timetable.

In February, the Administration proposed an appropriation of $43.5 million to the PTFP for FY 2002. This proposal is currently before the Congress. These funds would primarily be used to assist public television stations in meeting the FCC's deadline. While these sums are significant, NTIA anticipates that the majority of funds required to convert all the nation's public television stations will actually come from non-Federal sources.

For fiscal year 2001, NTIA awarded $34.7 million in funds to 52 projects which assisted public television stations in the conversion to digital technologies. The awards ranged from $121,600 to $1,800,000 to assist in the digital conversion of 76 public television stations.

NTIA has considered how best to distribute digital conversion funds to public television stations through the PTFP. One of NTIA's goals during the

FY 2002 grant round is to ensure that PTFP's administrative procedures as well as its funds can support public television's needs in meeting the FCC's deadline. Another of NTIA's goals is to maintain an acceptable balance between equipment replacement projects and digital television conversion projects. NTIA is continuing the following policies/procedures instituted during the FY 2000 grant cycle which will assist public television stations in the application for and use of PTFP funds for digital conversion projects.

These policies/procedures are summarized here and then are discussed fully in parts A through G later in this section:

(A) Digital television conversion projects and digital equipment replacement. NTIA has established a "Digital TV List" which includes the equipment eligible for PTFP funding under the Broadcast Other category. NTIA will also use the "Digital TV List" for most television equipment replacement projects and will modify the way it views television replacement applications.

(B) Multi-year funding. NTIA will accept applications under the Broadcast Other category for phased projects requesting funding for up to three years and which are intended to enable all of the applicant's public television stations to meet the FCC's digital broadcasting deadline.

(C) Effective date for expenditure of local matching funds. Applicants for digital conversion projects in the Broadcast Other category may include eligible equipment from the Digital TV List in their projects when that equipment is purchased with non-Federal funds after July 1, 1999.

(D) Subpriorities for digital conversion projects. NTIA is creating three Subpriorities to aid in the processing of digital conversion applications.

(E) Funding levels for television projects. NTIA has revised the presumption of funding from 50% Federal share for most television projects to 40%, has established simplified procedures so stations can qualify for hardship grants up to a 67% Federal share, and will provide incentives for applicants who request only 25% Federal funding.

(F) Use of CPB funds. Applicants may use CPB funds as part of their local non-Federal match in cases of clear and compelling need.

(G) Partnerships; urgency. NTIA encourages partnerships with commercial as well as noncommercial organizations and clarifies its consideration of urgency for digital conversion applications. NTIA believes that digital conversion applications should be afforded high urgency when they document time-sensitive partnerships, time-sensitive funding opportunities, or which include the replacement of equipment required to maintain existing service.

NTIA intends to remain responsive to the equipment replacement needs of public television stations. NTIA's balancing of equipment replacement and digital conversion applications is discussed in the following sections.

In order to assist public television stations in meeting the FCC's deadline and to facilitate a station's raising non-Federal matching funds required for digital conversion projects, NTIA is modifying its application procedures in the following areas.

(A) Digital Television Conversion Projects and Digital Equipment Replacement. For FY 2002, NTIA will support the equipment necessary for a public television station to comply with the FCC's deadline. This includes equipment required for digital broadcast of programs produced locally in analog format as well as the broadcast of digital programming received from national sources. NTIA is posting on its Internet site a listing of transmission and distribution equipment (as contained in the "Digital TV List") which is eligible for PTFP digital television conversion funding. Printed copies of this list are also available from PTFP at the address shown in the Address section of this document. This list was developed in conjunction with the Public Broadcasting Service and is similar to equipment lists PTFP used during last year's grant round. The Digital TV List includes transmission equipment (transmitters, antennas, STLs, towers, etc.) as well as distribution equipment located in a station's master control (routing switchers, video servers, PSIP generators, digital encoders, etc.). Applications seeking funding for the equipment necessary to meet the FCC's deadline will be placed in the Broadcast Other category.

NTIA believes that many stations must replace obsolete equipment in order to complete their digital conversion projects. NTIA is continuing its revised policies to permit the replacement of obsolete equipment as part of digital conversion projects. If the conversion to digital transmission includes the urgent replacement of an existing item of equipment, the application will be considered as a Broadcast Other, rather than as replacement under Priorities 2 or 4. Replacement of existing equipment then is a normal part of a digital conversion application.

If the purpose of an application is just for replacement of urgently needed equipment, even though the equipment is drawn from the Digital TV List, the application will be classified as a Priority 2 or 4, as appropriate.

Any application which includes equipment replacement as a justification for the urgency criterion should submit documentation of downtime or other evidence in support of the urgency evaluation criterion as contained in § 2301.17 of the PTFP Final Rules. The need to replace current equipment in order to maintain existing services will, in many cases, strengthen the urgency criterion of a digital conversion application.

Because of the requirement that all public television stations begin digital broadcasts, all public television applications, whether submitted for Priority 2, Priority 4 or the Broadcast Other category, should include the station's comprehensive plan for digital conversion to meet the FCC's deadline and explain how the requested equipment is consistent with that plan. If the applicant is still developing its plan for digital conversion, the application should address how the requested equipment will be consistent with the overall objective of converting the facility for digital broadcasting. Failure to provide detailed information on the applicant's proposed or existing digital conversion plan will place a television application at a competitive disadvantage during the evaluation of the technical qualification criterion as described in 15 CFR 2301.17 of the PTFP Rules.

NTIA calls applicants' attention to the fact that television production equipment is not included on the Digital TV List but will be found on other equipment lists posted on the NTIA Internet site or available from NTIA by mail. NTIA notes that while a television station must use digital transmission and distribution equipment to begin digital broadcasting, digital production equipment is not required to meet the FCC's deadline. As the FCC deadline approaches, NTIA has reluctantly concluded that, with the funds available to it in FY 2002, it cannot fund television production equipment at the same level as it has prior to the institution of these new digital conversion policies in FY 2000. Television production equipment will continue to be eligible for PTFP funding under Priority 2 and Priority 4, as appropriate. However, for the FY 2002 grant round NTIA will fund television production equipment replacement

applications only for those projects that present a "clear and compelling" case for the urgency of such replacement. NTIA anticipates funding television production replacement projects in FY 2002, though fewer than before this change in policy.

When making the final selection of awards under the procedures of § 2301.17, NTIA will take care to ensure that there is an acceptable balance between projects awarded for equipment replacement projects and those awarded for digital conversion projects. Further, NTIA will consider as part of this balance those stations in the Broadcast Other category (1) which request digital conversion projects and (2) which also include elements of equipment replacement. NTIA will not fund applications in the Broadcast Other category requesting digital conversion to the exclusion of those Broadcast Other applications which include documentation supporting equipment replacement as part of their urgency justification. Further, in making funding decisions for FY 2002, NTIA will limit its support of television replacement applications for production equipment to those applications which present a "clear and compelling" justification for funding during the current grant round.

A complete listing of equipment eligible for funding during the FY 2002 grant round is posted on the NTIA Internet site and printed copies are available from PTFP.

(B) Multi-year funding. NTIA anticipates that it will take many public television licensees several years to complete their digital conversion projects. The time required to complete a digital conversion project will be determined by several factors. In some instances, it will take a station several years to raise the local funds required to complete the project. Even if a station has accumulated all the funds required for its digital conversion project, the technical complexity of some projects (such as the construction of a 1,000-foot tower) will probably require several years to complete. Finally, many public television licensees operate several stations and are, therefore, responsible for the conversion of multiple broadcast facilities.

NTIA recognizes that the construction period for many of these digital conversion projects must, of necessity, be longer than the typical one to two years of the usual PTFP grant. Further, NTIA acknowledges that, with the funds available for award, the PTFP would be unable to fully fund more than a few of the digital conversion applications it could receive in FY 2002.

Therefore, for FY 2002, the PTFP will accept construction applications within the Broadcast Other category for digital television conversion projects which propose multi-year funding. Because of the FCC's approaching deadline, NTIA encourages applicants for digital conversion projects to file multi-year applications. NTIA anticipates that, in the early years of a multi-year project, applicants will request dissemination equipment necessary to meet the FCC's digital transmission requirement. Applicants including non-dissemination equipment in FY 2002 as part of their multi-year application should justify their need.

Applicants may submit project plans and budgets for up to three years. A multi-year application must contain the applicant's entire digital conversion plan. The plan must be divided into severable phases, with a budget request for each phase of the project. The application must identify the Federal funds requested for each phase. Only one phase of the project will be funded in any grant cycle. Once a project is approved, applicants will not be required to compete each year for funding of subsequent phases. Funding of subsequent phases will be at the sole discretion of the Department of Commerce and will depend on satisfactory performance by the recipient and the availability of funds to support the continuation of the project(s).

Projections based on previous experience indicate availability of between $10 million and $20 million to support multi-year digital television projects in FY 2002. The exact level of funding available for multi-year awards will be determined by NTIA after a review of applications submitted for multi-year awards and those radio, television and distance learning applications requesting a regular award.

NTIA believes that multi-year funding for digital television awards has significant benefits for both public television licensees and NTIA.

- Submission of a multi-year application particularly should help applicants which must convert multiple broadcast transmitters. NTIA understands that many stations have already begun to raise significant non-Federal funds with which they can begin to implement their digital conversion plans. Upon submission of a multi-year application, an applicant could begin spending its local match—at its own risk. An applicant, therefore, might be able to complete a portion of its digital conversion project using its local non-Federal funds for which Federal matching funds may not be available for several years. (For example, a future phase of a statewide project might be the conversion of two repeater stations; one might be constructed with available non-Federal funds, the second constructed if Federal funds are received). Applicants are cautioned, however, that while expenditure of the local match is permitted, PTFP Rules (§ 2301.6(d)) prohibit a grantee from obligating funds from the eventual Federal share of an award before a grant is actually awarded.
- NTIA believes that a multi-year award will reduce the administrative burden on both grantees and the PTFP. Grant recipients will submit only one application to cover the multiple years of their award, saving both the grantee and the PTFP the administrative tasks required to process applications during the annual grant round.
- Multi-year applications and awards will also assist both NTIA and public broadcasting licensees in the advance planning required to complete the conversion of almost 350 television facilities
- By issuing multi-year grants, NTIA would be able to fund the initial phases of more digital conversion projects with the monies available in FY 2002 than if PTFP funded fewer entire digital conversion plans.

NTIA believes that multi-year funding through the Broadcast Other category also is appropriate for projects which include urgent replacement of equipment, since, as noted earlier, most television equipment replacement requests can be viewed as one phase of a station's conversion to digital broadcasting.

Applications which are reactivated for the FY 2002 grant round must comply with the guidelines included in this notice, including the funding levels for television projects discussed later in this document.

Applicants submitting projects for consideration under the Broadcast Other category have a choice and may request either multi-year funding or a single grant. However, applications submitted for consideration under Priority 2 or Priority 4 may only request a single grant for a project, as in the past. NTIA anticipates that a majority of the television grants funded in FY 2002 will include multi-year projects.

(C) Effective date for expenditure of local matching funds for digital conversion projects. NTIA recognizes that many public television stations have begun to raise significant non-Federal funds for their digital conversion projects. State or local governments may have appropriated

funds to initiate digital conversion projects that, by local law, must be expended during the fiscal year in which they are awarded. Public television licensees that have raised significant non-Federal funds may desire to take advantage of unique opportunities (such as partnering with other stations to share broadcast antennas or towers). Some stations may be anxious to begin digital conversion projects with long lead times for completion, or may desire to begin digital broadcasting on the same timetable as commercial stations in their market. Within the limitations of Federal regulations, NTIA supports efforts undertaken by public television stations which bring the benefits of digital television broadcasting to their communities as quickly as possible.

In order to facilitate the raising of non-Federal funds for digital television projects and to also permit stations to begin construction of their digital facilities as soon as possible, NTIA is revising section 2301.6(b)(2) of the PTFP Final Rules. This section states that "Inclusion of equipment purchased prior to the closing date will be considered on a case-by-case basis only when clear and compelling justification is provided to PTFP."

As NTIA has done for the past two grant rounds, for FY 2002, NTIA will modify this regulation. If eligible equipment for a Broadcast Other project was purchased with non-Federal funds after July 1, 1999, NTIA will permit the applicant to include this equipment in a PTFP application. This date was selected to coincide with the beginning of the 2000 fiscal year used by many state and local governments and was announced at the beginning of this digital television conversion initiative in the Notice of Availability of Funds for the FY 2000 PTFP grant cycle (64 FR 72225–72234). NTIA also anticipates that July 1, 1999 will be the effective date in the FY 2003 and FY 2004 grant rounds for the expenditure of non-Federal funds for projects in the Broadcast Other category. Applicants who desire to use equipment purchased prior to July 1, 1999 as part of their local match must submit a "clear and compelling justification" supporting their request.

(D) Subpriorities for Digital Conversion Projects. As almost 350 public television stations are required to convert to digital broadcasting , NTIA anticipates a significant increase in the number of applications in the Broadcast Other category for digital conversion projects. In order to process these applications in an orderly manner and to provide guidance to potential applicants for the FY 2002 grant round, NTIA will divide the Broadcast Other category into three subpriorities; Broadcast Other-A; Broadcast Other-B, and Broadcast Other-C.

These three divisions are intended to reflect the priorities NTIA has used in the evaluation of traditional broadcast applications and to place a premium on projects either to assist stations providing sole service, to encourage cooperative efforts among different stations, or to support licensees facing the requirement to convert multiple transmission facilities in several television markets. NTIA notes that in the past it has been able to fund applications each year in most if not all of the five traditional broadcast Priorities and anticipates that it will be able to fund applications in FY 2002 in most if not all of the subpriorities under the Broadcast Other category.

NTIA will assign the following applications for conversion of public broadcasting facilities to advanced digital technologies at the first subpriority level within the Broadcast Other category. These applications will receive equal consideration as subpriority A.

—A single applicant providing the sole service in an area unserved by a digital public television signal. This reflects PTFP's funding priority for equipment replacement projects for sole service stations (PTFP Priority 2).

—Cooperative applications by two or more licensees for the first digital public television service to an area. This is intended to encourage cooperation and efficiencies among stations in overlap markets (as listed by CPB) in constructing digital facilities. It would provide stations in overlap markets the opportunity, if they work collaboratively, to be eligible for the highest priority in funding within this category.

—A statewide staged plan for the conversion of multiple stations, whether a state network, or other appropriate statewide organization, or a staged plan from a licensee with stations in several markets. This is intended to encourage licensees that must convert multiple stations and also to encourage groups of stations to work collaboratively in developing a digital conversion project.

NTIA will assign the following applications for conversion of public broadcasting facilities to advanced digital technologies at the second subpriority level within the Broadcast Other category. These applications will receive equal consideration as subpriority B.

—An applicant in a multi-PTV station market providing first public television service in an area. An applicant in a multi-PTV station market who chooses to file separately, rather than in conjunction with another licensee in the same area, receives a second priority for funding.

—A cooperative application by two or more licensees in an area already served by a digital public television station. The application is given a priority over Broadcast Other—C to encourage efficiency and cooperation. Since this is not the first service in the area, it is given a second priority.

NTIA will assign the following applications for conversion of public broadcasting facilities to advanced digital technologies at the third subpriority level within the Broadcast Other category. These applications will receive equal consideration as subpriority C.

—Individual applicants proposing a second digital public television service in an area already receiving a digital public television signal. This reflects PTFP's funding priority for equipment replacement applications in served areas (Priority 4).

—All other public television digital conversion applications.

(E) Funding Levels for Television Projects. As noted earlier in Section V of this document, NTIA has published several policies regarding the presumed Federal share of a requested project. These policies are intended to aid applicants in the planning of their applications. The policy for PTFP support of equipment replacement applications has long been the presumption of a 50 percent Federal share, although applicants are permitted to submit justification for a Federal grant of up to 75 percent of project costs. Those policies are also contained in § 2301.6(b) of the PTFP Final Rules.

In reviewing the projected costs to convert all the public television stations in the country, NTIA has concluded that it cannot continue its 50 percent presumption of Federal funding for television equipment replacement or digital conversion projects. Furthermore, NTIA believes that many public television facilities will be unable to raise 50 percent of the project costs. A significant number of stations may need Federal funding of 67 percent of a project's cost, or even up to the legal maximum of 75 percent of a project's cost, in order for them to meet the FCC's deadline.

In order to ensure that sufficient Federal funds are available to support the conversion of the nation's public

television stations, NTIA is establishing a new policy regarding the presumed Federal funding level for television equipment. As noted earlier in this section, NTIA recognizes that equipment on the PTFP Digital TV List may be included in either Broadcast Other digital conversion applications or in Priority 2 or Priority 4 equipment replacement applications. In order to treat all applicants equitably, NTIA's new policy will be the presumption of a 40 percent Federal share of the eligible project costs for television equipment for digital conversion or equipment replacement, improvement or augmentation projects. This 40 percent presumption will apply whether the application requests consideration under the two equipment replacement priorities (Priority 2 or 4) or under the digital conversion category (Broadcast Other). As noted earlier, NTIA will fund the replacement of production equipment upon a showing of clear and compelling need. However, since the deadline for digital conversion is rapidly approaching and Federal funds are limited, NTIA will fund replacement of production equipment at the same level of Federal support as digital conversion or equipment replacement projects. The presumption of a 40 percent Federal share will extend to all television projects to replace or upgrade equipment. However, because of the emphasis NTIA places on the extension of broadcast services to unserved areas, NTIA has retained the 75 percent level of Federal funding applications proposing new television facilities in Priority 1 (§ 2301.4(b)(1)).

As already noted, NTIA recognizes that many small stations, primarily in rural areas, will be unable to raise even a 50 percent local share of the funds required for their PTFP projects. NTIA has long permitted stations to request more than the standard level of Federal support upon a showing of "extraordinary need" per § 2301.6(b)(ii) of the PTFP Rules. NTIA will permit applicants to qualify for hardship funding and receive a 67 percent Federal share of their project costs. An applicant can qualify for 67% Federal funding by certifying that it is unable to match at least 60% of the eligible project costs, and either (a) by providing documentation that its average annual cash revenue for the previous four years is $2 million or less, or (b) by providing documentation that the eligible project costs are greater than the applicant's average annual cash revenue for the previous four years.

In addition, NTIA will continue to permit any applicant to provide justification that it has an "extraordinary need" for Federal funding up to the legal limit of 75 percent of eligible project costs.

In order to gather additional funds to award to stations which qualify under the hardship criteria, NTIA encourages financially able applicants to request a smaller share of Federal funds for digital equipment projects than the standard 40 percent. NTIA will add three additional points to the application evaluations from the independent review panel for applicants who request no more than 25 percent Federal funding. This provision will give extra credit to applications already highly reviewed, and, based on NTIA's previous experience, is often sufficient to move applications into the range for funding.

However, when making the final selection of awards, NTIA will take care to ensure that there is an acceptable balance between projects awarded to stations requesting a 25 percent Federal share and those requesting a higher Federal share. NTIA will not fund applications requesting a 25 percent Federal share to the exclusion of applications meeting the hardship criteria or to the exclusion of those requesting the standard 40 percent Federal share.

(F) Use of CPB funds. As discussed earlier in this document at the conclusion of Section V. Regulations, NTIA has limited the use of CPB funds for the non-Federal share of PTFP projects to circumstances of "clear and compelling need" (15 CFR 2301.6(c)(2)). NTIA recognizes that it will be difficult for many public television stations to raise the funds required to meet the FCC's digital broadcasting deadline. Therefore, NTIA continues it past policy that applicants may submit justification under this section for the use of CPB funds as part of their local match. Any request for the use of CPB funds must be accompanied by a statement regarding any limitations that CPB has placed on the expenditure of those funds.

(G) Partnerships, urgency. As discussed earlier in this section, part (D) on New Subpriorities, NTIA encourages efforts which promote efficiency within the public television system in order to save both current conversion costs and future operating costs. NTIA, therefore, also encourages public television stations to partner with commercial entities when this is in the best interests of the public station and the Federal government. In cases of public television partnerships with commercial entities, the PTFP project will be limited to the public television station's ownership share or use rights in the equipment. NTIA believes that such partnerships with commercial organizations comply with current PTFP regulations and PTFP has funded several projects for joint use of towers and broadcast antennas.

The urgency of an application is one of the criteria under which all PTFP applications are evaluated. (The evaluation criteria are listed in § 2301.17 of the PTFP Rules). NTIA suggests that there are at least three situations in which Broadcast Other applications may present high degrees of urgency. As we have just noted, applications containing proposals for joint use/ownership partnerships with other organizations may demonstrate a high urgency due to a time-sensitive opportunity. NTIA encourages these applicants to document the time-sensitive nature of the partnership opportunity in their response to the urgency criterion.

