Federal Register

3–6–02 Wednesday
Vol. 67 No. 44 Mar. 6, 2002

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(ISSN 0097-6326)

Federal Register

3–6–02 Wednesday
Vol. 67 No. 44 March 6, 2002
Pages 10099–10318

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–66; Amendment 39–12649; AD 2002–03–08]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW4000 Series Turbofan Engines, Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2002–03–08, applicable to Pratt & Whitney (PW) PW4000 series turbofan engines, that was published in the **Federal Register** on February 15, 2002 (67 FR 7061). An engine model number was inadvertently omitted from the regulatory information. This document corrects that omission. In all other respects, the original document remains the same.

EFFECTIVE DATE: April 16, 2002.

FOR FURTHER INFORMATION CONTACT: Robert McCabe, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7138, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule AD applicable to Pratt & Whitney (PW) Model PW4050, PW4052, PW4056, PW4060, PW4060A, PW4060C, PW4062, PW4152, PW4156, PW4156A, PW4158, PW4160, PW4460, PW4462, PW4650, PW4164, PW4168, PW4168A, PW4074, PW4074D, PW4077, PW4077D, PW4084, PW4084D, PW4090, PW4090D, and PW4098 turbofan engines, installed on but not limited to Airbus A300, A310, and A330 series, Boeing 747, 767, and 777 series, and McDonnell Douglas MD–11 series airplanes was published in the **Federal Register** on February 15, 2002 (67 FR 7061). This AD superseded an AD that applied to the PW4090–3 model as well. The PW4090–3 model was included in the Notice of Proposed Rulemaking and inadvertently left out of the final rule. The following correction is needed:

§ 39.13 [Corrected]

On page 7062, in the Regulatory Information, in the sixth line of the third column, the engine model applicability is corrected to read "PW4090, PW4090–3, PW4090D, and PW4098 turbofan." Also, on page 7062, in the Regulatory Information, in the third column, the thirteenth line of paragraph (a) is corrected to read "PW4090–3, PW4090D, and PW4098 series turbofan."

Issued in Burlington, MA, on February 25, 2002.

Thomas A. Boudreau,

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

[FR Doc. 02–5260 Filed 3–5–02; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ME065–7014a; A–1–FRL–7152–1]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Control of Gasoline Volatility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maine on June 7, 2000 and May 29, 2001, establishing a lower Reid Vapor Pressure (RVP) fuel requirement for gasoline distributed in southern Maine which includes York, Cumberland, Sagadahoc, Kennebec, Androscoggin, Knox, and Lincoln Counties. Maine has developed these fuel requirements to reduce emissions of volatile organic compounds (VOC) in accordance with the requirements of the Clean Air Act (CAA). EPA is approving Maine's fuel requirements into the Maine SIP because EPA has found that the requirements are necessary for southern Maine to achieve the national ambient air quality standard (NAAQS) for ozone. The intended effect of this action is to approve Maine's request to control the RVP of fuel in these seven southern counties. This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on April 5, 2002.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room M–1500, 401 M Street, (Mail Code 6102), SW., Washington, DC; and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge at (617) 918–1045.

SUPPLEMENTARY INFORMATION: On December 6, 2001 (66 FR 63343), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Maine. The NPR proposed approval of a State Implementation Plan (SIP) revision submitted by the State of Maine on June 7, 2000 and May 29, 2001, establishing a lower Reid Vapor Pressure (RVP) fuel requirement for gasoline distributed in southern Maine which includes York, Cumberland, Sagadahoc, Kennebec, Androscoggin, Knox, and Lincoln Counties.

The rule as amended requires that beginning May 1, 1999 through September 15, 1999, and each May 1 through September 15 thereafter, no gasoline may be sold with an RVP greater than 7.8 pounds per square inch (psi) in the counties of York, Cumberland, Sagadahoc, Kennebec, Androscoggin, Knox, and Lincoln. The State's low-RVP rule is codified in Chapter 119 of the Maine Department of Environmental Protection's regulations, entitled "Motor Vehicle Fuel Volatility Limit." Other specific requirements of the rule and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

Final Action

EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maine on June 7, 2000 and May 29, 2001, establishing a lower Reid Vapor Pressure (RVP) fuel requirement for gasoline distributed in southern Maine which includes York, Cumberland, Sagadahoc, Kennebec, Androscoggin, Knox, and Lincoln Counties.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 6, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: February 21, 2002.

Robert W. Varney,

Regional Administrator, EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart U—Maine

2. Section 52.1020 is amended by adding paragraph (c)(49) to read as follows:

§ 52.1020 Identification of plan.

* * * * *

(c) * * *

(49) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on June 7, 2000 and May 29, 2001.

(i) Incorporation by reference.

Maine Chapter 119, entitled "Motor Vehicle Fuel Volatility Limit" as amended and effective on June 1, 2000.

(ii) Additional materials:

(A) Letter from the Maine Department of Environmental Protection dated June 7, 2000 submitting Chapter 119 as a revision to the Maine State Implementation Plan.

(B) Letter from the Maine Department of Environmental Protection dated May 29, 2001 submitting additional technical support and an enforcement plan for Chapter 119 as an amendment to the State Implementation Plan.

3. In § 52.1031 Table 52.1031 is amended by revising the existing state citation 119 to read as follows:

§ 52.1031 EPA-approved Maine regulations.

* * * * *

TABLE 52.1031.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/Subject	Date adopted by State	Date approved by EPA	Federal Register citation	52.1020	
*	*	*	*	*	*	*
119	Motor Vehicle Fuel Volatility Limit.	6/1/00	3/6/02	[Insert FR citation from published date].	(c)(49)	Controls fuel volatility in the State. 7.8 psi RVP fuel required in 7 southern counties.
*	*	*	*	*	*	*

Note. 1. The regulations are effective statewide unless stated otherwise in comments section.

[FR Doc. 02–5185 Filed 3–5–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG04

Endangered and Threatened Wildlife and Plants; Endangered Status for the Buena Vista Lake Shrew (*Sorex Ornatus Relictus*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for the Buena Vista Lake shrew (*Sorex ornatus relictus*). This subspecies is endemic to Kern County, California, and is currently known from only four locations. This subspecies is imperiled primarily by habitat loss and modification due to agricultural activities, unnatural 1 hydrological conditions, incompatible water management practices, the possible toxic effects of selenium poisoning, modification or loss of genetic integrity from introgression (hybridization), and the loss of populations caused by random naturally occurring events. This final rule extends the Federal protection and recovery provisions of the Act for the Buena Vista Lake shrew.

DATES: This final rule is effective April 5, 2002.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Rm W–2605, Sacramento, CA 95825–1888.

FOR FURTHER INFORMATION CONTACT: Jan Knight, Chris Nagano, or Dwight Harvey, Sacramento Fish and Wildlife Office, at the above address (telephone 916/414–6600; facsimile 916/414–6710).

SUPPLEMENTARY INFORMATION:

Background

The Buena Vista Lake shrew (*Sorex ornatus relictus*) is one of nine subspecies of ornate shrew, eight of which are known to occur in California (Hall 1981; Owen and Hoffmann 1983; Maldonado 1992; Wilson and Reeder 1993; Jesús Maldonado, University of California-Los Angeles, in litt. 2000). Ornate shrews belong to the family Soricidae (long-tailed shrews) in the order Insectivora (Hall 1981; Junge and Hoffmann 1981; Owen and Hoffmann 1983; George 1988; Churchfield 1990). There are 27 species in the genus Sorex, and they are distributed throughout a large portion of North and Central America (Jackson 1928; Repenning 1967; Corbet and Hill 1980; Hall 1981; Churchfield 1990).

Shrews are primarily insectivorous mammals about the size of a mouse. They vary in color from black or brown, to grey, have long pointed snouts, five toes on each foot, tiny bead-like eyes, soft fur, visible external ears, and a scaly, well-developed tail covered with very short hairs (Ingles 1965; Vaughan 1978; Jamerson and Peeters 1988; Churchfield 1990). Shrews are active during the day and night but are rarely seen due to their small size and cryptic behavior. A few species of shrews can enter a daily state of inactivity (torpor) under extreme environmental conditions (Ingles 1965; Churchfield 1990), such as very low ambient temperatures. Shrews do not hibernate.

Grinnell (1932) was the first to describe the Buena Vista Lake shrew. According to Grinnell's description, the Buena Vista Lake shrew's back is predominantly black with a buffy-brown speckling pattern, its sides are more buffy-brown than the upper surface, and its underside is smoke-gray. The tail is faintly bicolor and blackens toward the end. The Buena Vista Lake shrew weighs approximately 4 grams (0.14 ounces) (Kathy Freas, Stanford University, pers. comm., 1994) and has a total length ranging from 98 to 105 millimeters (mm) (3.85 to 4.13 inches (in)) with a tail length of 35 to 39 mm (1.38 to 1.54 in) (Grinnell 1932). The Buena Vista Lake shrew differs from its geographically closest subspecies, the Southern California ornate shrew (*Sorex ornatus* spp. *ornatus*), by having darker, grayish-black coloration, rather than brown. In addition, the Southern California ornate shrew has a slightly larger body size; shorter tail; skull with a shorter, heavier rostrum (snout); and a higher, more angular brain-case in dorsal (top) view (Grinnell 1932).

Shrews have a high rate of metabolism because of their small size (Newman and Rudd 1978; McNab 1991). They lose heat rapidly from the surface of their small bodies, and are continually faced with the problem of getting enough food to maintain their body temperatures, especially in cold conditions (Aitchison 1987; Genoud 1988). Shrews feed indiscriminately on the available larvae and adults of several species of aquatic and terrestrial insects, some of which are detrimental to agricultural crops (Holling 1959; Ingles 1965; Newman 1970; Churchfield 1990). They are also known to consume spiders, centipedes, slugs, snails, and earthworms (Jamerson and Peeters 1988) on a seasonally available basis (Aitchison 1987).

Little is known about the reproduction or longevity of Buena Vista Lake shrews. Shrews, on the average, rarely live more than 12 months, and each generation is largely replaced annually (Rudd 1955b). For Buena Vista Lake shrews, the breeding season begins in February or March, and ends with the onset of the dry season in May or June, or may extend later in the

year, based on habitat quality and availability of water (J. Maldonado, pers. comm., 1998; Paul Collins, Santa Barbara Museum of Natural History, in litt. 2000). It is likely that this subspecies, like other long-tailed shrews, can give birth to two litters of four to six young each per year; the number of litters is usually dependent on how early or late in the year the young are born, and how soon they become sexually active (Rudd 1955b; Owen and Hoffmann 1983).

A taxonomic study of North American shrews noted that what little geographic variation exists in long-tailed shrew subspecies, like the Buena Vista Lake shrew, is measured in their pelage (coat) paleness or darkness; in their size, both external and cranial; in tail length; in general shape of the skull; and in dentition (size of teeth and length of molar tooth row) (Jackson 1928). Long-tailed shrews all have simply colored gray or brown fur without distinct patterns, and the general shape and proportions of skulls are fairly constant, varying little except between widely separated populations (Jackson 1928). However, long-tailed shrew pelage color can vary from fading or rusting due to wear, and the color and length can show pronounced seasonal variation (Ivanter 1994). Although no sexual variation or age variation in pelage color exists, seasonal variation between summer and winter color and hair length varies markedly in long-tailed shrews, with winter fur more grayish but paler in summer (Jackson 1928). In addition, skull size measurements can vary from 5 to 7.5 percent from the average, and this variation is also noted in external measurements of total length, tail length, and hind foot length. Tooth patterns and skull sizes can also show variation within shrew species.

Populations of ornate shrews show a great degree of variation in size and pelage coloration, and some populations exhibit different degrees of melanism (different shades of black caused by environmental exposure) (Rudd 1955a; Hays 1990; Maldonado *et al.* 2001). Therefore, to identify shrew subspecies based solely on pelage color may not always be reliable (Maldonado *et al.* 2001). However, recent studies involving the taxonomic characters of North American shrews have focused on detailed studies of their skull, teeth, chromosomes, allozymes, and gene sequences because other taxonomic characters can be less reliable (George 1986, 1988; Churchfield 1990; Ivanitskaya 1994; Carraway 1990, 1995; Maldonado *et al.* 2001). In a study on cranial morphology measuring skulls and teeth to assess the relationships and patterns of geographic variation of the ornate shrews, Maldonado (in press) concluded that populations of ornate shrews throughout their range showed low levels of morphological divergence. In addition, variation in these skull measurements due to age or sex was shown not to be significant.

Despite their phenotypic uniformity (similar appearance), ornate shrew populations have surprisingly high levels of genetic divergence (separation) which could prove useful for explaining the evolutionary history of their relationships (Maldonado *et al.* 2001). Recent genetic evaluations have been done on the ornate shrew complex (consisting of nine subspecies, seven of which only occur in California, one occurs in California and Baja California and one subspecies only occurs in Baja California) using mitrochondrial deoxyribonucleic acid (DNA) sequencing of the cytochrome b gene and protein allozymes (Maldonado *et al.* 2001). From these data, researchers determined that the ornate shrew complex is geographically structured into three haplotype clades (genetic groups) representing southern, central, and northern localities within California. From this genetic analysis, samples obtained from individual subspecies can be accurately identified within and between these three clades. However, genetic and morphological data on ornate shrews do not show the same level of sensitivity for differentiating individuals to the subspecies level. Using morphological data from the same subspecies, only 50 percent or less of the Buena Vista Lake shrews could be identified to the correct subspecies (Maldonado (in press)). At the subspecific level, Maldonado's (in press) morphological data can be used to distinguish between the three genetic clades but not within them. These results demonstrate the importance of evaluating both morphological and genetic data, when available, to evaluate and identify shrews captured within the range of the Buena Vista Lake shrew.

The Buena Vista Lake shrew formerly occurred in wetlands around Buena Vista Lake, and presumably throughout the Tulare Basin (Grinnell 1932, 1933; Hall 1981; Williams and Kilburn 1984; Williams 1986; Service 1998). The animals were likely distributed throughout the swampy margins of Kern, Buena Vista, Goose, and Tulare Lakes. By the time the first Buena Vista Lake shrews were collected and described, these lakes had already been drained and mostly cultivated with only sparse remnants of the original flora and fauna (Grinnell 1932; Mercer and Morgan 1991; Griggs 1992; Service 1998).

Nearly all of the valley floor in the Tulare Basin is cultivated, and most of the lakes and marshes have been drained and cultivated (Williams 1986; Werschkull *et al.* 1992; Williams and Kilburn 1992; Williams and Harpster 2001). The great expansion and conversion of natural lands and pasture to irrigated orchards, vegetable crops, cotton, and dairies was made possible by large increases in ground water pumping and the Central Valley Project's delivery of northern California water to the San Joaquin Valley (Mercer and Morgan 1991). The Buena Vista Lake shrew is now known from four isolated locations along an approximately 113-kilometer (km) (70-mile (mi)) stretch on the west side of the Tulare Basin. The four locations are the former Kern Lake Preserve (Kern Preserve) on the old Kern Lake bed, the Kern Fan recharge area, Cole Levee Ecological Preserve (Cole Levee), and the Kern National Wildlife Refuge (Kern NWR).

Buena Vista Lake shrews prefer moist habitat that has a diversity of terrestrial and aquatic insect prey (Kirkland 1991; Ma and Talmage 2001). During surveys conducted in 1988 and 1990 on the Kern Preserve, Freas (1990) found that shrews were more abundant in moderately mesic (moister) habitats versus xeric (drier) habitats, with 25 animals being captured in the moister environments and none in the drier habitat. Maldonado (1992) also found shrews at the Kern Preserve to be closely associated with dense, riparian understories that provide food, cover, and moisture. Capture of two Buena Vista Lake shrews at the Kern NWR occurred in a 0.46-hectare (ha) (1.13-acre (ac)) area that contained the most undisturbed moist riparian habitat, with a mature tree overstory, abundant invertebrates, and ground cover totaling about 90–95 percent (Maldonado *et al.*, 1998; J. Maldonado, in litt. 1998).

The mesic, lower elevation range of the Buena Vista Lake shrew is almost completely surrounded by the semiarid, higher elevation range of the Southern California ornate shrew (Hall 1981; J. Madonado, in litt. 1998, in press; Maldonado *et al.* 2001). Grinnell (1932) noted that Southern California ornate shrews occupied the uplands along streamside habitat, and intergraded with the lowland Buena Vista Lake shrews along the lower courses of the streams that enter the Kern-Tulare basin.

Due to the scarcity of Buena Vista Lake shrews, data about their home range size, breeding territory size, and population densities are lacking. Except

for the breeding season, shrews in general are solitary. As juveniles, they establish their home range, which is a small area in which they nest, forage, and explore, and where they remain for most of their life (Churchfield 1990). Accurate estimation of home range size based on mark and recapture techniques requires that a minimal number of recaptures be made (Hawes 1977). This level of data has never been collected for Buena Vista Lake shrews and, therefore, their home range has not been determined. Ingles (1961) was able to calculate an average home range size in a closely related species, the vagrant shrew (*Sorex vagrans*), found in the Sierra Nevada of California. The average home range size was approximately 372 square meters (m^2) (4,000 square feet (ft^2)), with breeding males occupying larger territories than breeding females (Hawes 1977). The distribution, and size, of a shrew's territory varies, and is primarily influenced by the availability of food (Ma and Talmage 2001). In a study on population densities of vagrant shrews in western Washington, Newman (1976) calculated densities of 25.8 shrews/ha (10.1/ac) in the fall and winter, and 50.2 shrews/ha (20.32/ac) at the height of summer.

At the time we published the proposed rule to list the Buena Vista Lake shrew (65 FR 35033, June 1, 2000), the only known extant (still existing) population was located on the Kern Preserve, which is a privately owned property (California Natural Diversity Data Base 1986; Jack Allen, Service, in litt. 2000). This property totals about 34 ha (83 ac) and was presumed, at the time, to support the only surviving population of Buena Vista Lake shrews.

Since the proposed rule was published, staff from the University of California at Los Angeles reported the results of additional surveys for the Buena Vista Lake shrew (J. Maldonado, in litt. 1998; Maldonado *et al.* 1998). Two Buena Vista Lake shrews were trapped on the south side of the Kern NWR in September 1998 (J. Maldonado, in litt. 1998; Maldonado *et al.* 1998). Due to the low amount of morphological variation in ornate shrews as discussed above, and the potential for the introgression with the southern California ornate shrew, genetic analysis of the potential Buena Vista Lake shrew specimens was completed. Tissue samples taken from shrews from the Kern Preserve and the Kern NWR were genetically analyzed and found distinct from other ornate shrew populations from California and Baja California. These specimens were determined to be Buena Vista Lake shrews (Maldonado *et al.* 2001; Jesús Maldonado, Smithsonian National Museum, pers. comm., 2001).

In February and March of 1999, the California State University Stanislaus Foundation's Endangered Species Recovery Program (ESRP) surveyed six locations within the historic range of the subspecies (Williams and Harpster 2001). They reported capturing five shrews at the Kern NWR along levee roads less than 1.2 km (0.5 mi) from the location where shrews were captured in 1998 (ESRP 1999a). In March 1999, ESRP found nine more shrews along the banks of an artificial pond adjacent to the nature center at the Cole Levee, and five more at the Kern County's water recharge area along the Kern Fan (ESRP 1999b; Williams and Harpster 2001). To date, no genetic analysis has been done on these shrews.

Before the 1998 and 1999 surveys, staff of the Kern NWR reported Buena Vista Lake shrews three other times. In 1992, one shrew was found alive under a sprinkler cover, and another was found dead in a manager's residence at the Kern NWR (Morgan Cook, Service, pers. comm., 1995). One additional shrew was found dead in 1994 within the same residence on the Kern NWR. This residence is currently the Kern NWR headquarters and is one of two buildings located on a 4-ha (10-ac) compound surrounded by lawns and trees (J. Allen, pers. comm., 1998). The constant lawn, shrub, and tree watering and the ponds at the Kern NWR headquarters may have been sufficient to maintain a shrew population (Engler 1994). Although genetic analysis of these specimens to determine their subspecific identity was not performed, these reports prompted the surveys for Buena Vista Lake shrews at the Kern NWR.

The seven shrews captured on the south side of the Kern NWR during the 1998 and 1999 surveys were located around a 323-ha (800-ac) marsh with emergent vegetation and an overstory of willows and cottonwoods (Maldonado *et al.*, 1998; J. Maldonado, in litt. 1998; ESRP 1999a). These marsh areas remain moist longer than most other marshes on the Kern NWR (J. Allen, pers. comm., 1998). However, water management practices at the Kern NWR have focused on waterfowl (Service 1986), and riparian habitat has not received adequate water over the years to maintain riparian diversity (Engler 1994; U.S. Bureau of Reclamation (BOR) 2000).

Over the last 20 years, a number of surveys have taken place in other fresh water marshes and moist riparian areas on private and public lands throughout the range of the subspecies and were all unsuccessful in capturing any Buena Vista Lake shrews. These surveys include: The Nature Conservancy's (TNC) Paine Wildflower Preserve and the Voice of America site west of Delano (Clark *et al.* 1982); along the Kern River Parkway in 1987 (Beedy *et al.* 1992); the Tule Elk State Reserve (Maldonado 1992); the Goose Lake Slough area of the Semitropic ground water banking project, Kern Water District, Kern County (Germano and Tabor 1993); Pixley National Wildlife Refuge in Tulare County (Williams and Harpster 2001); Lake Woollomes in Kern County; and Buena Vista Lake Aquatic Recreation area at the northern portion of the former Buena Vista Lake bed, Kern County (ESRP 1999c; Williams and Harpster 2001).

Other remnant patches of wetland and riparian communities within the Tulare Basin have not been surveyed and may support the Buena Vista Lake shrew, including the City of Bakersfield's water recharge area near the terminus of the Kern River at Buena Vista Lake (J. Maldonado, in litt. 1998; Service 1998; Williams and Harpster 2001; Bill Vanherweg, biological consultant, pers. comm., 2001); Goose Lake and Jerry Slough, overflow channels of the Kern River, located 10 miles south of Kern NWR, owned and managed by the Semitropic Water District as a ground water recharge basin (Germano and Tabor 1993); and the privately owned Crighton Ranch, located near the eastern shore of historical Tulare Lake in Tulare County (Williams and Harpster 2001).

Privately owned lands that may support Buena Vista Lake shrews are located around Sand Ridge flood basin, Buena Vista Slough, Goose Lake and Goose Lake Slough, Creighton Ranch, and along the Kern River west of Bakersfield, California (J. Maldonado, in litt. 1998, pers. comm., 1998; Service 1998; Williams and Harpster 2001). The small habitat patches within these areas would not likely support a significant number of animals (J. Maldonado, pers. comm., 1998; B. Vanherweg, pers. comm., 2001). In addition, these areas represent highly disjunct and fragmented habitat that may not be reconnected to other areas containing suitable habitat in the foreseeable future.

Previous Federal Action

We included the Buena Vista Lake shrew as a Category 2 candidate species in the September 18, 1985, Notice of Review (50 FR 37958). Category 2 species were those for which we had information indicating that threatened or endangered status might be warranted, but for which adequate data

on biological vulnerability and threats were not available to support issuance of listing proposals.

We received a petition dated April 18, 1988, from Ms. Doris Dixon of The Interfaith Council for the Protection of Animals and Nature to list the Buena Vista Lake shrew and three other shrew species as endangered species. We determined that the petition presented substantial information that the requested action may be warranted, and announced our finding in the **Federal Register** on December 30, 1988 (53 FR 53030). The Buena Vista Lake shrew remained a Category 2 candidate in the January 6, 1989, Candidate Notice of Review (54 FR 554). In the November 21, 1991, Notice of Review (56 FR 58804), the Buena Vista Lake shrew was elevated to Category 1 status based on new information that we received. Category 1 taxa were those for which we had on file sufficient information on biological vulnerability and threats to support the preparation of a listing proposal. In the February 28, 1996, Notice of Review (61 FR 7596), we discontinued the use of multiple candidate categories and considered the former Category 1 candidates as simply "candidates" for listing purposes. The Buena Vista Lake shrew remained a candidate with a listing priority number of 6 based upon our Listing and Recovery Priority Guidelines (48 FR 43096). The subspecies was elevated to a listing priority number of 3 in the Notice of Review (62 FR 49398) on September 19, 1997, and retained this listing priority number in the October 25, 1999, Notice of Review (64 FR 57534), and October 30, 2001, Notice of Review (66 FR 54808).

On June 1, 2000, we published a proposal to list the Buena Vista Lake shrew as endangered (65 FR 35033) and opened a 60-day comment period. On August 14, 2000 (65 FR 49530), we reopened the comment period for an additional 60 days to provide the public another opportunity to comment on the proposed rule. The final rule for the subspecies was delayed because nearly the entire Fiscal Year 2001 Listing Program appropriation had to be committed to listing actions required under court order or settlement agreement, which did not include the Buena Vista Lake shrew, and essential program management activities.

On October 2, 2001, we entered into a consent decree to settle listing litigation with the Center for Biological Diversity, Southern Appalachian Biodiversity Project, Foundation for Global Sustainability, and the California Native Plant Society. This consent decree requires us to make final listing decisions for a number of species we had previously proposed for listing, including the Buena Vista Lake shrew. The consent decree requires us to publish a final listing determination for this subspecies in the **Federal Register** by March 1, 2002 (*Center for Biological Diversity, et al.* v. *Norton,* Civ. No. 01–2063 (JR) (D.D.C.)). This final rule reflects new information concerning distribution, status, and threats to the subspecies since publication of the proposed rule, and is made in accordance with the aforementioned agreement.

Summary of Comments and Recommendations

In the June 1, 2000, proposed rule (65 FR 35033), we requested all interested parties to submit factual reports or information that might contribute to the development of a final listing decision. We contacted appropriate Federal agencies, State agencies, county and city governments, scientists, and other interested parties to request information and comments. We solicited independent review of the proposed rule from five peer reviewers. We published legal notices in the *Bakersfield Californian* on August 23, 2000. The first comment period was open for 60 days and closed on July 31, 2000. We reopened a second comment period on August 14, 2000, for an additional 60 days, closing on October 13, 2000 (65 FR 49530). We did not receive any requests for a public hearing during either comment period.

We received eleven comment letters, including four letters from peer reviewers. Four of the comment letters supported the proposal, one provided neutral comments, and seven were opposed to the proposal. Several commenters provided additional information that, with other clarifications, has been incorporated into the sections titled "Background" and "Summary of Factors" of this final rule.

Comments of a similar nature or point regarding the proposed rule have been grouped into issues and are discussed below.

Issue 1: Several commenters questioned whether the Buena Vista Lake shrew was a valid subspecies. Another commenter believed that the original description by Grinnell (1932) used "primitive" taxonomic standards, such as skin and skull measurements, to originally describe this subspecies, and that more current genetic and biogeographical research is needed before the taxa can be considered valid.

Our Response: In general, we recognize taxonomic determinations that are published in peer-reviewed journals and are accepted by the scientific community. The description of the Buena Vista Lake shrew was published in the University of California Publications in Zoology (Grinnell 1932). Grinnell described the subspecies based on distinguishing morphological characteristics, geographical and habitat distribution, and other taxonomic characteristics. Maldonado (in litt. 2000, in press) stated that the Buena Vista Lake shrew appears to be morphologically divergent from other populations of ornate shrew in California. No papers published in peer-reviewed scientific journals have synonymized the Buena Vista Lake shrew. Based on the most current scientific information, we have concluded the Buena Vista Lake shrew represents a valid subspecies.

Issue 2: Several commenters said that unpublished data was used that was not in the administrative record, and this information was used to make the determination that the Buena Vista Lake shrew was a valid subspecies and therefore appropriate for listing under the Act.

Our Response: The original description of the Buena Vista Lake shrew published by Grinnell (1932) is still the only peer-reviewed, published taxonomic treatment that is scientifically valid. Unpublished data regarding the validity of this subspecies would be considered speculative. Recent unpublished genetic and morphological work done on ornate shrews did not address the taxonomic validity of the Buena Vista Lake shrew as a subspecies of ornate shrew, and no scientific papers pertaining to the taxonomic status of this subspecies were available during the preparation of either the proposed rule or this final rule.

Issue 3: Several commenters said that we failed to use survey information made available that showed the presence of Buena Vista Lake shrews in several locations outside the only reported location at the former Kern Preserve, and this new information constitutes sufficient reason not to make the proposed rule final, or to postpone the final rule until more information can be gathered and assimilated.

Our Response: All survey data received prior to the publication of the proposed rule was evaluated . We received survey reports that indicated that Buena Vista Lake shrews were trapped at other areas outside the known location on the Kern Preserve before publication of the proposed rule, but did not include this information at that time. We felt that, due to the

difficulty in differentiating between subspecies of ornate shrews, and the possibility of introgression by the Southern California ornate shrew, it was necessary to obtain additional genetic information to determine if these new areas supported the Buena Vista Lake shrew subspecies.

Since publication of the proposed rule, we now believe that, based on survey efforts, the Buena Vista Lake shrew occurs in four locations, which are the Kern Preserve, the Kern Fan recharge area, Cole Levee, and the Kern NWR. We also believe that sufficient threats to the subspecies continue throughout its range to warrant listing (see the discussion under Summary of Factors).

Issue 4: Several commenters believe that the administrative record for the proposed rule was incomplete and unavailable for public review.

Our Response: The complete files for the proposed rule have been, and are, available for public inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office (see the **ADDRESSES** section).

At the time the proposed rule was published, we received a Freedom of Information Act request for the administrative record of the proposed rule. During the preparation of these documents, we noticed that an edit had been made to the rule and a citation had been left in that no longer had context. This discrepancy between the references cited in the published rule and the actual citations used to support the statement was corrected in the organization of the administrative record. All citations and references used in the proposed rule were made available in the public record and the correction to the administrative record did not change the results of the analysis in the proposed rule.

Issue 5: One commenter felt that the peer review process should take place during the proposed rule and not for the final rule, and that the proposed rule lacked proper peer review.

Our Response: During the preparation of the proposed rule, we contacted species experts to gather the best scientific and commercial information available. In accordance with our July 1, 1994 (59 FR 34270), Interagency Cooperative Policy on Peer Review, we also requested the expert opinions of five independent specialists regarding the biological and ecological information about the Buena Vista Lake shrew contained in the proposed rule. The peer review process occurred during the public comment period of the proposed rule. Therefore, the scientific community, as well as the public, had an opportunity to review the proposed rule and provide us comments on it. We believe that this process allowed ample time for review and comment. Comments by the public and peer reviewers have been addressed in this final rule.

Issue 6: Several commenters expressed their concern that we did not use the best scientific and commercial information available.

Our Response: We thoroughly reviewed all available scientific and commercial data in preparing the proposed and final rules. We sought and reviewed historic and recent publications and unpublished reports concerning the Buena Vista Lake shrew, as well as literature documenting the decline of natural habitats in the San Joaquin Valley in general. We considered all types of available information in making a listing determination. This includes reliable unpublished reports, historical documentation, and personal communications with experts. The public reviewed our proposed rule, which also was peer-reviewed according to our policy (see "Peer Review" section). We used our best professional judgment and based our decision on the best scientific and commercial data available, as required by section 4(b)(1) of the Act.

Issue 7: One commenter said that we failed to comply with the National Environmental Policy Act (NEPA).

Our Response: We need not prepare environmental assessments or environmental impact statements pursuant to the NEPA for reasons outlined in the **Federal Register** on October 25, 1983 (43 FR 49244). Listing decisions are based on biological, not sociological or economic considerations. This view was upheld in the court case *Pacific Legal Foundation* v. *Andrus*, 657 F.2d 829 (1981).

Issue 8: One commenter claimed that the selenium data used in support of the proposed rule is unsupportable and flawed.