NTIA also recognizes that some applicants may be presented with time-sensitive funding opportunities and, therefore, encourages these applicants to document the time sensitive nature of these funding opportunities in their response to the urgency criterion. Finally, as already noted, NTIA expects that some applications will request urgent replacement of existing equipment as part of a Broadcast Other application. NTIA encourages such applicants to provide documentation of their need to replace their equipment during the current grant round. This documentation might include maintenance logs, letters from manufacturers, reports from independent engineers, photos etc.

NTIA will instruct the panels evaluating the FY 2002 Broadcast Other applications that they should award the highest score under the urgency criterion to those applications which fully justify and document either (1) the time sensitive nature of partnerships, (2) the time sensitive nature of funding opportunities, or (3) the need for equipment replacements that must be accomplished during this grant round in order to maintain existing services.

VIII. Distance Learning Projects

Since 1979, NTIA has funded nonbroadcast distance learning projects through the "Special Applications" category as established in § 2301.4(a) of the PTFP Rules. In 1996, NTIA established a similar category for broadcast projects, "Broadcast/Other" in § 2301.4(b)(6). NTIA encourages applications in either category for innovative or unique distance learning projects which address demonstrated and substantial community needs. For fiscal year 2001, NTIA awarded $1.4

million in funds to five grants for distance learning projects. The awards ranged from $34,560 to $549,715.

The growth of digital technologies provides new opportunities for distance learning projects using both broadcast or nonbroadcast facilities. NTIA encourages applicants to consider the use of digital technologies in proposing unique or innovative distance learning projects for funding in FY 2002. Examples of innovative digital applications might include projects (1) which use broadband technologies for distance learning, (2) which distribute educational or informational programming via Direct Broadcast Satellite technologies, or (3) which use the multi-channel capabilities of a digital public television station. All distance learning applications must address substantial and demonstrated needs of the communities being served. NTIA is particularly interested in distance learning projects which benefit traditionally underserved audiences, such as projects serving minorities or people living in rural areas.

As discussed in Section VII of this document, NTIA anticipates that, in FY 2002, it will receive numerous digital conversion applications in the Broadcast/Other category. NTIA recognizes that, due to the multi-channel capability of digital television, distance learning components may well be a part of a digital conversion application. NTIA will, therefore, consider such distance learning proposals under the subpriorities established in Section VII. If NTIA determines that a broadcast distance learning project is not part of a digital conversion application, NTIA will evaluate the application pursuant to §§ 2301.4(b)(6) and 2301.17.

The November 22, 1991, PTFP Policy Statement (56 FR 59168 (1991)) mentioned in the Application Forms and Regulations section discussed a number of issues of particular relevance to applicants proposing *nonbroadcast* educational and instructional projects and potential improvement of nonbroadcast facilities. These policies remain in effect and will be available to all PTFP applicants as part of the Guidelines for preparing FY 2002 PTFP applications.

IX. Eligible and Ineligible Costs

Eligible equipment for the FY 2002 grant round includes the apparatus necessary for the production, interconnection, captioning, broadcast, or other distribution of programming, including but not limited to studio equipment; audio and video storage, processing, and switching equipment; terminal equipment; towers; antennas; transmitters; remote control equipment; transmission line; translators; microwave equipment; mobile equipment; satellite communications equipment; instructional television fixed service equipment; subsidiary communications authorization transmitting and receiving equipment; cable television equipment; and optical fiber communications equipment.

A complete listing of equipment eligible for funding during the FY 2002 grant round is posted on the NTIA Internet site and printed copies are available from PTFP.

Other Costs

(1) Construction Applications: NTIA generally will not fund salary expenses, including staff installation costs, and pre-application legal and engineering fees. Certain "pre-operational expenses" are eligible for funding. (See 15 CFR 2301.2.) Despite this provision, NTIA regards its primary mandate to be funding the acquisition of equipment and only secondarily funding of salaries. A discussion of this issue appears in the PTFP Final Rules under the heading *Support for Salary Expenses* in the introductory section of the document.

(2) Planning Applications. (a) Eligible: Salaries are eligible expenses for all planning grant applications, but should be fully described and justified within the application. Planning grant applicants may lease office equipment, furniture and space, and may purchase expendable supplies under the terms of 47 U.S.C. 392 (c). (b) Ineligible: Planning grant applications cannot include the cost of constructing or operating a telecommunications facility.

(3) Audit Costs. Audits shall be performed in accordance with audit requirements contained in Office of Management and Budget Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations, revised June 30, 1997. OMB Circular A–133 requires that non-profit organizations, government agencies, Indian tribes and educational institutions expending $300,000 or more in federal funds during a one-year period conduct a single audit in accordance with guidelines outlined in the circular. Applicants are reminded that other audits may be conducted by the Office of Inspector General.

NTIA recognizes that most of its grant recipients are divisions of state and local governments or are public broadcasting facilities, all of which routinely conduct annual audits. In order to make the maximum amount of monies available for equipment purchases and planning activities, NTIA will, therefore, fund audit costs only in exceptional circumstances.

X. Notice of Applications Received

In accordance with 15 CFR 2301.13, NTIA will publish a listing of all applications received by the Agency. The listing will be placed on the NTIA Internet site and NTIA also will make this information available by mail upon request. The address of the NTIA Internet site is: *www.ntia.doc.gov/ptfp.* Listing an application merely acknowledges receipt of an application to compete for funding with other applications. This listing does not preclude subsequent return of the application for the reasons discussed under the Dates section above, or disapproval of the application. nor does it assure that the application will be funded. The listing will also include a request for comments on the applications from any interested party.

XI. Evaluation Process

See 15 CFR 2301.16 for a description of the Technical Evaluation and 15 CFR 2301.17 for the Evaluation Criteria.

XII. Selection Process

Based upon the above cited evaluation criteria, the PTFP program staff prepares summary recommendations for the PTFP Director. These recommendations incorporate outside reviewers rankings and recommendations, engineering assessments, and input from the National Advisory Panel, State Single Point of Contacts and state telecommunications agencies. Staff recommendations also consider project impact, the cost/benefit of a project and whether review panels have consistently applied the evaluation criteria. The PTFP Director will consider the summary recommendations prepared by program staff, will recommend the funding order of the applications, and will present recommendations to the OTIA (Office of Telecommunications and Information Applications) Associate Administrator for review and approval of the recommended slate. The PTFP Director recommends the funding order for applications in three categories: "Recommended for Funding," "Recommended for Funding if Funds Available," and "Not Recommended for Funding." See 15 CFR 2301.18 for a description of the selection factors retained by the Director, OTIA Associate Administrator, and the Assistant Secretary for Telecommunications and Information.

Upon review and approval by the OTIA Associate Administrator, the Director's recommendations will then be presented to the Selection Official, the NTIA Administrator. The NTIA Administrator selects the applications for possible grant award taking into consideration the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the program's stated purposes set forth at 15 CFR 2301.1(a) and (c). Prior to award, applications may be negotiated between PTFP staff and the applicant to resolve whatever differences might exist between the original request and what PTFP proposes to fund. Some applications may be dropped from the proposed slate due to lack of FCC licensing authority, an applicant's inability to make adequate assurances or certifications, or other reasons. Negotiation of an application does not ensure that a final award will be made. The PTFP Director recommends final selections to the NTIA Administrator applying the same factors as listed in 15 CFR 2301.18. The Administrator then makes the final award selections taking into consideration the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the program's stated purposes in 15 CFR 2301.1(a) and (c).

XIII. Disposition of Unsuccessful Applications

PTFP will retain unsuccessful applications through the Closing Date of the next grant cycle. Applicants may reactivate their unsuccessful applications pursuant to § 2301.9 of the PTFP Rules. Unsuccessful applications not reactivated by the Closing Date of the next grant cycle will be destroyed.

XIV. Project Period

Planning grant award periods customarily do not exceed one year, whereas construction grant award periods for grants in the five broadcast Priorities and nonbroadcast Special Applications category commonly range from one to two years. Phases of multi-year construction projects funded in the Broadcast Other category would commonly be awarded for a one to two year period with the expectation that subsequent phases would be funded dependent on the availability of Federal funds. Although these time frames are generally applied to the award of all PTFP grants, variances in project periods may be based on specific circumstances of an individual proposal.

XV. NTIA Policies on Procedural Matters

Based upon NTIA's experience during the PTFP 2000 grant round, NTIA has determined that it is in the best interest of NTIA and applicants to continue recent policies regarding three procedural matters. The following policies are applicable only to the FY 2002 PTFP grant round and resulting awards.

Applications Resulting From Catastrophic Damage or Emergency Situations.

Section 2301.10 provides for submission of applications resulting from catastrophic damage or emergency situations. NTIA would like to clarify its implementation of this provision.

For FY 2002 PTFP applicants, when an eligible broadcast applicant suffers catastrophic damage to the basic equipment essential to its continued operation as a result of a natural or manmade disaster, or as the result of significant equipment failure, and is in dire need of assistance in funding replacement of the damaged equipment, it may file an emergency application for PTFP funding at any time. NTIA limits this request to equipment essential to a station's continued operation such as transmitters, towers, antennas, STLs or similar equipment which, if the equipment failed, would result in a complete loss of service to the community.

When submitting an emergency application, the applicant should describe the circumstances that prompt the request and should provide appropriate supporting documentation. NTIA requires that applicants claiming significant failure of equipment will document the circumstances of the equipment failure and demonstrate that the equipment has been maintained in accordance with standard broadcast engineering practices.

NTIA will grant an award only if it determines that (1) the emergency satisfies this policy, and (2) the applicant either carried adequate insurance or had acceptable self-insurance coverage.

Applications filed and accepted for emergency applications must contain all of the information required by the Agency application materials and must be submitted in the number of copies specified by the Agency.

NTIA will evaluate the application according to the evaluation criteria set forth in § 2301.17(b). The PTFP Director takes into account program staff evaluations (including the outside reviewers) the availability of funds, the type of project and broadcast priorities set forth at § 2301.4(b), and whether the applicant has any current NTIA grants. The Director presents recommendations to the Office of Telecommunications and Information Applications (OTIA) Associate Administrator for review and approval. Upon approval by the OTIA Associate Administrator, the Director's recommendation will be presented to the Selecting Official, the NTIA Administrator. The Administrator makes final award selections taking into consideration the Director's recommendation and the degree to which the application fulfills the requirements for an emergency award and satisfies the program's stated purposes set forth at § 2301.1(a) and (c).

Service of Applications

FY 2002 PTFP applicants are not required to submit copies of their PTFP applications to the FCC, nor are they required to submit copies of the FCC transmittal cover letters as part of their PTFP applications. NTIA routinely notifies the FCC of projects submitted for funding which require FCC authorizations.

FY 2002 PTFP applicants for distance learning projects are not required to notify every state telecommunications agency in a potential service area. Many distance learning applications propose projects which are nationwide in nature. NTIA, therefore, believes that the requirement to provide a summary copy of the application in every state telecommunications agency in a potential service area is unduly burdensome to applicants. NTIA, however, does expect that distance learning applicants will notify the state telecommunications agencies in the states in which they are located.

Federal Communications Commission Authorizations

For the FY 2002 PTFP grant round, applicants may submit applications to the FCC after the closing date, but do so at their own risk. Applicants are urged to submit their FCC applications with as much time before the PTFP closing date as possible. No grant will be awarded for a project requiring FCC authorization until confirmation has been received by NTIA from the FCC that the necessary authorization will be issued.

For FY 2002 PTFP applications, since there is no potential for terrestrial interference with Ku-band satellite uplinks, grant applicants for Ku-band satellite uplinks may submit FCC applications after a PTFP award is made. Grant recipients for Ku-band satellite uplinks will be required to document receipt of FCC authorizations

to operate the uplink prior to the release of Federal funds.

For FY 2002 PTFP applications, NTIA may accept FCC authorizations that are in the name of an organization other than the PTFP applicant in certain circumstances. Applicants requiring the use of FCC authorizations issued to another organization should discuss in the application Program Narrative why the FCC authorization must be in the other organization's name. NTIA believes that such circumstances will be rare and, in its experience, are usually limited to authorizations such as those for microwave interconnections or satellite uplinks.

As noted above, for FY 2002 PTFP applications, NTIA does not require that the FCC applications be filed by the closing date. While NTIA is permitting submission of FCC applications after the closing date, applicants are reminded that they must continue to provide copies of FCC applications, as they were filed or will be filed, or equivalent engineering data, in the PTFP application so NTIA can properly evaluate the equipment request. These include applications for permits, construction permits and licenses already received for (1) construction of broadcast station, (including a digital broadcasting facility) or translator, (2) microwave facilities, (3) ITFS authorizations, (4) SCA authorizations, and (5) requests for extensions of time.

For those applicants whose projects require authorization by the Federal Communications Commission (FCC), NTIA reminds applicants that the mailing address for the Federal Communications Commission has changed to: 445 12th St. SW, Washington DC 20554.

XVI. Intergovernmental Review

Applicants should note that they must continue to comply with the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." The Executive Order requires applicants for financial assistance under this program to file a copy of their application with the Single Points of Contact (SPOC) of all states relevant to the project. Applicants are required to provide a copy of their completed application to the appropriate SPOC on or before February 5, 2002. Applicants are encouraged to contact the appropriate SPOC well before their PTFP closing date. A listing of the state SPOC offices may be found with the PTFP application materials at the NTIA Internet site. A list of the SPOC offices is available from NTIA (see the Address section above).

XVII. 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), are applicable to this solicitation, unless stated otherwise in this notice.

XVIII. Executive Order 12866

It has been determined that this notice is a "not significant" rule under Executive Order 12866.

XIX. Executive Order 13132

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in EO 13132.

XX. Regulatory Flexibility Analysis

Because notice and comment are not required under 5 USC 553, or any other law, for this notice related to public property, loans, grants, benefits or contracts, 5 USC 553(a), Regulatory Flexibility Analysis is not required and has not been prepared for this notice. 5 USC 601 *et seq.*

Dr. Bernadette McGuire-Rivera,

Associate Administrator, Office of Telecommunications and Information Applications.

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Federal Register

Tuesday,
November 20, 2001

Part V

Department of Agriculture

Cooperative State Research, Education and Extension Service

Challenge Grants Program: Request for Applications and Request for Input; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Higher Education Challenge Grants Program: Request for Applications and Request for Input

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of request for applications and request for input.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) announces the availability of grant funds and requests applications for the Higher Education Challenge Grants Program (HEC) for fiscal year (FY) 2002 to stimulate and enable colleges and universities to provide the quality of education necessary to produce baccalaureate or higher degree level graduates capable of strengthening the Nation's food and agricultural scientific and professional work force. It is intended that projects supported by the program will: (1) Address a State, regional, national, or international educational need; (2) involve a creative or nontraditional approach toward addressing that need which can serve as a model to others; (3) encourage and facilitate better working relationships in the university science and education community, as well as between universities and the private sector, to enhance program quality and supplement available resources; and (4) result in benefits which will likely transcend the project duration and USDA support.

The amount available for support of this program in FY 2002 is approximately $4,058,000.

This notice identifies the objectives for HEC projects, the eligibility criteria for projects and applicants, and the application forms and associated instructions needed to apply for a HEC grant.

By this notice, CSREES additionally requests stakeholder input from any interested party for use in the development of the next Request for Applications (RFA) for this program.

DATES: Applications must be received by close of business (COB) on February 11, 2002. (5 p.m. Eastern Time). Applications received after this deadline will not be considered for funding. Comments regarding this RFA are requested within six months from the issuance of this notice. Comments received after that date will be considered to the extent practicable.

ADDRESSES: The address for hand-delivered applications or applications submitted using an express mail or overnight courier service is: Higher Education Challenge Grants Program; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 1307, Waterfront Centre; 800 9th Street, SW.; Washington, DC 20024; Telephone: (202) 401–5048.

Applications sent via the U.S. Postal Service must be sent to the following address: Higher Education Challenge Grants Program; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, SW.; Washington, DC 20250–2245.

Written stakeholder comments should be submitted by mail to: Policy and Program Liaison Staff; Office of Extramural Programs; USDA–CSREES; STOP 2299; 1400 Independence Avenue, SW.; Washington, DC 20250–2299; or via e-mail to: *RFP–OEP@reeusda.gov.* (This e-mail address is intended only for receiving comments regarding this RFA and not requesting information or forms.) In your comments, please state that you are responding to the Higher Education Challenge Grants Program RFA.

FOR FURTHER INFORMATION CONTACT: Applicants and other interested parties are encouraged to contact Mr. P. Gregory Smith; National Program Leader; Higher Education Programs, Cooperative State Research, Education and Extension Service; 1400 Independence Ave, SW.; STOP 2251; Washington, DC 20250–2251; telephone: (202) 720–2211; fax: (202) 720–2030; email: gsmith@reeusda.gov.

SUPPLEMENTARY INFORMATION:

Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under number 10.217.

Stakeholder Input

CSREES is requesting comments regarding this RFA from any interested party. These comments will be considered in the development of the next RFA for the program. Such comments will be used to meet the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7613(c)(2)). This section requires the Secretary to solicit and consider input on a current RFA from persons who conduct or use agricultural research, education and extension for use in formulating future RFA's for competitive programs. Comments should be submitted as provided for in the **ADDRESSES** and **DATES** portions of this Notice.

Table of Contents

Part I—General Information

A. Legislative Authority and Background

Authority for this program is contained in section 1417(b)(1) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (NARETPA) (7 U.S.C. 3152(b)(1)). In accordance with the statutory authority, subject to the availability of funds, the Secretary of Agriculture, who has delegated the authority to the Administrator of CSREES, may make competitive grants, for a period not to exceed 5 years, to land-grant colleges and universities, to colleges and universities having significant minority enrollments and a demonstrable capacity to carry out the teaching of food and agricultural sciences, and to other colleges and universities having a demonstrable capacity to carry out the teaching of food and agricultural sciences, to administer and conduct programs to

respond to identified State, regional, national or international educational needs in the food and agricultural sciences. For this program, the term "food and agricultural sciences" means basic, applied, and developmental teaching activities in food and fiber, agricultural, renewable natural resources, forestry, and physical and social sciences, and including related disciplines as defined in section 1404(8) of NARETPA, 7 U.S.C. 3103(8).

B. Purpose, Priorities, and Fund Availability

The HEC program supports projects related to strengthening undergraduate teaching programs in any subject matter area(s) in the food and agricultural sciences. A proposal may address a single targeted need area or multiple targeted need areas, and may be focused on a single subject matter area or multiple subject matter areas, in any combination (e.g., curriculum development in horticulture; curriculum development, faculty enhancement, and student experiential learning in animal science; faculty enhancement in food science and agribusiness management; or instruction delivery systems and student experiential learning in plant science, horticulture, and entomology). Please note that one of these Need Areas must be indicated in the appropriate space on the Project Summary Form (Form CSREES–2003) in the proposal application forms package.

For FY 2002, targeted need areas consist of one or more of the following:

(a) Curricula Design and Materials Development

The purpose of this initiative is to promote new and improved curricula and materials to increase the quality of, and continuously renew, the Nation's academic programs in the food and agricultural sciences. The overall objective is to stimulate the development and facilitate the use of exemplary education models and materials that incorporate the most recent advances in subject matter, research on teaching and learning theory, and instructional technology. Proposals may emphasize: the development of courses of study, degree programs, and instructional materials; the use of new approaches to the study of traditional subjects; or the introduction of new subjects, or new applications of knowledge, pertaining to the food and agricultural sciences. Examples include, but are not limited to, curricula and materials that promote: raising the level of scholastic achievement of the Nation's graduates in the food and agricultural sciences, addressing the special needs of particular groups of students, such as minorities, gifted and talented, or those with educational backgrounds that warrant enrichment, using alternative instructional strategies or methodologies, including computer-assisted instruction or simulation modeling, media programs that reach large audiences efficiently and effectively, activities that provide hands-on learning experiences, and educational programs that extend learning beyond the classroom, using sound pedagogy, particularly with regard to recent research on how to motivate students to learn, retain, apply, and transfer knowledge, skills, and competencies, and building student competencies to integrate and synthesize knowledge from several disciplines.

(b) Faculty Preparation and Enhancement for Teaching

The purpose of this initiative is to advance faculty development in the areas of teaching competency, subject matter expertise, or student recruitment and advising skills. Teachers are central to education. They serve as models, motivators, and mentors—the catalysts of the learning process. Moreover, teachers are agents for developing, replicating, and exchanging effective teaching materials and methods. For these reasons, education can be strengthened only when teachers are adequately prepared, highly motivated, and appropriately recognized and rewarded.

Each faculty recipient of support for developmental activities must be an "eligible participant" as defined in this RFA. Examples of developmental activities include, but are not limited to, those which enable teaching faculty to: Gain experience with recent developments or innovative technology relevant to their teaching responsibilities, work under the guidance and direction of experts who have substantial expertise in an area related to the developmental goals of the project, work with scientists or professionals in government, industry, or other colleges or universities to learn new applications in a field, obtain personal experience working with new ideas and techniques, expand competence with new methods of information delivery, such as computer-assisted or televised instruction, or increase understanding of the special needs of non-traditional students or students from groups that are underrepresented in the food and agricultural sciences workforce.

(c) Instruction Delivery Systems

The purpose of this initiative is to encourage the use of alternative methods of delivering instruction to enhance the quality, effectiveness, and cost efficiency of teaching programs. The importance of this initiative is evidenced by advances in educational research which have substantiated the theory that differences in the learning styles of students often require alternative instructional methodologies. Also, the rising costs of higher education strongly suggest that colleges and universities undertake more efforts of a collaborative nature in order to deliver instruction which maximizes program quality and reduces unnecessary duplication. At the same time, advancements in knowledge and technology continue to introduce new subject matter areas which warrant consideration and implementation of innovative instruction techniques, methodologies, and delivery systems. Examples include, but are not limited to: Use of computers, teleconferencing, networking via satellite communications, regionalization of academic programs, mobile classrooms and laboratories, individualized learning centers, or symposia, forums, regional or national workshops, etc.

(d) Student Experiential Learning

The purpose of this initiative is to further the development of student scientific and professional competencies through experiential learning programs which provide students with opportunities to solve complex problems in the context of real-world situations. Effective experiential learning is essential in preparing future graduates to advance knowledge and technology, enhance quality of life, conserve resources, and revitalize the Nation's economic competitiveness. Such experiential learning opportunities are most effective when they serve to advance decision-making and communication skills as well as technological expertise. Examples include, but are not limited to, projects which: Provide opportunities for students to participate in research projects, either as a part of an ongoing research project or in a project designed especially for this program, provide opportunities for students to complete apprenticeships, internships, or similar participatory learning experiences, expand and enrich courses which are of a practicum nature, or provide career mentoring experiences that link students with outstanding professionals.

There is no commitment by USDA to fund any particular application or to

make a specific number of awards. Approximately $4,058,000 will be available to fund applications in FY 2002.

C. Definitions

For the purpose of this program, the following definitions are applicable:

Authorized departmental officer means the Secretary or any employee of the Department with delegated authority to issue or modify grant instruments on behalf of the Secretary.

Authorized organizational representative means the president or chief executive officer of the applicant organization or the official, designated by the president or chief executive officer of the applicant organization, who has the authority to commit the resources of the organization.

Budget period means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

Cash contributions means the applicant's cash outlay, including the outlay of money contributed to the applicant by non-Federal third parties.

Citizen or national of the United States means:

(1) A citizen or native resident of a State; or,

(2) A person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States.

When eligibility is claimed solely on the basis of permanent allegiance, documentary evidence from the Immigration and Naturalization Service as to such eligibility must be made available to CSREES upon request.

College or *University* means an educational institution in any State which:

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which an associate degree or any other higher degree is awarded;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted pre-accreditation status by such an agency or association that has been recognized by the Secretary of Education for the granting of pre-accreditation status, and the Secretary of Education has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

Complementary project proposal means a proposal for a project which involves coordination with one or more other projects for which funding was awarded under this program in a previous fiscal year, or for which funding is requested under this program in the current fiscal year.

Department or *USDA* means the United States Department of Agriculture.

Eligible institution means an institution of higher education:

(1) That has an enrollment of needy students as defined in this section;

(2) Except if waived by the Secretary of Education, the average educational and general expenditures of which are low, per full-time equivalent undergraduate student, in comparison with the average educational and general expenditures per full-time equivalent undergraduate student of institutions that offer similar instruction;

(3) That is legally authorized to provide, and provides within the State, an educational program for which the institution awards a bachelor's degree; or that is a junior or community college as defined in this section;

(4) That is accredited by a nationally recognized accrediting agency or association determined by the Secretary of Education to be a reliable authority as to the quality of training offered or that is, according to such an agency or association, making reasonable progress toward accreditation;

(5) That meets such other requirements as the Secretary of Education may prescribe; and

(6) That is located in a State.

The term eligible institution also applies to any branch of any institution of higher education, described by the definition of an eligible institution, that by itself satisfies the requirements contained in clauses (1) and (2) of the definition of an eligible institution.

For purposes of determinating whether an institution is an eligible institution, the factor described under clause (1) of the definition of an eligible institution shall be given twice the weight of the factor described under clause (2) of the definition of an eligible institution.

Eligible participant means an individual who: (1) Is a citizen or national of the United States, as defined in this section; or (2) is a citizen of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau. Where eligibility is claimed on the basis of owing permanent allegiance to the United States, documentary evidence from the Immigration and Naturalization Service as to such eligibility must be made available to USDA upon request.

Food and agricultural sciences means basic, applied, and developmental research, extension, and teaching activities in the food and fiber, agricultural, renewable natural resources, forestry, and physical and social sciences, in the broadest sense of these terms, including but not limited to, activities relating to the production, processing, marketing, distribution, conservation, utilization, consumption, research, and development of food and agriculturally related products and services, and inclusive of programs in agriculture, natural resources, aquaculture, forestry, veterinary medicine, home economics, rural human ecology, and closely allied disciplines.

Grantee means the organization designated in the grant award document as the responsible legal entity to which a grant is awarded.

Joint project proposal means a proposal for a project, which will involve the applicant institution and two or more other colleges, universities, community colleges, junior colleges, or other institutions, each of which will assume a major role in the conduct of the proposed project, and for which the applicant institution will transfer at least one-half of the awarded funds to the other institutions participating in the project. Only the applicant institution must meet the definition of "eligible institution"; the other institutions participating in a joint project proposal are not required to meet the definition of "eligible institution", nor required to meet the definition of "college" or "university".

Land-grant colleges and universities means those institutions eligible to receive funds under the Act of July 2, 1862 (12 Stat. 503–505, as amended; 7 U.S.C. 301–305, 307 and 308), or the Act of August 30, 1890 (26 Stat. 417–419, as amended; 7 U.S.C. 321–326 and 328), including Tuskegee University.

Matching or *Cost-sharing* means that portion of allowable project costs not borne by the Federal Government, including the value of in-kind contributions.

Peer reviewers means experts or consultants qualified by training and experience to give expert advice on the scientific and technical merit of grant applications or the relevance of those applications to one or more of the

proposal evaluation criteria. Peer reviewers may be ad hoc or convened as a panel.

Prior approval means written approval evidencing prior consent by an authorized departmental officer.

Project means the particular activity within the scope of the program supported by a grant award.

Project director means the single individual designated by the grantee in the grant application and approved by the Authorized Departmental Officer who is responsible for the direction and management of the project [also known as a principal investigator for research activities].

Project period means the total length of time, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

Secretary means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved may be delegated.

State means any one of the fifty States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Marianas, the Virgin Islands of the United States, and the District of Columbia.

Teaching means formal classroom instruction, laboratory instruction, and practicum experience in the food and agricultural sciences and matters related thereto (such as faculty development, student recruitment and services, curriculum development, instructional materials and equipment, and innovative teaching methodologies) conducted by colleges and universities offering baccalaureate or higher degrees.

Third party in-kind contributions means non-cash contributions of property or services provided by non-Federal third parties, including real property, equipment, supplies and other expendable property, directly benefitting and specifically identifiable to a funded project or program.

United States means the several States, the territories and possessions of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Marianas, the Virgin Islands of the United States, and the District of Columbia.

D. Eligibility

Applications may be submitted by land-grant colleges and universities and other U.S. public or private nonprofit colleges and universities offering a baccalaureate degree or any other higher degree and having a demonstrable capacity for, and a significant ongoing commitment to, the teaching of food and agricultural sciences generally and to the specific need and/or subject area(s) for which a grant is requested.

For FY 2002, this program supports projects related to strengthening undergraduate teaching programs in any subject matter area(s) in the food and agricultural sciences.

For FY 2002, a maximum of two grants may be awarded to an institution eligible under this program. This ceiling excludes any subcontracts awarded to an institution pursuant to other grants issued under this program.

In addition, a grantee institution must meet the definition of a college or university as defined in this RFA. An institution eligible to receive an award under this program includes a research foundation maintained by an eligible college or university. For the purposes of this program, the individual branches of a State university system or public system of higher education that are separately accredited at the college level as degree granting institutions, are treated as separate institutions. Award recipients may subcontract to organizations not eligible to apply provided such organizations are necessary for the conduct of the project.

E. Indirect Costs

Pursuant to section 1462 of NARETPA, 7 U.S.C. 3310, indirect costs charged against a competitive grant under this program may not exceed 19 percent of the total Federal funds provided under the grant award. An alternative method of calculation of this limitation is to multiply total direct costs by 23.456 percent. Note that the indirect cost limit of 19 percent also applies to matching funds.

F. Matching Requirements

A grant recipient is required to match the USDA funds awarded on a dollar-for-dollar basis from non-Federal sources. (See Part III. B. 12. c.)

G. Funding Restrictions

Under the Higher Education Challenge Grants Program, the use of grant funds to plan, acquire, or construct a building or facility is not allowed. With prior approval, in accordance with the cost principles set forth in OMB Circular No. A–21, some grant funds may be used for minor alterations, renovations, or repairs deemed necessary to retrofit existing teaching spaces in order to carry out a funded project. However, requests to use grant funds for such purposes must demonstrate that the alterations, renovations, or repairs are incidental to the major purpose for which a grant is made.

There is no limit on the number of proposals any one institution may submit. In addition, there is no limit on the number of proposals which may be submitted on behalf of the same school, college, or equivalent administrative unit within an institution.

H. Types of Applications

In FY 2002, applications may be submitted to the HEC as one of the following two types of requests:

(1) New application. This is a project application that has not been previously submitted to the HEC Program. All new applications will be reviewed competitively using the selection process and evaluation criteria described in Part IV—Review Process.

(3) Resubmitted application. This is an application that had previously been submitted to the HEC Program but not funded. Project Directors (PD's) must respond to the previous review panel summary (see Response to Previous Review, Part III.B.5). Resubmitted applications must be received by the relevant due dates, will be evaluated in competition with other pending applications in appropriate area to which they are assigned, and will be reviewed according to the same evaluation criteria as new applications.

Part II—Program Description

A. Project Types

For FY 2002, the maximum total funds that may be awarded to an applicant under this program are $100,000 for a regular submission and $250,000 for a joint submission, as defined in this RFA.

A funded project period should be no less than eighteen(18) months and no more than thirty-six (36) months.

B. Program Area Description

The HEC Program supports projects in any discipline of the food and agricultural sciences education. Applicants should select one of the following codes which best describes the major academic discipline addressed by the proposal. Enter this code where indicated under discipline on the Project Summary Form (Form CSREES–2003) in the proposal application forms package:

Discipline	Code
General Food and Agricultural Sciences (includes multidisciplinary, institution-wide projects).	G
Agribusiness Management and Marketing (includes Agricultural Economics).	M

Discipline	Code
Agriscience (includes Agricultural/Biological Engineering),.	E
Agricultural Social Sciences (includes Agricultural Education, Agricultural Communications, and Rural Sociology).	S
Animal Sciences	A
Aquaculture	Q
Conservation and Renewable Natural Resources (includes Forestry and Ecology/Wetlands).	C
Entomology—Animal	J
Entomology—Plant	T
Environmental Sciences/Management.	L
Food Science/Technology and Manufacturing (including Food Safety).	F
Human Nutrition	N
Family and Consumer Sciences (excludes Human Nutrition).	H
International Education/Research (enhancement of U.S. programs).	I
Plant Sciences and Horticulture (including Turf Sciences).	P
Related Biological Sciences (includes General/Basic Biotechnology, Biochemistry, and Microbiology).	B
Soil Sciences	D
Veterinary Medicine/Science	V
(W) Water Science/Water Resources (including Water Quality and Watershed Management).	W
Other (and explain)	O

Part III—Preparation of an Application

A. Program Application Materials

Program application materials are available at the CSREES Funding Opportunities web site *(http://www.reeusda.gov/1700/funding/ourfund.htm)*. If you do not have access to the web page or have trouble downloading material and you would like a hardcopy, you may contact the Proposal Services Unit, Office of Extramural Programs, USDA/CSREES at (202) 401–5048. When calling the Proposal Services Unit, please indicate that you are requesting the RFA and associated application forms for the Higher Education Challenge Grants Program. These materials also may be requested via Internet by sending a message with your name, mailing address (not e-mail) and phone number to *psb@reeusda.gov*. State that you want a copy of the RFA and the associated application forms for Higher Education Challenge Grants Program.

B. Content of Applications

1. General

Use the following guidelines to prepare an application. Proper preparation of applications will assist reviewers in evaluating the merits of each application in a systematic, consistent fashion:

(a) Prepare the application on only one side of the page using standard size (8 1/2" x 11") white paper, one-inch margins, typed or word processed using no type smaller than 12 point font, and single or double spaced. Use an easily readable font face (e.g., Geneva, Helvetica, Times Roman).

(b) Number each page of the application sequentially, starting with the Project Description, including the budget pages, required forms, and any appendices.

(c) Staple the application in the upper left-hand corner. Do not bind. An original and five (5) copies (six (6) total) must be submitted in one package, along with two (2) additional copies of the "Project Summary," Form CSREES–2003, as a separate attachment.

(d) Include original illustrations (photographs, color prints, etc.) in all copies of the application to prevent loss of meaning through poor quality reproduction.

(e) The contents of the application should be assembled in the following order:

(1) Proposal Cover Page (Form CSREES–2002)
(2) Table of Contents
(3) Project Summary (Form CSREES–2003)
(4) Response to Previous Review
(5) Project Description
(6) References
(7) Appendices to Project Description
(8) Key Personnel
(9) Collaborative Arrangements (including Letters of Support)
(10) Conflict-of-Interest List (Form CSREES–2007)
(11) Budget (Form CSREES–2004)
(12) Budget Narrative
(13) Matching
(14) Current and Pending Support (Form CSREES–2005)
(15) Assurance Statement(s) (Form CSREES–2008)
(16) Compliance with the National Environmental Policy Act (NEPA) (Form CSREES–2006)
(17) Page B, Proposal Cover Page (Form CSREES–2002), Personal Data on Project Director

2. Proposal Cover Page (Form CSREES–2002)

a. Page A

Each copy of each grant application must contain a "Proposal Cover Page", Form CSREES–2002. One copy of the application, preferably the original, must contain the pen-and-ink signature(s) of the proposing PD's and the authorized organizational representative (AOR), the individual who possesses the necessary authority to commit the organization's time and other relevant resources to the project. If there are more than four co-PD's for an application, please list additional co-PD's on a separate sheet of paper (with appropriate information and signature) and attach to the Proposal Cover Page (Form CSREES–2002). Any proposed PD or co-PD whose signature does not appear on Form CSREES–2002 or attached additional sheets will not be listed on any resulting grant award. Complete both signature blocks located at the bottom of the "Proposal Cover Page" form. Please note that Form CSREES–2002 is comprised of two parts—Page A which is the "Proposal Cover Page" and Page B which is the "Personal Data on Project Director."

Form CSREES–2002 serves as a source document for the CSREES grant database; it is therefore important that it be accurately completed in its entirety, especially the e-mail addresses requested in blocks 4.c. and 18.c. However, the following items are highlighted as having a high potential for errors or misinterpretations:

(a) Type of Performing Organization (Block 6A and 6B). For block 6A, a check should be placed in the appropriate box to identify the type of organization which is the legal recipient named in block 1. Only one box should be checked. For block 6B, please check as many boxes that apply to the affiliation of the PD listed in block 16.

(b) Title of Proposed Project (Block 7). The title of the project must be brief (140-character maximum, including spaces), yet represent the major thrust of the effort being proposed. Project titles are read by a variety of nonscientific people; therefore, highly technical words or phraseology should be avoided where possible. In addition, introductory phrases such as "investigation of," "research on," "education for," or "outreach that" should not be used.

(c) Program to Which You Are Applying (Block 8). Enter Higher Education Challenge Grants Program.

(d) Type of Request (Block 14). Check the block for "New", or "Resubmitted" (note that the other award types are not supported by this program).

(e) Project Director (PD) (Blocks 16–19). Blocks 16–18 are used to identify the PD and Block 19 to identify co-PD's. If needed, additional co-PD's may be listed on a separate sheet of paper and attached to Form CSREES–2002, the Proposal Cover Page, with the applicable co-PD information and signatures. Listing multiple co-PD's, beyond those required for genuine collaboration, is discouraged.

(f) Other Possible Sponsors (Block 21). List the names or acronyms of all other

public or private sponsors including other agencies within USDA to which your application has been or might be sent. In the event you decide to send your application to another organization or agency at a later date, you must inform the identified CSREES program contact as soon as practicable. Submitting your application to other potential sponsors will not prejudice its review by CSREES; however, submitting the same (i.e., duplicate) application to another CSREES program is not permissible.

b. Page B

Page B should be submitted only with the original signature copy of the application and should be placed as the last page of the original copy of the application. This page contains personal data on the PD(s). CSREES requests this information in order to monitor the operation of its review and awards processes. This page will not be duplicated or used during the review process. Please note that failure to submit this information will in no way affect consideration of your application.

3. Table of Contents

For consistency and ease in locating information, each application must contain a detailed Table of Contents immediately following the proposal cover page. The Table of Contents should contain page numbers for each component of the application. Page numbering should begin with the first page of the Project Description.

4. Project Summary (Form CSREES–2003)

The application must contain a "Project Summary," Form CSREES–2003. The summary should be approximately 250 words, contained within the box, placed immediately after the Table of Contents, and not numbered. The names and affiliated organizations of all PD's and co-PD's should be listed on this form, in addition to the title of the project. The summary should be a self-contained, specific description of the activity to be undertaken and should focus on: Overall project goal(s) and supporting objectives; plans to accomplish project goal(s); measurable anticipated project outcomes or products; and relevance of the project to the goals of the HEC Program. The importance of a concise, informative Project Summary cannot be overemphasized. If there are more than four co-PD's for an application, please list additional co-PD's on a separate sheet of paper (with appropriate information) and attach to the Project Summary (Form CSREES–2003).

5. Response to Previous Review

If the proposal is a resubmission, Project Directors (PDs) must respond to the previous panel summary on no more than one page, titled "RESPONSE TO PREVIOUS REVIEW". In this section, a clear statement acknowledging comments from the previous reviewers, indicating revisions, rebuttals, etc., that can positively influence the review of the proposal should be made. Further, the resubmitted proposal should clearly indicate changes that have been made in the Project Description. Resubmitted proposals will be reviewed competitively using the selection process and evaluation criteria described in Part IV—Review Process.

This requirement only applies to "Resubmitted Applications" and "Resubmitted Renewal Applications" as described under Part I, H, "Types of Applications." Project Directors (PD's) must respond to the previous review panel summary on no more than one page, titled "RESPONSE TO PREVIOUS REVIEW," which is to be placed directly after the "Project Summary," Form CSREES–2003.

6. Project Description

Please Note: The Project Description shall not exceed twenty (20) pages of written text and up to five (5) additional pages for figures and tables. This maximum (25 pages) has been established to ensure fair and equitable competition. (**Note:** to facilitate proposal review and evaluation, the applicant is advised to include the following *underlined wording* as headings in the proposal narrative, followed by the applicant's response for each item.) The Project Description must include all of the following:

(1) Potential for Advancing the Quality of Education

(a) *Identification of Targeted Need Area(s).* Clearly identify and explain the proposed project's Targeted Need Area(s) from those described in Part I. B. of this RFA.

(b) *Project Justification.* Clearly state the specific instructional problem or opportunity to be addressed. Describe how and by whom the focus and scope of the project were determined. Summarize the body of knowledge which substantiates the need for the proposed project. Discuss how the project will be of value at the State, regional, national, or international level(s). Describe any ongoing or recently completed significant activities related to the proposed project for which previous funding was received under this program.

(c) *Innovation.* Describe the proposal's creative approach to improving the quality of food and agricultural sciences higher education.

(d) *Multidisciplinary focus.* Indicate where the project is relevant to multiple disciplines in the food and agricultural sciences or with other academic curricula. Also, discuss whether the project may be adapted by, or serve as a model for, other institutions.

(2) Proposed Approach

(a) *Objectives.* Cite and discuss the specific project objectives to be accomplished.

(b) *Plan of operation.* Describe procedures for accomplishing the objectives of the project.

(c) *Time line.* Identify all important project milestones and dates as they relate to project start-up, execution, evaluation, dissemination, and close-out.

(d) *Evaluation plans.* Provide a plan for evaluating the accomplishment of stated objectives, products and outcomes during the conduct of the project. Indicate the criteria, and corresponding weight of each, to be used in the evaluation process, describe any data to be collected and analyzed, and explain the methodology that will be used to determine the extent to which the needs underlying the project are met. Demonstrate that the project's impact on improving education will be evaluated.