Our Response: While we agree that there has never been a strongly documented case of selenium poisoning in a wild population of shrews, the selenium levels measured in the shrew populations found at the Kesterson National Wildlife Refuge (Kesterson) and the Westlands sites in Fresno approach or exceed selenium concentrations that can have chronic deleterious effects on reproduction and other physiological processes in small mammals. In addition, these same populations of shrews at Kesterson have declined dramatically over the past 10 years. While the shrews found at Kesterson are not Buena Vista Lake shrews, we believe because of the elevated levels of selenium found in portions of the ecosystem, and in some wildlife inhabiting the Tulare Basin, selenium poisoning is a potential threat to the Buena Vista Lake shrew.

Issue 9: One commenter felt that if the Buena Vista Lake shrew was listed, then restrictions would follow for chemical applications, water storage and conveyance activities, and general farming and ranching activities.

Our Response: All chemical applications used in regular farming activities are monitored by the California State Board of Pesticide Regulation (Pesticide Board) and are subject to their control. We do advise the Pesticide Board from time to time in regards to the potential harmful effects certain chemicals may have on endangered and threatened species if they are exposed, and make recommendations on how to eliminate or reduce adverse effects to listed species. Water storage and conveyance systems are subject to local control and through contracts with the Federal and State governments through the BOR. Where there is a Federal nexus (activities that are authorized, funded, or carried out by the Federal Government), certain activities involving chemical application, water storage or conveyance, and land conversion may be modified to protect listed species.

Issue 10: One commenter said that we failed to contact or consult with State and local county governments during the development of the proposed rule.

Our Response: During the preparation of the proposed and final rules, we contacted and made available all references and documents to appropriate State and local government agencies through direct contact, mailings, and the publication of a legal notice in a local newspaper. A copy of the proposed rule was sent to the California Department of Fish and Game (CDFG), Kern County, and other local agencies.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), Interagency Cooperative Policy on Peer Review, we solicited the expert opinions of five independent specialists regarding the biological and ecological information about the Buena Vista Lake shrew contained in the proposed rule. The purpose of such review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analysis. We received comments

back from four of the reviewers. All four peer reviewers provided information meant to correct, clarify, or support statements contained in the proposed rule. Three reviewers stated that the proposed rule was an accurate summary of the species biology and status. Two of the reviewers felt that additional surveys should be done in suitable habitat for Buena Vista Lake shrews; one of these reviewers felt that additional surveys and improved management of known populations of the species could eliminate the need to list the species. Two reviewers suggested that surveys done too late to be included into the proposed rule, be included in the final rule discussion. We have included all known survey data into this rule and encourage further surveys be done to better understand the current range of this rare species. Three of the peer reviewers provided additional information on the species life history, genetics, and distribution and one of the four reviewers provided technical corrections on material contained in the sections titled "Background" and "Summary of Factors Affecting the Species." We have incorporated their comments, where appropriate, into this final determination.

Summary of Factors Affecting the Species

Section 3 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal List of Endangered and Threatened Wildlife. After a thorough review and consideration of all information available, we determine that the Buena Vista Lake shrew should be classified as an endangered species. We may determine a species to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. These factors, and their application to the Buena Vista Lake shrew (*Sorex ornatus relictus*), are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The amount of suitable habitat for the Buena Vista Lake shrew has been significantly reduced over time due to the systematic drainage of land and shallow lakes for the purpose of agricultural crop production. As a result, over 95 percent of the riparian vegetation and associated marsh habitat of the southern San Joaquin Valley has been eliminated (TNC 1984 in Service 1986; Werschkull *et al.* 1992). At this time, the Buena Vista Lake shrew is known from only four locations: the Kern Preserve, Cole Levee, the Kern Fan recharge area, and the Kern NWR.

Rapid agricultural, urban, and energy developments since the early 1900s have severely reduced and fragmented native habitats throughout the San Joaquin Valley (Mercer and Morgan 1991). Historically, the former Tulare, Buena Vista, Goose, and Kern Lakes, along with their respective overflow marshes, covered 19 percent of the Tulare Basin in the southern San Joaquin Valley (Werschkull *et al.* 1992). Around the turn of the 20th century, the Tulare Basin had 104,890 ha (259,189 ac) of valley fresh water marsh, 177,005 ha (437,388 ac) of valley mixed-riparian forests, and 105,333 ha (260,283 ac) of valley sink scrub, for a total of 387,229 ha (956,860 ac) of potentially suitable Buena Vista Lake shrew habitat (TNC 1984, cited in Service 1986). By the early 1980s, the combined total had been reduced to 19,019 ha (46,996 ac), less than 5 percent of the original habitat (TNC 1984, cited in Service 1986; Werschkull *et al.* 1992). As of 1995, intensive irrigated agriculture comprised 1,239,961 ha (3,064,000 ac) or about 96 percent of the total lands within the Tulare Basin.

All of the natural plant communities in the Tulare Basin have been affected by the transformation of this area to production of food, fiber, and fuel (Spiegel and Anderson 1992; Griggs *et al.* 1992). As more canals were built, and more water was diverted for irrigation of the floodplains of the major rivers of the southern San Joaquin Valley, less water was available to keep the riparian forests alive, and less water reached the lakes. By the early 1930s, the former Tulare, Buena Vista, Goose, and Kern lakes were virtually dry and open for cultivation (Griggs *et al.* 1992).

Water delivery to maintain the Kern Preserve and support the Buena Vista Lake shrew habitat cannot be assured because the natural water table has been lowered by past and present agricultural practices on and around the Kern Preserve. From the first year TNC leased the property in 1986, until they decided not to renew the lease in 1995, the landowner supplied water to the Kern Preserve only during years of high runoff, at times when excess water was available at the end of the growing season, and after commercial crop needs were met. Without a dependable water supply of approximately 15 to 20 acre-feet (ac-ft) required to maintain the Kern Preserve's wetlands, the continued existence of the Buena Vista Lake shrew at this location is unlikely. If sufficient water is not provided, the Gator Pond on the Kern Preserve, and surrounding mesic habitat that supports this population, could dry out. The lack of a guaranteed water supply was one of the major reasons TNC determined that the habitat on the Kern Preserve could not remain viable and led to TNC's refusal to renew the lease and manage the Kern Preserve (Sabin Phelps, TNC, pers. comm., 1995).

The Kern NWR was established in 1960 on 4,297 ha (10,618 ac) of land surrounded by thousands of acres of agricultural land, and over the years has been managed primarily for waterfowl (Service 1986). The Kern NWR receives some water from the canalized Poso Creek and from purchases from willing sellers via the Goose Lake canal. The availability of adequate amounts of water to meet the needs of all Kern NWR wildlife is not always possible especially in dry years when the water demands of nearby crops are high and a willing seller of water is hard to find. Recently, the BOR has considered the water needs of several National Wildlife Refuges in the San Joaquin Valley and, through contract agreements with local water agencies, has attempted to provide the Kern NWR with a more predictable and stable water supply so that enough water is available to maintain wetland habitat for waterfowl and other wildlife species, including the Buena Vista Lake shrew (BOR 2000).

The Kern NWR has approximately 182 ha (450 ac) of riparian habitat which requires 2.6 to 3.0 ac-ft per acre each month from November until late May or early June (BOR 2000), or approximately 10,000 ac-ft per year. In accordance with the Water Acquisition Program for Central Valley Project Improvement Act (CVPIA) sections 3406(b)(3), (d)(2) and (g), the BOR will be delivering 8,000 ac-ft to the Kern NWR during fiscal year 2002 (Service and BOR 2001). However, according to the draft Biological Assessment and Biological Opinion on Refuge Water Supply Conveyance Facilities, 9,450 ac-ft are needed for riparian habitat (BOR 2000). In addition, 1,800 ha (4,450 ac) of other seasonal wetland habitat that is flooded from fall (October) through July requires 3.1 to 3.5 ac-ft per acre of water for a total of 15,575 ac-ft to meet all riparian/wetland water requirements. Therefore, the amount of water that is expected to be available is not adequate to support full ecosystem function on the entire area of riparian and wetland habitat that supports the Buena Vista Lake shrew on the Kern NWR. Without full deliveries of water to the Kern NWR, the continued existence of the Buena Vista Lake shrew may not be assured.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The subspecies has no known commercial or recreational value.

C. Disease or Predation

Although no cases of disease related to Buena Vista Lake shrews have been documented, the possibility of disease and associated threats exists. The small population size and restricted distribution increases their vulnerability to epidemic diseases. Buena Vista Lake shrews, like most small mammals, are host to numerous internal and external parasites, such as round worms, mites, ticks, and fleas, that may infest individuals and local populations in varying degrees with varying adverse effects (Churchfield 1990; J. Maldonado, pers. comm., 1998). However, the significance of the threat of disease and parasites to the Buena Vista Lake shrew is not known.

Most vertebrate carnivores of the Tulare Basin, such as coyotes (*Canis latrans*), foxes (*Vulpes* spp.), long-tailed weasels (*Mustela frenata*), raccoons (*Procyon lotor*), feral cats (*Felis cattus*), and dogs (*Canis familiaris*), as well as certain avian predators such as hawks, owls, herons, jays, and egrets, are all known predators of small mammals. While many predators find shrews unpalatable because of the distasteful secretion and offensive odor from their flank glands and feces, several of the avian predators, such as barn owls (*Tyto alba*), short eared owls (*Asio flammeus*), long-eared owls (*Asio otus*), and great horned owls (*Bubo virginianus*), have a poor sense of smell and are known to prey on shrews (Ingles 1965; Aitchison 1987; Marti 1992; Holt and Leasure 1993; Marks *et al.* 1994; Houston *et al.* 1998), and probably Buena Vista Lake shrews (J. Maldonado, pers. comm., 1998). The overall impact that predation may have on the number of individuals and densities of Buena Vista Lake shrews remains unknown.

D. The Inadequacy of Existing Regulatory Mechanisms

The primary cause of decline of the Buena Vista Lake shrew is the loss and fragmentation of habitat due to human activities. Federal, State, and local laws have not been adequate in preventing destruction of the limited Buena Vista Lake shrew habitat.

Under section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344 *et seq.*), the U.S. Army Corps of Engineers (Corps) regulates the discharge of fill material into waters of the United States, including wetlands. Section 404 regulations require applicants to obtain a permit for projects that involve the discharge of fill material into waters of the United States, including wetlands. However, many farming activities do not require a permit due to their exemption under the CWA (53 FR 20764; R. Wayland III, Environmental Protection Agency (EPA), in litt. 1996). Projects that are subject to regulation may qualify for authorization to place fill material into headwaters and isolated waters, including wetlands, under several nationwide permits. The use of nationwide permits by an applicant or project proponent is normally authorized with minimal environmental review by the Corps. No activity that is likely to jeopardize the continued existence of a threatened or endangered species, or that is likely to destroy or adversely modify designated critical habitat of such species, is authorized under any nationwide permit. An individual permit may be required by the Corps if a project otherwise qualifying under a nationwide permit would have greater than minimal adverse environmental impacts.

Recent court cases may further limit the Corps' ability to utilize the CWA to regulate the fill or discharge of fill or dredged material into the aquatic environment within the current range of the shrew (*Solid Waste Agency of Northern Cook County* v. *U.S. Army Corps of Engineers*, 531 U.S. 159 (2001) (SWANCC)). The effect of SWANCC on the Federal ability to regulate activities on wetlands in the area of the Buena Vista Lake shrew has not been determined by the Corps, but these wetlands could be determined to be "isolated" and, therefore, not subject to the CWA because these wetlands do not currently drain to a navigable water of the United States, or may otherwise be shown to have little connection to interstate commerce.

In addition, common activities such as ditching within aquatic habitats in the area may not be subject to the CWA provided such activities do not deposit more than minimal "fallback" into the aquatic environment. The Corps typically confines its evaluation of impacts only to those areas under its jurisdiction (i.e., wetlands and other waters of the United States).

The California Environmental Quality Act (CEQA) (Public Resources Code § 21000–21177) requires a full disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over a project is designated as the lead agency and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines, as amended, requires a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Once significant effects are identified, the lead agency has the option of requiring mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible (CEQA § 21002). In the latter case, projects may be approved that cause significant environmental damage, such as destruction of listed endangered species and/or their habitat. Protection of listed species through CEQA is, therefore, dependent upon the discretion of the agency involved. However, the Buena Vista Lake shrew is not listed as an endangered, threatened, or candidate species under the California Endangered Species Act.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

If shrew population ranges overlap or come in contact through expansion, then hybridization may occur in closely related species and certain subspecies (Rudd 1955a). Over time, a population of a subspecies could become genetically indistinguishable from a larger population of an introgressing subspecies such that the true genotype of the lesser subspecies no longer exists (Lande 1999). Apparent hybrids have been recorded between two subspecies of ornate shrew, the California ornate shrew (*Sorex. ornatus californicus*) and the Suisun Marsh ornate shrew (*S. o. sinuosus*), found on the northern side of the San Pablo and Suisun bays in Solano County, California (Rudd 1955a; Hays 1990). Although there is no documented evidence of hybrids, the possibility exists for introgression between the upland Southern California ornate shrew with the lowland Buena Vista Lake shrew. Unidentified subspecies of the ornate shrew have been captured on recently retired farmland south of Mendota in Fresno County (Williams and Harpster 2001; ESRP and BOR 2001).

Selenium toxicity represents a serious threat to the continued existence and recovery of the Buena Vista Lake shrew, not only at the two known locations at the Kern Preserve and the Kern NWR, but any potential locations throughout the Tulare Basin. The soils on the western side of the San Joaquin Valley have naturally elevated selenium concentrations. Due to extensive agricultural irrigation, selenium has

been leached from the soils and concentrated in the shallow groundwater along the western side of the San Joaquin Valley. Where this shallow groundwater reaches the surface or subsurface, selenium can accumulate in biota (flora and fauna) and result in adverse effects to growth, reproduction, and survival. Elevated concentrations of selenium have caused major wildlife mortalities in places like Kesterson (Moore *et al.* 1989). The EPA's water quality criterion for the protection of aquatic species is currently 5 micrograms/liter (µg/L) but is being reevaluated by that agency (65 FR 31681). The selenium standard to protect wetlands in the grassland area of the San Joaquin Valley is 2 µ/L. Some of the highest selenium levels in the western United States (greater than 1,100 µg/L) have been measured from groundwater within the southern San Joaquin Valley, and greater than 200 µg/L have been measured in drainwater evaporation ponds servicing the agricultural lands immediately surrounding the only known populations of Buena Vista Lake shrews in the Tulare Basin (California Regional Water Quality Control Board (RWQCB) 1996; DWR 1997; Seiler *et al.* 1999).

In addition, the increased supply of imported water and little or no exported drainwater has resulted in the raising of the selenium-contaminated groundwater table on the western side of the San Joaquin Valley and large portions of the Tulare Basin (DWR 1997). Water table levels have been measured at 1.5 to 3 m (5 to 10 ft) beneath the Kern Preserve and Kern NWR, and have moved steadily upwards since 1988 (DWR 1997). Between 1984 and 1989, the selenium concentration in shallow groundwater was measured from wells throughout the Tulare Basin and ranged from less than 5 µg/L to greater than 200 µg/L. The groundwater beneath the Kern NWR ranged between 5 and 50 µg/L selenium and between 50 and 200 µg/L under the Kern Preserve, both well above water quality criteria determined by EPA. Thus, careful surface and groundwater management in these areas is critical to avoid selenium bioaccumulation in fish and wildlife.

As selenium and other dissolved salts move upward with the shallow water table, the surface vegetation can take up selenium with the water via root absorption. The selenium and salts can also reach the surface via a "wicking" action through the soil or the groundwater. The selenium can then enter the food chain of the Buena Vista Lake shrew by becoming concentrated in insects that forage on the vegetation or reside in soils that concentrate these salts (Saiki and Lowe 1987; Moore *et al.* 1989). Subsurface drainwater discharged to evaporation ponds or recirculated in reuse and treatment systems can also allow this concentrated selenium to accumulate in biota. Elevated concentrations of selenium in insects have been measured in many potential Buena Vista Lake shrew prey species such as brine flies (Ephydridae), damselflies (Zygoptera), midges (Chironomidae), and other insects collected at 22 agricultural drainage evaporation ponds throughout the Tulare Basin, including ponds a few miles west of the Kern Preserve and along the northern border of the Kern NWR (Moore *et al.* 1989). In 1989, concentrations of selenium in 96 insects from 7 representative ponds in the Tulare Basin ranged from 0.71 to 303.7 µg/gram (g) with a mean of 19.67 µg/g (dry weight). These potential dietary levels of selenium are over six times the level that causes chronic deleterious symptoms in rodents and over 14 times what is considered toxic (see toxicity discussion below).

Current data on the selenium concentrations in potential insect prey from the same seven ponds mentioned above are not available, however, it has been established that tissue concentrations of selenium in field-collected aquatic invertebrates are strongly related to waterborne concentrations of selenium (Birkner 1978; Wilber 1980; Lillebo *et al.* 1988). Comparative selenium water concentrations were measured in 1989 and again in 1996 for these same seven ponds (RWQCB 1996). The mean selenium concentrations in 1996 were within the range of the mean 1989 selenium concentrations in all seven ponds. Therefore, the potential exposure and availability of insects with toxic selenium concentrations remains a threat to the Buena Vista Lake shrew in ponds with similar selenium concentrations.

No cases of widespread selenium poisoning (selenosis) among wild mammals in nature has been documented (Skorupa 1998). However, from the results of intensive research on domestic livestock, researchers discovered that consumption of seleniferous grass or hay containing more than 5 µg/g selenium was the most common cause of chronic selenosis, a potentially fatal disease (O'Toole and Raisbeck 1998; Seiler *et al.* 1999). From comparative studies on the pathology and toxicology of selenium poisoning in small mammals, researchers determined that high levels of selenium in the diet can cause deleterious effects to the hair, nails, liver, blood, heart, nervous system, and reproduction (O'Toole and Raisbeck 1998). The lowest dietary threshold for toxicity in small mammals was 1.4 µg/g (dry weight) and was associated with sublethal effects from lifetime exposure in rats (Eisler 1985). Longevity was reduced at 3 µg/g in the lifetime diet. Olson (1986) reports a minimum dietary exposure associated with reproductive selenosis in rats of 3 µg/g. Female rats fed a selenized diet either died of liver failure or were infertile (O'Toole and Raisbeck 1998). Anemia from hemolysis (rupture of red blood cells) is consistently produced in rats fed more than 15 µg/g dietary selenium (Franke 1934; Halverson *et al.* 1970).

A 666–ha (1,646–ac) experimental site south of Mendota in Fresno County has been monitored to assess the changes over time of restoration efforts, groundwater levels, and selenium concentrations in terrestrial invertebrates and small mammals once irrigation was stopped on the site (ESRP and BOR 2001). In 1999 and 2000, the range of selenium concentration in 34 beetles, crickets, isopods, and spiders ranged from 0.3 µg/g to 5.6 µg/g (dry weight). These invertebrates were found to be bioaccumulating selenium at higher levels on lands actively cultivated than on lands where cultivation (and irrigation) had ceased or natural areas where groundwater was much deeper. The selenium concentrations from the livers and whole bodies of 13 ornate shrews (subspecies unknown) captured on uncultivated lands at the site ranged from 2.0 to 7.8 µg/g (dry weight) for livers and 2.0 to 4.8 µg/g for whole body concentrations. These values are within or slightly above the range of background levels of 1 to 10 µg/g for livers and 1 to 4 µg/g for whole body selenium concentrations of small mammals associated with aquatic habitats (Skorupa 1998); however, they are unlikely to be toxic. Researchers found higher levels of selenium in the shrews than the mice at the site and had expected this finding due to the shrews' insectivorous foraging habits and higher metabolic rates requiring greater food intake per unit of body mass (ESRP and BOR 2001).

Elevated concentrations of selenium caused major wildlife mortalities at Kesterson where selenium bioaccumulated in virtually every biotic compartment in the ecosystem (Moore *et al.* 1989). Consistently, ornate shrews have been the small mammal experiencing the greatest exposures to selenium at Kesterson. Ornate shrews captured around Kesterson in 1984 showed selenium concentrations 3 to 25

times greater than those found for any other small mammal at the same site (Clark 1987). During periodic monitoring from 1984 to 1998, mean annual whole body concentrations of selenium in shrews ranged from 7.5 µg/g to 38 µg/g (Dale Pierce, Service, in litt. 2000). The cumulative trapping results for shrews at Kesterson reveal that the same trapping effort that would have resulted in 100 shrew captures in 1989, would have resulted in only eight shrew captures in 1999. In comparison, while the trapping rates for the highly selenium-exposed insectivorous shrews at Kesterson have crashed since 1989, the trapping rates for the much lesser exposed herbivorous (plant eating) deer mice have remained stable (D. Pierce, in litt. 2000). Whether selenium is the direct cause of the population declines of shrews at Kesterson is complicated by habitat change (filling of low areas) and climate changes (drought in early 1990s), but selenium bioaccumulation to harmful levels by shrews is clearly demonstrated at the site.

An additional potential source of selenium exposure to Buena Vista Lake shrews in the Tulare Basin is from both liquid and solid manure being produced by concentrated animal feeding operations (dairies, beef cattle, swine, and poultry operations). The U.S. Food and Drug Administration (FDA) allows the addition of up to 0.3 µg/g of selenium as a supplementation in livestock feed contrary to their own analysis of the potential effects on the environment (58 FR 47961). It was noted that selenium concentrations in a few sampled dairy cow manure pits had been documented at levels of 63 to 88 µg/L (58 FR 47961). By comparison, EPA's current selenium water quality criterion for the protection of aquatic life is 5 µg/L, and 2 µg/L is recommended for the protection of wetland habitats. Thus, direct contamination of fish and wildlife habitats is clearly a potential hazard. Of equal or greater concern is the issue of selenium loading into the environment via land applications of manure. As FDA stated (58 FR 47968), "Agricultural soils are highly manipulated oxidized systems that tend to favor formation of selenite and selenate and stimulate microbial activities." Much previous research has revealed that selenium in the form of selenate is highly mobile in the environment and is easily transported to aquatic ecosystems where it can rapidly become bioaccumulated to toxic levels (e.g., papers in Frankenberger and Engberg 1998). Thus, Buena Vista Lake shrews and their prey base could be exposed to potentially toxic levels of selenium from the on-farm and off-farm application of manure around the aquatic and moist habitats that support them. Accidental discharges from waste storage ponds during storm events could also release additional selenium into the environment.

The potential of additional exposure to toxic levels of selenium from beef cattle, dairy, swine, and poultry waste production appears to be increasing. Using dairy as an example, the Council for Agricultural Science and Technology (CAST) in 1994 published some vital statistics regarding selenium dynamics of lactating Holstein cows. For a herd receiving feed supplemented with 0.3 µg/g selenium, each cow excreted an average of 6.4 milligrams selenium (in urine and manure) per day (CAST 1994:13). That works out to the equivalent of 1.668 g selenium/year (yr) per animal unit (AU). This comes from a standard assumption that a lactating Holstein cow in a producing dairy operation, within the same geographic region that the Buena Vista Lake shrew occurs in, equals 1.4 AU and there are 365 days in a year. Thus, 100,000 AU would result in about 166,800 g of selenium being introduced into the environment each year. Now consider the number of dairy AU in the Tulare Basin of California. In 2000, Kern County had 65,000 milk cows; Fresno County, over 79,000 milk cows; Kings County had over 120,000 milk cows; and Tulare County had nearly 358,000 milk cows (California Department of Food and Agriculture 2001). Combined, the four counties had over 622,000 milk cows, and at 1.4 AU per milk cow, this equals 870,800 AU. That translates to 1,452,494 g of selenium being introduced into the environment. These dairies are large, with the average size in Kern County of over 1,600 head and 1,100 head in Tulare County. Also, they are not evenly spread across the landscape and are often concentrated around urban centers, processing facilities, or sources of water. The manure is also not evenly distributed across the landscape and is most often used to fertilize the agricultural lands on or adjacent to the dairies. Finally, this does not consider beef cattle, swine, and poultry operations that can also use selenium supplements.

The FDA (58 FR 47961) constructed a model to evaluate the addition of 3.9 g of selenium per hectare via application of chicken manure and calculated that such a scenario would lead to surface runoff from the amended fields that contained 7.8 µg/L of selenium, or 1.56 times EPA's aquatic life criterion. FDA's model did not consider the cumulative effects of repeated annual additions of selenium to the environment, but only looked at the scenario of a one-time land application of manure. This model applied to the Tulare Basin would mean that, to apply the 1.4 million g of selenium (from 870,800 AU) at the same rate used in the FDA model, over 373,121 ha (922,000 ac) of land would be required to safely land-apply dairy manure alone. The Central Valley Regional Water Quality Control Board (RWQCB) recommends that each dairy determine the manure application rates to their land based on nitrogen loading, but offers a basic rule of 5 cows per acre of double-cropped land as a "reasonable rate" for manure application (RWQCB 2001). Using 870,800 AU, this would translate to 70,480 ha (174,160 ac) needed in the Tulare Basin. Therefore, application of manure in accordance with the RWQCB's basic rule for nutrient management would likely result in selenium concentrations far in excess of safe levels in runoff. Remaining shrew habitat is at the lowest elevation within the surrounding agricultural region. Thus, it is the area to which runoff will tend to flow unless carefully and actively managed to avoid flooding and human error overflows that would affect Buena Vista Lake shrew habitat.

Additional perspective can be gained from a study of Stewart Lake, Utah (Stephens *et al.* 1992), where it was found that annual loading of only 252 g (8.9 ounces) of selenium (to the 101 surface-hectare (250 surface-acre) lake) was sufficient to cause selenium bioaccumulation in waterfowl eggs of over 20 µg/g (a toxic dose that caused embryo deformities). Thus, with an addition of only 2.5 g of selenium per surface hectare of the lake, severe selenium poisoning of wildlife occurred.

The number of dairy cows and new dairy operations that have been proposed or approved for Kern County has suddenly increased in and around the last remaining habitats of the Buena Vista Lake shrew. Six dairies have approved conditional use permits, and another nine dairies are pending approval, which could increase the number of dairies in Kern County from 37 to 52, and the number of milk cows from 60,000 to 112,500 (Bedell 2000). If these animals are fed supplements that have selenium concentrations of 0.3 µg/g and each cow excretes 6.4 milligrams per day (CAST 1994), or 1.668 g/yr/AU, and if each lactating dairy cow equals 1.4 AU, then 262,710 g (or 263 billion µg) of selenium could potentially enter the Kern County environment each year. This only includes the dairy farms in

Kern County and not the additional dairy herds in Kings and Tulare counties or other animal feeding operations.

Buena Vista Lake shrews are exposed to the wide-scale use of pesticides throughout their range, because they currently exist on small remnant patches of natural habitat in and around the margins of an otherwise agriculturally dominated landscape. Buena Vista Lake shrews could be directly exposed to lethal and sublethal concentrations of pesticides from drift or direct spraying of crops, canals and ditch banks, wetland or riparian edges, and roadsides where shrews might exist. Reduced reproduction in Buena Vista Lake shrews could be directly caused by pesticides through grooming, and secondarily from feeding on contaminated insects (Sheffield and Lochmiller 2001). Buena Vista Lake shrews could also die from starvation by the loss of their prey base (Ma and Talmage 2001; Sheffield and Lochmiller 2001). Exposure to organophosphate and carbamate insecticides can inhibit brain acetylcholinesterase activity leading to alterations in behavior and motor activity. Laboratory experiments have shown that behavioral activities such as rearing, exploring for food, and sniffing can be depressed for up to 6 hours in the common shrew (*Sorex araneus*) from environmental and dietary exposure to sublethal doses of a widely used insecticide called dimethoate (Dell'Omo *et al.* 1999). In their natural habitat, depression in such behavioral and motor activities could make the shrews more vulnerable to predation, and starvation. In addition, shrews may feed heavily on intoxicated arthropods after application of insecticides, and, therefore, ingest higher concentrations of pesticides than would normally be available (Stehn *et al.* 1976; Schauber *et al.* 1997; Sheffield and Lochmiller 2001). Fresno, Kern, and Tulare counties are the three highest users of pesticides in California with 16,773,126 kilograms (kg) (36,978,444 pounds (lb)); 10,985,201 kg (24,218,242 lb); and 7,562,064 kg (16,671,512 lb) of pesticide active ingredients used respectively in 1999 (Pesticide Board 2000).

One of the main reasons the Kern NWR was established was to provide waterfowl wintering habitat in the San Joaquin Valley (Service 1986). A waterfowl hunting program is provided in cooperation with the CDFG. In order to attract large numbers of waterfowl, large areas of the Refuge, including Unit 4A where Buena Vista Lake shrews were found, are flooded each year. Starting in August and September, water is released, and these areas remain flooded until March or April. This allows Buena Vista Lake shrews to exist only on narrow patches of unsubmerged habitat along the levee roads and trails that provide access to thousands of hunters, their dogs, and vehicles yearly (Service 1986). Hunters are also allowed to remain overnight, and their presence could cause disruptions in the behavior of the shrews. Due to their small size and high metabolic rates, shrews have short starvation times, and any disturbance, even for a short period, could prove fatal (Hanski 1994). As mentioned, shrews need to capture and consume between 24 and 48 insects over a 24-hour period, even during the colder winter months when thermoregulatory costs account for a major part of the energy expenses (Genound 1988).

The only known populations of Buena Vista Lake shrews are also vulnerable to environmental risks associated with small, restricted populations. Impacts to populations that can lead to extinction include the loss or alteration of essential elements for breeding, feeding, and sheltering; the introduction of limiting factors into the environment such as poison or predators; and catastrophic random changes or environmental perturbations, such as floods, droughts, or disease (Gilpin and Soule 1986). Many extinctions are the result of a severe reduction of population size by some deterministic event such as lowered birth rates due to exposure to certain toxins such as selenium, followed by a random natural event such as a crash in insect populations from an extended drought which causes the extirpation of the species. The smaller a population is, the greater its vulnerability to such perturbations (Terbough and Winter 1980; Gilpin and Soule 1986; Shaffer 1987). The elements of risk that are amplified in very small populations include: (1) The impact of high death rates or low birth rates; (2) the effects of genetic drift (random fluctuations in gene frequencies) and inbreeding; and (3) deterioration in environmental quality (Gilpin and Soulé 1986; Lande 1999). When the number of individuals in a population of a species or subspecies is sufficiently low, the effects of inbreeding may result in the expression of deleterious genes in the population (Gilpin 1987). Deleterious genes reduce individual fitness in various ways, most typically by decreasing survivorship of young. Genetic drift in small populations decreases genetic variation due to random changes in gene frequency from one generation to the next. This reduction of variability within a population limits the ability of that population to adapt to environmental changes (Lande 1999).

One scenario where loss of habitat may lead to extinction is when a species is a local endemic (because of its isolation and restricted range) (Gilpin and Soulé 1986). The Buena Vista Lake shrew is a limited local endemic subspecies (Williams and Kilburn 1992) that has never been found to be locally abundant and lives in very restricted areas of marshy wetland habitat (Bradford 1992). Because there are less than 30 known individuals in four populations (on approximately 575 ac) the Buena Vista Lake shrew is extremely vulnerable to natural or human-caused environmental impacts.

Conclusion

In developing this rule, we have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats facing this subspecies. The Buena Vista Lake shrew is imperiled primarily by agricultural activities, modifications and potential impacts to local hydrology, uncertainty of water availability and delivery to support riparian and marsh habitat, possible toxic effects from selenium poisoning, and by random, naturally occurring events. Only four isolated populations are known to exist. This subspecies is in danger of extinction "throughout all or a significant portion of its range" (section 3(6) of the Act) and, because of the high potential that these threats could result in the extinction of the Buena Vista Lake shrew, the preferred action is to list the subspecies as endangered.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species, and (II) that may require special management consideration or protection; and (III) specific areas outside the geographical area occupied by a species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1) state that the designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The primary regulatory effect of critical habitat is the requirement in section 7 of the Act that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this subspecies would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the subspecies, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. Designating critical habitat may also produce some educational or informational benefits. Therefore, we find that designation of critical habitat is prudent for the Buena Vista Lake shrew.