(e) *Dissemination plans.* Discuss the commitment to disseminate project results and products. Identify target audiences and explain methods of communication.

(f) *Products, results and measurable outcomes.* Explain the expected products, results, and their potential impact (outcome) on strengthening food and agricultural sciences higher education in the United States.

(g) *Partnerships and collaborative efforts.* Explain how the project will maximize partnership ventures and collaborative efforts to strengthen food and agricultural sciences higher education (e.g., involvement of faculty in related disciplines at the same institution, joint projects with other colleges or universities, or cooperative activities with business or industry). Also explain how it will stimulate academia, the States, or the private sector to join with the Federal partner in enhancing food and agricultural sciences higher education. Provide evidence, via letters from the parties involved, that arrangements necessary for collaborative partnerships or joint initiatives have been discussed and realistically can be expected to come to

fruition, or actually have been finalized contingent on an award under this program. Letters must be signed by an official who has the authority to commit the resources of the organization. Such letters should be referenced in the Project Description, but the actual letters should be included in the Appendix section of the proposal. Any potential conflict(s) of interest that might result from the proposed collaborative arrangements must be discussed in detail.

(3) Key Personnel

In addition to the required separate vitae for each PD, discuss the specific attributes and project responsibilities of each key person associated with the project.

(4) Institutional commitment and resources

(a) *Institutional commitment.* Discuss the institution's commitment to the project. Discuss how the benefits to be derived from the project will transcend the applicant institution or the grant period. For example, substantiate that the institution attributes a high priority to the project, discuss how the project will contribute to the achievement of the institution's long-term (five- to ten-year) goals, explain how the project will help satisfy the institution's high-priority objectives, or show how this project is linked to and supported by the institution's strategic plan.

(b) *Institutional resources.* Document the commitment of institutional resources to the project, and show that the institutional resources to be made available to the project, when combined with the support requested from USDA, will be adequate to carry out the activities of the project. Discuss institutional facilities, equipment, computer services, and other appropriate resources available to the project.

(c) *Continuation plans.* Discuss the likelihood of, or plans for, continuation or expansion of the project beyond USDA support. For example, does the institution's long-range budget or academic plan provide for the realistic continuation or expansion of the initiative undertaken by this project after the end of the grant period, are plans for eventual self-support built into the project, are plans being made to institutionalize the program if it meets with success, and are there indications of other continuing non-Federal support?

(5) Budget and Cost-Effectiveness

(a) *Budget.* In addition to the separate required budget page and budget narrative forms, discuss how the budget specifically supports the proposed project activities. Explain how such budget items as professional or technical staff time and salary, travel, equipment, etc., are necessary and reasonable to achieve project objectives. Justify that the total budget, including funds requested from USDA and any matching support provided, are allocated between the applicant and any collaborating institution, and will be adequate to carry out the activities of the project. Provide a summary of sources and amounts of all third party matching support.

(b) *Cost-effectiveness.* Justify the project's cost-effectiveness. Show how the project maximizes the use of limited resources, optimizes educational value for the dollar, achieves economies of scale, or leverages additional funds. For example, discuss how the project has the potential to generate a critical mass of expertise and activity focused on a targeted need area, or to promote coalition building that could lead to future ventures.

7. References

All references to works cited should be complete, including titles and all co-authors, and should conform to an acceptable journal format. References are not considered in the page-limitation for the Project Description.

8. Appendices to Project Description

Appendices to the Project Description are allowed if they are directly germane to the proposed project. The addition of appendices should not be used to circumvent the text and/or figures and tables page limitations.

9. Key Personnel

The following should be included, as applicable:

(a) The roles and responsibilities of each PD and/or collaborator should be clearly described; and

(b) Vitae of the PD and each co-PD, senior associate, and other professional personnel. This section should include vitae of all key persons who are expected to work on the project, whether or not CSREES funds are sought for their support. The vitae should be limited to two (2) pages each in length, excluding publications listings. The vitae should include a presentation of academic and research credentials, as applicable, e.g., earned degrees, teaching experience, employment history, professional activities, honors and awards, and grants received. A chronological list of *all* publications in *refereed journals* during the past *four (4) years,* including those in press, must be provided, as applicable, for each project member for whom a curriculum vitae is provided. Also list only those *non-refereed* technical publications that have *relevance* to the proposed project. All authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these usually appear in journals.

10. Collaborative Arrangements

If it will be necessary to enter into formal consulting or collaborative arrangements with others, such arrangements should be fully explained and justified. If the consultant(s) or collaborator(s) are known at the time of application, a vitae or resume should be provided. In addition, evidence (e.g., letter of support) should be provided that the collaborators involved have agreed to render these services. The applicant also will be required to provide additional information on consultants and collaborators in the budget portion of the application. See instructions in the application forms for completing Form CSREES–2004, Budget.

11. Conflict-of-Interest List (Form CSREES–2007)

A "Conflict-of-Interest List," Form CSREES–2007, must be provided for all individuals who have submitted a vitae in response to item 9.(b) of this part. Each Form CSREES–2007 should list alphabetically, by the last names, the full names of the individuals in the following categories: (a) All co-authors on publications within the past four years, including pending publications and submissions; (b) all collaborators on projects within the past four years, including current and planned collaborations; (c) all thesis or postdoctoral advisees/advisors within the past four years; and (d) all persons in your field with whom you have had a consulting or financial arrangement within the past four years, who stand to gain by seeing the project funded. This form is necessary to assist program staff in excluding from application review those individuals who have conflicts of interest with the personnel in the grant application. The program contact must be informed of any additional conflicts of interest that arise after the application is submitted.

12. Budget (Form CSREES–2004)

a. General

(1) Budget Form

Prepare the Budget, Form CSREES–2004, in accordance with instructions provided with the application forms. A budget form is required for each year of requested support. In addition, a cumulative budget is required detailing the requested total support for the overall project period. The budget form may be reproduced as needed by applicants. Funds may be requested under any of the categories listed on the form, provided that the item or service for which support is requested is allowable under the authorizing legislation, the applicable statutes, regulations, and Federal cost principles, and these program guidelines, and can be justified as necessary for the successful conduct of the proposed project. Applicants also must include a budget narrative to justify their budget requests (see section b. below.)

(2) Matching

Contributions toward the match from the institution should be identified in the column "Non-Federal Proposed Cost Sharing/Matching Funds" on the Budget Form (Form CSREES–2004). Cash contributions of the institution and third parties as well as non-cash contributions should be identified on Line P., as appropriate, of Form CSREES–2004 and described in the budget narrative. Any cost sharing commitments specified in the proposal will be referenced and included as a condition of an award resulting from this announcement. Any cost sharing commitments to the proposed grant must have a signed letter from the committing organization's Authorized Organizational Representative (AOR) and countersigned by the recipient's AOR. The letter must state the total dollar amount intended for the proposed project and whether the contribution is cash or in-kind. If the contribution is to be split between cash and in-kind, the exact dollar amount for each category must be clearly stated. The contribution should also clearly state the budget categories that the contributed dollars should be applied to and clearly state the individual items of in-kind contributions.

b. Budget Narrative

All budget categories, with the exception of Indirect Costs, for which support is requested, must be individually listed (with costs) in the same order as the budget and justified on a separate sheet of paper and placed immediately behind the Budget form.

c. Matching Funds

Proposals should include written verification of commitments of matching support (including both cash and in-kind contributions) from third parties. Written verification means:

(a) For any third party cash contributions, a separate pledge agreement for each donation, signed by the AORs of the donor organization and the applicant organization, which must include: (1) The name, address, and telephone number of the donor; (2) the name of the applicant organization; (3) the title of the project for which the donation is made; (4) the dollar amount of the cash donation; and (5) a statement that the donor will pay the cash contribution during the grant period; and

(b) For any third party in-kind contributions, a separate pledge agreement for each contribution, signed by the AORs of the donor organization and the applicant organization, which must include: (1) The name, address, and telephone number of the donor; (2) the name of the applicant organization; (3) the title of the project for which the donation is made; (4) a good faith estimate of the current fair market value of the third party in-kind contribution; and (5) a statement that the donor will make the contribution during the grant period.

The sources and amount of all matching support from outside the applicant institution should be summarized on a separate page and placed in the proposal immediately following the Budget Narrative. All pledge agreements must be placed in the proposal immediately following the summary of matching support.

The value of applicant contributions to the project shall be established in accordance with applicable cost principles. Applicants should refer to OMB Circular A–21, Cost Principles for Educational Institutions, for further guidance and other requirements relating to matching and allowable costs. Contributions toward the match from the institution should be identified in the column "Non-Federal Proposed Cost Sharing/Matching Funds" on the Budget Form (Form CSREES–2004).

Any cost sharing commitments specified in the proposal will be referenced and included as a condition of an award resulting from this announcement.

13. Current and Pending Support (Form CSREES–2005)

All applications must contain Form CSREES–2005 listing other current public or private support (including in-house support) to which personnel (i.e., individuals submitting a vitae in response to item 9.(b) of this part) identified in the application have committed portions of their time, whether or not salary support for person(s) involved is included in the budget. Please follow the instructions provided on this form. Concurrent submission of identical or similar applications to the possible sponsors will not prejudice application review or evaluation by the CSREES. However, an application that duplicates or overlaps substantially with an application already reviewed and funded (or to be funded) by another organization or agency will not be funded under this program. Please note that the project being proposed should be included in the pending section of the form.

14. Assurance Statement(s) (Form CSREES–2008)

A number of situations encountered in the conduct of projects require special assurances, supporting documentation, etc., before funding can be approved for the project. In addition to any other situation that may exist with regard to a particular project, applications involving any of the following elements must comply with the additional requirements as applicable.

a. Recombinant DNA or RNA Research

As stated in 7 CFR part 3015.205(b)(3), all key personnel identified in the application and all endorsing officials of the proposing organization are required to comply with the guidelines established by the National Institutes of Health entitled, "Guidelines for Research Involving Recombinant DNA Molecules," as revised. If your project proposes to use recombinant DNA or RNA techniques, you must so indicate by checking the "yes" box in Block 20 of Form CSREES–2002 (the Proposal Cover Page) and by completing Section A of Form CSREES–2008. For applicable applications recommended for funding, Institutional Biosafety Committee approval is required before CSREES funds will be released. Please refer to the application forms for further instructions.

b. Animal Care

Responsibility for the humane care and treatment of live vertebrate animals used in any grant project supported with funds provided by CSREES rests with the performing organization. Where a project involves the use of living vertebrate animals for experimental purposes, all key personnel identified in an application

and all endorsing officials of the proposing organization are required to comply with the applicable provisions of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2131 *et seq.*), and the regulations promulgated thereunder by the Secretary in 9 CFR Parts 1, 2, 3, and 4 pertaining to the care, handling, and treatment of these animals. If your project will involve these animals, you should check "yes" in block 20 of Form CSREES–2002 and complete Section B of Form CSREES–2008. In the event a project involving the use of live vertebrate animals results in a grant award, funds will be released only after the Institutional Animal Care and Use Committee has approved the project. Please refer to the application forms for further instructions.

c. Protection of Human Subjects

Responsibility for safeguarding the rights and welfare of human subjects used in any grant project supported with funds provided by CSREES rests with the performing organization. Guidance on this issue is contained in the National Research Act, Pub. L. No. 93–348, as amended, and implementing regulations promulgated by the Department under 7 CFR part 1c. If you propose to use human subjects in your project, you should check the "yes" box in Block 20 of Form CSREES–2002 and complete Section C of Form CSREES–2008. Please refer to the application forms for additional instructions.

15. Certifications

Note that by signing Form CSREES–2002 the applicant is providing the certifications required by 7 CFR part 3017, regarding Debarment and Suspension and Drug-Free Workplace, and 7 CFR part 3018, regarding Lobbying. The certification forms are included in the application package for informational purposes only. These forms should not be submitted with the application since by signing Form CSREES–2002 your organization is providing the required certifications. If the project will involve a subcontractor or consultant, the subcontractor/consultant should submit a Form AD–1048, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions, to the grantee organization for retention in their records. This form should not be submitted to USDA.

16. Compliance With the National Environmental Policy Act (NEPA) (Form CSREES–2006)

As outlined in 7 CFR part 3407 (the Cooperative State Research, Education, and Extension Service regulations implementing NEPA), the environmental data for any proposed project is to be provided to CSREES so that CSREES may determine whether any further action is needed. In some cases, however, the preparation of environmental data may not be required. Certain categories of actions are excluded from the requirements of NEPA.

In order for CSREES to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, Form CSREES–2006, "NEPA Exclusions Form," must be included in the application indicating whether the applicant is of the opinion that the project falls within a categorical exclusion and the reasons therefore. If it is the applicant's opinion that the proposed project falls within the categorical exclusions, the specific exclusion(s) must be identified.

Even though a project may fall within the categorical exclusions, CSREES may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for an activity, if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect.

C. Submission of Applications

1. When To Submit (Deadline Date)

Applications must be received by COB on February 11, 2002. (5 p.m. Eastern Time). Applications received after this deadline will not be considered for funding.

2. What To Submit

An original and five (5) copies must be submitted. In addition submit two (2) copies of the application's Project Summary. All copies of the application and the Project Summary must be submitted in one package.

3. Where To Submit

Applicants are strongly encouraged to submit completed applications via overnight mail or delivery service to ensure timely receipt by the USDA. The address for hand-delivered applications or applications submitted using an express mail or overnight courier service is: Higher Education Challenge Grants Program; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 1307, Waterfront Centre; 800 9th Street, SW.; Washington, DC 20024; Telephone: (202) 401–5048.

Applications sent via the U.S. Postal Service must be sent to the following address: Higher Education Challenge Grants Program; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, SW.; Washington, DC 20250–2245.

D. Acknowledgment of Applications

The receipt of all applications will be acknowledged by e-mail. Therefore, applicants are strongly encouraged to provide accurate e-mail addresses, where designated, on the Form CSREES–2002. If the applicant's e-mail address is not indicated, CSREES will acknowledge receipt of the application by letter.

If the applicant does not receive an acknowledgment within 60 days of the submission deadline, please contact the program contact. Once the application has been assigned an application number, please cite that number on all future correspondence.

Part IV—Review Process

A. General

Each application will be evaluated in a 2-part process. First, each application will be screened to ensure that it meets the administrative requirements as set forth in this RFA. Second, applications that meet these requirements will be technically evaluated by a review panel.

Reviewers will be selected based upon training and experience in relevant scientific, extension, or education fields, taking into account the following factors: (a) The level of relevant formal scientific, technical education, or extension experience of the individual, as well as the extent to which an individual is engaged in relevant research, education, or extension activities; (b) the need to include as reviewers experts from various areas of specialization within relevant scientific, education, or extension fields; (c) the need to include as reviewers other experts (e.g., producers, range or forest managers/operators, and consumers) who can assess relevance of the applications to targeted audiences and to program needs; (d) the need to include as reviewers experts from a variety of organizational types (e.g., colleges, universities, industry, state and Federal agencies, private profit and non-profit organizations) and geographic locations; (e) the need to maintain a balanced composition of reviewers with regard to

minority and female representation and an equitable age distribution; and (f) the need to include reviewers who can judge the effective usefulness to producers and the general public of each application.

B. Evaluation Criteria

The evaluation criteria and weights below will be used in reviewing applications submitted in response to this RFA:

1. Potential for Advancing the Quality of Education (30 Points)

This criterion is used to assess the likelihood that the project will have an impact on the quality of food and agricultural sciences higher education by promoting and strengthening institutional capacities to meet clearly documented State, regional, multi-state, national, or international needs. Elements include identification of need area(s), justification for the project, innovation (creative programs, material or curricula), and a multidisciplinary focus.

2. Proposed Approach (25 Points)

This criterion relates to the soundness of the proposed approach and includes objectives (achievable, logical, based upon review of literature), methodology, plan of operation (managerially, educationally, and/or scientifically sound), time line, evaluation (specific procedures that ensure measurable outcomes and impacts are assessed) and dissemination plans (commitment to submit results or products to a peer review by the academic community and/or to share results or products by electronic communications, conferences, workshops, or other similar means), expected products, results and measurable outcomes, and partnerships and collaborative efforts (enhanced coordination and/or new linkages).

3. Key Personnel (20 Points)

This criterion relates to the adequacy of the number and qualifications of the key persons who will carry out the project.

4. Institutional Commitment and Resources (15 Points)

This criterion relates to the institution's commitment to the project, the adequacy of institutional resources (administrative, facilities, equipment and/or materials) available to carry out the project, and continuation plans ensuring the project maintains its impact once funding expires.

5. Budget and Cost-Effectiveness (10 Points)

This criterion relates to the extent to which the total budget adequately supports the project and is cost-effective. Elements considered include the necessity and reasonableness of costs to carry out project activities and achieve project objectives; the appropriateness of budget allocations between the applicant and any collaborating institution(s); the adequacy of time committed to the project by key project personnel; and the degree to which the project maximizes the use of limited resources, optimizes educational value for the dollar, achieves economies of scale, leverages additional funds (identify non-Federal matching support), includes sound quality-control measures, and focuses expertise and activity on targeted educational areas.

C. Conflicts of Interest and Confidentiality

During the peer evaluation process, extreme care will be taken to prevent any actual or perceived conflicts of interest that may impact review or evaluation. For the purpose of determining conflicts of interest, the academic and administrative autonomy of an institution shall be determined by reference to the 2002 Higher Education Directory, published by Higher Education Publications, Inc., 6400 Arlington Boulevard, Suite 648, Falls Church, Virginia 22042. Phone: (703) 532–2300. Web site: *http://www.hepinc.com.*

Names of submitting institutions and individuals, as well as application content and peer evaluations, will be kept confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of peer reviewers will remain confidential throughout the entire review process. Therefore, the names of the reviewers will not be released to applicants. At the end of the fiscal year, names of panelists will be made available in such a way that the panelists cannot be identified with the review of any particular application.

Part V—Grant Awards

A. General

Within the limit of funds available for such purpose, the awarding official of CSREES shall make grants to those responsible, eligible applicants whose applications are judged most meritorious under the procedures set forth in this RFA. The date specified by the awarding official of CSREES as the effective date of the grant shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practical so that project goals may be attained within the funded project period. All funds granted by CSREES under this RFA shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations, the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations (parts 3015 and 3019 of 7 CFR).

B. Organizational Management Information

Specific management information relating to an applicant shall be submitted on a one-time basis as part of the responsibility determination prior to the award of a grant identified under this RFA, if such information has not been provided previously under this or another CSREES program. CSREES will provide copies of forms recommended for use in fulfilling these requirements as part of the preaward process. Although an applicant may be eligible based on its status as one of these entities, there are factors which may exclude an applicant from receiving Federal financial and nonfinancial assistance and benefits under this program (e.g., debarment or suspension of an individual involved or a determination that an applicant is not responsible based on submitted organizational management information).

C. Grant Award Document and Notice of Grant Award

The grant award document shall include at a minimum the following:

(1) Legal name and address of performing organization or institution to whom the Administrator has awarded a grant under the terms of this request for applications;

(2) Title of project;

(3) Name(s) and institution(s) of PD's chosen to direct and control approved activities;

(4) Identifying grant number assigned by the Department;

(5) Project period, specifying the amount of time the Department intends to support the project without requiring recompetition for funds;

(6) Total amount of Departmental financial assistance approved by the Administrator during the project period;

(7) Legal authority(ies) under which the grant is awarded;

(8) Appropriate Catalog of Federal Domestic Assistance (CFDA) number;

(9) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award; and

(10) Other information or provisions deemed necessary by CSREES to carry out its respective granting activities or to accomplish the purpose of a particular grant.

The notice of grant award, in the form of a letter, will be prepared and will provide pertinent instructions or information to the grantee that is not included in the grant award document.

Part VI—Additional Information

A. Access To Review Information

Copies of reviews, not including the identity of reviewers, and a summary of the panel comments will be sent to the applicant PD after the review process has been completed.

B. Use of Funds; Changes

1. Delegation of Fiscal Responsibility

Unless the terms and conditions of the grant state otherwise, the grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

2. Changes in Project Plans

a. The permissible changes by the grantee, PD(s), or other key project personnel in the approved project grant shall be limited to changes in methodology, techniques, or other similar aspects of the project to expedite achievement of the project's approved goals. If the grantee or the PD(s) is uncertain as to whether a change complies with this provision, the question must be referred to the Authorized Departmental Officer (ADO) for a final determination. The ADO is the signatory of the award document, not the program contact.

b. Changes in approved goals or objectives shall be requested by the grantee and approved in writing by the ADO prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

c. Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the ADO prior to effecting such changes.

d. Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the ADO prior to effecting such transfers, unless prescribed otherwise in the terms and conditions of the grant.

e. *Changes in Project Period:* The project period may be extended by CSREES without additional financial support, for such additional period(s) as the ADO determines may be necessary to complete or fulfill the purposes of an approved project, but in no case shall the total project period exceed five years. Any extension of time shall be conditioned upon prior request by the grantee and approval in writing by the ADO, unless prescribed otherwise in the terms and conditions of a grant.

f. *Changes in Approved Budget:* Changes in an approved budget must be requested by the grantee and approved in writing by the ADO prior to instituting such changes if the revision will involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or grant award.