However, our budget for listing activities is currently insufficient to allow us to immediately complete all the listing actions required by the Act. Listing the Buena Vista Lake shrew without designation of critical habitat will allow us to concentrate our limited resources on other listing actions that must be addressed, while allowing us to invoke protections needed for the conservation of this subspecies without further delay. This is consistent with section 4(b)(6)(C)(i) of the Act, which states that final listing decisions may be issued without critical habitat designations when it is essential that such determinations be promptly published. We will prepare a critical habitat designation in the future at such time when our available resources and priorities allow.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Federal activities that could occur and impact the Buena Vista Lake shrew include, but are not limited to, stream or river alterations, applicable EPA permits concerning concentrated animal feeding operations, water withdrawal projects, agricultural subsidy and assistance programs, road and bridge construction, Federal loan programs, Federal water deliveries, pesticide registration and use, levee and canal construction or maintenance activities, and fire management activities on Federal land.

We developed a Recovery Plan for Upland Species of the San Joaquin Valley, California (Recovery Plan), on September 30, 1998 (Service 1998). This Recovery Plan includes a recovery strategy for the Buena Vista Lake shrew which includes the general criteria for long-term conservation. The recovery criteria for the subspecies are defined under the following headings: Secure and protect three or more disjunct occupied sites collectively with at least 2,000 ha (4,940 ac) of occupied habitat; have a management plan approved and implemented for recovery areas that include survival of the subspecies as an objective; and monitor the specified recovery areas to demonstrate the continued presence at known occupied sites. In spite of published recovery objectives, habitat of the Buena Vista Lake shrew remains unprotected and the subspecies is vulnerable to numerous threats as discussed.

Although the Recovery Plan delineated reasonable actions that were believed to be required and adequate to recover and protect the species at the time they were written, they are subject to modification as dictated by new findings (Service 1998). The information contained in the proposed rule (65 FR 35033) and this final rule (see Summary of Factors Affecting the Species) may modify the criteria expected to be necessary from those outlined in the Recovery Plan for the long-term conservation of the Buena Vista Lake shrew.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered wildlife species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. For endangered species, such permits are available for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

Our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), is to identify, to the maximum extent practicable, activities that likely would or would not be contrary to section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the subspecies' range.

With respect to the Buena Vista Lake shrew, based on the best available information, the following actions would not be likely to result in a violation of section 9, provided these

activities are carried out in accordance with existing regulations and permit requirements:

(1) Possession of legally acquired Buena Vista Lake shrews; and

(2) Federally approved projects that involve activities such as discharge of fill material, draining, flooding, ditching, tilling, pond construction, wetland or riparian habitat enhancement or construction, stream channelization or diversion, canal or pipeline construction, alteration of surface or ground water into or out of riparian areas (i.e., due to roads, impoundments, discharge pipes, storm water detention basins, etc.), wildlife habitat restoration, or other such activity when it is conducted in accordance with any reasonable and prudent measures given by us in accordance with section 7 of the Act, or in accordance with a section 10(a)(1)(B) permit.

With respect to the Buena Vista Lake shrew, activities that could potentially result in a violation of section 9 of the Act include, but are not limited to, the following:

(1) Unauthorized killing, injuring, harassing, collecting, trapping, handling, or holding in captivity of Buena Vista Lake shrews;

(2) Unauthorized destruction or alteration of the Buena Vista Lake shrew's habitat through discharge of fill material, draining, flooding, ditching, tilling, pond construction, wetland or riparian habitat enhancement or construction, stream channelization or diversion, canal or pipeline construction, alteration of surface or ground water into or out of riparian areas (i.e., due to roads, impoundments, discharge pipes, storm water detention basins etc.);

(3) Burning, cutting, or mowing of riparian vegetation, repair and maintenance of water and sewer lines, levee or road maintenance, and the spraying of insecticides or herbicides on or in riparian or other supportive habitat if not in accordance with reasonable and prudent measures provided by us in accordance with section 7 of the Act or with conditions of a section 10(a)(1)(A) permit;

(4) Discharge or dumping of toxic chemicals, silt, or other pollutants (sewage, oil, and gasoline) into land supporting the subspecies. This includes any application of terrestrial or aquatic pesticide that results in mortality or injury of Buena Vista Lake shrews, regardless if the pesticide was applied in accordance with the labeling instructions. This includes drift from aerial applications and runoff from surface applications; and

(5) Possessing, selling, transporting, or shipping illegally taken Buena Vista Lake shrews.

Questions regarding whether specific activities risk violating section 9 of the Act should be directed to our Sacramento Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed plants and animals, and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, OR, 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

National Environmental Policy Act

We have determined that Environmental Assessments or Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to sections 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. 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 control number. For additional information concerning permits and associated requirements for endangered wildlife species, see 50 CFR 17.22.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary authors of this final rule are the staff of the Sacramento Fish and Wildlife Office (see **ADDRESSES** section) (telephone 916/414–6600).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend section 17.11(h) by adding the following, in alphabetical order under Mammals, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Shrew, Buena Vista Lake.	*Sorex ornatus relictus.*	U.S.A. (CA)	Entire	E		NA	NA
*	*	*	*	*	*		*

Dated: February 28, 2002.
Steve Williams,
Director, U.S. Fish and Wildlife Service.
[FR Doc. 02–5274 Filed 3–5–02; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02; I.D. 022502C]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

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

ACTION: Trip limit reduction.

SUMMARY: NMFS reduces the commercial trip limit of Atlantic group Spanish mackerel in or from the exclusive economic zone (EEZ) in the southern zone to 1,500 lb (680 kg) per day. This trip limit reduction is necessary to maximize the socioeconomic benefits of the quota.

DATES: Effective 6 a.m., local time, March 4, 2002, through March 31, 2002, unless changed by further notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, telephone: 727–570–5305, fax: 727–570–5583, e-mail: Mark.Godcharles@noaa.gov.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on August 2, 2000 (65 FR 41015, July 3, 2000), NMFS implemented an annual commercial quota of 3.87 million lb (1.76 million kg) for the Atlantic migratory group of Spanish mackerel. For the southern zone, NMFS specified an adjusted quota of 3.62 million lb (1.64 million kg) calculated to allow continued harvest at a set rate for the remainder of the year in accordance with 50 CFR 622.44(b)(2). In accordance with 50 CFR 622.44 (b)(1)(ii)(C), after 75 percent of the adjusted quota of Atlantic group Spanish mackerel from the southern zone is taken until 100 percent of the adjusted quota is taken, Spanish mackerel in or from the EEZ in the southern zone may be possessed on board or landed from a permitted vessel in amounts not exceeding 1,500 lb (680 kg) per day. The southern zone for Atlantic migratory group Spanish mackerel extends from 30°42′45.6″ N. lat., which is a line directly east from the Georgia/Florida boundary, to 25°20.4′ N. lat., which is a line directly east from the Miami-Dade/Monroe County, FL, boundary.

NMFS has determined that 75 percent of the adjusted quota for Atlantic group Spanish mackerel from the southern zone has been taken. Accordingly, the 1,500-lb (680-kg) per day commercial trip limit applies to Spanish mackerel in or from the EEZ in the southern zone effective 6:00 a.m., local time, March 4, 2002, through March 31, 2002, unless changed by further notification in the **Federal Register**.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to reduce the trip limit constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553 (b)(3)(B), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to allow. Any delay in implementing this action would be impractical and contradictory to the Magnuson-Stevens Act, the FMP, and the public interest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553 (d), a delay in the effective date is waived.

This action is taken under 50 CFR 622.44(b)(1)(ii)(C) and is exempt from review under Executive Order 12866.

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

Dated: March 1, 2002.
Bruce C. Morehead,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 02–5350 Filed 3–1–02; 2:58 pm]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 030102A]

Fisheries of the Exclusive Economic Zone Off Alaska; Species in the Rock sole/Flathead sole/"Other flatfish" Fishery Category by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area

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

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for species in the rock sole/flathead sole/"other flatfish" fishery category by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the first seasonal apportionment of the 2002 Pacific halibut bycatch allowance specified for the trawl rock sole/flathead sole/"other flatfish" fishery category.

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

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

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

The first seasonal apportionment of the 2002 halibut bycatch allowance specified for the BSAI trawl rock sole/flathead sole/"other flatfish" fishery category, which is defined at § 679.21(e)(3)(iv)(B)(2), is 448 metric tons (67 FR 956, January 8, 2002).

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region,

NMFS (Regional Administrator), has determined that the first seasonal apportionment of the 2002 halibut bycatch allowance specified for the trawl rock sole/flathead sole/"other flatfish" fishery in the BSAI has been caught. Consequently, the Regional Administrator is closing directed fishing for species in the rock sole/flathead sole/"other flatfish" fishery category by vessels using trawl gear in the BSAI.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to avoid exceeding the first seasonal apportionment of the halibut bycatch allowance for rock sole/flathead sole/"other flatfish" fishery category constitutes good cause to waive the requirement to provide prior notice opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to avoid exceeding the first seasonal apportionment of the halibut bycatch allowance for rock sole/flathead sole/"other flatfish" fishery category constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553 (d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.21 and is exempt from review under Executive Order 12866.

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

Dated: March 1, 2002.

Bruce Morehead,

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

[FR Doc. 02–5301 Filed 3–1–02; 2:58 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 44
Wednesday, March 6, 2002

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

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 56

[Docket No. 01N–0322]

Institutional Review Boards: Requiring Sponsors and Investigators to Inform IRBs of Any Prior IRB Reviews

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is considering whether to amend its institutional review board (IRB) regulations to require sponsors and investigators to inform IRBs about any prior IRB review decisions. These disclosures could help ensure that sponsors and clinical investigators who submit protocols to more than one IRB will not be able to ignore an unfavorable IRB review decision and that IRBs reviewing a protocol will be aware of what other IRBs reviewing similar protocols have concluded. FDA seeks information on IRB practices to determine whether it should draft a regulation and, if a regulation is to be drafted, to help determine the regulation's contents.

DATES: Submit written or electronic comments by June 4, 2002.

ADDRESSES: Submit written or electronic comments 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: Philip L. Chao, Office of Policy, Planning, and Legislation (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

SUPPLEMENTARY INFORMATION:

I. Introduction

IRBs are boards, committees, or other groups formally designated by an institution to review, approve the initiation of, and conduct periodic review of biomedical research involving human subjects (see 21 CFR 56.102(g)). An IRB's primary purpose during such reviews is to assure the protection of the rights and welfare of human subjects (id.). FDA's IRB regulations are at 21 CFR part 56 and apply to clinical investigations involving FDA-regulated products such as human drugs, biological products, medical devices, and food additives. (While section 520(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j(g)) refers to "institutional review committees" rather than IRBs, FDA considers institutional review committees to be IRBs and to be subject to the IRB regulations).

In 1998, the Department of Health and Human Services, Office of the Inspector General (OIG) issued several reports on IRBs. The OIG sought to identify the challenges facing IRBs and to make recommendations on improving Federal oversight of IRBs. One recommendation was that sponsors and clinical investigators be required to notify IRBs of any prior review (see Office of the Inspector General, Department of Health and Human Services, *Institutional Review Boards: A Time for Reform*, p. 14, June 1998). The OIG report stated that the OIG had:

> * * * heard of a few situations where sponsors and/or research investigators who were unhappy with one IRB's reviews switched to another without the new IRB being aware of the other's prior involvement. This kind of IRB shopping deprives the new IRB of information that it should have and that can be important in protecting human subjects. The ground rules should be changed so that sponsors and investigators have the clear obligation to inform an IRB of any prior reviews (footnote omitted). The obligation should be applied to all those conducting research funded by HHS or carried out on FDA-regulated products. It will have particular importance for those sponsors and investigators working with independent IRBs. Id.

It is important to note that the OIG never suggested that it was inappropriate to challenge a negative decision or to seek another IRB's review. What the OIG found troubling was the possibility that the second IRB would be unaware of the first IRB's concerns and reservations.

After reviewing the OIG's recommendation, FDA is considering whether to revise its IRB regulations to require such disclosures and, in this advance notice of proposed rulemaking (ANPRM), has identified several issues on which it invites public comment. The public comments will help FDA decide whether a regulation is needed and, if so, what the regulation's requirements should be.

The issues, in no particular order, are as follows:

1. How significant is the problem of IRB shopping? The OIG report refers to "a few situations" where IRB shopping supposedly occurred, but does not offer any quantitative estimate. FDA seeks information on how frequently IRB shopping occurs, the circumstances in which it occurs, and the nature of the different conclusions reached by the IRBs. For example, what number or percentage of sponsors and investigators engage in IRB shopping? What issues lead to IRB shopping? Is IRB shopping more prevalent where certain FDA-regulated products are involved or more likely to occur in certain types of research or under certain other situations? What sorts of differences in IRB conclusions are observed? Are there particular areas of disagreement that suggest a wider issue, such as review of certain trial practices or standards? Is IRB shopping more prevalent when the protocol includes or excludes certain populations (such as women and minorities)? Information on specific occurrences of IRB shopping and disagreement would be useful to help determine the seriousness of the problem.

2. Who should make these disclosures? The OIG report recommended that sponsors and investigators inform IRBs about any prior reviews, but FDA's experience suggests that there is some variation as to the person who seeks IRB review. In some instances, a sponsor, rather than an investigator, will seek IRB review, especially in the case of devices. One way to deal with these variations could be to require the person who sought the prior review, whether he or she is a sponsor, investigator, or both a sponsor and investigator, to make the required disclosures.

As FDA considered this issue further, questions arose as to whether sponsors and investigators should have a duty to

inform IRBs about any prior reviews, even if the sponsor or investigator had not sought the prior review, but somehow knew about it. For example, if investigator X and investigator Y were using the same protocol, and if investigator X knew that an IRB had disapproved investigator Y's protocol, should investigator X inform his or her IRB about that disapproval even though it involved a different investigator? If the sponsor knew that an IRB had disapproved investigator Y's protocol, should it notify investigator X so that he or she could inform his or her IRB? FDA invites comment on these issues.

3. Who should receive the disclosures? The OIG report states that IRB's that are reviewing or are going to review a protocol should be informed about prior IRB reviews. This assumes that the prior IRB's decision is known at the time the second IRB is asked to review the protocol. But what happens if the new IRB has already approved the protocol at the time the prior IRB's decision becomes known? Would information about prior IRB reviews still be helpful? One could argue that sponsors and investigators should inform new IRBs about prior IRB reviews, even if the new IRB has already approved the protocol, because the prior reviews might be relevant to the new IRBs continuing review of a protocol.

4. What information should be disclosed? The type of information to be disclosed depends on the purpose of the disclosure. If the purpose is solely to be certain that an IRB is aware of a prior adverse conclusion, perhaps only unfavorable prior reviews would need to be disclosed. If the purpose of the disclosure is to ensure that IRBs receive all relevant information about a study, it might be appropriate to disclose all prior IRB decisions, both positive and negative. Should all prior IRB reviews, including approvals, be disclosed?

5. If a proposal would not require disclosure of all prior IRB decisions, what information should be disclosed? Even if the purpose of disclosure is solely to be sure an IRB is aware of an unfavorable IRB review, there could be different degrees of disclosure. An unfavorable IRB decision could encompass complete disapproval of a protocol, a decision to approve a protocol with stipulations, and a request for significant changes to a protocol. Even a decision to require additional reviews by the IRB could be considered as an unfavorable decision.

A requirement to disclose only prior unfavorable IRB reviews may presume that an unfavorable review is more likely to be correct than a favorable review. If one presumes that the earlier IRB correctly disapproved, or requested modifications of, a protocol, then a new IRB could, indeed, benefit from knowing about that decision. This could be the case, for example, if the earlier IRB disapproved a protocol because one of its scientific members recognized that the investigational product would present a greater risk of harm to research subjects than was acknowledged in the informed consent document, based on that member's knowledge of certain animal studies. This information would be helpful to a new IRB, particularly if its scientific members did not possess the same expertise as the earlier IRB. On the other hand, a favorable decision by a prior IRB with superior expertise in a particular case could also be of value to a subsequent IRB as well.

Conversely, in cases where an initial review, either favorable or unfavorable, was not well-founded, information about the earlier IRB's review decision may offer little or no value to a new IRB and might lead to an ill-considered, "defensive" acceptance or rejection of a satisfactory proposal. For example, if an IRB was associated with an institution, and the institution was well-known or had a good reputation, a subsequent IRB might be inclined to follow the first IRB's decision even if the first IRB's decision was not well-founded.

6. To permit a subsequent IRB to assess the value of a prior IRB decision, should information about the basis for the prior decision be disclosed? Currently, IRBs are not generally required to document the reasons for approving a study, so if a proposed rule would require all IRB decisions to be disclosed, IRBs might have to explain their reasons for approving a study. Should the disclosed information include information about the composition and expertise of the prior IRB's members? What would be the additional burden on IRBs if FDA required the disclosure of the basis for all or even some IRB review decisions? How would this affect the time needed to conduct an IRB review?

7. How should FDA enforce the requirement? The OIG report did not suggest any method for enforcing a requirement that these disclosures about prior IRB reviews occur. What would be an appropriate sanction to impose on an investigator or sponsor for failure to comply with a disclosure requirement?

FDA must learn about a violation before it can consider what sanctions might be imposed. The OIG report did not recommend that sponsors and investigators inform FDA about any prior IRB reviews; it only recommended that sponsors and investigators inform IRBs. If FDA has no knowledge about the prior IRB review, the agency might find it difficult to detect noncompliance. FDA invites comment on how it might enforce the requirement efficiently.

8. Are There Other Ways to Deal with IRB Shopping Other Than Disclosure of Prior IRB Reviews? Although the OIG report recommended requiring disclosure of prior IRB reviews, there may be other ways to deal with IRB shopping. Therefore, if the problem of IRB shopping is significant enough to warrant Federal regulatory action, are there other requirements that could be employed to address the problem besides mandating disclosure of prior IRB reviews?

II. Request for Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments regarding the issues presented in this ANPRM by June 4, 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 brackets in the heading of this document. Received comments may be seen at the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 23, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–5247 Filed 3–5–02; 8:45 am]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI104–01–7334; FRL–7153–8]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Excess Volatile Organic Compound Emissions Fee Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a rule that revises Wisconsin's State Implementation Plan (SIP) for ozone. The rule requires major stationary sources of volatile organic compounds (VOC) in the Milwaukee nonattainment area to pay a fee to the state if the area fails to attain the one-hour national ambient air quality standard for ozone by 2007. The fee must be paid beginning in 2008 and in each calendar year thereafter, until the

area is redesignated to attainment of the one-hour ozone standard. Wisconsin submitted this rule on December 22, 2000, as part of the state's demonstration of attainment for the one-hour ozone standard.

DATES: EPA must receive comments on this proposed action by April 5, 2002.

ADDRESSES: Send written comments to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the proposed SIP revision and EPA's analysis are available for inspection at the following location: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Kathleen D'Agostino at (312) 886–1767 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767.

SUPPLEMENTARY INFORMATION:

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I. What Action Is EPA Taking?

The EPA is proposing to approve a rule that revises Wisconsin's ozone SIP. The rule requires major stationary sources of VOC in the Milwaukee nonattainment area to pay a fee to the state if the area fails to attain the one-hour national ambient air quality standard for ozone by 2007. The fee must be paid beginning in 2008 and in each calendar year thereafter, until the area is redesignated to attainment of the 1-hour ozone standard.

The EPA is proposing to approve this rule because it is consistent with the requirements of the Clean Air Act (Act).

II. Who Has To Pay These Fees?

This rule applies to major stationary VOC sources located in the Milwaukee nonattainment area. This area includes Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha Counties. For this area, major sources are defined as those for which the maximum theoretical emissions are 25 tons of VOC per year or more.

III. How Are the Fees Calculated?

The fee is initially set at $5,000 per ton of VOCs emitted by the source during the previous calendar year in excess of 80% of the baseline amount. The fee is to be adjusted annually, beginning in 1990, by the percentage by which the consumer price index has been adjusted. The baseline is the lower of the source's actual or allowable VOC emissions, during calendar year 2007. The fee is waived during any year that is treated as an extension year, as provided by section 181(a)(5) of the Act.

IV. Is Wisconsin Required To Adopt an Excess Emission Fee Rule?

Under sections 182(d)(3), (e), and 185 of the Act (the Act), states are required to adopt an excess emissions fee regulation for ozone nonattainment areas classified as severe or extreme. This regulation requires major stationary sources of VOC in the nonattainment area to pay a fee to the state if the area fails to attain the standard by the attainment date set forth in the Act. In Wisconsin, the Milwaukee nonattainment area is classified as severe.

Section 182(f) of the Act requires states to apply the same requirements to major stationary sources of oxides of nitrogen (NO_X) as are applied to major stationary sources of VOC. However, section 182(f) also allows the EPA to grant a waiver from this requirement if additional NO_X reductions would not contribute to attainment of the national ambient air quality standard for ozone or if they would not produce ozone air quality benefits. On July 13, 1994, the states of Wisconsin, Illinois, Indiana and Michigan jointly petitioned for an exemption from the requirements of section 182(f). EPA granted the waiver on January 26, 1996. The waiver was revised on November 13, 2001, when EPA published a final approval of the Wisconsin's demonstration of attainment of the one-hour ozone standard for the Milwaukee-Racine area. This revision changed the basis for the waiver from "would not contribute to (or might interfere with) attainment" to additional NO_X reductions beyond those submitted by the state are "excess reductions" and are not required for attainment of the ozone standard. Also the waiver was modified to no longer apply to the motor vehicle inspection and maintenance (I/M) program. However, while the basis for the NO_X waiver was changed, the effect of the waiver on NO_X related requirements (with the exception of the I/M program) remains unchanged. For example the waiver from RACT for major NO_X sources, offsets for major new sources, and Lowest Achievable Emission Rate Technology for major new sources remains unaffected. Therefore, because an approved section 182(f) waiver remains in effect, Wisconsin is not required to include major sources of NO_X in its excess emissions fee rule.

V. What Administrative Requirements Did EPA Consider?

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain an unfunded mandate, nor does it significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This proposed rule also 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272 note, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a SIP submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order, and has determined that the rule's requirements do not constitute a taking. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Nitrogen dioxide, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 15, 2002.

Bertram C. Frey,

Acting Regional Administrator, Region 5.

[FR Doc. 02–5311 Filed 3–5–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH 31

Endangered and Threatened Wildlife and Plants; Reopening of Public Comment Period and Notice of Availability of Draft Economic Analysis for Proposed Critical Habitat Determination for the Carolina Heelsplitter

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of public comment period and availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the draft economic analysis for the proposed designation of critical habitat for the Carolina heelsplitter (*Lasmigona decorata*). We also provide notice that the public comment period for the proposal is reopened to allow all interested parties to submit written comments on the proposal and the draft economic analysis. Comments previously submitted during the comment period need not be resubmitted as they will be incorporated into the public record and will be fully considered in the final determination on the proposal.

DATES: The original comment period closed on September 10, 2001. The comment period is hereby reopened until April 5, 2002. We must receive comments from all interested parties by the closing date. Any comments that we receive after the closing date will not be considered in the final decision on this proposal.

ADDRESSES: Copies of the draft economic analysis can be obtained by writing to or calling the State Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801; telephone 828/258–3939.

If you wish to comment, you may submit your comments by any one of several methods:

1. You may submit written comments and information to the State Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801.

2. You may hand-deliver written comments to our Asheville Field Office, at the above address or fax your comments to 828/258–5330.

Comments and materials received, as well as supporting documentation used in preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John A. Fridell, Fish and Wildlife Biologist (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Background

The Carolina heelsplitter is a medium sized freshwater mussel, reaching up to about 114.8 millimeters (4.6 inches in length), with a greenish brown to dark brown shell (Keferl 1991). It currently has a very fragmented, relict distribution but historically was known from several locations within the Catawba and Pee Dee River systems in North Carolina and the Pee Dee and Savannah River systems, and possibly the Saluda River system, in South Carolina (Clarke 1985, Keferl and Shelly 1988, Keferl 1991). Recent collection records (Keferl and Shelly 1988; Keferl 1991; Alderman 1995, 1998a, and 1998b; North Carolina Wildlife Resources Commission 1999 and 2000) indicate that the Carolina heelsplitter has been eliminated from the majority of its historical range, and only six populations of the species are known to exist. In Union County, North Carolina, one small remnant population occurs in Waxhaw Creek, a tributary to the Catawba River, and another small population occurs in both Goose Creek, a tributary in the Rocky River, and Duck Creek, a tributary to Goose Creek, in the Pee Dee River system. In South Carolina, there are four small surviving populations—one each in the Pee Dee and Catawba River systems and two in the Savannah River system. The population in the Pee Dee River system occurs in a relatively short reach of the Lynches River in Chesterfield, Lancaster, and Kershaw Counties and extends into Flat Creek, a tributary to the Lynches River in Lancaster County. In the Catawba River system, the species survives only in a short reach of Gills Creek in Lancaster County. In the Savannah River system, one population is found in Turkey Creek in Edgefield and McCormick Counties, and two of its tributaries, Mountain Creek and Beaverdam Creek in Edgefield County; and another smaller population survives in Cuffytown Creek, in Greenwood and McCormick Counties. Despite extensive surveys, no evidence of a surviving population has been found in recent years in the Saluda River system (Keferl and Shelly 1988; Keferl 1991; Alderman 1998a). Several factors adversely affecting the water and habitat quality of our creeks and rivers are believed to

have contributed to the decline and loss of populations of the Carolina heelsplitter and threaten the remaining populations. These factors include pollutants in wastewater discharges (sewage treatment plants and industrial discharges); habitat loss and alteration associated with impoundments and other stream alteration activities; and increased stormwater run-off and the run-off of silt, fertilizers, pesticides, and other pollutants from poorly implemented land-use activities (Service 1993, 1997, and 2001).

The Carolina heelsplitter requires cool, clean, well oxygenated water. It has been recorded from a variety of substrata (including mud, clay, sand, gravel, and cobble/boulder/bedrock) without significant silt accumulations, along stable, well-shaded stream banks (Keferl and Shelly 1988, Keferl 1991). The stability of the stream banks and stream-bottom substrata appear to be critical to the species (Service 1993, 1997, and 2001).

We listed the Carolina heelsplitter as endangered (58 FR 34926) under the Endangered Species Act of 1973, as amended (Act) on June 30, 1993. On July 11, 2001, we published in the **Federal Register** a proposal to designate critical habitat for this species (66 FR 36229). The proposal includes approximately 7.2 kilometers (km)—4.5 miles (mi)—of Goose Creek, 8.8 km (5.5 mi) of Duck Creek, and 19.6 km (12.25 mi) of Waxhaw Creek in Union County, North Carolina; 18.4 km (11.5 mi) of Flat Creek and 9.6 km (6.0 mi) of Gills Creek in Lancaster County, South Carolina; 23.6 km (14.75 mi) of the Lynches River in Lancaster, Chesterfield, and Kershaw Counties, South Carolina; 11.2 km (7.0 mi) of Mountain Creek and 10.8 km (6.75 mi) of Beaverdam Creek in Edgefield County, South Carolina; 18.4 km (11.5 mi) of Turkey Creek in Edgefield and McCormick Counties, South Carolina; and 20.8 km (13.0 mi) of Cuffytown Creek in Greenwood and McCormick Counties, South Carolina. All of the stream reaches proposed for designation as critical habitat for the Carolina heelsplitter are within the current occupied range of the species and include all known occurrences of the species.

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species. Consequently, we have prepared a draft economic analysis concerning the proposed critical habitat designation, which is available for review and comment (see **ADDRESSES** section).

Public Comments Solicited

We solicit comments on the draft economic analysis described in this notice, as well as any other aspect of the proposed designation of critical habitat for the Carolina heelsplitter. Our final determination on the proposed critical habitat will take into consideration comments and any additional information received by the date specified above. All previous comments and information submitted during the comment period need not be resubmitted. Written comments may be submitted to the State Supervisor (see **ADDRESSES** section).

Our practice is to make all comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Referenced Cited

A complete list of all references cited in this document is available upon request from the Asheville Field Office (see **ADDRESSES** section).

Author

The primary author of this document is John A. Fridell (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: February 26, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–5275 Filed 3–5–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 022502A]

New England Fishery Management Council; Public Meeting

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

ACTION: Public meeting.

SUMMARY: On March 4, 2002, NMFS published a notification announcing that the New England Fishery Management Council (Council) will hold a 2–day Council meeting on March 19 and 20, 2002, to consider actions affecting New England fisheries in the U.S. exclusive economic zone (EEZ). This document republishes the March 4th document in its entirety and supplements the notification by providing additional information concerning a presentation by the Northeast Fisheries Science Center concerning the Northeast multispecies groundfish reference points. In addition, this document provides additional information concerning Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan.

DATES: The meeting will be held on Tuesday and Wednesday, March 19 and 20, 2002. The meeting will begin at 9 a.m. on Tuesday and 8:30 a.m. on Wednesday.

ADDRESSES: The meeting will be held at the Mystic Hilton Hotel, 20 Coogan Boulevard, Mystic, CT 06355; telephone (860) 572–0731. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465–0492.

SUPPLEMENTARY INFORMATION: On March 4, 2002, NMFS published a notification in the **Federal Register** (67 FR 9646) of the Council's 2-day meeting scheduled for March 19 and 20, 2002, to consider actions affecting New England fisheries in the EEZ. This action republishes the March 4, 2002, notification in its entirety and provides additional information concerning the Northeast multispecies groundfish reference points and Amendment 10 to the

Atlantic Sea Scallop Fishery Management Plan (FMP).

Tuesday, March 19, 2002

Following introductions, the Council will consider fishing effort capacity reduction proposals for inclusion in draft Amendment 13 to the Northeast Multispecies Fishery Management Plan (FMP). The Council will consider proposals for modifying permit transfer provisions, reducing latent effort (unused groundfish days-at-sea) and the consolidation of fishing effort. Following this report, the Council will provide time on the agenda for public comments on any issues that are relevant to fisheries management and Council business. The Groundfish Committee will discuss progress on the development of Amendment 13. They will also recommend and possibly approve changes to the groundfish status determination criteria for inclusion in Amendment 13. The NMFS Northeast Fisheries Science Center will present results of the most recent analyses of reference points for groundfish stocks in the multispecies fishery. The Council may consider appropriate changes in reference points for use in upcoming groundfish rulemakings.

Wednesday, March 20, 2002

The meeting will reconvene with reports on recent activities from the Council Chairman and Executive Director, the NMFS Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, NOAA General Counsel and representatives of the U.S. Coast Guard, NMFS Enforcement and the Atlantic States Marine Fisheries Commission. A discussion of implementation issues concerning the U.S./ Canada Shared Resources Agreement is then scheduled, followed by a vote on whether to adopt the agreement, the contents of which were presented at the January Council meeting. There will be a discussion of possible future action related to the annual evaluation of whiting management measures. The Council will discuss whether it will complete a Framework Adjustment to implement alternatives to the year 4 default measures for whiting scheduled to become effective on May 1, 2003. During the Monkfish Committee Report the Council will consider approval of goals and objectives for Amendment 2 to the Monkfish FMP for the purpose of providing a basis for the development of management measures. There also will be an update on a timetable for the amendment and progress to develop management alternatives. The Scallop Committee will consider, and possibly approve, additional management alternatives relating to minimizing bycatch and adverse impacts on habitat for inclusion in Draft Amendment 10 to the Atlantic Sea Scallop FMP and the Draft Supplemental Environmental Impact Statement being prepared for the amendment. The committee also will provide an overview of all alternatives under consideration for inclusion in the Amendment. In addition, the Council will address any unresolved issues relating to Amendment 10 development.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal 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 Fishery Conservation and Management Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

The New England Council will consider public comments at a minimum of two Council meetings before making recommendations to the NMFS Regional Administrator on any framework adjustment to a fishery management plan. If the Regional Administrator concurs with the adjustment proposed by the Council, the Regional Administrator may publish the action either as proposed or final regulations in the **Federal Register**. Documents pertaining to framework adjustments are available for public review 7 days prior to a final vote by the Council.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: March 1, 2002.

Bruce C. Morehead,

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

[FR Doc. 02–5428 Filed 3–4–02; 11:47 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 44
Wednesday, March 6, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Jarbidge Canyon Analysis; Humboldt-Toiyabe National Forest, Elko County, Nevada

AGENCY: USDA Forest Service.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service will prepare an Environmental Impact Statement to evaluate the environmental effects of several alternatives for road reconstruction and maintenance and potential watershed and aquatic habitat improvement projects in the Canyon of the West Fork of the Jarbidge River. The Forest Service will prepare the EIS in cooperation with the Bureau of Land Management, U.S. Fish and Wildlife Service, U.S. Environmental Protection agency, Elko County Commission, Nevada Division of Wildlife, Nevada Division of Environmental Quality.

DATES: Written comments concerning the scope of the analysis should be received by April 15, 2002, to ensure timely consideration.

ADDRESSES: Send written comments to: Jarbidge EIS Team, Humboldt-Toiyabe National Forest, 2035 Last Chance Road, Elko, NV 89801.

FOR FURTHER INFORMATION CONTACT: Direct questions about the project and the preparation of the EIS to Jim Winfrey, Project Team Leader, Humboldt-Toiyabe National Forest, P.O. Box 539, Ely, NV 89301. Telephone: 775–289–3031.

SUPPLEMENTARY INFORMATION:

Background

Under the settlement agreement in *United States* v. *John Carpenter et al.* The Forest Service agreed not to contest Elko County's claim that it has a right of way for the South Canyon Road. In exchange, Elko County agreed no to do any roadwork on the South Canyon Road without Forest Service authorization. In addition, Elko County proposed several road and watershed improvement projects to protect and enhance the west fork of the Jarbridge River. The Forest Service agreed to complete any necessary analysis under NEPA and ESA to authorize proposed work by Elko County.

The Forest Service has received no specific proposals from Elko County. However, the Forest Service believes that is it is important to begin analyzing alternatives for road reconstruction and watershed improvements so they can be implemented as soon as practicable. Elko County will be invited to participate as a cooperating agency and can submit a proposal and it will be included in this analysis.

The proposed projects are located between the Idaho/Nevada Stateline and south to the Upper Fox Creek Bridge on the Jarbidge River. The approximate length of the road in the project area is 11 miles. By combining the analysis of the proposed projects along the length of the river the Forest will be better positioned to address cumulative effects of these projects on the river environment. This project area was defined in the Settlement Agreement. Within the project area there are opportunities for improvements to the terrestrial and aquatic environment that will be addressed.

Preliminary internal scoping and comments received in two earlier analyses have identified two issues, which will be addressed in the analysis process. The following list of issues is not intended to be all-inclusive: (1) The presence of bull trout that are federally listed as threatened. (2) The location of most of the proposed work within the flood plain of the river. These issues, and others identified during the scoping process will be used to develop alternatives to the proposed action. In addition, the No Action alternative will be considered in the analysis.

Purpose and Need for Action

The purpose of and need for action is to improve water quality and aquatic habitat while preserving and improving access along the road. This environmental document will disclose the environmental effects of the projects considered for implementation.

Proposed Action

To implement a set of proposed projects designed to improve the environment of the Jarbidge River Watershed. These projects are primarily focused on reconstructing portions of the road in the canyon bottom to reduce the direct input of sediment into the river from the road, to increase shade along the river and increase woody debris. The proposed action will be to authorize Elko County, where necessary, and allow the Forest Service to proceed with implementation of these projects.

Decision To Be Made and Responsible Official

The Responsible official will decide how Elko County may be authorized to reconstruct the South Canyon Road; and determine which road and watershed improvement projects to implement in a manner that adequately protects the surrounding land and aquatic resources

The Forest Service is the lead agency for this project and Robert L. Vaught; Forest Supervisor is the responsible official. Applicable laws, Forest Service regulations and the Humboldt National Forest Land and Resource Management Plan (1986 as amended) will be taken into account throughout the analysis.

Scoping Process

As part of the scoping process, the Forest Service is seeking information and comments from Federal, State, County and local agencies and other individuals or organizations that may be interested in or affected by the proposed actions. Scoping meetings will be held between 5 pm and 7 pm at the Forest service offices in Elko NV, March 18; Twin Falls ID, March 19; Boise ID, March 20; and Reno NV, March 21. This input will be used in preparation of the draft EIS and final EIS. The Scoping process will last 45 days from the publication of this NOI in the **Federal Register**.

Coordination With Other Agencies

Several government agencies will be invited to participate in this project as cooperating or participating agencies. These agencies include, but are not limited to, Bureau of Land Management, DOI U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, Nevada Division of Environmental Protection, Nevada Division of Wildlife, and Elko County. Participation by Elko

County will be required in the implementation of these projects.

Commenting

The Draft EIS is expected to be filed with the U.S. Environmental Protection Agency (EPA) and be available for review in July 2002. At that time, EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period of the Draft EIS will be at least 45 days from the date the EPA's Notice of Availability appears in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated or discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Robert L. Vaught,

Forest Supervisor.

[FR Doc. 02–5277 Filed 3–5–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southeast Washington Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463), the Southeast Washington Resource Advisory Committee (RAC) will meet on March 16, 2002 in Clarkston, Washington. The purpose of the meeting is to meet to nominate and select a chairperson, accept Bylaws and discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act.

DATES: The meeting will be held on March 16, 2002 from 9 a.m. to 12 a.m.

ADDRESSES: The meeting will be held at the Bennett Lumber Company Conference Room, 1951 Wilma Drive, Clarkston, Washington.

FOR FURTHER INFORMATION CONTACT: Monte Fujishin, Designated Federal Official, USDA, Umatilla National Forest, Pomeroy Ranger District, 71 West Main Street, Pomeroy, WA 99347. Phone: (509) 843–1891.

SUPPLEMENTARY INFORMATION: This will be the second meeting of the committee, and will focus on nomination and selection of a chairperson, accept Committee bylaws and discuss Title II project proposals. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: February 26, 2002.

Jeff D. Blackwood,

Forest Supervisor.

[FR Doc. 02–5252 Filed 3–5–02; 8:45 am]

BILLING CODE 3410–BH–M

DEPARTMENT OF AGRICULTURE

Forest Service

Columbia County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463), the Columbia County Resource Advisory Committee (RAC) will meet on March 18, 2002 in Dayton, Washington. The purpose of the meeting is to meet as a Committee for the first time and to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act.

DATES: The meeting will be held on March 18, 2002 from 7 p.m. to 9 p.m.

ADDRESSES: The meeting will be held at the Youth Building located at the Columbia County Fairgrounds, Dayton, Washington.

FOR FURTHER INFORMATION CONTACT: Monte Fujishin, Designated Federal Official, USDA, Umatilla National Forest, Pomeroy Ranger District, 71 West Main Street, Pomeroy, WA 99347. Phone: (509) 843–1891.

SUPPLEMENTARY INFORMATION: This will be the second meeting of the committee, and will focus on discussing Title II proposed projects. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: February 26, 2002.

Jeff D. Blackwood,

Forest Supervisor.

[FR Doc. 02–5253 Filed 3–5–02; 8:45 am]

BILLING CODE 3410–BH–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Southwest Idaho Resource Advisory Committee, Boise, ID, USDA, Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Boise and Payette National Forest's Southwest Idaho Resource Advisory Committee will meet Wednesday March 20, 2002 in Boise, Idaho for a business meeting. The Meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on March 20 begins at 10:30 AM, at the Idaho Counties Risk Management Program Building, 3100 South Vista Avenue, Boise, Idaho. Agenda items will include (1) development of criteria for evaluating project proposals, (2) initial review of project proposals and (3) an open public forum.

FOR FURTHER INFORMATION CONTACT: Randy Swick, McCall Ranger District Ranger and Designated Federal Officer, at (208) 634–0400.

David F. Alexander,

Forest Supervisor.

[FR Doc. 02–5254 Filed 3–5–02; 8:45 am]

BILLING CODE 3410–BH–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China; Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Reviews, Notice of Intent Not To Revoke in Part and Extension of Final Results of Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Notice of Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Reviews, Notice of Intent Not To Revoke in Part and Extension of Final Results of Reviews.

SUMMARY: In response to requests by a number of interested parties, the Department of Commerce (the Department) is conducting administrative reviews of the antidumping duty orders on heavy forged hand tools, finished or unfinished, with or without handles (HFHTs), from the People's Republic of China (PRC). The period of review (POR) is February 1, 2000, through January 31, 2001.

We preliminarily determine that certain manufacturers/exporters sold subject merchandise at less than normal value (NV) during the POR. If these preliminary results are adopted in our final results of review, we will instruct the U.S. Customs Service (Customs) to assess antidumping duties on all appropriate entries. We invite interested parties to comment on these preliminary review results. Parties who submit comments in these proceedings should also submit with the argument(s): (1) a statement of the issue(s) and (2) a brief summary of their argument (not to exceed five pages).

EFFECTIVE DATE: March 6, 2002.

FOR FURTHER INFORMATION CONTACT: Tom Futtner, Esther Chen or Tom Martin, 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, D.C. 20230; telephone (202) 482–3814, (202) 482–2305, and 482–3936, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended, (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations at 19 CFR Part 351 (2001).

Background

On February 19, 1991, the Department published in the Federal Register (56 FR 6622) four antidumping duty orders on HFHTs from the PRC. Imports covered by these orders comprise the following classes or kinds of merchandise: (1) hammers and sledges with heads over 1.5 kg (3.33 pounds) (hammers/sledges); (2) bars over 18 inches in length, track tools and wedges (bars/wedges); (3) picks/mattocks; and (4) axes/adzes. On February 27, 2001, the petitioner, Ames True Temper, requested administrative reviews of all four classes or kinds of subject merchandise for the following companies: Shandong Machinery Import & Export Corporation (SMC), Fujian Machinery & Equipment Import & Export Corporation (FMEC), Tianjin Machinery Import & Export Corporation (TMC), Liaoning Machinery Import & Export Corporation (LMC), and Shandong Huarong General Group Corporation (Huarong). The petitioner also requested a review of hammers/sledges from Shandong Jinma Industrial Group Co., Ltd. (Jinma). As part of its request for reviews, the petitioner also asked the Department to conduct duty absorption reviews under 19 U.S.C. § 1675(a)(4).

On February 27, 2001, four exporters of the subject merchandise requested that the Department conduct administrative reviews of their exports of subject merchandise. Specifically, TMC requested that the Department conduct administrative reviews of its exports of HFHTs within all four classes or kinds of merchandise. Huarong and LMC requested that the Department conduct an administrative review of their exports within the bars/wedges class of merchandise. SMC requested that the Department conduct an administrative review of its exports of hammers/sledges.

On March 22, 2001, the Department published a notice of initiation of administrative review covering the four orders on HFHTs and the five companies described above. See 66 FR 16037. At the time of initiation, the Department was conducting a new shipper review of Jinma, which ultimately was completed on October 29, 2001, covering hammers/sledges and the POR, February 1, 2000 through July 31, 2000. See, 66 FR 54503. As a consequence, we initiated this administrative review of hammers/sledges from Jinma covering only August 1, 2000 through January 31, 2001 in the POR. Additionally, on September 26, 2001, the Department extended the time limits for completion of these preliminary review results until no later than February 28, 2002. See, 66 FR 49163.

The Department is conducting these administrative reviews in accordance with section 751 of the Act.

Scope of Review

The products covered by these reviews are HFHTs from the PRC, comprising the following classes or kinds of merchandise: (1) hammers and sledges with heads over 1.5 kg (3.33 pounds) (hammers/sledges); (2) bars over 18 inches in length, track tools and wedges (bars/wedges); (3) picks and mattocks (picks/mattocks); and (4) axes, adzes and similar hewing tools (axes/adzes). HFHTs include heads for drilling hammers, sledges, axes, mauls, picks and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel wood splitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot blasting, grinding, polishing and painting, and the insertion of handles for handled products. HFHTs are currently provided for under the following Harmonized Tariff System (HTS) subheadings: 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded from these investigations are hammers and sledges with heads 1.5 kg. (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under. The HTS subheadings are provided for

convenience and U.S. Customs purposes. The written description remains dispositive.

Postponement of the Final Determination

Section 751(a)(3)(A) of the Act, requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order 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 these time periods, 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 of the preliminary determination.

We determine that it is not practicable to complete the final results of this review within the original time limit. Therefore, the Department is extending the time limit for completion of the final results until no later than August 27, 2002. See, Decision Memorandum from Holly A. Kuga to Bernard T. Carreau, dated concurrently with this notice.

Partial Rescission

On March 29, 2001, Jinma informed the Department that it did not ship hammers/sledges to the United States during the POR, and requested rescission of its administrative review. Information on the record indicates that there were no entries of this merchandise from Jinma during the POR. Accordingly, we are preliminarily rescinding the review with respect to Jinma.

On March 29, 2001, FMEC requested that the Department rescind its administrative reviews with respect to axes/adzes; bars/wedges; hammers/sledges; and picks/mattocks, because it had no sales, entries, or shipments of subject merchandise during the POR. See, FMEC Request for Rescission of Administrative Reviews Letter (March 29, 2001). Information on the record indicates that there were no entries of subject merchandise from FMEC during the POR. Accordingly, we are preliminarily rescinding the reviews of all four orders of HFHTs with respect to FMEC.

In their May 25, 2001, Section A questionnaire response, both Huarong and LMC stated that during the POR, they sold only subject merchandise within the bars/wedges class of merchandise. Information on the record indicates that there were no entries of axes/adzes, hammers/sledges and picks/mattocks from Huarong or LMC during the POR. Accordingly, we are preliminarily rescinding the reviews of Huarong and LMC under these three HFHTs orders.

In its May 25, 2001, Section A questionnaire response, SMC stated that during the POR, it sold only subject merchandise within the hammers/sledges class of merchandise. Information on the record indicates that there were no entries of axes/adzes, picks/mattocks and bars/wedges from SMC during the POR. Accordingly, we are preliminarily rescinding the reviews of SMC with respect to these three orders.

Intent Not To Revoke

In its February 27, 2001 review requests, TMC asked the Department to revoke it from the four HFHT orders. Section 351.222(b)(2) of the Department's regulations notes that the Secretary may revoke an antidumping order in part if the Secretary concludes, *inter alia*, that one or more exporters or producers covered by the order have sold the merchandise at not less than NV for a period of at least three consecutive years. Thus, in determining whether a requesting party is entitled to a revocation inquiry, the Department must determine that the party received zero or *de minimis* margins for the three years forming the basis for the revocation request. See, Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order: Brass Sheet and Strip From the Netherlands, 65 FR 742, 743 (January 6, 2000). TMC provided a certification pursuant to 19 CFR 351.222(e) indicating that it based its revocation request on the results of the instant review and the preceding two administrative reviews. However, TMC did not receive for any of the HFHT orders zero or *de minimis* margins in each of the reviews upon which it based its revocation request. See, e.g., Heavy Forged Hand Tools From the People's Republic of China; Amended Final Results of Antidumping Duty Administrative Reviews, 65 FR 50499 (August 18, 2000). Consequently, we preliminarily find that TMC does not qualify for revocation of the orders based upon section 351.222(b) of the Department's regulations.

Duty Absorption

On February 27, 2001, the petitioner requested that the Department conduct a duty absorption inquiry in order to determine whether antidumping duties had been absorbed by a foreign producer or exporter subject to the order. However, the Department's invitation for such requests only applies to certain administrative reviews of orders that were in effect before January 1995. For transition orders as defined in section 751(c)(6)(C) of the Tariff Act, i.e., orders in effect as of January 1, 1995, section 351.213(j)(2) of the Department's antidumping regulations provides that the Department will make a duty–absorption determination, if requested, for any administrative review initiated in 1996 or 1998. This approach ensures that interested parties will have the opportunity to request a duty–absorption determination prior to the time for a sunset review of the order under section 751(c) on entries for which the second and fourth years following an order have already passed. Because the antidumping duty orders on HFHTs from the PRC have been in effect since 1991, they are "transition orders" in accordance with section 751(c)(6)(C) of the Tariff Act. However, since the instant administrative reviews were not initiated in 1996 or 1998, the Department will not make duty absorption determinations.

Separate Rates Determination

To establish whether a company operating in a non–market economy (NME) is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991) (Sparklers), and the Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) (Silicon Carbide). Under this test, NME firms are entitled to separate, company–specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to their export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: (1) whether each exporter sets its own export prices independent of the

government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management. See, Silicon Carbide, 59 FR at 22587 and Sparklers, 56 FR at 20589.

In the final results of the 1999–2000 reviews of HFHTs, the Department granted separate rates to TMC and SMC, but not to Huarong and LMC. See, Heavy Forged Hand Tools From the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 66 FR 48026 (September 17, 2001). It is the Department's policy to evaluate separate rates questionnaire responses each time a respondent makes a separate rates claim, regardless of any separate rate the respondent received in the past. See, Manganese Metal From the People's Republic of China, Final Results and Partial Recision of Antidumping Duty Administrative Review, 63 FR 12441 (March 13, 1998). In the instant reviews, these companies submitted complete responses to the separate rates section of the Department's questionnaire. The evidence submitted in these reviews by TMC, SMC, Huarong and LMC included government laws and regulations on corporate ownership, business licences, and narrative information regarding the companies' operations and selection of management. This evidence supports a finding of a *de jure* absence of government control over export activities: (1) there are no controls on exports of subject merchandise, such as export quotas applied to the subject merchandise and no export license is required for exports of the subject merchandise to the United States; and (2) the subject merchandise does not appear on any government list regarding export provisions or exporting licensing. The companies have also shown *de facto* absence of government control over exports in their questionnaire responses: (1) each company sets its own export prices independent of the government and without the approval of a government authority; (2) each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) each exporter has a general manager, branch manager or division manager with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by the board of directors or company employees, and the general manager appoints the deputy managers and the manager of each department and (5) foreign currency does not need to be sold to the government. The Department preliminarily determines that all four respondents have established *primae facie* that they qualify for separate rates under Silicon Carbide and Sparklers.

Normal Value

For exports from NMEs, section 773(c)(1) of the Act provides that the Department shall determine NV using a factors of production (FOP) methodology if (1) the subject merchandise is exported from a NME country, and (2) available information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value. Section 351.408 of the Department's regulations sets forth the Department's methodology for calculating the NV of merchandise from NME countries. In every case conducted by the Department involving the PRC, the PRC has been treated as a NME. Since none of the parties to these proceedings contested such treatment in these reviews, we calculated NV in accordance with section 773(c) of the Act and section 351.408 of the Department's regulations.

In accordance with section 773(c)(3) of the Act, the FOP utilized in producing HFHTs include, but are not limited to: (A) hours of labor required; (B) quantities of raw materials employed; (C) amounts of energy and other utilities consumed; and (D) representative capital costs, including depreciation. In accordance with section 773(c)(4) of the Act, the Department valued the FOP, to the extent possible, using the costs of the FOP in a market economy that is (A) at a level of economic development comparable to the PRC; and (B) a significant producer of comparable merchandise. India is comparable to the PRC in terms of per capita gross national product, the growth rate in per capita income, and the national distribution of labor. Consequently we determined that India is the country most comparable to the PRC among the significant exporting countries of comparable merchandise. See, Memorandum From Jeffrey May, Director, Office of Policy, to Holly Kuga, Office Director, AD/CVD Enforcement Group II, dated February 28, 2002, which is on file in the CRU–Public File.

In accordance with section 773(c)(1) of the Act, for purposes of calculating NV, we attempted to value FOP using the Indian surrogate values that were in effect during the POR. Where contemporaneous data was not available to the Department, the most recent data was used, and adjusted to account for inflation or deflation between the effective period and the POR. We calculated the inflation or deflation adjustments for all factor values, except labor, using the wholesale price indices (WPI) for India as published in the International Monetary Fund's (IMF) publication, International Financial Statistics. We valued the FOP as follows:

(1) We valued direct materials used to produce HFHTs, packing materials, steel scrap generated from the production of HFHTs, and coal used for energy using, where available, the rupee per kilogram value of imports that entered India during February 2000 through January 2001, as published in the respective volumes of the Monthly Statistics of the Foreign Trade of India, Volume II—Imports (Indian Import Statistics). See, Surrogate Value Memorandum. We valued steel for SMC's four pound hammers using the company's average reported purchase price for steel purchased from a market economy vendor using a market economy currency, as SMC claims to have used this steel for all of its four pound hammers. See, SMC's Additional Response to the Department's December 6, 2001 Supplemental Questionnaire (January 25, 2002) at 3.

(2) We valued labor using a regression–based wage rate, in accordance with 19 CFR 351.408(c)(3). This rate is identified on the Import Administration's web site. (See, http://ia.ita.doc.gov.wages/). See, Surrogate Value Memorandum.

(3) We derived ratios for factory overhead, selling, general and administrative (SG;&A) expenses, and profit using information reported for 1999–2000, for 1,914 Public Limited Companies, in the Reserve Bank of India Bulletin for June 2001. From this information, we were able to calculate factory overhead as a percentage of direct materials, labor, and energy expenses; SG&A expenses as a percentage of the total cost of manufacturing (TOTCOM); and profit as a percentage of the sum of the TOTCOM and SG&A expenses. See, Calculation for the Preliminary Results of the Tenth Administrative Reviews of Heavy Forged Hand Tools, Finished or Unfinished, with or Without Handles ("HFHTS"), from the People's Republic of China ("PRC") Covering the Period of Review ("POR") February 1, 2000

Through January 31, 2001; Liaoning Machinery Import & Export Corporation.

(4) We valued electricity using 2000–2001 data from the Annual Report on The Working of State Electricity Boards & Electricity Departments, published in June 2001 by the Power & Energy Division of the Planning Commission of the Government of India. The average tariff rate for Indian industry was applied (as opposed to the commercial tariff rate, or agricultural tariff rate). See, Surrogate Value Memorandum.

(5) We used the following sources to value truck and rail freight services incurred to transport direct materials, packing materials, and coal from the suppliers of the inputs to the factories producing HFHTs:

Truck Freight: We valued road freight services using the rates used by the Department in the Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China, 65 FR 33805 (May 25, 2000). See, Surrogate Value Memorandum.

Rail Freight: We valued rail freight services using the 1999–2000 rate found in the Reserve Bank of India Bulletin, July 2001. See, Surrogate Value Memorandum.

Production "Caps≥: TMC, Huarong, SMC, and LMC have reported production "caps" for use in determining certain factor input amounts. A production "cap" is an estimate of the amount of factor input the company used to make the product in question. TMC reported "caps" for the following inputs: steel bar, billet and railroad scrap, paint, unskilled labor, skilled labor, and unskilled packing labor. LMC reported "caps" for estimating scrap railroad wheels, steel bars, paint, unskilled labor, skilled labor, and unskilled packing labor inputs. SMC reported "caps" for estimating paint, lubricating oil, varnish paint, resin glue, unskilled labor, skilled labor, unskilled packing labor, electricity and coal inputs. Huarong reported "caps" for the following inputs: steel billets, paint, unskilled labor, skilled labor, electricity, coal and unskilled packing labor. The Department notes that TMC, LMC, and Huarong initially reported using "caps" for coal and electricity, but finally chose to allocate these two factor inputs based upon steel weight.

The Department has accepted "caps" in the past only when the "caps" were found to reasonably reflect actual consumption, and has rejected them when found to be otherwise. See, Natural Bristle Paintbrushes and Brush Heads from the People's Republic of China; Final Review Results of Antidumping Review, 64 FR 27506 (May 20, 1999) (Natural Bristle Paintbrushes). In Natural Bristle Paintbrushes, at verification, the respondent attempted to duplicate reported "cap" figures, but did not succeed. The respondent asserted that the figures were derived from a standard cost system, but this system was not explained to the verifiers, who finally rejected the "caps." See, Natural Bristle Paintbrushes, 64 at 27514. Similarly, while the Department has found reported "caps" reasonable in past segments of this proceeding, the Department also found that there were discrepancies between the reported "cap" amounts and the figures presented at verification of the information submitted during the in the 1997–1998 administrative review. Because the Department could not deduce how the information in the questionnaire was derived, the Department did not consider the information verified. See, Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China; Final Results and Partial Recision of Antidumping Duty Admin. Reviews, 64 FR 43659, 43665–43666 (August 11, 1999). For these preliminary review results the Department has accepted the respondents reported "caps" for the purpose of calculating any antidumping margins. The Department intends to conduct verifications of the responding companies, and the use of "caps" in final review results will depend upon our verification findings.

Export Price

In accordance with section 772(a) of the Act, the Department calculated an export price (EP) for sales to the United States for all respondents because the first sale to an unaffiliated party was made before the date of importation and the use of constructed export price (CEP) was not otherwise warranted. When appropriate, we made deductions from the selling price to unaffiliated parties for ocean freight, marine insurance and foreign inland freight. Each of these services, with one exception, was either provided by a NME vendor or paid for using a NME currency. Thus, we based the deduction for these movement charges on surrogate values. See, Normal Value section of this notice. The one exception referred to above concerns ocean freight. TMC used market economy ocean freight vendors for a substantial portion of its U.S. sales and paid for this service using a market economy currency. To value ocean freight for TMC's U.S. sales, we used a weighted average of the firm's market economy ocean freight expenses. Huarong, on the other hand, ships subject merchandise with NME carriers. With respect to LMC, we used the actual reported ocean freight expenses for the market economy shipments. SMC ships through a freight forwarder, and has no knowledge of the actual ocean carriers on which its merchandise is shipped. With respect to SMC, the Department will assume that SMC's carriers are NME carriers in the absence of information to the contrary and base all of its ocean freight on surrogate values. For SMC and Huarong, we valued ocean freight using the official tariff rates published for hand tools by the Federal Maritime Commission. Similarly, for LMC, we valued ocean freight for freight shipped on NME carriers using these official tariff rates. If port–specific rates were not available, we used the regional rates calculated in the Final Determination of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People's Republic of China, 62 FR 9160 (February 28, 1997) ("Brake Drums and Brake Rotors"). We converted per container rates by dividing the container rate by 18 metric tons.

We valued marine insurance using the rate of 141.01 Rs/MT which was reported in the public version of the questionnaire response placed on the record in Stainless Steel Wire Rod From India; Final Results of Administrative Review, 63 FR 48184 (September 9, 1998) (India Wire Rod). See, Surrogate Values Used for the Preliminary Results of the Tenth Administrative Reviews of Certain Heavy Forged Hand Tools From the People's Republic of China – February 1, 2000 through January 31, 2001 (Surrogate Value Memorandum). We valued foreign brokerage and handling using the rate of 1519.32 Rs/. MT, also reported in the questionnaire response in India Wire Rod. The source used to value inland freight is identified in the Normal Value section of this notice.

To account for inflation or deflation between the time period that the freight, brokerage, and insurance rates were in effect and the POR, we adjusted the rates using the WPI for India from the IMF publication, International Financial Statistics. See, Surrogate Value Memorandum.

Margins

As a result of our reviews, we preliminarily determine that the following margins exist for the period February 1, 2000 through January 31, 2001:

Manufacturer/Exporter	Margin (percent)
Shandong Huarong General Group Corporation.	
Bars/Wedges 2/1/00–1/31/01	3.57
Liaoning Machinery Import & Export Corporation.	
Bars/Wedges 2/1/00–1/31/01	1.61
Tianjin Machinery Import & Export Corporation.	
Axes/Adzes 2/1/00–1/31/01	10.41
Bars/Wedges 2/1/00–1/31/01	25.95
Hammers/Sledges 2/1/00–1/31/01	9.85
Picks/Mattocks 2/1/00–1/31/01	89.16
Shandong Machinery Import & Export Corporation.	
Hammers/Sledges 2/1/00–1/31/01	0.00
PRC–wide rates:.	
Axes/Adzes 2/1/00–1/31/01	18.72
Bars/Wedges 2/1/00–1/31/01	47.88
Hammers/Sledges 2/1/00–1/31/01	27.71
Picks/Mattocks 2/1/00–1/31/01	98.77

The Department will disclose to parties to this proceeding the calculations performed in reaching these preliminary results within ten days of the date of announcement of these preliminary review results. We will issue a memorandum detailing the dates of a hearing, if any, and deadlines for submission of case briefs/written comments and rebuttal briefs or rebuttals to written comments, limited to issues raised in such briefs or comments, after verification. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that an interested party requests such a hearing. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. The Department will issue the final results of these administrative reviews, which will include the results of its analysis of issues raised in interested party comments, within 180 days of publication of these preliminary results.

The final results of these reviews shall be the basis for the assessment of antidumping duties on entries of merchandise covered by these reviews and for future deposits of estimated duties.

Duty Assessment Rates

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), for each HFHT order, we have calculated importer–specific ad valorem duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. In order to estimate the entered value, we subtracted international movement expenses from the gross sales value. These importer–specific rates will be assessed uniformly on all entries of each importer that were made during the POR. In accordance with 19 CFR 351.106 (c)(2), we will instruct Customs to liquidate without regard to antidumping duties any entries for which the importer–specific assessment rate is de minimis, i.e., less than 0.5 percent. Upon completion of its Final Results, the Department will issue appraisement instructions directly to Customs.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of these administrative reviews for all shipments of HFHTs from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies named above which have separate rates (Huarong, LMC, SMC and TMC) will be the rates for those firms established in the final results of these administrative reviews for the classes or kinds of merchandise listed above; (2) for any previously reviewed PRC or non–PRC exporter with a separate rate not covered in these reviews, the cash deposit rates will be the company–specific rates established for the most recent period; (3) for all other PRC exporters, the cash deposit rates will be the PRC&wide rates; and (4) the cash deposit rates for non&PRC exporters of subject merchandise from the PRC will be the rates applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

Notification to Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under section 351.402(f)(2) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

February 28, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–5351 Filed 3–5–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of New Shipper Review and Preliminary Results and Partial Rescission of Second Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of new shipper review and preliminary results and partial rescission of second antidumping duty administrative review.

SUMMARY: The Department of Commerce is currently conducting the new shipper review and second administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China covering the period February 1, 2000, through January 31, 2001. The new shipper review covers two exporters and the second administrative review covers three exporters. We have preliminarily determined that sales have been made below normal value with respect to three out of these five exporters. If these preliminary results are adopted in our final results of this review, we will instruct the U.S. Customs Service to assess antidumping duties on entries of subject merchandise during the period of review, for which the importer-specific assessment rates are above *de minimis*.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: March 6, 2002.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Terre Keaton, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–1280, respectively.

The Applicable Statute: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the U.S. Department of Commerce's ("the Department's") regulations are to 19 CFR part 351 (2001).

SUPPLEMENTARY INFORMATION:

Background

On February 19, 1999, the Department published in the **Federal Register** an amended final determination and antidumping duty order on certain preserved mushrooms from the People's Republic of China ("PRC") (64 FR 8308).

On February 14, 2001, the Department published a notice advising of the opportunity to request an administrative review of the antidumping duty order on certain preserved mushrooms from the PRC (66 FR 10269). On February 26, 2001, the Department received a timely request from Gerber Food (Yunnan) Co., Ltd. ("Gerber") for an administrative review pursuant to 19 CFR 351.213(b).

On February 27, 2001, the Department received timely requests from Shantou Hongda Industrial General Corporation ("Shantou Hongda") and Shenxian Dongxing Foods Co., Ltd. ("Shenxian Dongxing") for a new shipper review of this antidumping duty order in accordance with 19 CFR 351.214(c).

On February 28, 2001, the petitioner [1] requested an administrative review pursuant to 19 CFR 351.213(b) of 28 companies [2] which it claimed were producers and/or exporters of the subject merchandise. Three of these 28 companies also requested a review.

On March 12, 2001, both Shantou Hongda and Shenxian Dongxing agreed to waive the time limits applicable to the new shipper review and to permit the Department to conduct the new shipper review concurrently with the administrative review.

On March 16, 2001, the Department initiated an administrative review covering the companies listed in the petitioner's February 28, 2001, request (*see Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 66 FR 16037, 16039, (May 23, 2001).

On March 26, 2001, the Department initiated a new shipper review of Shantou Hongda and Shenxian Dongxing (*see Certain Preserved Mushrooms from the People's Republic of China: Initiation of New Shipper Antidumping Duty Review*, 66 FR 17406 (May 30, 2001).