C. Expected Program Outputs and Reporting Requirements

(a) During the tenure of a grant, project directors are invited to attend at least one national project directors meeting, if offered, in Washington, DC, or any other announced location. The purpose of the meeting will be to discuss project and grant management, opportunities for collaborative efforts, future directions for education reform, and opportunities to enhance dissemination of exemplary end products/results.

(b) An Annual Performance Report must be submitted to the USDA program contact person within 90 days after the completion of the first year of the project and annually thereafter during the life of the grant. Generally, the Annual Performance Reports should include a summary of the overall progress toward project objectives, current problems or unusual developments, the next year's activities, and any other information that is pertinent to the ongoing project or which may be specified in the terms and conditions of the award.

(c) A Final Performance Report must be submitted to the USDA program contact person within 90 days after the expiration date of the project. The expiration date is specified in the award documents and modifications thereto, if any. Generally, the Final Performance Report should be a summary of the completed project, including: a review of project objectives and accomplishments; a description of any products and outcomes resulting from the project; activities undertaken to disseminate products and outcomes; partnerships and collaborative ventures that resulted from the project; future initiatives that are planned as a result of the project; the impact of the project on the project director(s), students, the departments, the institution, and the food and agricultural sciences higher education system; and data on project personnel and beneficiaries. The Final Performance Report should be accompanied by samples or copies of any products or publications resulting from or developed by the project. The Final Performance Report also must contain any other information which may be specified in the terms and conditions of the award.

D. Applicable Federal Statutes and Regulations

Several Federal statutes and regulations apply to grant applications considered for review and to project grants awarded under this program. These include, but are not limited to:

7 CFR part 1.1—USDA implementation of the Freedom of Information Act.

7 CFR part 3—USDA implementation of OMB Circular No. A–129 regarding debt collection.

7 CFR part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., OMB Circular Nos. A–21 and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. No. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR part 3018—USDA implementation of Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR part 3019—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Other

Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR part 3052—USDA implementation of OMB Circular No. A–133, Audits of States, Local Governments, and Non-profit Organizations.

7 CFR part 3407—CSREES procedures to implement the National Environmental Policy Act of 1969, as amended.

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR part 15b (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

E. Confidential Aspects of Applications and Awards

When an application results in a grant, it becomes a part of the record of CSREES transactions, available to the public upon specific request. Information that the Secretary determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as confidential, privileged, or proprietary should be clearly marked within the application. The original copy of an application that does not result in a grant will be retained by the Agency for a period of one year. Other copies will be destroyed. Such an application will be released only with the consent of the applicant or to the extent required by law. An application may be withdrawn at any time prior to the final action thereon.

F. Regulatory Information

For the reasons set forth in the final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29114, June 24, 1983), this program is excluded from the scope of the Executive Order 12372 which requires intergovernmental consultation with State and local officials. Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0039.

Done at Washington, DC, this 15th day of November 2001.

Colien Hefferan,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 01–28991 Filed 11–19–01; 8:45 am]

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Tuesday,
November 20, 2001

Part VI

Department of Agriculture

Cooperative State Research, Education and Extension Service

1890 Institution Teaching and Research Capacity Building Grants Program: Request for Applications and Request for Input; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service 1890 Institution Teaching and Research Capacity Building Grants Program: Request for Applications and Request for Input

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of request for applications and request for input.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) anticipates the availability of grant funds and requests applications for the 1890 Institution Teaching and Research Capacity Building Grants Program (CBG) for fiscal year (FY) 2002 to build the institutional capacities of the eligible colleges and universities through cooperative initiatives with Federal and non-Federal entities. This program addresses the need to (1) attract more students from under represented groups into the food and agricultural sciences, (2) expand the linkages among the 1890 Institutions and with other colleges and universities, and (3) strengthen the teaching and research capacity of the 1890 Institutions to more firmly establish them as full partners in the food and agricultural science and education system. In addition, through this program, USDA will strive to increase the overall pool of qualified applicants for the Department to make significant progress toward achievement of the Department's goal of increasing participation of under represented groups in Departmental programs.

The amount available for support of this program in FY 2002 is approximately $8.8 million ($4.4 million for Teaching and $4.4 million for Research).

This notice identifies the objectives for CBG projects, the eligibility criteria for projects and applicants, and the application forms and associated instructions needed to apply for a CBG grant.

By this notice, CSREES additionally requests stakeholder input from any interested party for use in the development of the next Request for Applications (RFA) for this program.

DATES: Applications must be received by close of business (COB) on January 31, 2002 (5:00 p.m. Eastern Time). Applications received after this deadline will not be considered for funding. Comments regarding this RFA are requested within six months from the issuance of this notice. Comments received after that date will be considered to the extent practicable.

ADDRESSES: The address for hand-delivered applications or applications submitted using an express mail or overnight courier service is: 1890 Institution Teaching and Research Capacity Building Grants Program; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 1307, Waterfront Centre; 800 9th Street, S.W.; Washington, D.C. 20024; Telephone: (202)401–5048.

Applications sent via the U.S. Postal Service must be sent to the following address: 1890 Institution Teaching and Research Capacity Building Grants Program; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2245.

Written stakeholder comments should be submitted by mail to: Policy and Program Liaison Staff; Office of Extramural Programs; USDA–CSREES; STOP 2299; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2299; or via e-mail to: RFP-OEP@reeusda.gov. (This e-mail address is intended only for receiving comments regarding this RFA and not requesting information or forms.) In your comments, please state that you are responding to the 1890 Institution Teaching and Research Capacity Building Grants Program RFA.

FOR FURTHER INFORMATION CONTACT: Applicants and other interested parties are encouraged to contact Mr. Richard M. Hood; National Program Leader; Higher Education Programs, Cooperative State Research, Education and Extension Service; 1400 Independence Ave, S.W.; STOP 2251; Washington, DC 20250–2251; telephone: (202) 720–2186; fax: (202) 720–2030; email: rhood@reeusda.gov.

SUPPLEMENTARY INFORMATION:

Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under number 10.216.

Stakeholder Input

CSREES is requesting comments regarding this RFA from any interested party. These comments will be considered in the development of the next RFA for the program. Such comments will be used to meet the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7613(c)(2)). This section requires the Secretary to solicit and consider input on a current RFA from persons who conduct or use agricultural research, education and extension for use in formulating future RFA's for competitive programs. Comments should be submitted as provided for in the **ADDRESSES** and **DATES** portions of this Notice.

Table of Contents

Part I—General Information

A. Legislative Authority and Background

Authority for this program is contained in section 1417(b)(4) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (NARETPA) (7 U.S.C. 3152(b)(4)) and pursuant to annual appropriations made available specifically for an 1890 capacity building program. In accordance with the statutory authority, subject to the availability of funds, the Secretary of Agriculture, who has delegated the authority to the Administrator of CSREES, may make competitive grants, for a period not to exceed 5 years, to design and implement food and agricultural programs to build teaching

and research capacity at colleges and universities having significant minority enrollments. Based on and subject to the express provisions of the annual appropriations act, only 1890 land-grant institutions and Tuskegee University are eligible for this grants program.

B. Purpose, Priorities, and Fund Availability

Teaching Program

The CBG teaching program supports projects related to strengthening teaching programs in the food and agricultural sciences. Proposals may focus on any subject matter area(s) in the food and agricultural sciences. For this program, the term "food and agricultural sciences" means basic, applied, and developmental teaching activities in food and fiber, agricultural, renewable natural resources, forestry, and physical and social sciences, and including related disciplines as defined in section 1404(8) of NARETPA, 7 U.S.C. 3103(8). A proposal may address a single targeted need area or multiple targeted need areas, and may be focused on a single subject matter area or multiple subject matter areas, in any combination (e.g., curriculum development in horticulture; curriculum development, faculty enhancement, and student experiential learning in animal science; faculty enhancement in food science and agribusiness management; or instruction delivery systems and student experiential learning in plant science, horticulture, and entomology). Applicants are also encouraged to include a library enhancement component related to the teaching project in their proposals. Please note that one of these Need Areas must be indicated in the appropriate space on the Project Summary Form (Form CSREES–2003) in the proposal application forms package.

For FY 2002, targeted need areas for teaching projects consist of one or more of the following:

(a) *Curricula Design and Materials Development.* The purpose of this need area is to promote new and improved curricula and materials to increase the quality of, and continuously renew, the Nation's academic programs in the food and agricultural sciences. The overall objective is to stimulate the development and facilitate the use of exemplary education models and materials that incorporate the most recent advances in subject matter, research on teaching and learning theory, and instructional technology. Proposals may emphasize: the development of courses of study, degree programs, and instructional materials; the use of new approaches to the study of traditional subjects; or the introduction of new subjects, or new applications of knowledge, pertaining to the food and agricultural sciences. Examples include, but are not limited to, curricula and materials that promote: raising the level of scholastic achievement of the Nation's graduates in the food and agricultural sciences, addressing the special needs of particular groups of students, such as minorities, gifted and talented, or those with educational backgrounds that warrant enrichment, using alternative instructional strategies or methodologies, including computer-assisted instruction or simulation modeling, media programs that reach large audiences efficiently and effectively, activities that provide hands-on learning experiences, and educational programs that extend learning beyond the classroom, using sound pedagogy, particularly with regard to recent research on how to motivate students to learn, retain, apply, and transfer knowledge, skills, and competencies, and building student competencies to integrate and synthesize knowledge from several disciplines.

(b) *Faculty Preparation and Enhancement for Teaching.* The purpose of this need area is to advance faculty development in the areas of teaching competency, subject matter expertise, or student recruitment and advising skills. Teachers are central to education. They serve as models, motivators, and mentors—the catalysts of the learning process. Moreover, teachers are agents for developing, replicating, and exchanging effective teaching materials and methods. For these reasons, education can be strengthened only when teachers are adequately prepared, highly motivated, and appropriately recognized and rewarded. Each faculty recipient of support for developmental activities must be an "eligible participant" as defined in this RFA. Examples of developmental activities include, but are not limited to, those which enable teaching faculty to: gain experience with recent developments or innovative technology relevant to their teaching responsibilities, work under the guidance and direction of experts who have substantial expertise in an area related to the developmental goals of the project, work with scientists or professionals in government, industry, or other colleges or universities to learn new applications in a field, obtain personal experience working with new ideas and techniques, expand competence with new methods of information delivery, such as computer-assisted or televised instruction.

(c) *Instruction Delivery Systems.* The purpose of this need area is to encourage the use of alternative methods of delivering instruction to enhance the quality, effectiveness, and cost efficiency of teaching programs. The importance of this initiative is evidenced by advances in educational research which have substantiated the theory that differences in the learning styles of students often require alternative instructional methodologies. Also, the rising costs of higher education strongly suggest that colleges and universities undertake more efforts of a collaborative nature in order to deliver instruction which maximizes program quality and reduces unnecessary duplication. At the same time, advancements in knowledge and technology continue to introduce new subject matter areas which warrant consideration and implementation of innovative instruction techniques, methodologies, and delivery systems. Examples include, but are not limited to: use of computers, teleconferencing, networking via satellite communications, regionalization of academic programs, mobile classrooms and laboratories, individualized learning centers, symposia, forums, regional or national workshops, etc.

(d) *Scientific Instrumentation for Teaching.* The purpose of this need area is to provide students in science-oriented courses the necessary experience with suitable, up-to-date equipment in order to involve them in work central to scientific understanding and progress. This program initiative will support the acquisition of instructional laboratory and classroom equipment to assure the achievement and maintenance of outstanding food and agricultural sciences higher education programs. A proposal may request support for acquiring new, state-of-the-art instructional scientific equipment, upgrading existing equipment, or replacing non-functional or clearly obsolete equipment. Examples include, but are not limited to: rental or purchase of modern instruments to improve student learning experiences in courses, laboratories, and field work, development of new ways of using instrumentation to extend instructional capabilities, establishment of equipment-sharing capability via consortia or centers that develop innovative opportunities, such as mobile laboratories or satellite access to industry or government laboratories.

(e) *Student Experiential Learning.* The purpose of this need area is to further the development of student scientific and professional competencies through experiential learning programs which provide students with opportunities to solve complex problems in the context of real-world situations. Effective experiential learning is essential in preparing future graduates to advance knowledge and technology, enhance quality of life, conserve resources, and revitalize the Nation's economic competitiveness. Such experiential learning opportunities are most effective when they serve to advance decision-making and communication skills as well as technological expertise. Examples include, but are not limited to, projects which: provide opportunities for students to participate in research projects, either as a part of an ongoing research project or in a project designed especially for this program, provide opportunities for students to complete apprenticeships, internships, or similar participatory learning experiences, expand and enrich courses which are of a practicum nature, provide career mentoring experiences that link students with outstanding professionals.

(f) *Student Recruitment and Retention.* The purpose of this need area is to strengthen student recruitment and retention programs in order to promote the future strength of the Nation's scientific and professional work force. The Nation's economic competitiveness and quality of life rest upon the availability of a cadre of outstanding research scientists, university faculty, and other professionals in the food and agricultural sciences. A substantial need exists to supplement efforts to attract increased numbers of academically outstanding students to prepare for careers as food and agricultural scientists and professionals. It is particularly important to augment the racial, ethnic, and gender diversity of the student body in order to promote a robust exchange of ideas and a more effective use of the full breadth of the Nation's intellectual resources. Each student recipient of monetary support for education costs or developmental purposes must be enrolled at an eligible institution and meet the requirement of an "eligible participant" as defined in this RFA. Examples include, but are not limited to: special outreach programs for elementary and secondary students as well as parents, counselors, and the general public to broaden awareness of the extensive nature and diversity of career opportunities for graduates in the food and agricultural sciences, special activities and materials to establish more effective linkages with high school science classes, unique or innovative student recruitment activities, materials, and personnel, special retention programs to assure student progression through and completion of an educational program, development and dissemination of stimulating career information materials, use of regional or national media to promote food and agricultural sciences higher education. Providing financial incentives to enable and encourage students to pursue and complete an undergraduate or graduate degree in an area of the food and agricultural sciences.

There is no commitment by USDA to fund any particular application or to make a specific number of awards. Approximately $4.4 million will be available to fund teaching proposals in FY 2002.

Research Program

The CBG research program supports projects that address high-priority research initiatives in the targeted need areas specified in this RFA where there is a present or anticipated need for increased knowledge or capabilities or in which it is feasible for applicants to develop programs recognized for their excellence. Proposals may focus on any subject matter area(s) in the food and agricultural sciences. Applicants are encouraged to include in their proposals a library enhancement component related to the research initiative(s) for which they have prepared their proposals. Please note that one of these Need Areas must be indicated in the appropriate space on the Project Summary Form (Form CSREES–2003) in the proposal application forms package.

For FY 2002, targeted need areas for research projects consist of one or more of the following:

(a) *Studies and Experimentation in Food and Agricultural Sciences.* The purpose of this initiative is to advance the body of knowledge in those basic and applied natural and social sciences that comprise the food and agricultural sciences. Examples include, but are not limited to: Conduct plant or animal breeding programs to develop better crops, forests, or livestock (e.g., more disease resistant, more productive, yielding higher quality products), conceive, design, and evaluate new bioprocessing techniques for eliminating undesirable constituents from or adding desirable ones to food products, propose and evaluate ways to enhance utilization of the capabilities and resources of food and agricultural institutions to promote rural development (e.g., exploitation of new technologies by small rural businesses), identify control factors influencing consumer demand for agricultural products, analyze social, economic, and physiological aspects of nutrition, housing, and life-style choices, and of community strategies for meeting the changing needs of different population groups, other high-priority areas such as human nutrition, sustainable agriculture, biotechnology, agribusiness management and marketing, and aquaculture.

(b) *Centralized Research Support Systems.* The purpose of this initiative is to establish centralized support systems to meet national needs or serve regions or clientele that cannot otherwise afford or have ready access to the support in question, or to provide such support more economically thereby freeing up resources for other research uses. Examples include, but are not limited to: Storage, maintenance, characterization, evaluation and enhancement of germplasm for use by animal and plant breeders, including those using the techniques of biotechnology, computerized data banks of important scientific information (e.g., epidemiological, demographic, nutrition, weather, economic, crop yields, etc.). Expert service centers for sophisticated and highly specialized methodologies (e.g., evaluation of organoleptic and nutritional quality of foods, toxicology, taxonomic identifications, consumer preferences, demographics, etc.).

(c) *Technology Delivery Systems.* The purpose of this initiative is to promote innovations and improvements in the delivery of benefits of food and agricultural sciences to producers and consumers, particularly those who are currently disproportionately low in receipt of such benefits. Examples include, but are not limited to: Computer-based decision support systems to assist small-scale farmers to take advantage of relevant technologies, programs, policies, etc., efficacious delivery systems for nutrition information or for resource management assistance for low-income families and individuals.

(d) *Other Creative Proposals.* The purpose of this initiative is to encourage other creative proposals, outside the areas previously outlined, that are designed to provide needed enhancement of the Nation's food and agricultural research system.

There is no commitment by USDA to fund any particular proposal or to make a specific number of awards. Approximately $4.4 million will be available to fund research proposals in FY 2002.

C. Definitions

For the purpose of this program, the following definitions are applicable:

1890 Institution or *1890 land-grant institution* or *1890 colleges and universities* means one of those institutions eligible to receive funds under the Act of August 30, 1890, as amended (7 U.S.C. 321 *et seq.*), including Tuskegee University. Unless otherwise stated for a specific program, this term includes a research foundation maintained by such an institution.

Authorized departmental officer means the Secretary or any employee of the Department with delegated authority to issue or modify grant instruments on behalf of the Secretary.

Authorized organizational representative means the president or chief executive officer of the applicant organization or the official, designated by the president or chief executive officer of the applicant organization, who has the authority to commit the resources of the organization.

Budget period means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

Cash contributions means the applicant's cash outlay, including the outlay of money contributed to the applicant by non-Federal third parties.

Citizen or *national of the United States* means:

(1) A citizen or native resident of a State; or,

(2) A person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States.

When eligibility is claimed solely on the basis of permanent allegiance, documentary evidence from the Immigration and Naturalization Service as to such eligibility must be made available to CSREES upon request.

College or *University* means an educational institution in any State which:

(1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) is legally authorized within such State to provide a program of education beyond secondary education;

(3) provides an educational program for which an associate degree or any other higher degree is awarded;

(4) is a public or other nonprofit institution; and

(5) is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted pre-accreditation status by such an agency or association that has been recognized by the Secretary of Education for the granting of pre-accreditation status, and the Secretary of Education has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

Complementary project proposal means a proposal for a project which involves coordination with one or more other projects for which funding was awarded under the same program in a previous fiscal year, or for which funding is requested under the same program in the current fiscal year.

Department or *USDA* means the United States Department of Agriculture.

Eligible participant means, for purposes of education target areas "Faculty Preparation and Enhancement for Teaching", and "Student Recruitment and Retention", an individual who: (1) Is a citizen or national of the United States, as defined in this RFA; or (2) is a citizen of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau. Where eligibility is claimed under "Citizen or national of the United States", as defined above, documentary evidence from the Immigration and Naturalization Service as to such eligibility must be made available to CSREES upon request.

Food and agricultural sciences means basic, applied, and developmental research, extension, and teaching activities in the food and fiber, agricultural, renewable natural resources, forestry, and physical and social sciences, in the broadest sense of these terms, including but not limited to, activities concerned with the production, processing, marketing, distribution, conservation, consumption, research, and development of food and agriculturally related products and services, and inclusive of programs in agriculture, natural resources, aquaculture, forestry, veterinary medicine, home economics, rural human ecology, and closely allied disciplines.

Grantee means the organization designated in the grant award document as the responsible legal entity to which a grant is awarded.

Joint project proposal means a proposal for a project, which will involve the applicant institution and two or more other colleges, universities, community colleges, junior colleges, or other institutions, each of which will assume a major role in the conduct of the proposed project, and for which the applicant institution will transfer at least one-half of the awarded funds to the other institutions participating in the project. Only the applicant institution must meet the program eligibility requirements; other participating institutions in a joint project proposal are not limited to eligible institutions.

Matching or *Cost-sharing* means that portion of allowable project costs not borne by the Federal Government, including the value of in-kind contributions.

Peer reviewers means experts or consultants qualified by training and experience to give expert advice on the scientific and technical merit of grant applications or the relevance of those applications to one or more of the proposal evaluation criteria. Peer reviewers may be ad hoc or convened as a panel.

Prior approval means written approval evidencing prior consent by an authorized departmental officer.

Project means the particular activity within the scope of the program supported by a grant award.

Project director means the single individual designated by the grantee in the grant application and approved by the Authorized Departmental Officer who is responsible for the direction and management of the project [also known as a principal investigator for research activities].

Project period means the total length of time, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

Research means any systematic study directed toward new or fuller knowledge and understanding of the subject studied.

Research capacity means the quality and depth of an institution's research infrastructure as evidenced by its: faculty expertise in the natural or social sciences, scientific and technical resources, research environment, library resources, and organizational structures and reward systems for attracting and retaining first-rate research faculty or students at the graduate and post-doctorate levels. Research project grant means a grant in support of a project that addresses one or more of the targeted need areas or specific subject matter/emphasis areas identified in the annual program announcement related to strengthening research programs including, but not limited to, such initiatives as: studies and experimentation in food and agricultural sciences, centralized

research support systems, technology delivery systems, and other creative projects designed to provide needed enhancement of the Nation's food and agricultural research system.

Secretary means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved may be delegated.

State means any one of the fifty States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Marianas, the Virgin Islands of the United States, and the District of Columbia.

Teaching means formal classroom instruction, laboratory instruction, and practicum experience in the food and agricultural sciences and matters related thereto (such as faculty development, student recruitment and services, curriculum development, instructional materials and equipment, and innovative teaching methodologies) conducted by colleges and universities offering baccalaureate or higher degrees.

Teaching capacity means the quality and depth of an institution's academic programs infrastructure as evidenced by its: curriculum, teaching faculty, instructional delivery systems, student experiential learning opportunities, scientific instrumentation for teaching, library resources, academic standing and racial, ethnic, or gender diversity of its faculty and student body as well as faculty and student recruitment and retention programs provided by a college or university in order to achieve maximum results in the development of scientific and professional expertise for the Nation's food and agricultural system.

Teaching project grant means a grant in support of a project that addresses one or more of the targeted need areas or specific subject matter/emphasis areas identified in the annual program announcement related to strengthening teaching programs including, but not limited to, such initiatives as: curricula design and materials development, faculty preparation and enhancement for teaching, instruction delivery systems, scientific instrumentation for teaching, student experiential learning, and student recruitment and retention.

Third party in-kind contributions means non-cash contributions of property or services provided by non-Federal third parties, including real property, equipment, supplies and other expendable property, directly benefitting and specifically identifiable to a funded project or program.

USDA agency cooperator means any agency or office of the Department which has reviewed and endorsed an applicant's request for support, and indicates a willingness to make available non-monetary resources or technical assistance throughout the life of a project to ensure the accomplishment of the objectives of a grant awarded under this program.

United States means the several States, the territories and possessions of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Marianas, the Virgin Islands of the United States, and the District of Columbia.

D. Eligibility

Applications may be submitted by any of the sixteen historically black 1890 Land-Grant Institutions and Tuskegee University. The 1890 Land-Grant Institutions are: Alabama A&M University; University of Arkansas-Pine Bluff; Delaware State University; Florida A&M University; Fort Valley State University; Kentucky State University; Southern University and A&M College; University of Maryland-Eastern Shore; Alcorn State University; Lincoln University (MO); North Carolina A&T State University; Langston University; South Carolina State University; Tennessee State University; Prairie View A&M University; and Virginia State University. An institution eligible to receive an award under this program includes a research foundation maintained by an 1890 land-grant institution or Tuskegee University. Award recipients may subcontract to organizations not eligible to apply provided such organizations are necessary for the conduct of the project.

For FY 2002, eligible institutions may propose projects in any discipline(s) of the food and agricultural sciences.

E. Indirect Costs

Pursuant to section 1462 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3310), indirect costs charged against a competitive grant under this program may not exceed 19 percent of the total Federal funds provided under the grant award. An alternative method of calculation of this limitation is to multiply total direct costs by 23.456 percent.

F. Matching Requirements

The Department strongly encourages non-Federal matching support for the program. For FY 2002, the following incentive is offered to applicants for committing their own institutional resources or securing third-party contributions in support of capacity building projects: *Tie Breaker*—The amount of institutional and third-party cash and non-cash matching support for each proposed project, will be used as the primary criterion to break any ties (when proposals are equally rated in merit) resulting from the proposal review process conducted by the peer reviewers. A grant awarded on this basis will contain language requiring such matching commitments as a condition of the grant.

G. Funding Restrictions

Under the 1890 Institution Capacity Building Grants Program, the use of grant funds to plan, acquire, or construct a building or facility is not allowed. With prior approval, in accordance with the cost principles set forth in OMB Circular No. A–21, some grant funds may be used for minor alterations, renovations, or repairs deemed necessary to retrofit existing teaching spaces in order to carry out a funded project. However, requests to use grant funds for such purposes must demonstrate that the alterations, renovations, or repairs are incidental to the major purpose for which a grant is made.

There is no limit on the number of proposals any one institution may submit. However, funding limitations in FY 2002 will affect the number of awards eligible institutions and individuals may receive.

Funding Limitations per Institution

In FY 2002, the following two limitations will apply to the institutional maximum: (1) No institution may receive more than four grants, and (2) no institution may receive more than 10 percent (approximately $880,000) of the total funds available for grant awards. For a Joint Project Proposal (submitted by an eligible institution and involving two or more other colleges or universities assuming major roles in the conduct of the project), only that portion of the award to be retained by the grantee will be counted against the grantee's institutional maximum. Those funds to be transferred to the other colleges and universities participating in the joint project will not be applied toward the maximum funds allowed the grantee institution. However, if any of the other colleges and universities participating in the joint project are 1890 Institutions or Tuskegee University, the amount transferred from the grantee institution to such institutions will be counted toward their institutional maximums. For Complementary Project Proposals, only those funds to be retained by the

grantee institution will be counted against the grantee's institutional maximum.

Funding Limitation per Project Director

For FY 2002, the maximum number of new awards listing the same individual as Project Director is two grants. This restriction does not apply to joint projects.

Funding Limitation per Targeted Need Area

In FY 2002, the maximum number of new awards listing the same individual as Project Director in any one targeted need area that focuses on a single subject matter area or discipline is one grant. This restriction does not apply to proposals that address multiple targeted need areas and/or multiple subject matter areas.

H. Types of Applications

In FY 2002, applications may be submitted to the CBG as one of the following three types of requests:

(1) *New application.* This is a project application that has not been previously submitted to the CBG Program. All new applications will be reviewed competitively using the selection process and evaluation criteria described in Part IV—Review Process.

(2) *Renewal application.* This is a project application that requests additional funding for a CBG project beyond the period that was approved in an original or amended award. Applications for renewed funding must contain the same information as required for new applications, and additionally must contain a Progress Report (see Project Description, Part III.B.6). Renewal applications must be received by the relevant due dates, will be evaluated in competition with other pending applications in appropriate area to which they are assigned, and will be reviewed according to the same evaluation criteria as new applications.

(3) *Resubmitted application.* This is an application that had previously been submitted to the CBG Program but not funded. Project Directors (PD's) must respond to the previous review panel summary (see Response to Previous Review, Part III.B.5). Resubmitted applications must be received by the relevant due dates, will be evaluated in competition with other pending applications in appropriate area to which they are assigned, and will be reviewed according to the same evaluation criteria as new applications.

Part II—Program Description

A. Project Types

For FY 2002, a proposal may be directed toward the undergraduate or graduate level of study.

For FY 2002, eligible institutions may submit grant applications for either category of grants (teaching or research); however, each application must be limited to either a teaching project grant proposal or a research project grant proposal.

For FY 2002, the maximum total funds that may be awarded to an applicant for a teaching project is $200,000. The maximum total funds that may be awarded for a research project is $300,000.

A funded project period should be no less than eighteen (18) months and no more than thirty-six (36) months.

B. Program Area Description

The 1890 Capacity Building Grants Program supports both teaching and research projects. To specify the program to which you are applying, please indicate either "1890 Capacity Building Teaching Grants Program" or "1890 Capacity Building Research Grants Program" in Block 8 of Form CSREES–2002 (Proposal Cover Page). For FY 2002, the CBG Program supports projects in any discipline of the food and agricultural sciences. Applicants should select one of the following codes which best describes the major academic or scientific discipline addressed by the proposal. Enter this code where indicated under discipline on the Project Summary Form (Form CSREES–2003) in the proposal application forms package:

Discipline	Code
General Food and Agricultural Sciences (includes multidisciplinary, institution-wide projects).	G
Agribusiness Management and Marketing (includes Agricultural Economics).	M
Agriscience Agricultural/Biological Engineering).	E
Agricultural Social Sciences (includes Agricultural Education, Agricultural Communications, and Rural Sociology).	S
Animal Sciences	A
Aquaculture	Q
Conservation and Renewable Natural Resources (includes Forestry and Ecology/Wetlands).	C
Entomology—Animal	J
Entomology—Plant	T
Environmental Sciences/Management.	L
Food Science/Technology and Manufacturing (includes Food Safety).	F
Human Nutrition	N
Family and Consumer Sciences (excludes Human Nutrition).	H
International Education/Research (enhancement of U.S. programs).	I
Plant Sciences and Horticulture (includes Turf Sciences).	P
Related Biological Sciences (includes General/Basic Biotechnology, Biochemistry, and Microbiology).	B
Soil Sciences	D
Veterinary Medicine/Science	V
Water Science/ Water Resources (includes Water Quality and Watershed Management).	W
Other (and explain)	O

Part III—Preparation of an Application

A. Program Application Materials

Program application materials are available at the CSREES Funding Opportunities web site (http://www.reeusda.gov/1700/funding/ourfund.htm). If you do not have access to the web page or have trouble downloading material and you would like a hardcopy, you may contact the Proposal Services Unit, Office of Extramural Programs, USDA/CSREES at (202) 401–5048. When calling the Proposal Services Unit, please indicate that you are requesting the RFA and associated application forms for the 1890 Institution Teaching and Research Capacity Building Grants Program. These materials also may be requested via Internet by sending a message with your name, mailing address (not e-mail) and phone number to psb@reeusda.gov. State that you want a copy of the RFA and the associated application forms for 1890 Institution Teaching and Research Capacity Building Grants Program.

B. Content of Applications

1. General

Use the following guidelines to prepare an application. Proper preparation of applications will assist reviewers in evaluating the merits of each application in a systematic, consistent fashion:

(a) Prepare the application on only one side of the page using standard size (8½″ x 11″) white paper, one-inch margins, typed or word processed using no type smaller than 12 point font, and single or double spaced. Use an easily readable font face (e.g., Geneva, Helvetica, Times Roman).

(b) Number each page of the application sequentially, starting with the Project Description, including the budget pages, required forms, and any appendices.

(c) Staple the application in the upper left-hand corner. Do not bind. An original and seven (7) copies (eight (8)

total) must be submitted in one package, along with two (2) additional copies of the "Project Summary," Form CSREES–2003, as a separate attachment.

(d) Include original illustrations (photographs, color prints, etc.) in all copies of the application to prevent loss of meaning through poor quality reproduction.

(e) The contents of the application should be assembled in the following order:

(1) Proposal Cover Page (Form CSREES–2002)
(2) Table of Contents
(3) Project Summary (Form CSREES–2003)
(4) Response to Previous Review
(5) Project Description
(6) References
(7) Appendices to Project Description
(8) Key Personnel
(9) Collaborative Arrangements (including Letters of Support)
(10) Conflict-of-Interest List (Form CSREES–2007)
(11) Budget (Form CSREES–2004)
(12) Budget Narrative
(13) Matching
(14) Current and Pending Support (Form CSREES–2005)
(15) Assurance Statement(s) (Form CSREES–2008)
(16) Compliance with the National Environmental Policy Act (NEPA) (Form CSREES–2006)
(17) Page B, Proposal Cover Page (Form CSREES–2002), Personal Data on Project Director

2. Proposal Cover Page (Form CSREES–2002)

a. Page A

Each copy of each grant application must contain a "Proposal Cover Page", Form CSREES–2002. One copy of the application, preferably the original, must contain the pen-and-ink signature(s) of the proposing PD's and the authorized organizational representative (AOR), the individual who possesses the necessary authority to commit the organization's time and other relevant resources to the project. If there are more than four co-PD's for an application, please list additional co-PD's on a separate sheet of paper (with appropriate information and signature) and attach to the Proposal Cover Page (Form CSREES–2002). Any proposed PD or co-PD whose signature does not appear on Form CSREES–2002 or attached additional sheets will not be listed on any resulting grant award. Complete both signature blocks located at the bottom of the "Proposal Cover Page" form. Please note that Form CSREES–2002 is comprised of two parts—Page A which is the "Proposal Cover Page" and Page B which is the "Personal Data on Project Director."

Form CSREES–2002 serves as a source document for the CSREES grant database; it is therefore important that it be accurately completed in its entirety, especially the e-mail addresses requested in blocks 4.c. and 18.c. However, the following items are highlighted as having a high potential for errors or misinterpretations:

(a) Type of Performing Organization (Block 6A and 6B). For block 6A, a check should be placed in the appropriate box to identify the type of organization which is the legal recipient named in block 1. Only one box should be checked. For block 6B, please check as many boxes that apply to the affiliation of the PD listed in block 16.

(b) Title of Proposed Project (Block 7). The title of the project must be brief (140-character maximum, including spaces), yet represent the major thrust of the effort being proposed. Project titles are read by a variety of nonscientific people; therefore, highly technical words or phraseology should be avoided where possible. In addition, introductory phrases such as "investigation of," "research on," "education for," or "outreach that" should not be used.

(c) Program to Which You Are Applying (Block 8). Enter 1890 Institution Teaching and Research Capacity Building Grants Program.

(d) Type of Request (Block 14). Check the block for "New", "Resubmitted", or "Renewal Proposal" (note that the other award types are not supported by this program).

(e) Project Director (PD) (Blocks 16–19). Blocks 16–18 are used to identify the PD and Block 19 to identify co-PD's. If needed, additional co-PD's may be listed on a separate sheet of paper and attached to Form CSREES–2002, the Proposal Cover Page, with the applicable co-PD information and signatures. Listing multiple co-PD's, beyond those required for genuine collaboration, is discouraged.

(f) Other Possible Sponsors (Block 21). List the names or acronyms of all other public or private sponsors including other agencies within USDA to which your application has been or might be sent. In the event you decide to send your application to another organization or agency at a later date, you must inform the identified CSREES program contact as soon as practicable. Submitting your application to other potential sponsors will not prejudice its review by CSREES; however, submitting the same (i.e., duplicate) application to another CSREES program is not permissible.

b. Page B

Page B should be submitted only with the original signature copy of the application and should be placed as the last page of the original copy of the application. This page contains personal data on the PD(s). CSREES requests this information in order to monitor the operation of its review and awards processes. This page will not be duplicated or used during the review process. Please note that failure to submit this information will in no way affect consideration of your application.

3. Table of Contents

For consistency and ease in locating information, each application must contain a detailed Table of Contents immediately following the proposal cover page. The Table of Contents should contain page numbers for each component of the application. Page numbering should begin with the first page of the Project Description.

4. Project Summary (Form CSREES–2003)

The application must contain a "Project Summary," Form CSREES–2003. The summary should be approximately 250 words, contained within the box, placed immediately after the Table of Contents, and not numbered. The names and affiliated organizations of all PD's and co-PD's should be listed on this form, in addition to the title of the project. The summary should be a self-contained, specific description of the activity to be undertaken and should focus on: overall project goal(s) and supporting objectives; plans to accomplish project goal(s); and relevance of the project to the goals of the CBG Program. The importance of a concise, informative Project Summary cannot be overemphasized. If there are more than four co-PD's for an application, please list additional co-PD's on a separate sheet of paper (with appropriate information) and attach to the Project Summary (Form CSREES–2003).

5. Response to Previous Review

If the proposal is a resubmission, Project Directors (PDs) must respond to the previous panel summary on no more than one page, titled "RESPONSE TO PREVIOUS REVIEW". In this section, a clear statement acknowledging comments from the previous reviewers, indicating revisions, rebuttals, etc., that can positively influence the review of the proposal should be made. Further, the resubmitted proposal should clearly

indicate changes that have been made in the Project Description. Resubmitted proposals will be reviewed competitively using the selection process and evaluation criteria described in Part IV—Review Process.

This requirement only applies to "Resubmitted Proposals" as described under Part I. H. "Types of Proposals."

This requirement only applies to "Resubmitted Applications" and "Resubmitted Renewal Applications" as described under Part I, H, "Types of Applications." Project Directors (PD's) must respond to the previous review panel summary on no more than one page, titled "RESPONSE TO PREVIOUS REVIEW," which is to be placed directly after the "Project Summary," Form CSREES–2003.

6. Project Description

Please Note: The Project Description shall not exceed twenty (20) pages of written text and up to five (5) additional pages for figures and tables. This maximum has been established to ensure fair and equitable competition. (**Note:** To facilitate proposal review and evaluation, the applicant is advised to include the following *underlined wording* as headings in the proposal narrative, followed by the applicant's response for each item.

The Project Description must include all of the following:

Teaching Proposals

(1) *Potential for advancing the quality of education.* (a) *Identification of Needs.* Identify the educational need areas(s) to be addressed by this project.

(b) *Project Justification.* Clearly state the specific instructional problem or opportunity to be addressed. Describe how and by whom the focus and scope of the project were determined. Summarize the body of knowledge which substantiates the need for the proposed project. Discuss how the benefits to be derived from the project will transcend the proposing institution or the grant period. Describe ongoing or recently completed significant activities related to the proposed project for which previous funding was received under the CBG Program.

(c) *Innovation.* Describe the degree to which the proposal reflects an innovative or non-traditional approach to solving a higher education problem or strengthening the quality of education in the food and agricultural sciences.

(d) *Multidisciplinary focus.* Indicate where the project is relevant to multiple disciplines in the food and agricultural sciences or with other academic curricula. Indicate whether the project will expand partnership ventures among disciplines at a university. Also, discuss whether the project may be adapted by, or serve as a model for, other institutions.

(2) *Proposed Approach and Cooperative Linkages.* (a) *Objectives.* Cite and discuss the specific objectives to be accomplished under the project.

(b) *Plan of operation.* Describe procedures for accomplishing the objectives of the project.

(c) *Timetable.* Provide a timetable for conducting the project. Identify all important project milestones and dates as they relate to project start-up, execution, evaluation, dissemination, and close-out.

(d) *Products, results and measurable outcomes.* Explain the expected products and results and their potential impact on strengthening food and agricultural sciences higher education in the United States, including attracting academically outstanding students or increasing the ethnic, racial, and gender diversity of the Nation's food and agricultural scientific and professional expertise base.

(e) *Evaluation plans.* Provide a plan for evaluating the accomplishment of stated objectives, products and outcomes during the conduct of the project. Develop indicators of progress and measurable outcomes. Describe any data to be collected and analyzed, and explain the methodology that will be used to determine the extent to which the needs underlying the project are met. Provide a plan for evaluating the effectiveness of the end results upon conclusion of the project.

(f) *Dissemination plans.* Discuss plans to disseminate project results and products. Identify target audiences and explain methods of communication.

(g) *Partnerships and collaborative efforts.* Explain how the project will maximize partnership ventures and collaborative efforts to strengthen food and agricultural sciences higher education (e.g., involvement of faculty in related disciplines at the same institution, joint projects with other colleges or universities, or cooperative activities with business or industry). Also explain how it will stimulate academia, the States, or the private sector to join with the Federal partner in enhancing food and agricultural sciences higher education. Provide evidence, via letters from the parties involved, that arrangements necessary for collaborative partnerships or joint initiatives have been discussed and realistically can be expected to come to fruition, or actually have been finalized contingent on an award under this program.

Note: Letters must be signed by an official who has the authority to commit the resources of the organization. Such letters should be referenced in the plan of operation, but the actual letters should be included in the Appendix section of the proposal. Any potential conflict(s) of interest that might result from the proposed collaborative arrangements must be discussed in detail. Explain how the project will create a new or enhance an existing partnership between the USDA agency cooperator(s) and the 1890 Institution(s). This section should expand upon the summary information provided in the documentation of USDA agency cooperator.

(3) *Institutional Capacity Building.* (a) *Institutional enhancement.* Explain how the proposed project will strengthen the institution's teaching capacity, and, if applicable, that of any other institution assuming a major role in the conduct of the project. For example, describe how the proposed project is intended to strengthen the institution's academic infrastructure by expanding the current faculty expertise base, advancing the scholarly quality of the institution's academic programs, enriching the racial, ethnic, or gender diversity of the student body, helping the institution establish itself as a center of excellence in a particular field of education, helping the institution maintain or acquire state-of-the-art scientific instrumentation or library collections for teaching, or enabling the institution to provide more meaningful student experiential learning opportunities.