On March 30, 2001, we issued a questionnaire to each PRC company listed in the above-referenced initiation notices. On April 3 and 4, and May 2, 2001, Shanghai Foodstuffs, Fujian Cereals, and the Canned Goods Company of Raoping each stated for the record that they did not make shipments of the subject merchandise to the U.S. market during the POR.

On April 3, and 4, 2001, the Department was notified by Federal Express that Federal Express was unable to deliver the Department's March 30, 2001, antidumping duty questionnaire to the following companies based on the mailing address provided: (1) Citic Ningbo; (2) China Ningbo; (3) Longhai Senox; (4) Beiliu Canned; (5) Shenzhen Cofry; (6) Jiangsu Cereals; (7) General Canned Food Factory of Zhangzhou; and (8) Dongya (*see* April 18, 2001, Memorandum to the File from Case Analyst for further details).

From May 5, through 29, 2001, China Processed, Gerber, Raoping Xingyu (and its supplier Raoping Yucun), Shantou Hongda, and Shenxian Dongxing submitted their responses to the Department's antidumping duty questionnaire.

From June 8 through 27, 2001, the petitioner submitted comments on questionnaire responses provided by Raoping Xingyu and Gerber, and comments on the Section A responses provided by Shantou Hongda and Shenxian Dongxing.

On June 20, 2001, the petitioner withdrew its request for an administrative review of China Processed, Fujian Yu Xing, and Xiamen Jiahua. Also, the petitioner requested an extension of time until August 9, 2001,

[1] The petitioner is the Coalition for Fair Preserved Mushroom Trade which includes the American Mushroom Institute and the following domestic companies: L.K. Bowman, Inc., Modern Mushroom Farms, Inc., Monterey Mushrooms, Inc., Mount Laurel Canning Corp., Mushrooms Canning Company, Southwood Farms, Sunny Dell Foods, Inc., and United Canning Corp.

[2] The petitioner request included the following companies: (1) Tak Fat Trading Co. ("Tak Fat"); (2) Mei Wei Food Industry Co., Ltd. ("Mei Wei"); (3) China Processed Food Import & Export Company ("China Processed"); (4) Fujian Yu Xing Fruits and Vegetables Foodstuffs Co., Ltd. ("Fujian Yu Xing"); (5) Raoping Xingyu Foods Co., Ltd. ("Raoping Xingyu"); (6) Raoping Yucun Canned Foods Factory ("Raoping Yucun"); (7) Shantou Hongda; (8) Shenxiang Dongxing; (9) Gerber; (10) Green Fresh Foods (Zhangzhou) Co., Ltd. ("Green Fresh"); (11) Zhang Zhou Longhai Lubao Food Co., Ltd. ("Zhang Zhou Longhai"); (12) Citic Ningbo Import & Export Corp., Ltd. ("Citic Ningbo"); (13) Shanghai Foodstuffs Import & Export Corporation ("Shanghai Foodstuffs"); (14) Zhejiang Cereals, Oils & Foodstuffs Import & Export Co., Ltd. ("Zhejiang Cereals"); (15) China Ningbo Canned Food Factory ("China Ningbo"); (16) Longhai Senox Limited ("Longhai Senox"); (17) Beiliu Canned Food Factory ("Beiliu Canned"); (18) Fujian Cereals, Oils & Foodstuffs Import & Export (Group) Corp. ("Fujian Cereals"); (19) Putian Cannery ("Putian"); (20) General Canned Food Factory of Zhangzhou; (21) Jiangsu Cereals, Oils & Foodstuffs Import & Export Group Corp. ("Jiangsu Cereals"); (22) Canned Goods Company of Raoping; (23) Shenzhen Cofry Cereals, Oils & Foodstuffs, Co., Ltd. ("Shenzhen Cofry"); (24) Xiamen Gulong Import & Export Co., Ltd. ("Xiamen Jiahua"); (25) Dongya Food Co., Ltd. ("Dongya"); and (26) Xiamen Jiahua Import & Export Trading Co., Ltd. ("Xiamen Jiahua").

to submit factual information in this case, which the Department granted on June 22, 2001.

On July 3, 2001, the Department provided the parties an opportunity to submit publicly available information for consideration in these preliminary results.

On July 19, 2001, the Department published in the **Federal Register** a notice of postponement of the preliminary results until no later than February 28, 2002 (66 FR 37640).

On August 30, and 31, 2001, Gerber and the petitioner submitted publicly available information for use in valuing the factors of production. On September 7, 2001, Gerber provided rebuttal publicly available information and comments.

On September 28, 2001, the petitioner submitted comments on the Section C and D responses provided by Shantou Hongda and Shenxian Dongxing. On October 3, 2001, the Department issued supplemental questionnaires to Gerber, Raoping Xingyu, Shantou Hongda, and Shenxian Dongxing.

In November 2001, the respondents submitted their responses to the Department's supplemental questionnaires. In November and December 2001, the petitioner submitted additional comments on the supplemental responses provided by each respondent.

In December 2001, the Department issued each respondent a second supplemental questionnaire. In January and February 2002, the respondents submitted their responses to these questionnaires. In February 2002, the petitioner submitted additional comments on the responses filed by all four respondents. Two respondents, Gerber and Raoping Xingyu, submitted clarifications to items raised by the petitioner in its February 2002 filings. Based on the comments submitted, which were not received in time to be fully analyzed for the preliminary results, we intend to issue supplemental questionnaires soliciting certain additional information or clarification from the respondents, as appropriate, after the preliminary results, for consideration in the final results.

Scope of Order

The products covered by this order are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis*. "Preserved mushrooms" refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms"; (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified" or "pickled" mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.[3]

The merchandise subject to this order is currently classifiable under subheadings 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000 of the Harmonized Tariff Schedule of the United States[4] ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Period of Reviews

The reviews ("POR") cover the period February 1, 2000, through January 31, 2001.

Partial Rescission of Administrative Review

We are preliminarily rescinding this review with respect to China Processed, Fujian Yu Xing, and Xiamen Jiahua because the petitioner withdrew its request for review and no other interested party requested a review of these companies.

Furthermore, we are preliminarily rescinding this review with respect to Shanghai Foodstuffs, Fujian Cereals, and the Canned Goods Company of Raoping, each of which reported that it made no shipments of subject merchandise during this POR, based on the results of our examination of shipment data furnished by the Customs Service. Because the shipment data we examined did not show U.S. entries of the subject merchandise during the POR from Shanghai Foodstuffs, Fujian Cereals or the Canned Goods Company of Raoping, we pursued no further this inquiry with the Customs Service.

Moreover, the shipment data we examined did not show U.S. entries of the subject merchandise during the POR from Tak Fat, Mei Wei, Zhang Zhou Longhai, Citic Ningbo, Zhejiang Cereals, China Ningbo, Longhai Senox, Beiliu Canned, Putian, General Canned Food Factory of Zhangzhou, Jiangsu Cereals, Shenzhen Cofry, Xiamen Gulong, and Dongya. Therefore, we are preliminarily rescinding this review with respect to these companies as well.

However, the shipment data we examined did show U.S. entries of the subject merchandise during the POR from Green Fresh.

Facts Available

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested (subject to sections 782(c)(1) and 782(e) of the Act), significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Because Green Fresh shipped subject merchandise to the United States during the POR, but failed to respond to the Department's antidumping duty questionnaire, we find that the use of facts available is warranted in this segment of the proceeding with respect to Green Fresh.

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as facts otherwise available. Section 776(b) of the Act further provides that, in selecting from among the facts available, the Department may employ adverse inferences against an interested party if that party failed to cooperate by not acting to the best of its ability to comply with requests for information. See also "Statement of Administrative Action"

[3] On June 19, 2000, the Department affirmed that "marinated," "acidified," or "pickled" mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. See "Recommendation Memorandum—Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China," dated June 19, 2000.

[4] As of January 1, 2002, the HTS codes are as follows: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153, and 0711.51.0000.

accompanying the URAA, H.R. Rep. No. 103–316, 870 (1994) ("SAA").

As stated above, U.S. Customs data indicates that Green Fresh made shipments of the subject merchandise to the U.S. market during the POR. However, it failed to respond to the Department's March 30, 2001, antidumping duty questionnaire. Further, Green Fresh has participated in a prior review and yet provided the Department with no explanation as to why it could not respond in this review. Therefore, Green Fresh failed to cooperate to the best of its ability in this segment of the proceeding. As a result, pursuant to section 776(b) of the Act, we have made the adverse inference that Green Fresh no longer qualifies for a separate rate. Thus, we have treated it as part of the non-market economy ("NME") entity, which is subject to the PRC-wide rate.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate (*i.e.*, a PRC-wide rate). One respondent in these reviews, Gerber, is wholly foreign-owned by persons located outside the PRC. Thus, for Gerber, because we have no evidence indicating that it is under the control of the PRC government, a separate rates analysis is not necessary to determine whether it is independent from government control (*see Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of Fifth New Shipper Review*, 66 FR 44331 (August 23, 2001) (which cites to *Brake Rotors from the People's Republic of China: Preliminary Results and Partial Rescission of the Fifth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review*, 66 FR 29080 (May 29, 2001) (where the respondent was wholly-owned by a U.S. registered company); (*Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review*, 66 FR 27063 (May 16, 2001) (which cites to *Brake Rotors from the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review*, 66 FR 1303, 1306 (January 8, 2001) (where the respondent was wholly-foreign owned by a company located in Hong Kong); and *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104, 71105 (December 20, 1999) (where the respondent was wholly-owned by persons located in Hong Kong)).

Two respondents, Raoping Xingyu and Shenxian Dongxing, are joint ventures. The other respondent, Shantou Hongda, is owned by all of the people. Thus, a separate-rates analysis is necessary to determine whether each of these three exporters is independent from government control (*see Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China* ("*Bicycles*"), 61 FR 56570 (April 30, 1996)). To establish whether a firm is sufficiently independent in its export activities from government control to be entitled to a separate rate, the Department utilizes a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), and amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). Under the separate-rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. De Jure Control

Raoping Xingyu, Shantou Hongda, and Shenxian Dongxing have placed on the administrative record the following document to demonstrate absence of *de jure* control: the 1994 "Foreign Trade Law of the People's Republic of China." In other cases involving products from the PRC, respondents have submitted the following additional documents to demonstrate absence of *de jure* control: the Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People," adopted on April 13, 1988 ("the Industrial Enterprises Law"); "The Enterprise Legal Person Registration Administrative Regulations," promulgated on June 13, 1988; the 1990 "Regulation Governing Rural Collectively-Owned Enterprises of PRC;" and the 1992 "Regulations for Transformation of Operational Mechanisms of State-Owned Industrial Enterprises" ("Business Operation Provisions") (*see* February 28, 2002, memorandum to the file which places the above-referenced laws on the record of this proceeding).

As in prior cases, we have analyzed these laws and have found them to establish sufficiently an absence of *de jure* control of joint ventures and companies owned by "all of the people." *See, e.g., Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from the People's Republic of China* ("*Furfuryl Alcohol*") 60 FR 22544 (May 8, 1995), and *Preliminary Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 29571 (June 5, 1995).

2. De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide* and *Furfuryl Alcohol*. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or subject to the approval of, a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses (*see Silicon Carbide* and *Furfuryl Alcohol*).

Raoping Xingyu, Shantou Hongda, and Shenxian Dongxing each has asserted the following: (1) Each establishes its own export prices; (2) each negotiates contracts without guidance from any governmental entities or organizations; (3) each makes its own personnel decisions; and (4) each retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Additionally, each respondent's questionnaire responses indicate that its pricing during the POR does not suggest coordination among exporters. This information supports a preliminary finding that there is *de facto* absence of governmental control of the export functions performed by Raoping Xingyu, Shantou Hongda, and Shenxian

Dongxing. *See Pure Magnesium from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Administrative Review*, 62 FR 55215 (October 23, 1997). Consequently, we have preliminarily determined that each respondent has met the criteria for the application of separate rates.

Fair Value Comparisons

To determine whether sales of the subject merchandise by each respondent to the United States were made at LTFV, we compared the export price to the normal value, as described in the "Export Price" and "Normal Value" sections of this notice, below.

Export Price

We used export price methodology in accordance with section 772(a) of the Act because the subject merchandise was sold by the exporter directly to an unaffiliated customer in the United States prior to importation and constructed export price was not otherwise indicated. We made the following company-specific adjustments as follows:

A. Gerber

For Gerber, we calculated export price based on packed, FOB foreign port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight and foreign brokerage and handling charges in the PRC in accordance with section 772(c) of the Act. Because foreign inland freight and foreign brokerage and handling fees were provided by PRC service providers or paid for in a renminbi, we based those charges on surrogate rates from India (*see* "Surrogate Country" section below for further discussion of our surrogate country selection). To value foreign inland trucking charges, we used a November 1999 average truck freight value based on price quotes from Indian trucking companies. We most recently used this rate in a new shipper review of brake rotors from the PRC (*see Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of Fifth Antidumping Duty New Shipper Review*, 66 FR 44331 (August 23, 2001) (which cites to the "Issues and Decision Memorandum" from Richard W. Moreland, Deputy Assistant Secretary for Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated August 17, 2001) ("*Brake Rotors New Shipper Review*")). To value foreign brokerage and handling expenses, we relied on public information reported in the 1997–1998 antidumping duty new shipper review of stainless steel wire rod from India (*see* also *Brake Rotors Fifth New Shipper Review*).

B. Raoping Xingyu

For Raoping Xingyu, we calculated export price based on packed, C&F foreign port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight and international freight (which included ocean freight and foreign brokerage and handling expenses) in accordance with section 772(c) of the Act. Because foreign inland freight was provided by PRC service providers or paid for in renminbi, we based this charge on surrogate rates from India (*see* discussion above for further details). Because international freight for all U.S. sales was provided by a market-economy service provider and paid for in U.S. dollars, we relied on the amounts reported for this charge by Raoping Xingyu.

C. Shantou Hongda

For Shantou Hongda, we calculated export price based on packed, FOB foreign port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight and brokerage and handling expenses in accordance with section 772(c) of the Act. Because foreign inland freight and brokerage and handling expenses were provided by PRC service providers or paid for in renminbi, we based these charges on surrogate rates from India (*see* discussion above for further details).

D. Shenxian Dongxing

For Shenxian Dongxing, we calculated export price based on packed, C&F foreign port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight in accordance with section 772(c) of the Act. Because foreign inland freight was provided by PRC service providers or paid for in renminbi, we based this charge on surrogate rates from India (*see* discussion above for further details). Because Shenxian Dongxing separately invoiced the U.S. customer for the total amount of ocean freight and foreign brokerage and handling expenses incurred for its sales, we did not deduct an amount for these expenses from the starting price.

Normal Value

A. Non-Market Economy Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is a NME country shall remain in effect until revoked by the administering authority (*see Notice of Preliminary Results of Antidumping Duty Administrative Review and Preliminary Partial Rescission of Antidumping Duty Administrative Review: Freshwater Crawfish Tail Meat From the People's Republic of China*, 66 FR 52100, 52103 (October 12, 2001). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated normal value in accordance with section 773(c) of the Act, which applies to NME countries.

B. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value a NME producer's factors of production, to the extent possible, in one or more market economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. India is among the countries comparable to the PRC in terms of overall economic development (*see* May 8, 2001, Memorandum from the Office of Policy to the Case Analyst). In addition, based on publicly available information placed on the record, India is a significant producer of the subject merchandise. Accordingly, we considered India the primary surrogate country for purposes of valuing the factors of production because it meets the Department's criteria for surrogate country selection.

C. Factors of Production

In accordance with section 773(c) of the Act, we calculated normal value based on the factors of production which included, but were not limited to: (A) Hours of labor required; (B) quantities of raw materials employed; (C) amounts of energy and other utilities consumed; and (D) representative capital costs, including depreciation. We used the factors reported by the four respondents which produced the subject merchandise they exported to the United States during the POR. To calculate normal value, we multiplied the reported unit factor quantities by publicly available Indian values.

One respondent, Raoping Xingyu, reported its factors of production on a can size-specific basis. For the

preliminary results, we have accepted its method of reporting its factors since there is no information on the record which indicates that it maintains records which could have enable it to report its factors on a more specific basis (*i.e.*, mushroom style basis).[5] However, for certain U.S. sales, Raoping Xingyu did not indicate which reported factors were associated with those U.S. sales. For the preliminary results, we have assigned factors to those U.S. sales based on data contained in Raoping Xingyu's response for the same can size. In addition, although Raoping Xingyu reported separate market-economy prices for certain inputs (*i.e.*, lids and cans), it reported the usage of both inputs as one factor. Because, we have no way of separating this data, this reporting method prevents us from using the reported market-economy prices to value this input in our analysis. Therefore, for the preliminary results, we have used a surrogate value for Raoping Xingyu's reported factors for this input. We intend to issue Raoping Xingyu another supplemental questionnaire in order to address these matters prior to the final results.

The Department's selection of the surrogate values applied in this determination was based on the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices to make them delivered prices. For those values not contemporaneous with the POR and quoted in a foreign currency or in U.S. dollars, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's *International Financial Statistics*.

To value fresh mushrooms, we used an average price based on data from February–July 2000 as contained in the *Economic Times of India* and data contained in the 1999–2000 financial reports Agro Dutch Foods Ltd. ("Agro Dutch") and Premier Explosives Ltd. ("Premier"). For those respondents which purchased brined mushrooms, we also used the fresh mushroom price to value brined mushrooms because we were unable to obtain publicly available information which contained a price for brined mushrooms.

To value spawn and manure, we used an average price based on data contained in the 1999–2000 financial reports of Agro Dutch and Flex Foods Ltd. ("Flex Foods") (*i.e.*, two Indian producers of the subject merchandise). To value straw, we used an average price based on data contained in the 1999–2000 financial reports of Agro Dutch, Flex Foods, and Premier. To value grain and phosphate super, we used price data contained in Flex Foods' 1999–2000 financial report because no other data or data which was as contemporaneous was available from the other financial reports on the record. To value tin cans and lids, we used price data contained in Agro Dutch's 1999–2000 financial report because no such data was available from the other financial reports on the record. To value salt, we used price data contained in the 1998–1999 financial report of Weikfield Agro Products Ltd. (*i.e.*, another Indian producer of the subject merchandise) because no such data was available from the other financial reports on the record. To value citric acid, boric acid, magnesium sulfate, calcium carbonate, and formaldehyde, we used an average price based on April 2000–February 2001 data contained in *Monthly Statistics of the Foreign Trade of India* ("*Monthly Statistics*") and February 2000–January 2001 data contained in *Chemical Weekly*. For those prices obtained from *Chemical Weekly*, where appropriate, we also deducted an amount for excise taxes based on the methodology applied to values from the same source in a prior review involving the subject merchandise from the PRC (*see* page 4 of the May 31, 2001, Preliminary Results Valuation Memorandum for the *Preliminary Results of New Shipper Review: Certain Preserved Mushrooms from the People's Republic of China*, 66 FR 30695 (June 7, 2001) (which has been placed on the record of this proceeding)). To value calcium phosphate, we used a December 1999 value from *Chemical Market Reporter*. Since the value from *Chemical Market Reporter* was in U.S. dollars and contemporaneous with the POR, we did not inflate this value.

To value gypsum, cotton, tin plate, copper conducting wire, copper, wire scrap, can and lid scrap, and tin plate scrap, and coal, we used April 2000–February 2001 average import values from *Monthly Statistics*. To value furnace oil, we used price data contained in Hindustan Lever Limited's ("Hindustan's") 1999–2000 financial report because no other data was available from the other financial reports on the record. We also added an amount for loading and additional transportation charges associated with delivering coal to the factory based on June 1999 Indian price data contained in the periodical *Business Line*.

We did not value water separately because, consistent with our methodology used in prior reviews of the subject merchandise, we believe that the costs for water are included as factory overhead in the Indian financial statements used to calculate factory overhead, selling, general, and administrative ("SG&A") expenses, and profit (*see Preliminary Results of New Shipper Review: Certain Preserved Mushrooms from the People's Republic of China*, 66 FR 30695, 30697 (June 7, 2001)).

To value electricity, we used an average rate based on data contained in the financial statements of three Indian producers of the subject merchandise.

We valued labor based on a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3).

To value factory overhead and SG&A expenses, we used the audited 1999–2000 financial data of Agro Dutch, Flex Foods, and Himalya International Ltd. ("Himalya"). However, to value profit, we only used the 1999–2000 financial data of Agro Dutch and Himalya because Flex Foods did not realize a profit during that year (*see Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from Moldova*, 66 FR 33525 (June 22, 2001) and accompanying decision memorandum at Comment 3). In addition, we did not use the 1999–2000 fiscal data obtained for Premier or the 1999–2000 fiscal data obtained for Hindustan because although each company produces the subject merchandise, the subject merchandise is but one of several products which they produce and is not the major product produced by either company.

Where appropriate, we did not include in the surrogate overhead and SG&A calculations the excise duty amount listed in the financial reports. We made certain adjustments to the ratios calculated as a result of reclassifying certain expenses contained in the financial reports. For a further discussion of the adjustments made, *see* the Preliminary Results Valuation Memorandum.

All inputs were shipped by truck. Therefore, to value PRC inland freight, we used a November 1999 average truck freight value based on price quotes from Indian trucking companies.

In accordance with the decision of the Court of Appeals for the Federal Circuit in *Sigma Corp.* v. *United States*, 117 F. 3d 1401 (Fed. Cir. 1997), we revised our methodology for calculating source-to-factory surrogate freight for those material inputs that are valued based on CIF import values in the surrogate country. Therefore, we have added to CIF surrogate values from India a surrogate freight cost using the shorter of the reported distances from either the closest PRC port of importation to the

[5] Buttons, whole, and slices are examples of different mushroom styles.

factory, or from the domestic supplier to the factory on an input-specific basis.

To value corrugated cartons, labels, paper, separators, tape, and glue we used April 2000–February 2001 average import values from *Monthly Statistics*.

Preliminary Results of the Review

We preliminarily determine that the following margin exists for following exporters during the period February 1, 2000, through January 31, 2001:

Manufacturer/producer/exporter	Margin percent
Gerber Food (Yunnan) Co., Ltd..	46.80
Raoping Xingyu Foods, Co., Ltd..	23.52
Shantou Hongda Industrial General Corporation.	0.00 (*de minimis*)
Shenxian Dongxing Foods Co., Ltd..	0.00 (*de minimis*)
PRC-Wide Rate	198.63

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication of this notice. If requested, a hearing will be scheduled upon receipt of responses to supplemental questionnaires and determination of briefing schedule.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in case briefs and rebuttal briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted in accordance with a schedule to be determined upon the receipt of responses to supplemental questionnaires, which the Department will issue subsequent to the preliminary results. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) A statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of these administrative and new shipper reviews, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. In order to estimate the entered value, we will subtract applicable movement expenses from the gross sales value. In accordance with 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries of subject merchandise during the POR for which the importer-specific assessment rate is zero or *de minimis* (*i.e.*, less than 0.50 percent). For entries subject to the PRC-wide rate, the Customs Service shall assess *ad valorem* duties at the rate established in the LTFV investigation. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review.

Cash Deposit Requirements

Upon completion of this review, for entries from each respondent listed above, we will require cash deposits at the rate established in the final results pursuant to 19 CFR 351.214(e) and as further described below.

The following deposit requirements will be effective upon publication of the final results of these antidumping administrative and new shipper reviews for all shipments of certain preserved mushrooms from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for each respondent listed above will be the rate established in the final results; (2) the cash deposit rate for PRC exporters who received a separate rate in a prior segment of the proceeding, who did not export subject merchandise during the POR, or for which there was no request for administrative review (*i.e.*, China Processed, Fujian Yu Xing, Xiamen Jiahua, Fujian Cereals, Shanghai Foodstuffs, the Canned Goods Company of Raoping, Tak Fat, Mei Wei, Zhang Zhou Longhai, Citic Ningbo, Zhejiang Cereals, China Ningbo, Longhai Senox, Beiliu Canned, Putian, General Canned Food Factory of Zhangzhou, Jiangsu Cereals, Shenzhen Cofry, Xiamen Gulong, and Dongya) will continue to be the rate assigned in that segment of the proceeding; (3) the cash deposit rate for the PRC NME entity will continue to be 198.63 percent; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative and new shipper reviews and notice are in accordance with sections 751(a)(1) and (2)(B) of the Act.

Dated: February 28, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–5347 Filed 3–5–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–822]

Stainless Steel Sheet and Strip in Coils from Mexico; Antidumping Duty Administrative Review; Time Limits

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limits.

SUMMARY: The Department of Commerce (the Department) is extending the time limits for the preliminary results of the 2000–2001 administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Mexico. This review covers one manufacturer/exporter of the subject merchandise to the United States and the period July 1, 2000 through June 30, 2001.

EFFECTIVE DATE: March 6, 2002.

FOR FURTHER INFORMATION CONTACT: Deborah Scott at (202) 482–2657 or

Robert James at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On August 20, 2001, in response to requests from the respondent and petitioners, we published a notice of initiation of this administrative review in the Federal Register. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 66 FR 43570. Pursuant to the time limits for administrative reviews set forth in section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Tariff Act), the current deadlines are April 2, 2002 for the preliminary results and July 31, 2002 for the final results. It is not practicable to complete this review within the normal statutory time limit due to a number of significant case issues, such as major inputs purchased from affiliated suppliers, the reporting of downstream sales, and further manufacturing of subject merchandise in the United States. Therefore, the Department is extending the time limits for completion of the preliminary results until July 31, 2002 in accordance with section 751(a)(3)(A) of the Tariff Act. The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act (19 U.S.C. 1675 (a)(3)(A) (2001)).

February 26, 2002

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–5346 Filed 3–5–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–831]

Stainless Steel Sheet and Strip in Coils from Taiwan: Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of time limits for the preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limits for the preliminary results of the antidumping duty administrative review of stainless steel sheet and strip ("SSSS") from Taiwan.

EFFECTIVE DATE: March 6, 2002.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4243.

BACKGROUND:

On September 24, 2001, we published a notice of initiation of a review of SSSS from Taiwan covering the period July 1, 2000 through June 30, 2001. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, October 1, 2001 (66 FR 49924). The preliminary results of review are currently due on April 2, 2002.

EXTENSION OF TIME LIMITS FOR PRELIMINARY RESULTS

Section 751(a)(3)(A) of the Act states that if it is not practicable to complete the review within the time specified, the administering authority may extend the 245–day period to issue its preliminary results by 120 days. Completion of the preliminary results of this review within the 245–day period is impracticable for the following reasons:

- The review involves a large number of transactions and complex adjustments.
- The review involves a large number of companies.
- All companies include sales and cost investigations which require the Department to gather and analyze a significant amount of information pertaining to each company's sales practices, manufacturing costs and corporate relationships.

Therefore, in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the preliminary results of review by 90 days until July 1, 2002. The final results continue to be due 120 days after the publication of the preliminary results.

February 27, 2002

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–5348 Filed 3–5–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–834]

Stainless Steel Sheet and Strip in Coils from Korea: Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits for the preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limits for the preliminary results of the antidumping duty administrative review of stainless steel sheet and strip ("SSSS") from Korea.

EFFECTIVE DATE: March 6, 2002.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4243.

BACKGROUND:

On August 10, 2001, we published a notice of initiation of a review of SSSS from Korea covering the period July 1, 2000 through June 30, 2001. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, August, 20, 2001 (66 FR 43570). The Department's preliminary results are currently due on April 2, 2002.

EXTENSION OF TIME LIMITS FOR PRELIMINARY RESULTS

Section 751(a)(3)(A) of the Act states that if it is not practicable to complete the review within the time specified, the administering authority may extend the 245–day period to issue its preliminary results by 120 days. Completion of the preliminary results of this review within the 245–day period is not practicable for the following reasons:

- The review involves a large number of transactions and complex adjustments.
- All companies include sales and cost investigations which require the Department to gather and analyze a significant amount of information pertaining to each company's sales practices, manufacturing costs and corporate relationships.

Therefore, in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the

preliminary results of review by 120 days until July 31, 2002. The final results continue to be due 120 days after the publication of the preliminary results.

February 27, 2002

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–5349 Filed 3–5–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Overseas Trade Missions

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies to participate in the below listed overseas trade missions. For a more complete description of each trade mission, obtain a copy of the mission statement from the Project Officer indicated for each mission below. Recruitment and selection of private sector participants for these missions will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions dated March 3, 1997.

IT and Telecommunications Trade Mission to Poland, Czech Republic and Hungary

Warsaw, Prague and Budapest
April 18–25, 2002
Recruitment closes on March 18, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Beatrix Roberts, U.S. Department of Commerce, telephone 202–482–2952, e-mail *Beatrix_Roberts@ita.doc.gov* or Mr. Jon Boyens, U.S. Department of Commerce, telephone 202–482–0573, e-mail *Jon_Boyens@ita.doc.gov*.

Franchising Trade Mission to China, Hong Kong (SAR) and Taiwan

Beijing, Shanghai, Hong Kong and Taipei
June 10–21, 2002
Recruitment closes on April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Raj Dwivedy, U.S. Department of Commerce. Telephone 202–482–4581, or e-mail *Raj_Dwivedy@ita.doc.gov*.

Aerospace Trade Mission to Vietnam

Hanoi and Ho Chi Minh City
August 25–31, 2002
Recruitment closes on July 15, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Mara Yachnin, U.S. Department of Commerce. Telephone 202–482–6236, or e-mail *Mara_Yachnin@ita.doc.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Nisbet, U.S. Department of Commerce. Telephone 202–482–5657, or e-mail *Tom_Nisbet@ita.doc.gov*.

Dated: February 28, 2002.

Thomas H. Nisbet,

Director, Export Promotion Coordination, Office of Planning, Coordination and Management.

[FR Doc. 02–5258 Filed 3–5–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022602E]

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 Law Enforcement Advisory Panel (LEAP).

DATES: This meeting will be held on Wednesday, March 20, 2002, from 8:30 a.m. to 12 noon.

ADDRESSES: This meeting will be held at the Casino Magic Hotel - Biloxi, 195 East Beach Boulevard, Biloxi, MS; telephone: 228–386–4600.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The LEAP will convene to review management options for a Secretarial Amendment to the Reef Fish Fishery Management Plan that would establish a 10–year rebuilding period for red grouper in the Gulf of Mexico. The amendment contains various options for setting sustainable fishing parameters and rebuilding strategies/scenarios. It also contains management options including quotas, trip limits, closed seasons, bag limits, and additional gear restrictions. The LEAP will also review the status regarding implementation of previous management actions taken by the Council, as well as an update of the implementation of the Cooperative 2002 Operations Plan, including Joint Enforcement Agreements (JEAs) among the Gulf states and NOAA Enforcement. Finally, the LEAP will discuss the possible development of an enforceability document that would gauge the relative ease/difficulty for enforcement of various types of management measures, and issues of safety regarding fishing around port and offshore structures, particularly oil and gas rigs.

The LEAP consists of principal law enforcement officers in each of the Gulf states as well as NMFS, the U.S. Coast Guard, and NOAA General Counsel. A copy of the agenda and related materials can be obtained by calling the Council office at 813–228–2815.

Although other non-emergency issues not on the agendas may come before the LEAP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meetings. Actions of the LEAP will be restricted to those issues specifically identified in the agenda 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 action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by March 13, 2002.

Dated: March 1, 2002.

Richard W. Surdi,

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

[FR Doc. 02–5320 Filed 3–5–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022602A]

Mid-Atlantic Fishery Management Council (MAFMC) and the Atlantic States Marine Fisheries Commission (ASMFC); Public Hearings

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

ACTION: Public hearings, request for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission, will hold public hearings to allow input on Amendment 13 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). The purpose of the Amendment is to address problems associated with the commercial fishery for black sea bass and to implement management alternatives for summer flounder, scup, and black sea bass to prevent, mitigate, or minimize adverse effects on essential fish habitat caused by fishing and enhance compliance with the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: Written comments will be accepted until April 15, 2002. See **SUPPLEMENTARY INFORMATION** for dates and times of public hearings.