(b) *Institutional commitment.* Discuss the institution's commitment to the project. For example, substantiate that the institution attributes a high priority to the project, discuss how the project will contribute to the achievement of the institution's long-range (five- to ten-year) goals, explain how the project will help satisfy the institution's high priority objectives, or show how this project is linked to and supported by the institution's strategic plan. Document the commitment of institutional resources to the project, and show that the institutional resources to be made available to the project, when combined with the support requested from USDA, will be adequate to carry out the activities of the project. Discuss institutional facilities, equipment, computer services, and other appropriate resources available to the project.

(c) *Continuation Plans.* Discuss the likelihood of, or plans for, continuation or expansion of the project beyond USDA support. For example, does the institution's long-range budget or academic plan provide for the realistic continuation or expansion of the initiative undertaken by this project after the end of the grant period, are plans for eventual self-support built into

the project, are plans being made to institutionalize the program if it meets with success, and are there indications of other continuing non-Federal support?

(4) *Key Personnel.* In addition to the required separate vitae for each PD, discuss the specific attributes and project responsibilities of each key person associated with the project.

(5) *Budget and Cost-Effectiveness.* (a) *Budget.* In addition to the separate required budget page and budget narrative forms, discuss how the budget specifically supports the proposed project activities. Explain how such budget items as professional or technical staff time and salary, travel, equipment, etc., are necessary and reasonable to achieve project objectives. Justify that the total budget, including funds requested from USDA and any matching support provided, are allocated between the applicant and any collaborating institution, and will be adequate to carry out the activities of the project. Provide a summary of sources and amounts of all third party matching support.

(b) *Cost-effectiveness.* Justify the project's cost-effectiveness. Show how the project maximizes the use of limited resources, optimizes educational value for the dollar, achieves economies of scale, or leverages additional funds. For example, discuss how the project has the potential to generate a critical mass of expertise and activity focused on a targeted need area, or to promote coalition building that could lead to future ventures.

Research Proposals

(2) *Significance of the Problem.* (a) *Identification of the Problem.* Identify the specific problem or opportunity to be addressed and present any research questions or hypotheses to be examined.

(b) *Project Justification.* Provide a rationale for the proposed approach to the problem or opportunity and indicate the part that the proposed project will play in research and knowledge. Discuss how the project will be of value and importance at the State, regional, national, or international level(s). Also discuss how the benefits to be derived from the project will transcend the proposing institution or the grant period. Include a comprehensive summary of the pertinent scientific literature. Citations should be accurate, complete, and adhere to an acceptable journal format. Explain how such knowledge (or previous findings) is related to the proposed project. Describe the relevancy of the proposed project to current research or significant research support activities at the proposing institution and any other institution participating in the project, including research which may be as yet unpublished.

(c) *Innovation.* Describe the degree to which the proposal reflects an innovative or non-traditional approach to a food and agricultural research initiative.

(d) *Multidisciplinary focus.* Indicate where the project is relevant to multiple disciplines in the food and agricultural sciences. Indicate whether the project will expand partnership ventures among disciplines at a university. Also, discuss whether the project may be adapted by, or serve as a model for, other institutions.

(2) *Proposed Approach.* (a) *Objectives.* Cite and discuss the specific objectives to be accomplished under the project.

(b) *Plan of operation.* Describe procedures or methodologies to be applied to the proposed project. This section should include, but not limited to a description of: the proposed investigations, experiments, or research support enhancements in the sequence in which they will be carried out, procedures and techniques to be employed, including their feasibility, means by which data will be collected and analyzed, pitfalls that might be encountered, limitations to proposed procedures.

(c) *Timetable.* Provide a timetable for execution of the project. Identify all important research milestones and dates as they relate to project start-up, execution, evaluation, dissemination, and close-out.

(d) *Products, results and measurable outcomes.* Explain the expected products and results and their potential impact on strengthening food and agricultural sciences higher education in the United States, including attracting academically outstanding students or increasing the ethnic, racial, and gender diversity of the Nation's food and agricultural scientific and professional expertise base.

(e) *Evaluation plans.* Provide a plan for evaluating the accomplishment of stated objectives, products and outcomes during the conduct of the project. Develop indicators of progress and measurable outcomes. Describe any data to be collected and analyzed, and explain the methodology that will be used to determine the extent to which the needs underlying the project are met. Provide a plan for evaluating the effectiveness of the end results upon conclusion of the project.

(f) *Dissemination plans.* Discuss plans to disseminate project results and products. Identify target audiences and explain methods of communication.

(g) *Partnerships and collaborative efforts.* Explain how the project will maximize partnership ventures and collaborative efforts to strengthen food and agricultural sciences higher education (e.g., involvement of faculty in related disciplines at the same institution, joint projects with other colleges or universities, or cooperative activities with business or industry). Also explain how it will stimulate academia, the States, or the private sector to join with the Federal partner in enhancing food and agricultural sciences higher education. Provide evidence, via letters from the parties involved, that arrangements necessary for collaborative partnerships or joint initiatives have been discussed and realistically can be expected to come to fruition, or actually have been finalized contingent on an award under this program. (NOTE: Letters must be signed by an official who has the authority to commit the resources of the organization. Such letters should be referenced in the plan of operation, but the actual letters should be included in the Appendix section of the proposal. Any potential conflict(s) of interest that might result from the proposed collaborative arrangements must be discussed in detail. Explain how the project will create a new or enhance an existing partnership between the USDA agency cooperator(s) and the 1890 Institution(s). This section should expand upon the summary information provided in the documentation of USDA agency cooperator.

(3) *Institutional Capacity Building.* (a) *Institutional enhancement.* Explain how the proposed project will strengthen the institution's research capacity, and, if applicable, that of any other institution assuming a major role in the conduct of the project. For example, describe how the proposed project is intended to strengthen the institution's research infrastructure by advancing the expertise of the current faculty in the natural or social sciences; providing a better research environment, state-of-the-art equipment, or supplies; enhancing library collections; or enabling the institution to provide efficacious organizational structures and reward systems to attract and retain first-rate research faculty and students'particularly those from underrepresented groups.

(b) *Institutional commitment.* Discuss the institution's commitment to the project. For example, substantiate that the institution attributes a high priority to the project, discuss how the project will contribute to the achievement of the institution's long-range (five-to ten-year) goals, explain how the project will

help satisfy the institution's high priority objectives, or show how this project is linked to and supported by the institution's strategic plan. Document the commitment of institutional resources to the project, and show that the institutional resources to be made available to the project, when combined with the support requested from USDA, will be adequate to carry out the activities of the project. Discuss institutional facilities, equipment, computer services, and other appropriate resources available to the project.

(c) *Continuation Plans.* Discuss the likelihood of, or plans for, continuation or expansion of the project beyond USDA support. For example, does the institution's long-range budget or academic plan provide for the realistic continuation or expansion of the line of research or research support activity undertaken by this project after the end of the grant period. For example, are there plans for securing non-Federal support for the project? Is there any potential for income from patents, technology transfer or university-business enterprises resulting from the project? Also discuss the probabilities of proposed activity or line of inquiry being pursued by researchers at other institutions. Are plans for eventual self-support built into the project, are plans being made to institutionalize the program if it meets with success, and are there indications of other continuing non-Federal support?

(4) *Key Personnel.* In addition to the required separate vitae for each PD, discuss the specific attributes and project responsibilities of each key person associated with the project.

(5) *Budget and Cost-Effectiveness.*

(a) *Budget.* In addition to the separate required budget page and budget narrative forms, discuss how the budget specifically supports the proposed project activities. Explain how such budget items as professional or technical staff time and salary, travel, equipment, etc., are necessary and reasonable to achieve project objectives. Justify that the total budget, including funds requested from USDA and any matching support provided, are allocated between the applicant and any collaborating institution, and will be adequate to carry out the activities of the project. Provide a summary of sources and amounts of all third party matching support.

(b) *Cost-effectiveness.* Justify the project's cost-effectiveness. Show how the project maximizes the use of limited resources, optimizes educational value for the dollar, achieves economies of scale, or leverages additional funds. For example, discuss how the project has the potential to generate a critical mass of expertise and activity focused on a targeted need area, or to promote coalition building that could lead to future ventures.

7. References

All references to works cited should be complete, including titles and all co-authors, and should conform to an acceptable journal format. References are not considered in the page-limitation for the Project Description.

8. Appendices to Project Description

Appendices to the Project Description are allowed if they are directly germane to the proposed project. The addition of appendices should not be used to circumvent the text and/or figures and tables page limitations.

9. Key Personnel

The following should be included, as applicable:

(a) The roles and responsibilities of each PD and/or collaborator should be clearly described; and

(b) Vitae of the PD and each co-PD, senior associate, and other professional personnel. This section should include vitae *of all* key persons who are expected to work on the project, whether or not CSREES funds are sought for their support. The vitae should be limited to two (2) pages each in length, excluding publications listings. The vitae should include a presentation of academic and research credentials, as applicable, e.g., earned degrees, teaching experience, employment history, professional activities, honors and awards, and grants received. A chronological list of *all* publications in *refereed journals* during the past *four (4) years*, including those in press, must be provided, as applicable, for each project member for whom a curriculum vitae is provided. Also list only those *non-refereed* technical publications that have *relevance* to the proposed project. All authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these usually appear in journals.

10. Collaborative Arrangements

If it will be necessary to enter into formal consulting or collaborative arrangements with others, such arrangements should be fully explained and justified. If the consultant(s) or collaborator(s) are known at the time of application, a vitae or resume should be provided. In addition, evidence (e.g., letter of support) should be provided that the collaborators involved have agreed to render these services. The applicant also will be required to provide additional information on consultants and collaborators in the budget portion of the application. See instructions in the application forms for completing Form CSREES–2004, Budget.

11. Conflict-of-Interest List (Form CSREES–2007)

A "Conflict-of-Interest List," Form CSREES–2007, must be provided for all individuals who have submitted a vitae in response to item 9.(b) of this part. Each Form CSREES–2007 should list alphabetically, by the last names, the full names of the individuals in the following categories: (a) All co-authors on publications within the past four years, including pending publications and submissions; (b) all collaborators on projects within the past four years, including current and planned collaborations; (c) all thesis or postdoctoral advisees/advisors within the past four years; and (d) all persons in your field with whom you have had a consulting or financial arrangement within the past four years, who stand to gain by seeing the project funded. This form is necessary to assist program staff in excluding from application review those individuals who have conflicts of interest with the personnel in the grant application. The program contact must be informed of any additional conflicts of interest that arise after the application is submitted.

12. Budget (Form CSREES–2004)

a. General

(1) Budget Form

Prepare the Budget, Form CSREES–2004, in accordance with instructions provided with the application forms. A budget form is required for each year of requested support. In addition, a cumulative budget is required detailing the requested total support for the overall project period. The budget form may be reproduced as needed by applicants. Funds may be requested under any of the categories listed on the form, provided that the item or service for which support is requested is allowable under the authorizing legislation, the applicable statutes, regulations, and Federal cost principles, and these program guidelines, and can be justified as necessary for the successful conduct of the proposed project. Applicants also must include a budget narrative to justify their budget requests (see section b. below.)

(2) Matching

Contributions toward the match from the institution should be identified in the column "Non-Federal Proposed Cost Sharing/Matching Funds" on the Budget (Form CSREES–2004). Cash contributions of the institution and third parties as well as non-cash contributions should be identified on Line Q, as appropriate, of Form CSREES–2004 and described in the budget narrative.

b. Budget Narrative

All budget categories, with the exception of Indirect Costs, for which support is requested, must be individually listed (with costs) in the same order as the budget and justified on a separate sheet of paper and placed immediately behind the Budget form.

c. Matching Funds

Proposals should include written verification of commitments of matching support (including both cash and in-kind contributions) from third parties. Written verification means:

(a) For any third party cash contributions, a separate pledge agreement for each donation, signed by the AORs of the donor organization and the applicant organization, which must include: (1) The name, address, and telephone number of the donor; (2) the name of the applicant organization; (3) the title of the project for which the donation is made; (4) the dollar amount of the cash donation; and (5) a statement that the donor will pay the cash contribution during the grant period; and

(b) For any third party in-kind contributions, a separate pledge agreement for each contribution, signed by the AORs of the donor organization and the applicant organization, which must include: (1) The name, address, and telephone number of the donor; (2) the name of the applicant organization; (3) the title of the project for which the donation is made; (4) a good faith estimate of the current fair market value of the third party in-kind contribution; and (5) a statement that the donor will make the contribution during the grant period.

The sources and amount of all matching support from outside the applicant institution should be summarized on a separate page and placed in the proposal immediately following the Budget Narrative. All pledge agreements must be placed in the proposal immediately following the summary of matching support.

The value of applicant contributions to the project shall be established in accordance with applicable cost principles. Applicants should refer to OMB Circular A–21, Cost Principles for Educational Institutions, for further guidance and other requirements relating to matching and allowable costs.

Any cost sharing commitments specified in the proposal will be referenced and included as a condition of an award resulting from this announcement.

13. Current and Pending Support (Form CSREES–2005)

All applications must contain Form CSREES–2005 listing other current public or private support (including in-house support) to which personnel (i.e., individuals submitting a vitae in response to item 9.(b) of this part) identified in the application have committed portions of their time, whether or not salary support for person(s) involved is included in the budget. Please follow the instructions provided on this form. Concurrent submission of identical or similar applications to the possible sponsors will not prejudice application review or evaluation by the CSREES. However, an application that duplicates or overlaps substantially with an application already reviewed and funded (or to be funded) by another organization or agency will not be funded under this program. Please note that the project being proposed should be included in the pending section of the form.

14. Assurance Statement(s) (Form CSREES–2008)

A number of situations encountered in the conduct of projects require special assurances, supporting documentation, etc., before funding can be approved for the project. In addition to any other situation that may exist with regard to a particular project, applications involving any of the following elements must comply with the additional requirements as applicable.

a. Recombinant DNA or RNA Research

As stated in 7 CFR Part 3015.205 (b)(3), all key personnel identified in the application and all endorsing officials of the proposing organization are required to comply with the guidelines established by the National Institutes of Health entitled, "Guidelines for Research Involving Recombinant DNA Molecules," as revised. If your project proposes to use recombinant DNA or RNA techniques, you must so indicate by checking the "yes" box in Block 20 of Form CSREES–2002 (the Proposal Cover Page) and by completing Section A of Form CSREES–2008. For applicable applications recommended for funding, Institutional Biosafety Committee approval is required before CSREES funds will be released. Please refer to the application forms for further instructions.

b. Animal Care

Responsibility for the humane care and treatment of live vertebrate animals used in any grant project supported with funds provided by CSREES rests with the performing organization. Where a project involves the use of living vertebrate animals for experimental purposes, all key personnel identified in an application and all endorsing officials of the proposing organization are required to comply with the applicable provisions of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2131 *et seq.*), and the regulations promulgated thereunder by the Secretary in 9 CFR Parts 1, 2, 3, and 4 pertaining to the care, handling, and treatment of these animals. If your project will involve these animals, you should check "yes" in block 20 of Form CSREES–2002 and complete Section B of Form CSREES–2008. In the event a project involving the use of live vertebrate animals results in a grant award, funds will be released only after the Institutional Animal Care and Use Committee has approved the project. Please refer to the application forms for further instructions.

c. Protection of Human Subjects

Responsibility for safeguarding the rights and welfare of human subjects used in any grant project supported with funds provided by CSREES rests with the performing organization. Guidance on this issue is contained in the National Research Act, Pub. L. No. 93–348, as amended, and implementing regulations promulgated by the Department under 7 CFR Part 1c. If you propose to use human subjects in your project, you should check the "yes" box in Block 20 of Form CSREES–2002 and complete Section C of Form CSREES–2008. Please refer to the application forms for additional instructions.

15. Certifications

Note that by signing Form CSREES–2002 the applicant is providing the certifications required by 7 CFR Part 3017, regarding Debarment and Suspension and Drug-Free Workplace, and 7 CFR Part 3018, regarding Lobbying. The certification forms are included in the application package for informational purposes only. These forms should not be submitted with the application since by signing Form

CSREES–2002 your organization is providing the required certifications. If the project will involve a subcontractor or consultant, the subcontractor/consultant should submit a Form AD–1048, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions, to the grantee organization for retention in their records. This form should not be submitted to USDA.

16. Compliance With the National Environmental Policy Act (NEPA) (Form CSREES–2006)

As outlined in 7 CFR Part 3407 (the Cooperative State Research, Education, and Extension Service regulations implementing NEPA), the environmental data for any proposed project is to be provided to CSREES so that CSREES may determine whether any further action is needed. In some cases, however, the preparation of environmental data may not be required. Certain categories of actions are excluded from the requirements of NEPA.

In order for CSREES to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, Form CSREES–2006, "NEPA Exclusions Form," must be included in the application indicating whether the applicant is of the opinion that the project falls within a categorical exclusion and the reasons therefore. If it is the applicant's opinion that the proposed project falls within the categorical exclusions, the specific exclusion(s) must be identified.

Even though a project may fall within the categorical exclusions, CSREES may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for an activity, if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect.

17. Documentation of USDA Agency Cooperator

To be considered for funding, each proposal for the 1890 Institution Capacity Building Grants Program must include documentation of cooperation with at least one USDA agency or office. If multiple agencies are involved as cooperators, documentation must be included from each agency. This documentation must include the following information: a summary of the cooperative arrangement; indicate the agency's willingness to commit support for the project; identify the person(s) at the USDA agency who will serve as the liaison or technical contact for the project; describe the degree and nature of the USDA agency's involvement in the proposed project; describe the expected benefits of the partnership venture for the USDA agency and for the 1890 Institution. A detailed discussion of these partnership arrangements should be provided in the proposal narrative under item (2)(g), "Partnerships and collaborative efforts," in Part III, B6—Project Description.

C. Submission of Applications

1. When To Submit (Deadline Date)

Applications must be received by COB on January 31, 2002. (5:00 p.m. Eastern Time). Applications received after this deadline will not be considered for funding.

2. What To Submit

An original and seven (7) copies must be submitted. In addition, submit two (2) copies of the application's Project Summary. All copies of the application and the Project Summary must be submitted in one package.

3. Where To Submit

Applicants are strongly encouraged to submit completed applications via overnight mail or delivery service to ensure timely receipt by the USDA. The address for hand-delivered applications or applications submitted using an express mail or overnight courier service is: 1890 Institution Teaching and Research Capacity Building Grants Program; in care of Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 1307, Waterfront Centre; 800 9th Street, SW., Washington, DC 20024; Telephone: (202) 401–5048.

Applications sent via the U.S. Postal Service must be sent to the following address: 1890 Institution Teaching and Research Capacity Building Grants Program; in care of Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, SW., Washington, DC 20250–2245.

D. Acknowledgment of Applications

The receipt of all applications will be acknowledged by e-mail. Therefore, applicants are strongly encouraged to provide accurate e-mail addresses, where designated, on the Form CSREES–2002. If the applicant's e-mail address is not indicated, CSREES will acknowledge receipt of the application by letter.

If the applicant does not receive an acknowledgment within 60 days of the submission deadline, please contact the program contact. Once the application has been assigned an application number, please cite that number on all future correspondence.

Part IV—Review Process

A. General

Each application will be evaluated in a 2-part process. First, each application will be screened to ensure that it meets the administrative requirements as set forth in this RFA. Second, applications that meet these requirements will be technically evaluated by a review panel.

Reviewers will be selected based upon training and experience in relevant scientific, extension, or education fields, taking into account the following factors: (a) The level of relevant formal scientific, technical education, or extension experience of the individual, as well as the extent to which an individual is engaged in relevant research, education, or extension activities; (b) the need to include as reviewers experts from various areas of specialization within relevant scientific, education, or extension fields; (c) the need to include as reviewers other experts (e.g., producers, range or forest managers/operators, and consumers) who can assess relevance of the applications to targeted audiences and to program needs; (d) the need to include as reviewers experts from a variety of organizational types (e.g., colleges, universities, industry, state and Federal agencies, private profit and non-profit organizations) and geographic locations; (e) the need to maintain a balanced composition of reviewers with regard to minority and female representation and an equitable age distribution; and (f) the need to include reviewers who can judge the effective usefulness to producers and the general public of each application.

B. Evaluation Criteria

The evaluation criteria and weights below will be used in reviewing applications submitted in response to this RFA:

Teaching Proposals

1. Potential for Advancing the Quality of Education (30 Points)

This criterion is used to assess the likelihood that the project will have a substantial impact upon and advance the quality of food and agricultural sciences higher education by

strengthening institutional capacities to meet clearly delineated needs. Elements considered include identification of needs, justification for the project, innovation (creative programs, material or curricula), and a multidisciplinary focus.