ADDRESSES: Send comments to Mr. Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, 300 S. New Street, Dover, DE 19904. For specific locations, see **SUPPLEMENTARY INFORMATION.**

The hearings will be held in Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Maryland, Virginia, and North Carolina.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION:

Background

This amendment would (1) revise the quarterly commercial quota system for black sea bass implemented in Amendment 9 to the Summer Flounder, Scup, and Black Sea Bass Fisheries Management Plan; (2) address the problem related to permit requirements for fishermen that have both a Northeast Black Sea Bass Permit and a Southeast Snapper/Grouper Permit and fish for black sea bass north and south of Cape Hatteras, NC; (3) address the problems related to the wet storage of black sea bass pots/traps; (4) establish de minimus specifications for black sea bass under the Atlantic State Marine Fisheries Commission Interstate Fisheries Management Program Charter; (5) implement tag requirements for black sea bass pots/traps; (6) limit the number of black sea bass pots/traps fished by fishermen; and (7) assess the impact of fishing activities on essential fish habitat and implement management alternatives for summer flounder, scup and black sea bass to prevent, mitigate, or minimize adverse effects on essential fish habitat caused by fishing.

In conjunction with development of Amendment 13, the Council prepared a Draft Environmental Impact Statement (DEIS) under the National Environmental Policy Act (NEPA) to assess the potential effects of the proposed actions, and the alternatives to those actions, on the human environment. This DEIS updates the information presented in Amendments 2, 8, and 9 for summer flounder, scup, and black sea bass, respectively.

A notice of availability for the DEIS for Amendment 13 was published in the **Federal Register** on March 1, 2002. The 45–day public comment period for the DEIS ends on April 15, 2002. Copies can be obtained from the Mid-Atlantic Fishery Management Council (see **ADDRESSES**)

Dates, Times, and Locations of DEIS Hearings

1. Monday, March 18, 2002, 7–10 p.m.—Grand Hotel, 1045 Beach Ave., (corner of Philadelphia and Beach Ave.) Cape May, NJ (609–884–5611)

2. Monday, March 18, 2002, 7–10 p.m.—Best Western (Canal Club), 100 Trowbridge Road, Bourne, MA (800–675–0008)

3. Tuesday, March 19, 2002, 7–10 p.m.—Comfort Inn, 1940 Post Road, Warwick, RI (877–805–8997)

4. Tuesday, March 19, 2002, 7–10 p.m.—Sheraton, 110 Vanderbilt Motor Pkwy, Smithtown, NY (631–231–1100)

5. Tuesday, March 19, 2002, 7–10 p.m.—Ocean Pines Library, 11107 Cathell Road, Ocean Pines, MD (410–208–4014)

6. Wednesday, March 20, 2002, 7–10 p.m.—Quality Inn Lake Wright, 6280 Northampton Blvd., Norfolk, VA (757–461–6251)

7. Thursday, March 21, 2002, 7–10 p.m.—Roanoke Island Festival Park, 1 Festival Park, Manteo, NC (252–475–1500)

The hearings will be tape recorded, with the tapes filed as the official transcript of the hearings.

Special Accommodations

The hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council Office at least 5 days prior to the hearing dates.

Dated: February 28, 2002.

Bruce C. Morehead,

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

[FR Doc. 02–5319 Filed 3–5–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on responents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 6, 2002.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the USACE, Directorate of Civil Works, Institute for Water Resources, 7701 Telegraph Road/Casey Building, Alexandria, Virgina 22315–3868. ATTN: CEIWR–MD (Stuart Davis). Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports Clearance Officer at (703) 692–1451.

Title, Associated Form, and OMB Number: Corps of Engineers Civil Works Questionnaires—Generic Clearance, OMB Control 0710–0001.

Needs and Uses: Information from the questionnaire items for the collection of planning data is needed to formulate and evaluate alternative water resources development plans in accordance with the Principles and Guidelines for Water Resources Council, to determine the effectiveness and evaluate the impacts of Corps project, and in the case of flood damage mitigation, to obtain information on flood damages incurred,

whether or not a project is being considered or exists.

Affected Public: Individual or households.

Annual Burden Hours: 17,583.

Number of Respondents: 213,750.

Responses Per Respondent: 1.

Average Burden Per Response: 5 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: Executive Order 12862, dated September 11, 1993, "Setting Customer Service Standards," requires that Federal agencies monitor public satisfaction with the quality of services that they provide. All survey questionnaires are adminstered either by face-to-face, mail, or telephone methods. Public surveys are used to gather data for planning and operating Corps projects and facilities. Survey responses have been used to determine the economically efficient flood and navigation plans, public preferences for projects alternatives, and customer satisfaction with existing facilities and services.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–5251 Filed 3–5–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Scientific Advisory Board Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with 10(a)(2) of the Federal Advisory committee Act, Public Law (92–463) announcement is made of the following open meeting:

Name of Committee: Scientific Advisory Board (SAB).

Dates of Meeting: May 23–24, 2002.

Place: The Armed Forces Institute of Pathology (AFP), Building 54, 14th St. & Alaska Ave., NW., Washington, DC 20306–6000.

Time: 8 a.m.–5 p.m. (May 23, 2002). 8:30 a.m.–12 p.m. (May 24, 2002).

FOR FURTHER INFORMATION CONTACT: Mr. Ridgely Rabold, Center for Advanced Pathology (CAP), AFIP, Building 54, Washington, DC 20306–6000, phone (202) 782–2553.

SUPPLEMENTARY INFORMATION:

(1) *General function of the board:* The Scientific Advisory Board provides scientific and professional advice and guidance on programs, polices and procedures of the AFIP.

(2) *Agenda:* The Board will hear status reports from the AFIP Director, the Director of the Center for Advanced Pathology, the Director of the National Museum of the Health and Medicine, and each of the pathology sub-speciality departments which the Board members will visit during the meeting.

(3) *Open board discussions:* Reports will be presented on all visited departments. The reports will consist of findings, recommended areas of further research, and suggested solutions. New trends and/or technologies will be discussed and goals established. The meeting is open to the public.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–5250 Filed 3–5–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning Mutants of Brucella Melitensis

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent No. 5,939,075 entitled "Mutants of Brucella Melitensis" issued August 17, 1999. The United States Government as represented by the Secretary of the Army has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The vaccines are prepared by isolating the Brucella genes complementing mutations in the purEK genes of Escherichia coli, physically mapping, determining the DNA sequence, constructing a defined deletion mutation by polynucleotide chain reaction (PCR), introducing a selectable marker into the deletion, and then selecting a purE mutant in Brucella arising by allelic exchange. The resulting Brucella require purines for growth because they lack the pure gene product that is required for the carboxylation of 5′-phosphoribosyl-5-aminoimidazole.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–5249 Filed 3–5–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning a Simple PCR Technique for Detecting and Differentiating Bacterial Pathogens

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent No. 5,958,686 entitled "A Simple PCR Technique for Detecting and Differentiating Bacterial Pathogens" issued September 28, 1999. The United States Government as represented by the Secretary of the Army has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: A simple polymerase chain reaction procedure is described for the detection and differentiation of Shigella from other pathodenic Escherichia coli isolates, such as EIEC and EPEC. Serotype specific primers derived from the rfc genes of different Shigella strains are used to identify the most prominents Shigella serotypes, such as S. sonnei, S. flexneria 1 through 5, and S. dysenteriae 1. More than 95% of Shigellosis cases reported could be identified by the serotype specific primers described.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–5248 Filed 3–5–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of the Final Army Alternate Procedures for Protection of Army Historic Properties

AGENCY: Department of the Army, DoD.

ACTION: Notice of adoption.

SUMMARY: This notice announces the Department of the Army's adoption of and publishes the final Army Alternate Procedures (AAP) to 36 CFR Part 800: Protection of Army Historic Properties. The Advisory Council on Historic Preservation (Council) approved the AAP for adoption in a role-call vote at their meeting on July 13, 2001. The AAP is an optional procedure that an installation may choose to adopt to satisfy compliance with Section 106 of the National Historic Preservation Act (NHPA) in lieu of the existing regulations set forth in the Council's regulations at 36 CFR Part 800. The Army and the Council have consulted extensively with State Historic Preservation Officers, Indian tribes and Native Hawaiian organizations, and the National Trust for Historic Preservation throughout the development of the AAP. The AAP represents a plan-based approach to Section 106 compliance, in contrast to the project-by-project review approach defined in 36 CFR 800 subpart B.

ADDRESSES: To obtain additional copies of the AAP, contact the U.S. Army Environmental Center, ATTN: SFIM–AEC–PA (Mr. Robert DiMichele), Aberdeen Proving Ground, MD 21010–5401.

FOR FURTHER INFORMATION CONTACT: Mr. Lee Foster, 703–693–0675.

SUPPLEMENTARY INFORMATION: The Department of the Army has adopted the final AAP for compliance with Section 106 of the NHPA and for comprehensive management of historic properties on lands owned or controlled by the Department of the Army. The AAP stands in place of the project-by-project review procedures set forth in 36 CFR Part 800. The AAP's leverage the internal policy requiring installations to prepare Integrated Cultural Resource Management Plans (ICRMP) in accordance with Army Regulation 200–4, Cultural Resources Management, as implemented by more detailed guidance in Department of the Army Pamphlet, 200–4. The AAP authorizes Army Installation Commanders to develop a Historic Property Component (HPC) to the installation's ICRMP. Once certified by the Council, the HPC serves as the installation's Section 106 compliance agreement for a five (5) year period. The installation's Section 106 compliance responsibilities would be met through internal installation implementation of the HPC rather than case-by-case, formalized, external review of individual undertakings as presently required by 36 CFR Part 800. Installations choosing not to develop certified HPCs will continue to review undertakings in accordance with 36 CFR part 800.

Copies of the AAP can also be found on the Council's web site at *www.achp.gov/army.html.*

Dated: February 25, 2002.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environmental, Safety and Occupational Health), OASA(I&E).

BILLING CODE 3710–08–M

ARMY ALTERNATE PROCEDURES

TO 36 CFR PART 800

ADVISORY COUNCIL ON HISTORIC PRESERVATION

ARMY ALTERNATE PROCEDURES TO 36 CFR Part 800

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Protection of Army Historic Properties

ARMY ALTERNATE PROCEDURES TO 36 CFR PART 800

Section 1.0: Introduction

1.1 Purpose and Introduction

(a) *Purpose.* Section 106 of the National Historic Preservation Act (Act) requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Advisory Council on Historic Preservation (Council) a reasonable opportunity to comment on such undertakings. The section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation between the Army, and consulting parties and the public. The purposes of these alternate procedures are to provide for more efficient, consistent and comprehensive Army compliance with the goals and mandates of section 106 of the Act, to encourage more thoughtful consideration and early planning for historic properties, and to better support the Army's ability to accomplish its national defense mission. These alternate procedures further these purposes by establishing a proactive planning and management approach that stands in place of the formal project-by-project review process prescribed by the Council's regulations at 36 CFR Part 800. The approach set forth in these alternate procedures relies on the Army's existing internal planning, funding and decision making processes.

(b) *Relation to other provisions of the Act.* Section 106 is related to other provisions of the Act designed to further the national policy on historic preservation. References to those related provisions are included in these procedures to identify circumstances where actions may be affected by the independent obligations of those other provisions.

(c) *Relation to internal Army Regulations.* Army Regulation 200-4 "Cultural Resources Management" (AR 200-4), an internal agency policy, sets forth the Army's requirements for complying with the Act, the Archeological Resources Protection Act (ARPA), the Native American Graves Protection and Repatriation Act (NAGPRA), the American Indian Religious Freedom Act (AIRFA), Indian Sacred Sites under Executive Order 13007 (Indian Sacred Sites), Executive Order 13175, (Consultation and Coordination with Indian Tribal Governments), and 36 CFR Part 79 (Curation of Federally-Owned and Administered Archaeological Collections). The cornerstone of AR 200-4 is the policy requirement for all installations (other than those receiving a variance) to prepare an Integrated Cultural Resource Management Plan (ICRMP). The ICRMP integrates the entirety of the installation cultural resources program with the ongoing military mission, allows identification of potential conflicts between the installation's mission and cultural resources, and identifies actions necessary to meet statutory and regulatory requirements.

(d) These procedures utilize to the maximum extent possible existing internal Army program requirements to meet section 106 requirements. Each ICRMP developed by an installation shall have a Historic Properties Component (HPC) to ensure compliance with section 106 of the Act on a programmatic, as opposed to project-by-project, basis. Individual installations shall coordinate with internal staff elements, consult with consulting parties, and, where appropriate, consider the views of the public, on development of the HPC to ensure that the HPC includes adequate procedures for identification, evaluation, and treatment of historic properties over the five-year ICRMP planning period. Installations shall substantially involve consulting parties on development of the HPC, not the entire ICRMP, since other components of the ICRMP involve management of cultural resources beyond the statutory and regulatory authority and jurisdiction of consulting parties. Neither these procedures nor a certified HPC relieves the Army of its responsibilities to comply with other cultural resources laws such as NAGPRA and ARPA.

(e) *Optional application.* These alternate procedures recognize that certain installations may be successfully operating under the current review procedures in 36 CFR Part 800. Therefore, application of these procedures is optional. Authority rests with the installation commander to elect to comply with section 106 of the Act through application of these alternate procedures in lieu of 36 CFR Part 800. Installation commanders choosing to continue compliance through 36 CFR Part 800 instead of through these alternate procedures are strongly encouraged to revisit that determination on a periodic basis, and may choose to apply these alternate procedures at any time, in accordance with Section 1.2, below. In

addition, installation commanders operating under an HPC retain authority to revert to operation under 36 CFR Part 800 should they desire.

(f) *Role of consulting parties.* These alternate procedures promote early and effective participation of State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs), Federally recognized Indian Tribes, and Native Hawaiian organizations in Army planning and management of historic properties. These consulting parties play a regulatory role in development of and signature on the HPC. Once the HPC has been finalized, SHPOs, THPOs, Federally recognized Indian Tribes, and Native Hawaiian organizations will have continued opportunities to participate in implementation by reviewing and monitoring installation compliance and providing expertise concerning identification, evaluation, and management of historic properties. These alternate procedures establish minimum requirements for compliance. Installations are encouraged to tailor their planning documents to their particular needs, and, where appropriate, supplement these minimum requirements.

(g) *Role of the public.* The public includes national, regional, or local organizations and individuals with an interest in historic preservation, and local governments when not participating as consulting parties. Public views are important to a fully informed decision making process under these procedures. The process established by the National Environmental Policy Act (NEPA), as implemented by the regulations published by the Council on Environmental Quality and Army Regulation 200-2 "Environmental Effects of Army Actions" (AR 200-2) is designed to ensure meaningful public participation in Federal agency decision making. Installation commanders will use the NEPA process to the greatest extent practicable to provide for public participation under these procedures for installation activities.

(h) Nothing in these procedures changes any rights reserved to any Indian Tribe by treaty or otherwise granted to any Indian Tribe, Native Hawaiian organization, or to their members by Federal law, including Statute, regulation or Executive Order. These procedures are designed to ensure that the Army fully meets its responsibilities to consult with Federally recognized Indian Tribes and Native Hawaiian organizations when Army activities may affect historic properties of traditional religious and cultural importance to them.

1.2 Methods of Complying with Section 106 of the Act

(a) Each installation electing to comply with section 106 of the Act through these procedures in lieu of 36 CFR Part 800 will develop a Draft HPC, in consultation with consulting parties, and request certification of its HPC from the Council. Once certified, an installation shall comply with section 106 of the Act through implementation of its HPC for a five-year period.

(b) Prior to HPC certification, installations shall continue to comply with section 106 of the Act by reviewing undertakings pursuant to 36 CFR Part 800.

(c) Installations electing not to comply with section 106 of the Act through these procedures shall continue to comply with section 106 of the Act by following 36 CFR Part 800.

(d) Where the Army proposes to conduct any undertaking on Tribal land where a Federally recognized Indian Tribe has developed Tribal historic preservation regulations pursuant to section 101(d)(5) of the Act, and those regulations operate in place of review under 36 CFR Part 800, the Army shall follow those Tribal historic preservation regulations prior to approving and while conducting the undertaking.

1.3 Authority

(a) These procedures are promulgated pursuant to section 110(a)(2)(E) of the Act (16 U.S.C. 470h-2) which directs Federal agencies to develop procedures for implementing section 106 of the Act, and 36 CFR § 800.14(a) which authorizes Federal agencies, in consultation with the Council, to develop alternative procedures to implement the section 106 process, that, after Council concurrence, substitute

for the regulations set forth in 36 CFR Part 800. The Council retains final authority to determine whether the Army's alternate procedures are consistent with 36 CFR Part 800.

1.4 Scope

(a) These procedures apply to all levels of the Active Army, the Army National Guard, the U.S. Army Reserve, including all installations and activities under the control of the Army by ownership, lease, license, public land withdrawal, or, any similar instrument, where the Agency Official elects to comply with these procedures in lieu of 36 CFR Part 800. All of the above shall be referred to in these procedures as the Army, unless otherwise noted.

(b) These procedures do not apply to the Civil Works functions of the U.S. Army Corps of Engineers.

(c) These procedures shall not apply to installations or activities where the installation commander has elected, pursuant to Section 2.1, to continue to comply with section 106 of the Act through the process set forth under 36 CFR Part 800.

1.5 Definitions

Act means the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.).

Adverse effects are those effects of an undertaking that may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion on the National Register of Historic Places (National Register) in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. The criteria of adverse effect also require consideration of all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

Agency Official is the Army official with jurisdiction over an undertaking as set forth in Section 1.6(a).

Area of potential effects (APE) means the geographic area or areas within which an undertaking may directly or indirectly cause changes in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

Army means Active Army, Army National Guard, U.S. Army Reserve, and all installations and activities as described in Section 1.4.

Comment, when used in relation to the Council, means the findings and recommendations of the Council formally provided in writing to the Secretary of the Army under section 106 of the Act.

Consulting parties are those parties that have a consultative role in the section 106 process; these parties are the SHPO, the THPO, Federally recognized Indian Tribes, Native Hawaiian organizations, representatives of local governments, and applicants for Federal permits, licenses, assistance or other forms of Federal approval. Members of the public may participate as consulting parties upon the invitation of the installation commander.

Consultation means the formal process of seeking, discussing, identifying and considering the views of consulting parties. For purposes of these procedures, consultation with Federally recognized Indian Tribes means consultation on a government-to-government basis as defined below.

Coordination, for the purposes of these procedures, means the informal communication and exchange of information and ideas between consulting parties concerning historic preservation issues affecting the Army. Coordination is intended to be an informal process, on a staff-to-staff basis, for routine management issues as distinguished from the formal consultation and tribal consultation processes as defined by these procedures.

Council means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

Day or days means calendar days.

Effect means alteration to the characteristics of an historic property that qualify it for inclusion in or make it eligible for inclusion in the National Register.

Federally recognized Indian Tribe, for the purposes of these procedures, means: (i) an Indian or Alaska Native Tribe, band, nation, pueblo, village or community within the continental United States presently acknowledged by the Secretary of the Interior to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act, Public Law 103-454; and (ii) Regional Corporations or Village Corporations, as those terms are defined in Section 3 of the Alaskan Native Claims Settlement Act (43 U.S.C. 1602), which are recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Government-to-government relations, for the purposes of these procedures, means relations formally established between the Army and Federally recognized Indian Tribes through their respective governmental structures. In recognition of a Federally recognized Indian Tribe's status as a sovereign nation, formal government-to-government relations are established and maintained directly between installation commanders and the heads of Tribal governments. In accordance with AR 200-4, installation commanders initiate government-to-government relations with Federally recognized Indian Tribes by means of formal, written communication to the heads of Tribal governments. Such letters should designate an installation official who is authorized to conduct follow-on consultations with the Tribe's designated representative. Installation commanders are encouraged to meet face-to-face with the heads of Tribal governments as part of the process to initiate government-to-government consultation. Any final decisions on installation HPCs that have been the subject of government-to-government consultation will be formally transmitted from the installation commander to the head of the Tribal government.

Historic preservation or preservation includes identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, conservation, and education and training regarding the foregoing activities or any combination of the foregoing activities.

Historic property means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register maintained by the Secretary of the Interior. The term includes artifacts, records, and remains that are related to and located within such properties. The term includes historic properties of traditional religious and cultural importance to a Federally recognized Indian Tribe or Native Hawaiian organization. The term "eligible for inclusion in the National Register" includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

Historic Properties Component (HPC) means, in accordance with these procedures, that portion of the ICRMP which relates directly to the implementation of section 106 of the Act. The HPC is a five-year plan that provides for installation identification, evaluation, assessment of effects, treatment, and management of historic properties, including those of traditional religious and cultural importance to a Federally recognized Indian Tribe or Native Hawaiian organization. The HPC is the basis upon which an installation's program is evaluated for certification for purposes of these procedures. While the HPC remains a component of the ICRMP, it stands alone as a legal compliance document under these procedures.

Installation means a grouping of facilities located in the same vicinity, which are under control of the Army and used by Army organizations. This includes land and improvements. In addition to those used primarily by soldiers, the term "installation" applies to real properties such as depots, arsenals, ammunition plants (both contractor and government operated), hospitals, terminals, and other special mission installations. The term may also be applied to a state or a region in which the Army maintains facilities. For example, the Army National Guard may consider National Guard facilities within a state to be one installation and the U.S. Army Reserve may consider Regional Support Centers to be installations. Under these procedures, a subinstallation may be certified individually or as part of its support installation.

Integrated Cultural Resources Management Plan (ICRMP) is a five-year plan developed and implemented by an installation commander to provide for the management of cultural resources in a way that maximizes beneficial effects on such resources and minimizes adverse effects and impacts without impeding the mission of the Army.

National Historic Landmark (NHL) means a historic property that the Secretary of the Interior has designated a National Historic Landmark pursuant to the Historic Sites Act of 1935, Public Law 100-17.

National Register means the National Register of Historic Places maintained by the Secretary of the Interior.

National Register Criteria means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR Part 60).

Native Hawaiian means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

Native Hawaiian organization means any organization which (1) serves and represents the interests of Native Hawaiians, (2) has as a primary and stated purpose the provision of services to Native Hawaiians, and (3) has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians. Such organizations include the Office of Hawaiian Affairs and Hui Malama I Na Kupuna 'O Hawai'i Nei.

NEPA process means the decision making process established by the National Environmental Policy Act as implemented by the regulations published by the Council on Environmental Quality and AR 200-2. The NEPA process involves preparation of a NEPA document, either a Record of Environmental Consideration, an Environmental Assessment (EA) or an Environmental Impact Statement (EIS), followed by a decision document. An EA results in either a Finding of No Significant Impact or Notice of Intent to prepare an EIS. An EIS results in a Record of Decision.

Professional standards means, for the purposes of these procedures, those standards set forth in the Secretary of Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716), which apply to individuals conducting technical work for the Army. Tribal members and Native Hawaiians are uniquely qualified to identify and assist in the evaluation, assessment of effect, and treatment of historic properties to which they attach traditional religious and cultural importance. When the Army requests assistance from Federally recognized Indian Tribes and Native Hawaiian organizations to aid in the identification, evaluation, assessment of effects and treatment of historic properties of traditional religious and cultural importance, such Tribal members and Native Hawaiians need not meet the Secretary of Interior's Professional Qualifications Standards (48 FR 44738-44739).

Review and monitoring means an informal process in which an installation shall coordinate with consulting parties to discuss proposed undertakings for the upcoming year, results of plan implementation during the previous year, the overall effectiveness of the installation's HPC, and the need for making amendments to it. At a minimum, this review and monitoring shall be conducted annually.

Sovereign or *sovereignty,* with respect to Federally recognized Indian Tribes means the exercise of inherent sovereign powers over their members and territories.

State Historic Preservation Officer (SHPO) means the official appointed or designated pursuant to section 101(b)(1) of the Act to administer the state historic preservation program or a representative designated to act for the State Historic Preservation Officer.

Surface Danger Zone means the area designated on the ground of a training complex (to include associated safety areas) for the vertical and lateral containment of projectiles, fragments, debris, and components resulting from the firing or detonation of weapon systems to include exploded and unexploded ordnance.

Tribal consultation means seeking, discussing, identifying and considering Tribal views through good faith dialogue with Federally recognized Indian Tribes on a government-to-government basis in recognition of the unique relationship between Federal and Tribal governments and the status of Federally recognized Indian Tribes as sovereign nations (see government-to-government relations). The Tribal Historic Preservation Officer (THPO) serves as the Tribal official for government-to-government consultation for undertakings affecting historic properties off Tribal lands only where the Tribal government has designated the THPO as the Tribe's designated representative responsible for carrying out such functions.

Tribal Historic Preservation Officer (THPO) means the Tribal official, appointed by the head of the Tribal government or as designated by a Tribal ordinance or preservation program, who has assumed the responsibilities of the SHPO for purposes of section 106 compliance on Tribal lands in accordance with section 101(d)(2) of the Act.

Tribal lands mean all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

Undertaking means a project, activity, or program that is funded in whole or in part under the direct or indirect jurisdiction of the Army, including those carried out by or on behalf of the Army, those carried out in whole or in part with Army funds, and those requiring Army approval.

1.6 Participants

(a) *Army.*

(1) The Army Agency Official with jurisdiction over an undertaking takes legal and financial responsibility for section 106 compliance either through implementing these alternate procedures or continuing operation under 36 CFR Part 800. For purposes of these procedures, the Army Agency Official with jurisdiction over an undertaking is the installation commander or official representative designated by the commander. The Army Agency Official shall ensure that professional standards, as defined in Section 1.5, are met in the conduct of identification, evaluation, assessment of effects, and treatment of historic properties.

(i) Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) (DASA (ESOH)) is the Army Federal Preservation Officer (FPO) responsible for policy, program direction and oversight of the Army's responsibilities under the Act. The DASA (ESOH) is responsible for ensuring the Army's implementation of these alternate procedures.

(ii) The ACSIM is the Army staff proponent for implementing the Act and Army-specific policy and guidelines set forth in AR 200-4. ACSIM functional responsibilities are carried out through the Director of Environmental Programs (DEP) and the Commander, U.S. Army Environmental Center as set forth in AR 200-4.
The ACSIM shall:

(A) Carry out the ACSIM's assigned staff functions in AR 200-4;

(B) Review HPCs and installation historic preservation programs in accordance with the staffing procedures set forth in Section 4.1; and,

(C) Serve as the Agency Official on the Army Staff for purposes of consultation and coordination with consulting parties and the public on development of these alternate procedures, amendment and implementing guidance.

(iii) Commanders of Major Commands; Commander, U.S. Army Reserve Command; and Director, Army National Guard (MACOM commanders) shall:

(A) Carry out the MACOM's historic property management and compliance responsibilities set forth in AR 200-4;

(B) Review installation programs to ensure that historic preservation compliance responsibilities under these procedures are implemented across all installations electing to comply with these procedures within their MACOM;

(C) Review installation HPCs, amendments, and program elements for consistency with these procedures and the certification criteria;

(D) When requested, participate in consultation on HPC certification, amendment and recertification to resolve objections; and,

(E) Assist installation commanders in establishing funding priorities to meet the requirements of these procedures, and assist in resolution of issues and objections regarding installation performance under these procedures.

(iv) Installation and Activity Commanders, Commanders of U.S. Army Reserve Regional Support Centers, and Adjutants General (installation commanders) shall:

(A) Carry out their assigned historic property management and compliance responsibilities set forth in AR 200-4;

(B) As the Agency Officials responsible for installation undertakings, ensure that such undertakings are implemented in accordance with either these procedures or 36 CFR Part 800;

(C) Develop a historic preservation program, including an HPC, in accordance with Section 3.0 and AR 200-4;

(D) Serve as the Agency Official responsible for consulting on HPC and its implementation with SHPOs, THPOs, Native Hawaiian organizations, and Federally recognized Indian Tribes when required under these procedures. Tribal consultation shall occur with Federally recognized Indian Tribes on a government-to-government basis, as defined in Section 1.5; and,

(E) Ensure that such consultation provides a reasonable opportunity for the SHPO, THPO, Federally recognized Indian Tribes, and Native Hawaiian organizations to identify their concerns with the identification, evaluation, assessment of effect and treatment of historic properties, and after consideration, address such concerns.

(F) If electing to implement these procedures:

(1) Sign an HPC, and amendments thereto, recognizing that the HPC is the installation's procedure for complying with section 106 of the Act;

(2) Invite the SHPO, THPO, Federally recognized Indian Tribe or Native Hawaiian organization to consult in development of and sign the HPC;

(3) Implement a signed HPC to comply with section 106 of the Act; and,

(4) Prior to certification, comply with section 106 of the Act through review of undertakings under 36 CFR Part 800.

(b) *Advisory Council on Historic Preservation.*

(1) The Council issues regulations to implement section 106 of the Act; provides guidance and advice on the application of its regulations, 36 CFR Part 800; oversees the operation of the section 106 process; enters into agreements with Federally recognized Indian Tribes under section 101(d)(5) of the Act; and approves Federal agency procedures for substitution of the Council's regulations. Consulting parties and the public, may at any time seek advice, guidance, and assistance from the Council on the application of these procedures.

(2) For the purposes of these procedures, the Council reviews and evaluates HPCs and certifies that an installation is authorized to implement an approved HPC.

(c) *State Historic Preservation Officer.*

(1) The SHPO administers the national preservation program at the State level and is responsible for conducting comprehensive statewide surveys of historic properties and for maintaining inventories of these properties. Under section 101(b)(3)(E) of the Act, SHPOs are directly responsible for advising and assisting Federal agencies, such as the Army, in carrying out their historic preservation responsibilities. For purposes of these procedures, the SHPO advises and consults with individual installations in the development, implementation, recertification and Major Amendment of the HPC.

(2) The SHPO has access to expertise regarding historic properties within the State. The SHPO, throughout HPC implementation, may provide assistance to the installation commander and ensure access to and application of such expertise.

(3) When participating as a consulting party, the SHPO is invited to sign the HPC.

(d) *Federally Recognized Indian Tribes and Native Hawaiian Organizations.*

(1) Section 101(d)(6)(B) of the Act requires the Army to consult with any Federally recognized Indian Tribe and Native Hawaiian organization that attaches traditional religious and cultural importance to historic properties that may be affected by an undertaking. For Federally recognized Indian Tribes, this consultation may take place for historic properties located both on and off Tribal lands. Consultation with Federally recognized Indian Tribes shall be conducted as Tribal consultation and initiated on a government-to-government basis, and shall occur through the provisions of these procedures. While installation commanders must invite Federally recognized Indian Tribes to participate in government-to-government consultation, as sovereign nations, such Tribes may decline to participate.

(2) Where an installation's undertakings may affect historic properties of traditional religious and cultural importance to a Federally recognized Indian Tribe or Native Hawaiian organization, that Tribe or organization shall be invited to participate as a consulting party on the development, implementation, recertification and Major Amendment to the HPC.

(3) When participating as consulting parties, Federally recognized Indian Tribes and Native Hawaiian organizations shall be invited to sign the HPC.

(e) *Tribal Historic Preservation Officer.*

(1) Where the Secretary of the Interior has authorized a Federally recognized Indian Tribe to carry out some or all of the SHPO responsibilities on Tribal lands pursuant to section 101(d)(2) of the Act, the THPO acts as a consulting party on the development, implementation, recertification and Major Amendment to the HPC. The THPO participates as a consulting party when:

(i) An installation's undertakings occur on or affect historic properties on Tribal lands; or,

(ii) An installation's undertakings may affect a historic property of traditional religious and cultural importance to the Tribe both on and off Tribal lands, and the THPO is the Tribe's designated representative for government-to-government consultation.

(2) When the THPO has participated as a consulting party, the Federally recognized Indian tribe which he or she represents is invited to sign the HPC.

(f) *The Public.*

(1) The installation commander shall seek and consider the views of the general public regarding the development, implementation, and recertification of the HPC in a manner consistent with Section 3.5 and Section 5.2 below.