2. Proposed Approach and Cooperative Linkages (25 Points)

This criterion relates to the soundness of the proposed approach and the quality of the partnerships likely to evolve as a result of the project. Elements include objectives, methodology, plan of operation, timetable, expected products and results, evaluation plans, dissemination plans, and partnerships and collaborative efforts. Emphasis is placed on the quality of educational support provided to the applicant institution through its partnerships and cooperative linkages.

3. Institutional Capacity Building (20 Points)

This criterion relates to the degree to which the project will strengthen the teaching capacity of the applicant institution and, if applicable, that of any other institution assuming a major role in the conduct of the project. Elements include the institution's commitment to the project, institutional enhancement, and plans for project continuation or expansion beyond the period of USDA support.

4. Key Personnel (15 Points)

This criterion relates to the adequacy of the number and qualifications of the key persons who will carry out the project.

5. Budget and Cost-Effectiveness (10 Points)

This criterion relates to the extent to which the total budget adequately supports the project and is cost-effective. Elements considered include the necessity and reasonableness of costs to carry out project activities and achieve project objectives; the appropriateness of budget allocations between the applicant and any collaborating institution(s); the adequacy of time committed to the project by key project personnel; and the degree to which the project maximizes the use of limited resources, optimizes educational value for the dollar, achieves economies of scale, leverages additional, and focuses expertise and activity on targeted educational areas.

Research Proposals

1. Significance of the Problem (30 Points)

This criterion is used to assess the likelihood that the project will advance or have a substantial impact upon the body of knowledge constituting the natural and social sciences undergirding the agricultural, natural resources, and food systems. Elements considered include identification of the problem or opportunity to be addressed, justification for the project, innovation (creative programs, material or curricula) and a multidisciplinary focus.

2. Proposed Approach and Cooperative Linkages (25 Points)

This criterion relates to the soundness of the proposed approach and the quality of the partnerships likely to evolve as a result of the project. Elements include objectives, methodology, plan of operation, timetable, expected products and results, evaluation plans, dissemination plans, and partnerships and collaborative efforts. Emphasis is placed on the quality of research support provided to the applicant institution through its partnerships and cooperative linkages.

3. Institutional Capacity Building (20 Points)

This criterion relates to the degree to which the project will strengthen the research capacity of the applicant institution and, if applicable, that of any other institution assuming a major role in the conduct of the project. Elements include the institution's commitment to the project, institutional enhancement, and plans for project continuation or expansion beyond the period of USDA support.

4. Key Personnel (15 Points)

This criterion relates to the adequacy of the number and qualifications of the key persons who will carry out the project.

5. Budget and Cost-Effectiveness (10 Points)

This criterion relates to the extent to which the total budget adequately supports the project and is cost-effective. Elements considered include the necessity and reasonableness of costs to carry out project activities and achieve project objectives; the appropriateness of budget allocations between the applicant and any collaborating institutions(s); the adequacy of time committed to the project by key project personnel; and the degree to which the project maximizes the use of limited resources, optimizes educational value for the dollar, achieves economies of scale, leverages additional funds, focuses expertise and activity on a high-priority research initiative(s), or promote coalition building for current or future ventures.

C. Conflicts of Interest and Confidentiality

During the peer evaluation process, extreme care will be taken to prevent any actual or perceived conflicts of interest that may impact review or evaluation. For the purpose of determining conflicts of interest, the academic and administrative autonomy of an institution shall be determined by reference to the 2002 Higher Education Directory, published by Higher Education Publications, Inc., 6400 Arlington Boulevard, Suite 648, Falls Church, Virginia 22042. Phone: (703) 532–2300. Web site: http://www.hepinc.com.

Names of submitting institutions and individuals, as well as application content and peer evaluations, will be kept confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of peer reviewers will remain confidential throughout the entire review process. Therefore, the names of the reviewers will not be released to applicants. At the end of the fiscal year, names of panelists will be made available in such a way that the panelists cannot be identified with the review of any particular application.

Part V—Grant Awards

A. General

Within the limit of funds available for such purpose, the awarding official of CSREES shall make grants to those responsible, eligible applicants whose applications are judged most meritorious under the procedures set forth in this RFA. The date specified by the awarding official of CSREES as the effective date of the grant shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practical so that project goals may be attained within the funded project period. All funds granted by CSREES under this RFA shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations,

the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations (parts 3015 and 3019 of 7 CFR).

B. Organizational Management Information

Specific management information relating to an applicant shall be submitted on a one-time basis as part of the responsibility determination prior to the award of a grant identified under this RFA, if such information has not been provided previously under this or another CSREES program. CSREES will provide copies of forms recommended for use in fulfilling these requirements as part of the preaward process. Although an applicant may be eligible based on its status as one of these entities, there are factors which may exclude an applicant from receiving Federal financial and nonfinancial assistance and benefits under this program (e.g., debarment or suspension of an individual involved or a determination that an applicant is not responsible based on submitted organizational management information).

C. Grant Award Document and Notice of Grant Award

The grant award document shall include at a minimum the following:

(1) Legal name and address of performing organization or institution to whom the Administrator has awarded a grant under the terms of this request for applications;

(2) Title of project;

(3) Name(s) and institution(s) of PD's chosen to direct and control approved activities;

(4) Identifying grant number assigned by the Department;

(5) Project period, specifying the amount of time the Department intends to support the project without requiring recompetition for funds;

(6) Total amount of Departmental financial assistance approved by the Administrator during the project period;

(7) Legal authority(ies) under which the grant is awarded;

(8) Appropriate Catalog of Federal Domestic Assistance (CFDA) number;

(9) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award; and

(10) Other information or provisions deemed necessary by CSREES to carry out its respective granting activities or to accomplish the purpose of a particular grant.

The notice of grant award, in the form of a letter, will be prepared and will provide pertinent instructions or information to the grantee that is not included in the grant award document.

Part VI—Additional Information

A. Access To Review Information

Copies of reviews, not including the identity of reviewers, and a summary of the panel comments will be sent to the applicant PD after the review process has been completed.

B. Use of Funds; Changes

1. Delegation of Fiscal Responsibility

Unless the terms and conditions of the grant state otherwise, the grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

2. Changes in Project Plans

a. The permissible changes by the grantee, PD(s), or other key project personnel in the approved project grant shall be limited to changes in methodology, techniques, or other similar aspects of the project to expedite achievement of the project's approved goals. If the grantee or the PD(s) is uncertain as to whether a change complies with this provision, the question must be referred to the Authorized Departmental Officer (ADO) for a final determination. The ADO is the signatory of the award document, not the program contact.

b. Changes in approved goals or objectives shall be requested by the grantee and approved in writing by the ADO prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

c. Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the ADO prior to effecting such changes.

d. Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the ADO prior to effecting such transfers, unless prescribed otherwise in the terms and conditions of the grant.

e. Changes in Project Period: The project period may be extended by CSREES without additional financial support, for such additional period(s) as the ADO determines may be necessary to complete or fulfill the purposes of an approved project, but in no case shall the total project period exceed five years. Any extension of time shall be conditioned upon prior request by the grantee and approval in writing by the ADO, unless prescribed otherwise in the terms and conditions of a grant.

f. Changes in Approved Budget: Changes in an approved budget must be requested by the grantee and approved in writing by the ADO prior to instituting such changes if the revision will involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or grant award.

C. Expected Program Outputs and Reporting Requirements

(a) During the tenure of a grant, project directors are invited to attend at least one national project directors meeting, if offered, in Washington, D.C., or any other announced location. The purpose of the meeting will be to discuss project and grant management, opportunities for collaborative efforts, future directions for education reform, and opportunities to enhance dissemination of exemplary end products/results.

(b) An Annual Performance Report must be submitted to the USDA program contact person within 90 days after the completion of the first year of the project and annually thereafter during the life of the grant. Generally, the Annual Performance Reports should include a summary of the overall progress toward project objectives, current problems or unusual developments, the next year's activities, and any other information that is pertinent to the ongoing project or which may be specified in the terms and conditions of the award.

(c) A Final Performance Report must be submitted to the USDA program contact person within 90 days after the expiration date of the project. The expiration date is specified in the award documents and modifications thereto, if any. Generally, the Final Performance Report should be a summary of the completed project, including: A review of project objectives and accomplishments; a description of any products and outcomes resulting from the project; activities undertaken to disseminate products and outcomes; partnerships and collaborative ventures that resulted from the project; future initiatives that are planned as a result of the project; the impact of the project on the project director(s), students, the departments, the institution, and the food and agricultural sciences higher education system; and data on project personnel and beneficiaries. The Final Performance Report should be

accompanied by samples or copies of any products or publications resulting from or developed by the project. The Final Performance Report also must contain any other information which may be specified in the terms and conditions of the award.

D. Applicable Federal Statutes and Regulations

Several Federal statutes and regulations apply to grant applications considered for review and to project grants awarded under this program. These include, but are not limited to:

7 CFR Part 1.1—USDA implementation of the Freedom of Information Act.

7 CFR Part 3—USDA implementation of OMB Circular No. A–129 regarding debt collection.

7 CFR Part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., OMB Circular Nos. A–21 and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. No. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR Part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR Part 3018—USDA implementation of Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR Part 3019—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Other Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR Part 3052—USDA implementation of OMB Circular No. A–133, Audits of States, Local Governments, and Non-profit Organizations.

7 CFR Part 3407—CSREES procedures to implement the National Environmental Policy Act of 1969, as amended.

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR Part 15b (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR Part 401).

E. Confidential Aspects of Applications and Awards

When an application results in a grant, it becomes a part of the record of CSREES transactions, available to the public upon specific request. Information that the Secretary determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as confidential, privileged, or proprietary should be clearly marked within the application. The original copy of an application that does not result in a grant will be retained by the Agency for a period of one year. Other copies will be destroyed. Such an application will be released only with the consent of the applicant or to the extent required by law. An application may be withdrawn at any time prior to the final action thereon.

F. Regulatory Information

For the reasons set forth in the final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29114, June 24, 1983), this program is excluded from the scope of the Executive Order 12372 which requires intergovernmental consultation with State and local officials. Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0039.

Done at Washington, DC, this 15th day of November 2001.

Colien Hefferan,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 01–28992 Filed 11–19–01; 8:45 am]

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Federal Register

Tuesday,
November 20, 2001

Part VII

The President

Executive Order 13235—National Emergency Construction Authority

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Tuesday, November 20, 2001

Presidential Documents

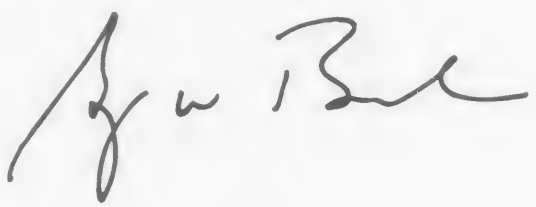
Title 3—

The President

Executive Order 13235 of November 16, 2001

National Emergency Construction Authority

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code, I declared a national emergency that requires the use of the Armed Forces of the United States, by Proclamation 7463 of September 14, 2001, because of the terrorist attacks on the World Trade Center and the Pentagon, and because of the continuing and immediate threat to the national security of the United States of further terrorist attacks. To provide additional authority to the Department of Defense to respond to that threat, and in accordance with section 301 of the National Emergencies Act (50 U.S.C. 1631), I hereby order that the emergency construction authority at 10 U.S.C. 2808 is invoked and made available in accordance with its terms to the Secretary of Defense and, at the discretion of the Secretary of Defense, to the Secretaries of the military departments.



THE WHITE HOUSE,
November 16, 2001.

[FR Doc. 01–29219
Filed 11–19–01; 10:37 am]
Billing code 3195–01–P

Federal Register

Tuesday,
November 20, 2001

Part VIII

The President

Proclamation 7504—Thanksgiving Day, 2001

Federal Register
Vol. 66, No. 224
Tuesday, November 20, 2001

Presidential Documents

Title 3—

The President

Proclamation 7504 of November 16, 2001

Thanksgiving Day, 2001

By the President of the United States of America

A Proclamation

Nearly half a century ago, President Dwight Eisenhower proclaimed Thanksgiving as a time when Americans should celebrate "the plentiful yield of our soil . . . the beauty of our land . . . the preservation of those ideals of liberty and justice that form the basis of our national life, and the hope of international peace." Now, in the painful aftermath of the September 11 attacks and in the midst of our resolute war on terrorism, President Eisenhower's hopeful words point us to our collective obligation to defend the enduring principles of freedom that form the foundation of our Republic.

During these extraordinary times, we find particular assurance from our Thanksgiving tradition, which reminds us that we, as a people and individually, always have reason to hope and trust in God, despite great adversity. In 1621 in New England, the Pilgrims gave thanks to God, in whom they placed their hope, even though a bitter winter had taken many of their brethren. In the winter of 1777, General George Washington and his army, having just suffered great misfortune, stopped near Valley Forge, Pennsylvania, to give thanks to God. And there, in the throes of great difficulty, they found the hope they needed to persevere. That hope in freedom eventually inspired them to victory.

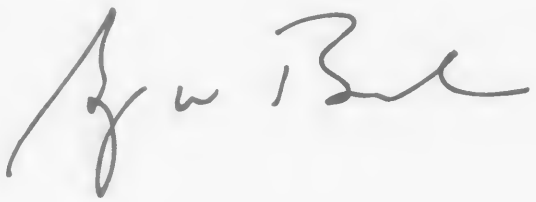
In 1789, President Washington, recollecting the countless blessings for which our new Nation should give thanks, declared the first National Day of Thanksgiving. And decades later, with the Nation embroiled in a bloody civil war, President Abraham Lincoln revived what is now an annual tradition of issuing a presidential proclamation of Thanksgiving. President Lincoln asked God to "heal the wounds of the nation and to restore it as soon as may be consistent with the Divine purposes to the full enjoyment of peace, harmony, tranquillity, and Union."

As we recover from the terrible tragedies of September 11, Americans of every belief and heritage give thanks to God for the many blessings we enjoy as a free, faithful, and fair-minded land. Let us particularly give thanks for the selfless sacrifices of those who responded in service to others after the terrorist attacks, setting aside their own safety as they reached out to help their neighbors. Let us also give thanks for our leaders at every level who have planned and coordinated the myriad of responses needed to address this unprecedented national crisis. And let us give thanks for the millions of people of faith who have opened their hearts to those in need with love and prayer, bringing us a deeper unity and stronger resolve.

In thankfulness and humility, we acknowledge, especially now, our dependence on One greater than ourselves. On this day of Thanksgiving, let our thanksgiving be revealed in the compassionate support we render to our fellow citizens who are grieving unimaginable loss; and let us reach out with care to those in need of food, shelter, and words of hope. May Almighty God, who is our refuge and our strength in this time of trouble, watch over our homeland, protect us, and grant us patience, resolve, and wisdom in all that is to come.

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 Thursday, November 22, 2001, as a National Day of Thanksgiving. I encourage Americans to assemble in their homes, places of worship, or community centers to reinforce ties of family and community, express our profound thanks for the many blessings we enjoy, and reach out in true gratitude and friendship to our friends around the world.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of November, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 01–29234
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Federal Aviation Administration

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H.J. Res. 74/P.L. 107–70

Making further continuing appropriations for the fiscal year 2002, and for other purposes. (Nov. 17, 2001; 115 Stat. 596)

Last List November 14, 2001

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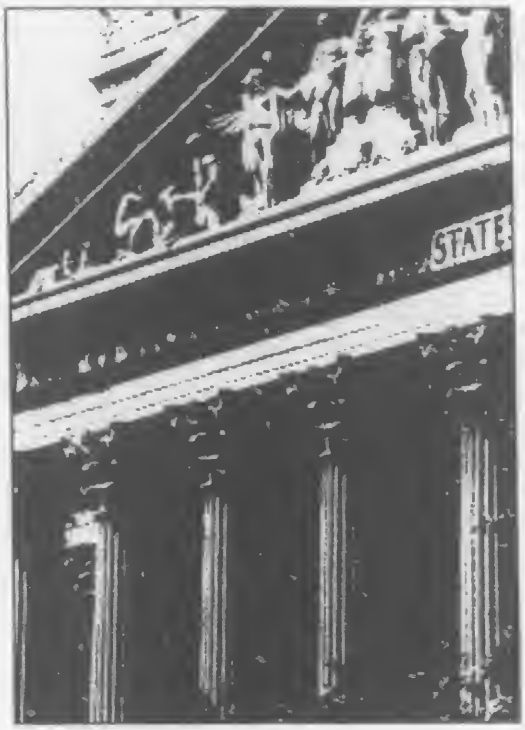

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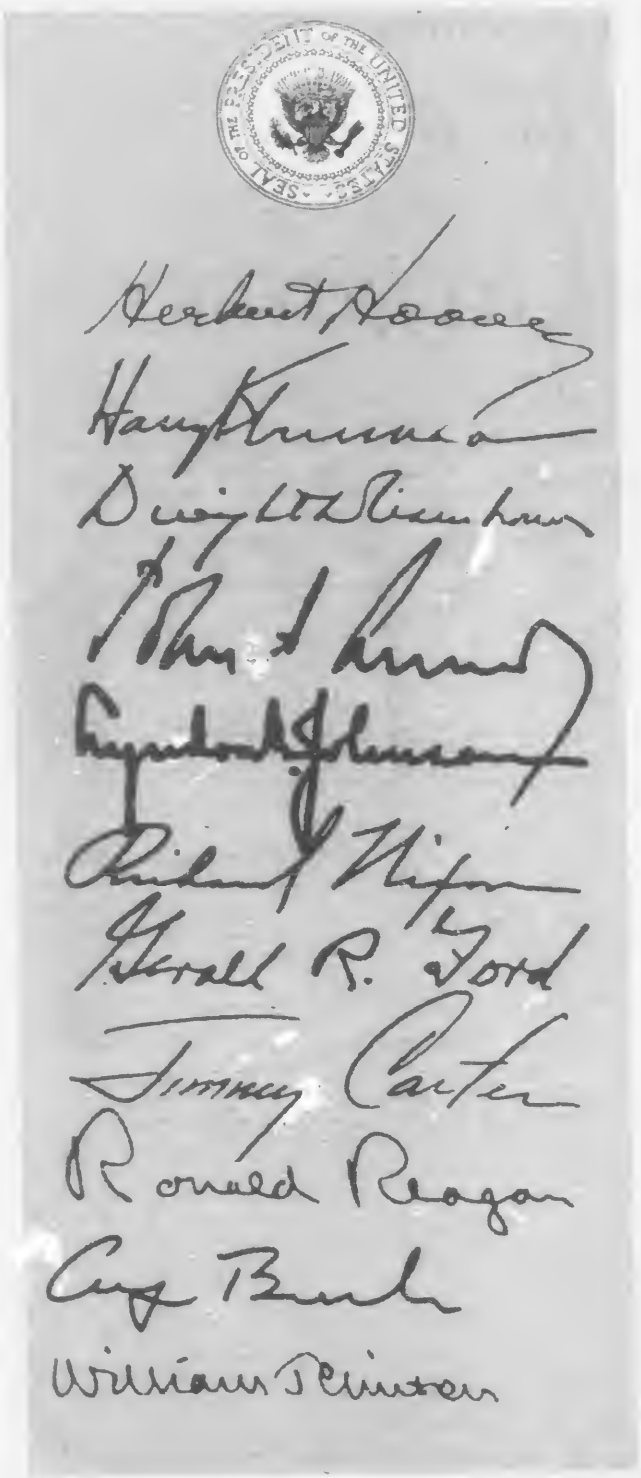

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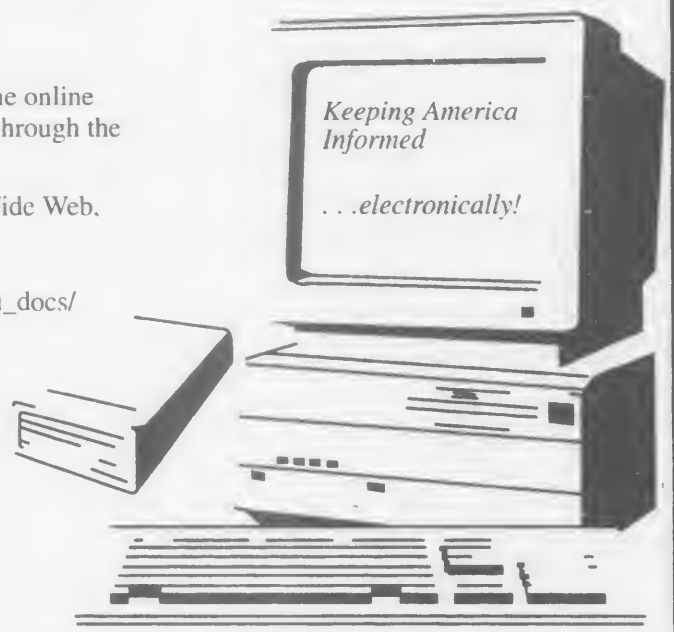

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