Section 2.0: Applicability of Procedures

2.1 Installation Determination

(a) Installation commanders electing to comply with these procedures in lieu of 36 CFR Part 800 shall document that determination in writing and provide notice to:

(1) The ACSIM, through its MACOM;

(2) The SHPO;

(3) The Council;

(4) The head of any Federally recognized Indian Tribe or Native Hawaiian organization that attaches traditional religious and cultural importance to any historic property on the installation or affected by installation activities; and,

(5) The THPO for any Federally recognized Indian Tribe where historic properties on Tribal land will be affected by installation activities, including those properties of traditional religious and cultural importance to the Tribe.

(b) Installation commanders electing to continue compliance with section 106 of the Act through 36 CFR Part 800 as opposed to these procedures may revisit their decision at any time thereafter and elect to comply with these procedures by:

(1) Filing the notice required by Section 2.1(a);

(2) Establishing the necessary program elements set forth in Section 3.0; and,

(3) Completing the certification process established by Section 4.0.

(c) When an installation commander operating under a certified HPC decides that the HPC is no longer appropriate, the installation commander may terminate the HPC by taking the following actions:

(1) Provide a notice of the installation commander's intent to terminate to all consulting parties 45 days prior to the effective date of termination. The notice of intent to terminate should provide a brief explanation for the decision to terminate;

(2) Invite the Council, MACOM, ACSIM, and consulting parties to provide their views on the proposed termination during the 45-day notification period, and consider those views during the 45-day period. The installation commander will only furnish additional notice to consulting parties when a decision to continue operation under the HPC is made; and,

(3) At the end of the 45-day period, revert to compliance with section 106 through 36 CFR Part 800.

(d) Installation commanders who have terminated their HPC may elect to implement these procedures at a later time through the certification process in Section 4.3.

Section 3.0: Program Elements for Installations Participating in the Alternate Procedures

3.1 Designation of Cultural Resource Manager (CRM) and Coordinator for Native American Affairs

(a) Each installation commander shall designate, consistent with AR 200-4, an installation CRM to coordinate the section 106 responsibilities required under these procedures. The installation commander will ensure that the CRM has appropriate knowledge, skills, and professional training and education to carry out installation cultural resources management responsibilities. The CRM shall ensure that all historic properties technical work, including identification and evaluation of historic properties, assessment and treatment of effects, and preparation of HPCs, is conducted by individuals who meet the applicable professional standards defined in Section 1.5.

(b) Each installation commander shall designate, consistent with AR 200-4, a Coordinator for Native American Affairs if there are Native American issues. The installation commander will ensure that the Coordinator for Native American Affairs has appropriate knowledge, skills, and professional training and education to conduct installation consultation responsibilities with Federally recognized Indian Tribes and Native Hawaiian organizations. The Coordinator for Native American Affairs is responsible for facilitating the government-to-government relationship and, when designated, carry out staff-to-staff consultation responsibilities with Federally recognized Indian Tribes. The Coordinator for Native American Affairs will have access to the installation command staff in order to facilitate direct government-to-government consultation.

(c) If the installation commander deems it appropriate, he or she will fill the Coordinator for Native American Affairs position with an individual other than the CRM.

3.2 Professional Standards for the Development of the HPC

(a) Prior to developing the HPC, the installation commander shall ensure that:

(1) The CRM is either qualified under the standards set forth in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, and/or has access to technical experts who meet these standards to identify, evaluate, assess effects to, and treat historic properties, and for certification purposes in Section 4.0 below; and,

(2) When such expertise is provided by Federally recognized Indian Tribes and Native Hawaiian organizations regarding identification of properties of traditional religious and cultural importance, they need not meet the Secretary of Interior's Standards and Guidelines for Archeology and Historic Preservation.

(b) The Army is responsible for all findings and determinations made by external parties. When an external party prepares a document or study, the Army is responsible for its content and ensuring that it meets applicable standards and guidelines.

3.3 Identification of Consulting Parties for HPC Development

(a) Prior to the development of the HPC, the installation commander shall:

(1) Identify the SHPO(s) associated with the installation;

(2) Identify the THPO(s) when installation activities may affect historic properties on Tribal lands;

(3) Identify any Federally recognized Indian Tribes who may attach traditional religious and cultural importance to any historic properties on or off Tribal lands that may be affected by installation activities;

(4) Identify any Native Hawaiian organization that may attach traditional religious and cultural importance to any historic properties that may be affected by installation activities;

(5) In consultation with the SHPO(s), THPO(s), Federally recognized Indian Tribes, and Native Hawaiian organizations, identify other parties that are entitled, or should be invited to be consulting parties, including interested members of the public; and,

(6) Invite consulting parties to participate in the development of the installation's HPC.

(b) Installation commanders should contact Federally recognized Indian Tribes early to establish a schedule and protocol for conducting consultation on a government-to-government basis for development of the HPC.

3.4 Consultation and Coordination for HPC Development

(a) Each installation commander shall develop a draft HPC in consultation with the parties identified in Section 3.3, above, and, in coordination with appropriate installation staff (including natural resource management; facilities/housing management; range management, testing, training, and operations; master planning; public affairs office; the CRM, the Coordinator for Native American Affairs, and the Staff Judge Advocate).

(b) The installation commander shall ensure that all parties participating in consultation are provided adequate documentation early in the process regarding the installation's mission and operations, historic properties under its control, and the installation command structure. The documentation should be provided to consulting parties at least 30 days in advance of the initial consultation meeting to allow for a full review prior to participation in HPC development.

(c) HPC development begins with an initial consultation meeting between installation staff and consulting parties to identify issues that should be addressed in the HPC. Consultation and coordination shall continue throughout HPC development to ensure adequate opportunity for these parties to fully participate in development of the HPC. Installations are encouraged to invite consulting parties to participate in workgroups for drafting the HPC, but, at a minimum, must, provide opportunities for periodic review, and comment on draft work products.

3.5 HPC Development

The installation commander shall prepare an HPC to include the following:

(a) *Introduction*: This is a description of the installation's past and present mission(s) to include information that describes the types of activities associated with each mission that might have an effect on historic properties. The introduction shall also identify where the CRM position, and, when appropriate, the Coordinator for Native American Affairs position, is located within the installation's organizational structure.

(b) *Planning Level Survey (PLS):* The PLS, based on review of existing literature, records, and data, identifies the historic properties that are known, or may be expected to be present, on the installation. The PLS shall be updated as necessary to include additional information made available through the identification and evaluation of historic properties. The PLS shall, as appropriate:

(1) Provide locations of known historic properties, including historic properties having traditional religious and cultural importance to Federally recognized Indian Tribes or Native Hawaiian organizations, that have been listed in the National Register, or determined eligible for inclusion in the National Register, and those properties that require evaluation for determination of eligibility for the National Register;

(2) Be constructed in such a way that sensitive site information shall be excluded from the HPC, where distribution might jeopardize either the historic property or the confidentiality concerns of Federally recognized Indian Tribes and Native Hawaiian organizations;

(3) Establish an annual inventory schedule that identifies and prioritizes those areas of the installation that are programmed for undertakings in the next fiscal year to ensure that inventories and analyses of alternatives are completed early in the planning processes for these activities;

(4) Provide locations that have been previously inventoried where no historic properties have been identified;

(5) Provide information on current and projected future conditions of identified historic properties;

(6) Contain or provide reference to existing historic contexts, archeological sensitivity assessments, predictive models, and other relevant reports addressing historic properties on the installation;

(7) Provide a listing of any affiliated Federally recognized Indian Tribes or Native Hawaiian organizations, other consulting parties and members of the public having an interest in the historic properties associated with the installation.

(c) *Categorized Undertakings:* This section shall include:

(1) A summary of the categories of undertakings that the installation anticipates conducting over the five-year planning period and should serve as the basis for development of standardized treatments, under Section 3.5(e), where such activities have the potential to result in effects to historic properties. Categories of undertakings should include maintenance and repair, ground-disturbing activities, renovation, adaptive reuse, rehabilitation, substantial alteration, demolition, disposal through transfer, sale, or lease, and mothballing. This is not a list of individual undertakings;

(2) If available, a list of potential undertakings that the installation has programmed over the five-year planning period; and,

(3) Past and proposed undertakings that should be considered by consulting parties through the HPC's review and monitoring process required by Section 3.5(f)(2).

(d) *Categorical Exclusions*: The HPC should include a list of undertakings that are categorically excluded from review. This list of categorical exclusions, developed in consultation with consulting parties, is supplemental to the Army-wide exempt undertakings listed in Section 4.5. Final approval of an HPC's categorical exclusions, as provided for in 36 CFR § 800.14(c), will be made by the Council as part of the certification process; however, the Council may terminate a categorical exclusion at the Army's request or when the Council determines that the exclusion no longer meets the criteria of 36 CFR § 800.14(c)(1). The Council shall notify the Army 30 days before termination becomes effective.

(e) *Management Goals and Practices*: The purpose of this section is to establish proactive consideration of preservation concerns carried out by management practices that are integrated into day-to-day installation activities to avoid adverse effects to historic properties. This section shall include:

(1) A description of the installation's desired future condition for historic properties over the course of the planning period;

(2) A description of goals for management and preservation of the installation's historic properties to be achieved over the course of the planning period; and,

(3) A list of management practices that can be employed to best meet the desired future condition and stated management goals. These management practices should:

(i) Be comparable with preservation standards and guidelines included in DA PAM 200-4 and the relevant Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation;

(ii) Focus on the major activities of an installation, including those identified in the Categorized Undertakings section of the HPC; and,

(iii) Focus on standardizing effective historic preservation practices and procedures for installation properties that, at a minimum, include preservation, adaptive reuse, rehabilitation standards, and, as appropriate, interpretation for historic properties.

(f) *Standard Operating Procedures (SOPs):* SOPs are critical to an installation's proper management of its undertakings and must be developed in close consultation with consulting parties, including SHPOs, THPOs, Federally recognized Indian Tribes, and Native Hawaiian organizations. SOPs shall be developed to provide consistent implementation of management goals, historic preservation standards, coordination, consultation, and mitigation procedures for historic properties that may be affected by installation undertakings. Where Federally recognized Indian Tribes attach traditional religious and cultural importance to historic properties, consultation with Tribes may take place for properties both on and off Tribal lands. These procedures shall be tailored for the particular conditions and specific requirements at an installation. At a minimum, HPCs shall include the following:

(1) *SOPs for Installation Decision Making Process:* These SOPs define the progressive steps which an installation shall take in its internal decision making process in order to manage its undertakings and their potential to affect historic properties. The goal of this SOP should be to avoid adverse effects in the first instance; to mitigate such effects where avoidance is not feasible; and to proceed with notification when adverse effects cannot be mitigated. In order to document this process, an installation commander should complete each step of the process before proceeding to the next.

(i) *Identifying Undertakings and Defining APEs*: This SOP shall provide for identifying undertakings and defining the APE for each undertaking.

(ii) *Identifying and Evaluating Historic Properties:* This SOP shall contain procedures for identifying historic properties within the APE, evaluating their eligibility for the National Register

and assessing the effects on them, including those properties having traditional religious and cultural importance to Federally recognized Indian Tribes or Native Hawaiian organizations (recognizing that such properties may be eligible under any of the National Register criteria). This SOP should also contain a procedure for resolving any disputes over the eligibility of a property to the National Register. Any unresolved disputes concerning eligibility shall be forwarded to the Keeper of the National Register in accordance with 36 CFR Part 63.

(iii) *Applying Best Management Practices:* This SOP shall provide for the consideration and application of historic preservation management practices established pursuant to Section 3.5(e) to avoid adverse effects in the first instance and to meet identified HPC preservation goals. Avoidance of adverse effects would preclude the need to proceed with a more detailed alternatives review. Avoidance of adverse effects includes, for example, rehabilitating historic buildings following the Secretary of the Interior's Standards for the Treatment of Historic Properties (1995), and modifying project plans to physically avoid and protect archeological sites and historic properties of traditional religious and cultural importance to a Federally recognized Indian Tribe or Native Hawaiian organization.

(iv) *Alternatives Review:* This SOP shall provide a process for the review of project alternatives for undertakings where application of best management practices is not feasible or would not avoid adverse effects. Prior to applying mitigation measures to minimize unavoidable adverse effects to historic properties, application of this SOP is required. This SOP will:

(A) Conduct a review of project alternatives, using the NEPA process, when practical, to consider whether other feasible alternatives to avoid or reduce impacts to a historic property can be implemented. Alternatives should include the relocation or modification of project features, or the rehabilitation, renovation, adaptive reuse, transfer, or mothballing of historic buildings; and,

(B) Conduct an economic analysis for historic buildings proposed for demolition that addresses and compares the economic costs associated with alternatives, including the life-cycle costs associated with rehabilitation and reuse; demolition and new construction; and mothballing and reuse.

(v) *Treatment of Adverse Effects:* This SOP shall provide for treating/mitigating adverse effects that cannot be avoided through the application of best management practices or implementation of a project alternative. This SOP should include HABS/HAER recordation, archeological data recovery, and mitigation procedures for transfer, sale or lease of historic properties out of Army ownership to a non-federal entity.

(vi) *Documenting Acceptable Loss:* This SOP shall provide for determinations to proceed with an undertaking having an adverse effect where the installation commander has determined that treatment/mitigation is not in the best public interest or is not financially or otherwise feasible. The installation commander's determination, including a discussion as to how the preceding steps in the decision making process were carried out and a rationale as to why mitigation measures will not be applied, shall be provided to consulting parties and the Council for a 30-day review, prior to implementing the undertaking. Upon receiving the written views of the Council, the installation commander must consider the Council's comments and provide written documentation of his or her decision to the Council and the consulting parties.

(2) *Review and Monitoring:* This SOP shall establish an annual review and monitoring coordination process among appropriate installation staff and consulting parties. Review and monitoring shall:

(i) Provide in advance, sufficient information to allow meaningful participation of consulting parties in the review and monitoring process;

(ii) Include review of the installation's programmed undertakings for the upcoming fiscal year to provide consulting parties an advanced opportunity to express their views on specific methods for identification, evaluation, and treatment of historic properties affected by such undertakings;

(iii) Include evaluation of past undertakings for the concluded fiscal year and the results of historic preservation efforts related to those undertakings;

(iv) Include evaluation of the effectiveness of the installation's HPC and the need to make amendments to it; and,

(v) Rely to the greatest extent practicable, on information generated by existing Army auditing, programming, and reporting systems.

(3) *Obtaining Technical Assistance in HPC Implementation:* Recognizing the importance of consulting parties' expertise in the management of historic properties, this SOP may be used to establish a process for the continued involvement of consulting parties and qualified organizations with a demonstrated interest in management of the installation's historic properties during HPC implementation through use of reimbursable arrangements.

(i) This SOP should establish reimbursable arrangements, such as cooperative agreements and procurement contracts, to obtain technical assistance from SHPOs, THPOs, Federally Recognized Indian Tribes, Native Hawaiian organizations, and other qualified organizations with a demonstrated interest in management of the installation's historic properties.

(ii) This SOP will ensure that the installation obtains necessary technical assistance in identification, evaluation, assessment of effects, and treatment of historic properties, using, to the maximum extent practicable, reimbursable arrangements such as procurement contracts and cooperative agreements with consulting parties and qualified organizations with a demonstrated interest in management of the installation's historic properties.

(iii) This SOP will recognize that:

(A) Federally recognized Indian Tribes are uniquely qualified to identify, evaluate, and treat historic properties to which they attach traditional religious and cultural importance on and off Tribal lands;

(B) Native Hawaiian organizations are uniquely qualified to identify, evaluate, and treat historic properties to which they attach traditional religious and cultural importance; and,

(C) SHPOs and THPOs possess indispensable professional expertise for identification and evaluation of historic properties as well as assessment and treatment of effects.

(iv) This SOP shall ensure that all actions to implement the HPC will be taken by individuals who meet professional standards under regulations established by the Secretary of Interior in accordance with Section 112 (a)(1)(A) of the Act. The Army Agency Official shall ensure that professional standards, as defined in Section 1.5 of these procedures, are met in the conduct of identification, evaluation, and assessment of effects and treatment of historic properties. When the Army requests assistance from Federally recognized Indian Tribes and Native Hawaiian organizations in the identification, evaluation, assessment of effects and treatment of historic properties of traditional religious and cultural importance, they need not meet the Secretary of Interior's Professional Qualifications Standards.

(4) *Consultation for Inadvertent Discovery and for Emergency Actions:* This SOP shall establish an expeditious consultation process between the installation and the consulting parties for emergency actions and for the inadvertent discovery of historic properties, including those of traditional religious and cultural importance to Federally recognized Indian Tribes or Native Hawaiian organizations.

Consultation with Federally recognized Indian Tribes shall take place for such properties both on and off Tribal lands.

(5) *Categorical Exclusions:* This SOP shall provide for a process to determine when an approved categorical exclusion is applicable to an undertaking.

(6) *National Historic Landmarks:* This SOP shall contain provisions to give special consideration to installation undertakings that may directly and adversely affect NHLs by taking such planning and actions, where feasible, to minimize harm to the NHL. This SOP shall afford the Council and the National Park Service a reasonable opportunity to comment on the NEPA document(s) prepared for or associated with the undertaking prior to its approval.

(7) *Shared Public Data:* This SOP shall provide for the sharing of data between the installation and consulting parties and the public. The procedure should, at a minimum, identify the categories of data to be shared, the format in which the data will be provided and the standards of data accuracy that will be met. To the greatest extent permitted by law, including section 304 of the Act and section 9 of ARPA, this SOP shall also ensure that shared data concerning the precise location and nature of historic properties, properties of traditional religious and cultural importance, and sacred sites identified pursuant to Executive Order 13007 are protected from public disclosure through NEPA or the Freedom of Information Act. Particular care should be taken to safeguard electronic data.

Section 4.0: Program Review and Certification

The installation commander shall develop a final HPC only after completing internal Army review and consultation with consulting parties and public participation in accordance with the procedures set forth in this section. The installation commander shall sign and implement the final HPC in recognition of its status as a section 106 legal compliance document. Should the command change during HPC implementation, the CRM or Native American Affairs Coordinator, shall advise the incoming installation commander of the HPC, its content, commitments and legal effect.

4.1 Army Program Review

(a) Installation commanders that have elected to comply with these procedures in lieu of 36 CFR Part 800 shall forward a Draft HPC, meeting the requirements set forth in Section 3.0, through the MACOM to Headquarters Department of the Army (HQDA) for review and comment through the following procedures.

(b) The installation commander shall forward the Draft HPC and supporting documentation to the MACOM for review. The review package shall include:

(1) The Draft HPC addressing all program elements set forth in Section 3.0;

(2) The Draft NEPA document, generally an EA, developed to consider the environmental impacts of adopting and developing the Draft HPC;

(3) Confirmation that relevant installation level staff, including legal, operations and training, facilities and public works, have reviewed the Draft HPC;

(4) Summary of consultation with consulting parties and the results of such consultation, including the written comments, if any; and,

(5) An explanation of outstanding issues of concern when the Draft HPC does not reflect the mutual agreement of the installation and consulting parties.

(c) The MACOM shall conduct appropriate technical and legal review of the Draft HPC and supporting documentation, and forward the review package with the MACOM's written comments to the ACSIM within 30 days.

(d) The ACSIM, or his/her designee, shall coordinate HQDA review of the Draft HPC and supporting documentation, and, within 30, days provide written comments to the MACOM and installation commander regarding the Draft HPC's consistency with technical, legal and policy practices.

(e) The installation commander shall release the Draft HPC and NEPA document for review by the public and consulting parties in accordance with the procedures set forth in Section 4.2 after giving consideration to MACOM and HQDA comments and integrating such comments where appropriate. The installation commander shall withhold sensitive site data to the greatest extent permitted by ARPA and the Act.

4.2 Consulting Party and Public Review

(a) *Public Review*. After consultation with consulting parties in accordance with Section 3.4, and internal Army program review pursuant to Section 4.1, the installation shall release the Draft HPC and NEPA document, including, if appropriate, a draft Finding of No Significant Impact to the public for 30-day review and comment. The installation shall publicize the availability of these documents using appropriate public notification procedures established by the Army's published NEPA regulations, 32 CFR Part 651. In addition, the installation shall forward copies of the Draft HPC and Draft NEPA document to any members of the public who have been identified as having an interest in the effects of Army activities on historic properties located on the installation or affected by installation activities, and local government officials.

(b) *Tribal, Native Hawaiian organization, SHPO, THPO and Council Review*:

(1) Concurrent with public review, the installation commander shall forward the Draft HPC and NEPA document to the following entities and invite their views:

(i) The Council;

(ii) The SHPO;

(iii) The THPO for any Federally recognized Indian Tribe where historic properties on Tribal lands will be affected by installation activities, including those properties of traditional religious and cultural importance to the Tribe;

(iv) The Tribal government and Native Hawaiian organization that attaches traditional religious and cultural importance to any historic property on the installation or affected by installation activities;

(v) any other consulting parties that have taken part in development of the HPC; and,

(2) Within 30 days of receipt of Draft HPC and NEPA document, consulting parties shall:

(i) Provide their written views to the installation;

(ii) Indicate whether or not they intend to be a signatory to the HPC; and,

(iii) Identify specific objections to the HPC.

(3) If any consulting party fails to provide written response within the 30-day review period, the installation commanders may presume there is no objection by that consulting party to the Draft HPC.

(4) Installation commanders shall consider the comments from the public and the written views and recommendations of the Council, SHPO, THPO, Tribal government or Native Hawaiian organization, and make adjustments to the Draft HPC and NEPA document, if appropriate.

(5) Where a SHPO, THPO, Tribal government or Native Hawaiian organization has objected in writing to the Draft HPC and refused to be a signatory, installation commanders shall consult with the objecting party to resolve the objection, prior to forwarding the Draft HPC and supporting documentation to the Council for review and certification.

4.3 Council Review and Certification

(a) After considering, and where appropriate, addressing the views of other consulting parties and the public, and consulting to resolve objections, the installation commander shall finalize and sign the HPC, obtain the signature of consulting parties (other than those with outstanding objections), and forward the signed HPC to the Council with a request to review and certify the installation's HPC. The following supporting documentation will be included:

(1) Final NEPA documentation,

(2) Written views, if any, of consulting parties, including SHPO, THPO, Tribal governments or Native Hawaiian organizations,

(3) Summary of consultation with consulting parties, including SHPO, THPO, Tribal governments or Native Hawaiian organization(s),

(4) any views expressed by the public; and,

(5) Where a consulting party has declined to participate as a signatory to the HPC, a summary of the party's objections and the installation's efforts to resolve the objections.

(b) The Council shall review the HPC to determine whether it meets the following certification criteria:

(1) Establish the Program Elements set forth in Section 3.0;

(2) Include appropriate SOPs to ensure that the installation will effectively manage its historic properties, identify and consider the effects of its undertakings on historic properties, including those of traditional religious and cultural importance to a Federally recognized Indian Tribe or Native Hawaiian organization, apply appropriate treatment standards, and coordinate and consult with consulting parties;

(3) Demonstrate that it was developed in consultation with the SHPO, THPO, Tribal governments or Native Hawaiian organizations that attach traditional religious and cultural importance to historic properties on the installation or affected by installation activities;

(4) Demonstrate that the public participated in development and/or review;

(5) Establish procedures for coordination to facilitate review and monitoring;

(6) Establish procedures for obtaining Council and National Park Service comments through the NEPA process where an undertaking will have a direct and adverse effect on an NHL; and,

(7) For installations with identified NHLs, establish procedures, where feasible, for minimizing the effects of undertakings that may have a direct and adverse effect on an NHL.

(c) Within 30 days of its receipt of the HPC and supporting documentation, the Council shall apply the certification criteria set forth in Section 4.3(b)(1)-(7), and shall:

(1) Determine that the installation's HPC meets the criteria and sign the HPC, certifying the installation to comply with section 106 of the Act through implementation of the HPC. Within 30 days of receiving the Council's certification, the installation commander shall provide signed copies of the certified HPC to consulting parties; or,

(2) Determine that the installation historic preservation program shall meet the certification criteria with minor adjustments; and,

(i) Provide views to the installation with suggested changes, and,

(ii) Sign the HPC, subject to the installation's incorporation of changes, certifying the installation to comply with section 106 of the Act through implementation of the HPC. Within 60 days of receipt of the Council's certification, the installation commander, unless an extension period is agreed to, shall make the recommended changes and shall provide copies of the revised HPC to the Council, and the consulting parties. If the Council does not receive the installation changes within 60 days or the extension period, the Council shall notify the installation commander and consulting parties that the HPC has failed to meet certification criteria, and the installation shall follow Section 4.3(d), below.

(3) Determine that the installation has failed to meet one or more of the certification criteria set forth in Section 4.3(b)(1)-(7), and:

(i) Provide the installation with formal written views that identify the specific criterion and related deficiency; and,

(ii) Make specific recommendations to the installation for addressing the identified deficiency.

(d) Where the Council has determined that the installation's HPC has failed to meet the certification criteria, the installation commander shall:

(1) Address the identified deficiency and resubmit the HPC and supporting documentation to the Council for certification in accordance with Section 4.3(a), in which case the Council shall conduct the review and provide a certification determination pursuant to Section 4.3(b)-(c); or,

(2) Object, in writing, to the Council's recommendations and consult with the Council to resolve the objections.

(i) If, after good faith consultation, the Council and installation commander agree that the objection(s) cannot be resolved, the installation shall notify its MACOM.

(ii) If, 30 days after MACOM notification, objections remain unresolved, consultation under these procedures shall terminate and the installation commander will notify consulting parties and continue to operate under 36 CFR Part 800.

(3) The installation commander may resubmit his request for certification and reinitiate consultation at any time after termination.

4.4 Effect of Certification

(a) Installations with a certified HPC shall operate under the procedures set forth herein as implemented by that HPC. The provisions of the certified HPC shall substitute for the requirements of 36 CFR Part 800 for a period of five years from the date of certification.

(b) Installations electing to apply these procedures that have not met certification requirements shall review undertakings in accordance with the procedures set forth in 36 CFR Part 800.

(c) Installations shall implement treatment and mitigation commitments made in existing project-specific Memoranda of Agreement (MOAs) and Programmatic Agreements (PAs). Upon completion of pre-existing mitigation and treatment requirements, such agreements shall terminate. Requirements of other installation level Programmatic Agreements shall terminate upon certification. However, successful procedures in such agreements for the identification, evaluation, assessment of effects and treatment of historic properties should be considered during consultation, and if appropriate, integrated in the SOPs.

4.5 Exempt Undertakings

(a) The following categories of undertakings are exempt from further review by an installation operating under a certified HPC:

(1) Undertakings addressed through a fully executed nationwide Programmatic Agreement or other Program Alternative executed in accordance with 36 CFR Part 800.14.

(2) Undertakings categorically excluded by an installation's HPC pursuant to Section 3.5(a)(4).

(3) Undertakings where there is an imminent threat to human health and safety. Such actions include:

(i) In-place disposal of unexploded ordnance;

(ii) Disposal of ordnance in existing open burning/open detonation units;

(iii) Emergency response to releases of hazardous substances, pollutants and contaminants; and,

(iv) Military activities in existing designated surface danger zones.

(b) Where a Federally recognized Indian Tribe has entered into an agreement with the Council to substitute Tribal historic preservation regulations for the Council's regulations under section 101(d)(5) of the Act, the Army shall follow those Tribal historic preservation regulations for undertakings occurring on or affecting historic properties on Tribal lands.

(c) In instances where another Federal agency is involved with the Army in an undertaking, the Army and the other agency may mutually agree that the other agency be designated as lead Federal agency. In such cases, undertakings will be reviewed in accordance with 36 CFR Part 800.

Section 5.0: Amendment and Recertification

5.1 Plan Amendment

(a) At any time after obtaining Council certification, a consulting party may identify changed circumstances and propose an HPC amendment to the installation commander.

(b) If an installation commander determines that an amendment to an HPC may be necessary, the installation shall continue to review undertakings and treat adverse effects in accordance with the established HPC, unless he/she determines that the HPC is insufficient to meet its responsibilities under section 106 of the Act. If the installation commander determines that the HPC is no longer sufficient to meet those responsibilities, it shall review its undertakings in accordance with 36 CFR Part 800 until the proposed HPC amendment is completed.

(c) Where an installation commander determines that an amendment proposed by a consulting party is not necessary, and agreement cannot be reached between the installation commander and the consulting party to amend the HPC, the consulting party may request Council review under Section 7.2.

(d) *Major Amendments:* Any proposal to alter, delete, or add to an HPC's list of categorical exclusions, best management practices, or established standard operating procedures shall be considered a Major Amendment to the HPC.

(1) The installation commander shall:

(i) Forward the proposed amendment to consulting parties;

(ii) Consult with such parties and invite them to be signatories on the HPC Major Amendment; and,

(iii) Seek and consider views of the public through the NEPA process, if applicable.

(2) Within 45 days of its receipt of the proposed HPC Major Amendment, each consulting party shall:

(i) Provide written comments to the installation;

(ii) Indicate whether it intends to be a signatory to the proposed HPC Major Amendment; and, if not,

(iii) Provide written objections to both the installation commander and the Council.

(3) When a consulting party fails to provide written response within the 45-day review period, the installation commander may presume that there is no objection to the proposed HPC Major Amendment by that consulting party.

(4) If all consulting parties and the installation commander concur with the proposed HPC Major Amendment, the installation commander shall obtain the consulting parties signatures, sign the final HPC Major Amendment, and forward it to the Council for review, approval, and signature. If the Council does not respond within 30 days of its receipt of the amendment, then the amendment shall be considered final. The installation commander shall send copies of the final signed HPC Major Amendment to consulting parties and its MACOM.

(5) If all consulting parties do not concur with the proposed HPC Major Amendment and/or the Council objects within 30 days of the proposed amendment, the Council shall provide its written views and recommendations on the proposed HPC Major Amendment to the installation commander;

(i) If the installation commander considers the Council's views and implements the Council's recommendations, then the HPC Major Amendment shall be considered final.

(ii) If the installation commander objects to the Council's recommendations, the installation commander shall consult with the Council to resolve the objections.

(A) If the Council and the installation commander agree that the objection cannot be resolved, installation shall notify its MACOM.

(B) If, 30 days after MACOM notification, objections remain unresolved, consultation shall terminate and the installation shall either continue implementation of its certified HPC without the amendment or, where that is not feasible, comply with 36 CFR Part 800. The installation commander shall notify consulting parties of his or her final decision.

(iii) The installation commander may reinitiate consultation on the proposed amendment to the HPC any time after termination.

(e) *Minor Amendments:* When circumstances at an installation change, requiring Minor Amendment(s) to an administrative provision in the installation's HPC, such as identification of the CRM, Coordinator for Native American Affairs, changes to the planning level survey, changes to the list of categorized undertakings, and technical editorial changes, the installation commander shall:

(1) Amend the HPC without further consultation or coordination; and,

(2) Provide a Notice of Change to consulting parties and the Council.

5.2 Recertification

(a) No later than six months prior to expiration of the five-year term of certification, the installation commander shall initiate the process for obtaining renewed certification through the procedures set forth in Sections 3.0 and 4.0 of these procedures.

(b) The installation shall continue to operate under its certified HPC during the recertification process unless the five-year term of the HPC has expired. Where the five-year term of the HPC has expired, the installation commander shall:

(1) Continue to operate under the certified HPC for a period of time to be determined by the Council, in consultation with the installation commander; and,

(2) Inform consulting parties of the time extension, and work with them towards completing the recertification process; or,

(3) Inform consulting parties and review individual undertakings in accordance with 36 CFR Part 800 until recertification of the HPC is completed.

Section 6.0: Administrative Remedies

6.1 Evaluation of Council Determinations

(a) Within 30 days of the Council's final determination to certify or recertify an installation to operate under its HPC, or approve a Major Amendment, a consulting party may object in writing to the Council's determination. The objection must:

(1) Be forwarded to the Council, the installation commander and the MACOM;

(2) Be specifically related to a deficiency in:

(i) Consultation with the consulting party; and/or,

(ii) Consideration of historic properties of importance to that objecting party.

(b) The Council shall review the objection, obtain the installation's views, and within 30 days provide the Council's written determination to both the objecting party and the installation commander.

(c) The Council's written determination shall either:

(1) Validate the Council's previous determination to certify or recertify the HPC, or to approve a Major Amendment;

(2) Allow the installation to continue implementation while resolving objections; or,

(3) Revoke the previous determination and require the installation to review its undertakings in accordance with 36 CFR Part 800.

6.2 Evaluation of HPC Implementation

(a) Any time subsequent to Council certification or recertification, if a consulting party believes that an installation has failed to implement its HPC, the consulting party shall first notify the installation commander, in writing, of its objection. The consulting party must provide information and documentation sufficient to set forth the basis for its objection. The installation commander and consulting party shall attempt to resolve the objection informally before proceeding with the formal procedures set forth below.

(b) If a consulting party has raised an objection with the installation commander and the objection has not been resolved informally, the objecting party may elevate its objection to the Council, in writing. The written objection must:

(1) Be forwarded to the Council and the installation commander;

(2) Be specifically related to an installation's failure to implement an identified SOP in the HPC; and,

(3) Describe the objecting party's efforts to resolve the objection informally at the installation level.

(c) Where the consulting party has objected to a specific undertaking, the installation commander shall, during the 15-day Council review period set forth below, defer that discrete portion of the undertaking which may cause adverse effects to historic properties. This deferral provision will not apply where the activity at issue is an exempt undertaking under Section 4.5 or where the adverse effects have been documented as acceptable loss under an installation's HPC implementing Section 3.5(f)(1)(vi) of these procedures.

(d) The Council, within 15 days of receiving the written objection of a consulting party, shall provide a written response to the consulting party and the installation commander, expressing its views, and, if appropriate, making specific recommendations for resolution of the consulting party's objections.

(e) If the Council does not provide its written views within the 15-day review period, the installation commander shall assume that there is no Council objection and proceed with the undertaking.

(f) If the Council does provide its written views within the 15 day review period, the installation commander shall document his or her consideration of the Council's views, provide copies of the documentation to the Council and the objecting consulting party, and proceed with the undertaking.

(g) The Council may also object to an installation's implementation of its HPC, in which case the Council will provide its written views and specific recommendations for resolution to the installation commander for his or her consideration. The installation commander shall document his or her consideration of the Council's views and provide copies of the documentation to the Council and the consulting parties.

Section 7.0: Council Review of Army Section 106 Compliance

7.1 Council Review of Army Alternate Procedures

(a) The Council may periodically evaluate the effectiveness of these procedures in meeting the mandates, goals and objectives of section 106 of the Act and make recommendations to the Army to improve the efficiency and effectiveness of its compliance with section 106, under these procedures.

(b) As required by section 203 of the Act, the Army shall assist the Council in their evaluation by providing requested documentation on Army policies, procedures, and actions taken to comply with section 106 of the Act.

(c) The Council shall make the results of any evaluation conducted under this section available for public inspection.

7.2 Council Review of Installation Compliance

(a) The Council may review an installation's compliance with its HPC only where a documented pattern of failure to implement the installation's HPC is evident. The Council's review may be undertaken on its own initiative or at the request of a consulting party based in part on the objections rising from evaluation under Section 6.2. Based on its review, the Council shall:

(1) Determine that the installation is substantially complying with the HPC and make recommendations for program improvements; or,

(2) Initiate consultation with the installation commander and MACOM, if appropriate, and recommend a course of action to ensure installation implementation of its HPC.

(3) Provide a copy of any written recommendations to consulting parties.

(b) The installation commander, after receiving Council recommendations, shall either:

(1) Conclude consultation and implement its HPC in accordance with Council recommendations; or,

(2) Make a determination to revert to operation under 36 CFR Part 800 and provide notice to consulting parties, the Council, and the ACSIM through its MACOM.

Appendix A: Acronyms

ACRONYMS USED IN PROPOSED ARMY ALTERNATE PROCEDURES TO 36 CFR PART 800

AAP	Army Alternate Procedures
ACSIM	Assistant Chief of Staff for Installation Management
AR 200-2	Army Regulation 200-2: Environmental Effects of Army Actions
AR 200-4	Army Regulation 200-4: Cultural Resources Management
Act	The National Historic Preservation Act
APE	Area of Potential Effects
ARPA	The Archeological Resources Protection Act
CRM	Cultural Resources Manager
DA PAM 200-4	Department of the Army Pamphlet 200-4: Cultural Resources Management
DEP	Director of Environmental Programs
EA	Environmental Assessment
EIS	Environmental Impact Statement
FPO	Federal Preservation Officer
HPC	Historic Properties Component (the section 106 portion of an ICRMP)
HQDA	Headquarters, Department of the Army
ICRMP	Integrated Cultural Resources Management Plan
MACOM	Major Command
MOA	Memorandum of Agreement
NAGPRA	The Native American Graves Protection and Repatriation Act
NEPA	The National Environmental Policy Act
NHL	National Historic Landmark
NHPA	The National Historic Preservation Act
PA	Programmatic Agreement
PLS	Planning Level Survey
SHPO	State Historic Preservation Officer
SOP	Standard Operating Procedure
THPO	Tribal Historic Preservation Officer

[FR Doc. 02–4837 Filed 3–5–02; 8:45 am]
BILLING CODE 3710–08–C

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Consolidated State Applications Under Section 9302 of the Elementary and Secondary Education Act

AGENCY: Department of Education.

ACTION: Notice of proposed requirements and request for comment.

SUMMARY: We propose requirements for optional State consolidated applications submitted under section 9302 of the Elementary and Secondary Education Act of 1965 (ESEA), as reauthorized by the No Child Left Behind Act of 2001, Public Law 107–110 (NCLB). Submitting a consolidated application will allow a State to obtain funds under many Federal programs through a single application, rather than through separate applications for each program. To receive fiscal year (FY) 2002 program funds on a timely basis, a State educational agency's (SEA's) application would need to be received no later than May 28, 2002.

DATES: Please send your comments on or before April 5, 2002.

ADDRESSES: Please address your comments to Marcia Kingman, Office of Elementary and Secondary Education, U.S. Department of Education, using one of the following methods:

1. *Internet.* We encourage you to send your comments through the Internet to the following address: marcia.kingman@ed.gov. You should use the term "ESEA Consolidated Plan" in the subject line of your electronic message.

2. *Fax Machine.* You also may submit your comments by fax at (202) 205–5870.

3. *Surface Mail.* You may submit your comments via surface mail addressed to: Marcia Kingman, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. room 3E213, Washington, DC 20202–6400.

If you want to comment on the information collection requirements, you must send your comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Marcia Kingman, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. room 3E213, Washington, DC 20202–6400. Telephone: (202) 260–2199.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person for information identified in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The No Child Left Behind Act of 2001 (Pub. L. 107–110, NCLB) became law on January 8, 2002, with the President George W. Bush's signature of H.R. 1. The Act substantially revises the Elementary and Secondary Education Act of 1965 (ESEA) in a manner designed to provide all of America's school children with the opportunity and means to achieve academic success. It embodies the four key principles of the President's education reform plan: (1) Accountability for results, (2) expanded State and local flexibility and reduced "red tape," (3) expanded choices for parents, and (4) focusing resources on proven educational methods, particularly in reading instruction.

These principles are designed to produce fundamental reforms in classrooms throughout America. The new Act will provide officials and educators at the school, school district, and State levels substantial flexibility to plan and implement school programs that will help close the achievement gap between disadvantaged and minority students and their peers. At the same time, the reauthorized Act will hold school officials accountable—to parents, students, and the public—for achieving results. These and other major changes to the ESEA redefine the Federal role in K–12 education to better focus on improving the academic performance of all students.

The full text of this law may be found on the Internet at: *http://www.ed.gov/offices/OESE/esea/index.html.*

I. Purpose of Consolidated State Applications

Before they can implement their ESEA education programs, States need to apply for and receive Federal program funds. Each ESEA program statute contains detailed requirements for the content of the plan or application under which States can apply for program funding. In enacting the ESEA, Congress crafted these individual program plan or application requirements to reflect a need for the Department to review critical programmatic information before awarding ESEA funds. However, recognizing the burden on States of preparing so many individual ESEA plans or applications, and wanting to encourage States to integrate individual programs with State and local funds into comprehensive educational improvement and reform initiatives, Congress retained in sections 9301 and 9302 provisions that permit each SEA, in consultation with the Governor, to apply for ESEA program funds on the basis of a "consolidated State plan or a consolidated State application."

Under this approach, a State educational agency (SEA) may submit a consolidated plan or application that responds to an alternative set of procedures and criteria the Department has established. By statute, a consolidated application is to include "only descriptions, information, assurances, * * * and other materials that are absolutely necessary for the consideration of the consolidated State plan or consolidated State application." The consolidated application authority thus can result in a major reduction in State administrative burden while helping States to meld the various Federal programs into a more coherent strategy for improving education in the State.

In addition, section 9305 of the ESEA extends similar flexibility to local educational agencies (LEAs), continuing the authority for LEAs to receive program funding through submission of consolidated local plans or applications instead of having to submit a separate application for each individual program. It also clarifies that SEAs may not require LEAs to submit individual program plans or applications if the LEAs wish to submit a consolidated plan or application.

Consistent with the principles embodied in NCLB, consolidated applications are thus a tool that can promote State and local flexibility in exchange for greater State and local accountability for increased student achievement. These applications can be a vehicle for linking State plans to performance and, specifically, to data States will include in the performance reports submitted under section 9303 of the ESEA. The Department's current proposal outlined below, unlike previous practice, would require States to provide information and data in their consolidated applications that would be the baseline for State reporting in their annual performance reports. Moreover, while the Department would identify major goals against which States would create program strategies and report performance data, States would have flexibility to develop targets for measuring progress that fits individual State contexts. In all cases, the applications and report would focus on a single objective—student achievement.

II. The Department's Proposal for the Content of the Consolidated State Application

The No Child Left Behind Act recognizes that all children can achieve to the same high standards and must be provided the education they need to reach those standards. Successful student academic performance depends upon the opportunity to attend schools that—

- Provide instruction to all students that, based on the findings of solid research, will lead to gains in achievement for all students;
- Have highly qualified teachers and principals;
- Provide a learning environment that is safe and drug free, and conducive to learning; and
- Are accountable to the public for results.

The proposed requirements for the consolidated application and report are guided by these principles.

The Department proposes that consolidated State applications integrate these principles in two ways. First, in our framework for ESEA accountability we propose that States adopt (1) six overall "performance goals" that cut across the ESEA programs, (2) core indicators for measuring progress toward these goals, and (3) State performance targets that define when satisfactory progress occurs. Second, we propose that States provide certain minimum information that will confirm their conformance with key requirements of the ESEA programs they choose to include in their consolidated applications.

III. The Framework for ESEA Accountability.

A. "ESEA Performance Goals"

The ESEA performance goals reflect overall statements of expectations arising from the purposes of the ESEA programs. We have identified in appendix A six ESEA performance goals that the Department proposes that each SEA submitting a consolidated application would have to adopt. These are:

1. All students will reach high standards, at a minimum attaining proficiency or better in reading and mathematics by 2013–2014.
2. By 2013–2014, all students will be proficient in reading by the end of the third grade.
3. All limited English proficient students will become proficient in English.
4. By 2005–2006, all students will be taught by highly qualified teachers.
5. All students will be educated in learning environments that are safe, drug free, and conducive to learning.
6. All students will graduate from high school.

These ESEA performance goals, like the basic purposes of the ESEA programs themselves, fall into three areas: (a) Those that address levels of proficiency that all students would meet; (b) those that address the special needs of certain populations of students, such as students who are limited English proficient, who are the special focus of particular ESEA programs and (c) those that address such factors as qualified teachers and safety that are critical to a school's success in enabling student achievement to flourish.

B. "ESEA Performance Indicators"

States would use performance indicators to measure their progress in meeting the ESEA performance goals. Along with requiring States to adopt the six key ESEA performance goals identified above, the Department would require each SEA that submits a consolidated application to adopt, at minimum, the Department's core set of indicators for these six performance goals. For example, as explained in appendix A, relative to the second ESEA performance goal, "By 2013–2014, all students will be proficient in reading by the end of the third grade," the Department would require all States to use the following indicator:

Example: 2.1 Performance indicator: The percentage of students in third grade reading at grade level or above. State adoption of the common core indicators listed in appendix A is critical to the Department's ability to meet its responsibility under NCLB to ensure that all States are accountable for implementing the ESEA programs in ways that contribute significantly to the achievement of all students. As with the ESEA performance goals, States would be free to add their own performance indicators to the core set of indicators that the Department is proposing.

C. "Performance Targets"

Performance targets define the progress a State expects to make at specified points in time with respect to each indicator. For example, for indicator 2.1, "the percentage of students in third grade reading at grade level," a State might adopt as a target: the percentage of students in third grade reading at grade level will increase from "x" percent in 2001–2002 to "y" percent in 2002–2003.

Under our proposal, while each State would have to adopt the core set of ESEA performance goals and performance indicators that the Department had established, the State would define and adopt its own performance targets. (See appendix A for the ESEA goals and indicators that the Department would require States submitting consolidated applications to adopt, and some examples of performance targets that States might choose to use.)

Finally, the accountability system relies upon collection of data that explain how well States are succeeding in meeting their performance targets. States would describe in their consolidated applications their timelines and benchmarks for securing these data, as well as their data sources. States also would provide their "baseline data." For example, a State that adopted the performance target described in the preceding paragraph would identify the percentage of students in third grade reading at grade level at the end of the 2001–2002 school year (i.e., the "x" percent).

In their annual performance reports, States would provide updated data on their progress in meeting their performance targets, as well as other data the Department needs to assess both State progress in improving student achievement and the contributions of the Federal programs to that effort.

Where applicable, States may include html references, electronic files, or other existing documentation to comply with the requirements listed in the application.

IV. Other Requirements for the Consolidated Application

In addition to the framework for ESEA accountability, the consolidated application also would include:

A. A description of key strategies States would use to implement the ESEA programs in order to accomplish the purposes of those programs (appendix B);

B. Key programmatic and fiscal information that the Department has determined it needs before it awards FY 2002 funds in order to ensure the integrity of programs States include in their consolidated applications (appendix C). This information is a small part of what the individual ESEA program statutes would have States otherwise provide in individual program plans or applications; and

C. Assurances of the State's adherence to all requirements of the programs included in the application (appendix D). In the final application package for the consolidated application, and, on its website, the Department plans to include a list of particular requirements of individual programs that, while covered by these general assurances, the

Department believes warrant special State attention.

V. Documentation of Compliance With All Program Requirements

States will be held accountable by policymakers, parents, and students, as well as the Department, for how they plan for and use Federal funds. As part of Federal accountability, we would continue to require States to maintain documentation of their compliance with all program requirements—both those the ESEA expresses as (1) descriptive content or specific assurances to be included in individual program plans or applications, and (2) those that otherwise govern program planning, public input, implementation, or evaluation. To the extent consistent with State "open records" statutes, these documents evidencing adherence to ESEA requirements would be available to parents, policymakers, and other members of the public.

VI. Consolidation of Federal Funds

Title VI of the ESEA contains a number of important flexibility provisions that permit States and LEAs to treat funds received under some programs as if received under others. Moreover, sections 9201–9203 continue to permit the SEAs and LEAs to consolidate administrative funds under specified programs. However, beyond the flexibility that these provisions offer, the Department's approval of a consolidated State application neither authorizes a State or LEA to combine or commingle program funds nor eliminates State or LEA responsibilities to keep separate records on the use of each program's funds.

VII. Data Management Reform

During 2002 and beyond, the Department will work with LEAs and SEAs to establish data standards for performance indicators and other information collected from States and districts. The Department will also confer with LEA and SEA officials, the research community, information technology vendors, and other interested parties on ways in which States, LEAs, and schools can collect and electronically record useful baseline and follow-up data through an internet-based format. The new format should accommodate the measurement of success relative to the various indicators that the Department and States have adopted. Future application and reporting guidelines, therefore, will stress electronic reporting and provide States with additional options in fulfilling federal information requests.

VIII. Other Considerations

NCLB makes significant changes to the ESEA that are designed to give school officials, educators, and parents the tools they need to ensure that all students can achieve. However, in several instances this Act also builds upon school reform strategies that were previously begun under other Federal and State initiatives. In this regard, provided that the content of a State's consolidated application is consistent with Department requirements, the States would be able to draw upon information and data that it developed under the ESEA as previously authorized.

In addition, to gauge the success of the Nation in implementing NCLB, it is important that, where possible, States report their assessment data using common formats and measures. Hence, the Department intends to work with States on the development of these consistent formats and measures.

IX. Proposed Process for Submitting a Consolidated State Application

Information States would submit by May 2002 is proposed in the following discussion. Given the January enactment of the NCLB, States will have a limited period of time to prepare full consolidated applications before they will need to submit them for Departmental review prior to the awarding of ESEA funds in early July of 2002. In some cases, this period of time will be shortened further as a result of State procedural requirements, including those for securing approvals by State boards or other reviewing officials of applications for Federal funding before SEAs submit them to the Department.

On the other hand, the ESEA goals and performance indicators the Department proposes to establish are very basic to the ESEA programs, and many States already collect data on performance targets for these kinds of indicators. Moreover, if in the absence of consolidated applications SEAs were to submit to the Department the individual plans or applications that the ESEA program statutes otherwise require, they would by law be required to provide the Department this spring not only the limited amount of program information identified in appendix C, but also much more.

In balancing these factors, we propose that each SEA that chooses to submit a consolidated application submit to the Department by May of this year at least the following:

A. A statement that it (a) has adopted the minimum core ESEA goals and performance indicators that the Department will establish, and (b) agrees to adopt (for inclusion in the following year's consolidated application) its own performance targets for these indicators;

B. A description of the key activities and initiatives the State will carry out with ESEA State-level, administrative and activity funds, including activities to help achieve their performance targets: i.e., information about the State's standards, assessments and accountability system (of which for certain items we propose that States submit timelines in May 2002 and other information and evidence at a later date as specified), subgranting processes, technical assistance, monitoring, professional development, and coordination activities (appendix B); and

C. The individual ESEA program descriptions that the Department determines are needed in order to ensure program integrity (appendix C), and the required statutory assurances (appendix D).

States that already have adopted performance targets that link to these performance indicators (including indicator 1.3, which incorporates the NCLB definition of annual yearly progress under section 1111(b)(3)), would be encouraged to submit them with their applications, along with any baseline data they already use (and an identification of the data sources).

If SEAs do not submit their ESEA performance targets and associated baseline data in the consolidated applications provided to the Department in May 2002, SEAs would have to submit them to the Department no later than May 2003 in order that the Department can review and approve this information in time to make timely awards of FY 2003 ESEA program funds. (SEAs would submit any information for which either the ESEA or the Department establishes a later submission date in accordance with that other schedule.)

X. Programs That May Be Included in a Consolidated Application

Section 9101(13) of the ESEA, which defines the term "covered program," and section 9302, which governs consolidated State plans and applications, permit an SEA to seek funding under any of the programs authorized by the following titles and parts through a consolidated State application:

Title I, Part A: Improving Basic Programs Operated by Local Educational Agencies.

Title I, Part B, Subpart 3: Even Start Family Literacy.

Title I, Part C: Education of Migrant Children.

Title I, Part D: Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk.

Title I, Part F: Comprehensive School Reform.

Title II, Part A: Teacher and Principal Training and Recruiting Fund.

Title II, Part D: Enhancing Education Through Technology.

Title III, Part A: English Language Acquisition, Language Enhancement, and Academic Achievement.

Title IV, Part A, Subpart 1: Safe and Drug-Free Schools and Communities.

Title IV, Part A, Subpart 2: Community Service Grants.

Title IV, Part B: 21st Century Community Learning Centers.

Title V, Part A: Innovative Programs.

Title VI, Part B, Subpart 2: Rural and Low-Income Schools.

Other Programs the Secretary May Designate

The Secretary has decided to designate both the formula and discretionary components of the programs supporting development of State assessments, authorized in sections 6111 and 6112 of Title VI, as programs that SEAs may include in their consolidated applications. (Section 6111 provides formula grants to States for development of State assessments and related activities. Section 6112 provides competitive grants to States for development of "enhanced assessment instruments." SEAs that choose to apply for the competitive grant program (see appendix E) would submit their applications by September 15, 2002.)

The competitive Enhanced Assessment Instruments program, authorized in section 6112 of the ESEA, is not the only competitive program that section 9302 might permit an SEA to include in a consolidated application. On the other hand, applications for competitive grant programs present special challenges for consolidated applications; in particular, they must be reviewed against competitive selection criteria and are typically processed over a longer timeframe than is needed for formula grant programs. Given the close relationship of the competitive Enhanced Assessment Instruments program to the development of a State system of accountability for student achievement that is at the heart of Title I, Part A program, the Secretary has decided, to permit States, notwithstanding these factors, to apply for this one competitive program through the consolidated application. The Department's proposed selection criteria and other requirements to govern the initial competition under this program are contained in appendix E. Given the difficulties of using consolidated applications as the vehicle with which SEAs would apply for competitive grant programs, the Secretary does not propose to invite States to include other competitive programs in them.

As stated in the "Invitation to Comment" section of this notice, the public is invited to suggest other grant programs that the Secretary should designate for inclusion in a consolidated State application and to describe how that application can best accommodate these other programs.

XI. Public Participation Requirements

Section 9304(a)(7) of the ESEA provides for public comment on the State application by requiring, as one of the SEA's general assurances, that "before the [consolidated application] was submitted to the Secretary, the State afforded a reasonable opportunity for public comment on the application and considered such comment." We believe that the procedures under which SEAs would secure adequate public participation are to be determined under State law.

XII. Consolidated Local Plans or Applications

Section 9305(a) of the ESEA authorizes LEAs to receive funding from the SEA under more than one "covered program" through consolidated local plans or applications. Section 9305(c) and (d) requires the SEA, in consultation with the Governor, to collaborate with LEAs in establishing procedures for submission of these plans or applications, and to require "only descriptions, information, assurances, and other material that are absolutely necessary for the consideration of the [LEA] plan or application."

These provisions closely mirror provisions in section 9302 of the ESEA that govern the content and procedures for consolidated State applications. Consistent with the statutory language, we believe that SEAs have wide discretion in fashioning (in consultation with the Governor and LEAs) procedures and content for these plans or applications that make sense in terms of the student achievement and other goals imbedded in the ESEA. We stress that LEAs submitting consolidated local plans or applications must still implement all of the requirements—including record-keeping requirements—of the statutes whose programs those plans or applications include.

XIII. Voluntary Submission of Consolidated State Applications

Development of a consolidated State application is voluntary. It is the SEA's decision whether to submit a consolidated application, which of the eligible programs to include in it if one is submitted, and whether to add, in later submissions, programs that are not included in the consolidated application submitted this May for purposes of receipt of FY 2002 funds. (Should an SEA choose to submit an individual application under the Safe and Drug-Free Schools and Communities program, the program statute (Title IV, Part A, Subpart 1) permits SEAs to submit an "interim" application in FY 2002, and a comprehensive application by FY 2003. Proposed rules for this interim program application are included in appendix F.) Moreover, an SEA that submits a consolidated application for FY 2002 funds that does not contain all of the information requested could later decide not to submit that outstanding information and instead submit individual program plans or applications that the ESEA, as amended by NCLB, requires.

XIV. Response to the January 4, 2002 Notice of the Department's Preliminary Plans for the Consolidated State Application

On January 4, 2002, we published a notice in the **Federal Register** (67 FR 571) that described our working model for the content and procedures to govern the consolidated State application, and requested early public comment. This notice included our initial thoughts about the kind of ESEA accountability system the consolidated State application (and annual performance report) might encompass, and proposed that States submit their consolidated State applications through a series of phased submissions.

In response to this notice, the Department received 27 written comments, including 17 from State officials across the Nation. While offering suggestions in a number of areas to improve the overall effectiveness of both the consolidated application and the overall accountability system, these comments generally were very supportive of the Department's proposal.

In this regard, many commenters made recommendations for how the content of performance goals, indicators, and State-defined targets that

SEAs would address in their consolidated applications might fit with their own State accountability systems. Others commented on the proposal to permit SEAs to submit their consolidated applications in phases. These individuals generally agreed that a phase-in process would be needed, urged that the Department have all data submitted no later than the beginning of the 2003–04 school year, and recommended that after submitting their initial applications this spring, SEAs submit follow-up information on a schedule that reflects their States' own needs and unique circumstances. Still other commenters raised questions about specific ESEA programs, questions the Department will address in individual program guidance. We considered all of these suggestions and questions in formulating the details of this current proposal.

Invitation To Comment

The Secretary invites comments from all interested members of the public on this proposal for the content and procedures to govern consolidated State applications. In view of the late enactment of the NCLB and the time needed subsequently to prepare this notice, the Department will need to publish a notice of final requirements as quickly as possible in order to ensure that it can make formula grant awards to States in the beginning of July. For this reason, while we will carefully consider all comments received during the 30-day comment period, we request those wishing to comment to send their comments to the individual identified in the **ADDRESSES** section of this notice by March 25 if possible.

As we observed in our January 4 initial proposal, consolidated State applications can provide the Department with important information on how the State intends ESEA programs included in the application to promote increased achievement of all students. However, the principal importance of applications (and reports) is the opportunity they provide SEAs to communicate to the public, policymakers, and others in each State the basis on which the State officials responsible for implementing the new law propose to hold themselves accountable for ensuring that no child is left behind.

In both of these contexts, we are interested in receiving public comment and reaction to all aspects of this proposal. However, in formulating your comments we ask that you pay particular attention to the following questions:

A. *The proposed ESEA system of accountability.* Do the ESEA performance goals and performance indicators, which the Department would have all States adopt as a minimum core for a sound accountability system (see appendix A), reflect a reasonable mix of those critical elements on which student achievement and the purposes of ESEA programs rest? Would the data reporting requirements included in this package be compatible with States' own efforts to collect, analyze, and report data on educational outcomes and the effectiveness of education programs? How can the Department assist States in creating systems to manage data associated with ESEA performance indicators? What baseline data do States already have to measure their success in meeting these performance targets? When in calendar year 2003 could States reasonably provide baseline data to the Department?

B. *Timeline for submitting data for appendix B or C.* Aside from information that appendix B or C would permit States to submit on another schedule—

Does appendix B or C solicit any program descriptions or fiscal information that States could not provide by May of this year? In responding to this question, please remember that absent submission of a consolidated application, the ESEA would require States, as a condition of receiving their fiscal year 2002 ESEA funding, to submit individual program plans or applications that meet each of the requirements of the applicable ESEA program statute.

Except for requirements of Title I, Part A that do not become effective until later, is it feasible to have all required information—including baseline data for performance targets and information about standards, assessments, and accountability systems required by Title I—submitted to the Department by May 2003? If not, why not? If this is not feasible, what flexibility might the Department consider providing to States that can demonstrate a need for a bit more time to adopt performance targets relative to the required indicators proposed in appendix A, and at the same time hold States accountable for providing baseline data?

C. *Individual program information.* Do any aspects of the programmatic or fiscal information that the Department would have States submit in their consolidated applications seem either unnecessary or ill-defined? Which ones?

D. *Possible designation of other programs.* Section 9302(a)(2) of the ESEA authorizes the Secretary to designate other programs for inclusion in a consolidated State application. Are there other programs that the Secretary should designate?

E. *Other questions.* Are there criteria and procedures for consolidated State applications that, consistent with the requirements of sections 9301 and 9302 of the ESEA, would better promote accountability for increased academic achievement of all students and other objectives of the No Child Left Behind Act? What are they? How should they be reflected in the procedures and content for consolidated State applications that the Department establishes? Alternatively, is the Department's proposal reasonable and clearly presented? Which aspects need to be modified or revised?

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 3W300, 400 Maryland Avenue, SW., Washington, DC 20202–6400.

Executive Order 12866

This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice are those associated resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice, we have determined that the benefits justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits: It is not anticipated that the application requirements proposed in this notice will impose any significant costs on applicants. These proposed requirements provide a basis for the Secretary to award funds from a number of different federal programs under a single application. Therefore, the requirements would not impose any unfounded mandates on States. The benefits of the program are described in the **SUMMARY** section of this application.

Regulatory Flexibility Act Certification

The Secretary certifies that the requirements in this notice would not have a significant economic impact on a substantial number of small entities. The entities affected by these requirements would be SEAs. In

addition, these requirements are minimal and are necessary to ensure effective program management.

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications.

"Federalism implications" means 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. Although we do not believe these proposed requirements would have federalism implications as defined in Executive Order 13132, we encourage State and local elected officials to review them and to provide comments.

Paperwork Reduction Act of 1995

The Department is currently drafting a consolidated State application package that would contain the data collection requirements proposed in this document. The feedback received on these proposed data collection requirements will be considered when we develop the final notice and the final application package. At that time, we will request Office of Management and Budget approval of the final application package on an emergency basis.

We invite your comments on the proposed collection requirements. In view of the late enactment of the NCLB and the time needed subsequently to prepare this notice, the Department will need to publish a notice of final requirements as quickly as possible in order to ensure that it can make formula grant awards to States in the beginning of July. For this reason, while we will carefully consider all comments received during the 30-day comment period, we request those wishing to comment to send their comments to the individual identified in the **ADDRESSES** section of this notice.

Intergovernmental Review

These programs are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document is intended to provide early notification of our specific plans and actions for this program.

Electronic Access to This Document

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Program Authority: Section 9302 of the ESEA, as amended by the No Child Left Behind Act of 2001 (Pub. L. 107–110).

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

Marina Tse,

Acting Director for English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students.

Appendix A: ESEA Performance Goals, Performance Indicators, and State Performance Targets

State and local accountability for the academic achievement of all students is central to the No Child Left Behind Act of 2001. The system of accountability on which the consolidated State application rests, a system intended to help the public understand how well the State is meeting its student achievement goals for all students, is built around several key elements:

1. ESEA *"Performance goals"* that the Department has established. These goals reflect the basic purposes of the ESEA and the programs included in the consolidated application.

2. ESEA *"Performance indicators"* that the Department has established for each ESEA performance goal. States would use these indicators to measure their progress in meeting the ESEA performance goals.

3. *"Performance targets"* that each State would establish. The performance targets define the progress a State expects to make at specified points in time with respect to each indicator. For example, for the indicator "the percentage of students in third grade reading at grade level," the performance target might be: "the percentage of students in third grade reading at grade level will increase from "x" percent in 2001–2002 to "y" percent in 2002–2003."

We identify the following six ESEA performance goals that are central to the purposes of the ESEA programs, and performance indicators for each of these performance goals. Each State must adopt this set of six performance goals and corresponding performance indicators. However, a State may include additional performance goals and indicators in its application if it desires to do so.

Performance goal 1: All students will reach high standards, at a minimum attaining proficiency or better in reading and mathematics by 2013–2014.

1.1 *Performance indicator:* The percentage of students in Title I schools, in the aggregate and for each subgroup, who are at or above the proficient level in reading on the State's assessment. (Note: Subgroups are those defined in Section 1111(b)(2)(C)(v))

1.1.1 *Example of a State performance target:* State assessments will show that the percentage of students in Title I schools, in the aggregate and in each subgroup, who are at or above the proficient level in reading will increase consistent with the annual measurable objectives determined by the computations for "adequate yearly progress"; these annual measurable objectives are "x" for 2002–03, "y" for 2003–04, etc.

1.2 *Performance indicator:* The percentage of students in Title I schools, in the aggregate and in each subgroup, who are at or above the proficient level in mathematics on the State's assessment.

1.3 *Performance indicator:* The percentage of Title I schools that make adequate yearly progress in reading and mathematics.

1.3.1 *Example of a State performance target:* The percentage of schools that make adequate yearly progress will increase from the baseline established in 2001–2002 by "x" percent each subsequent year.

1.4 *Performance indicator:* The percentage of migrant students who are enrolled in schools in need of improvement.

1.5 *Performance indicator:* The percentage of students that meet or exceed State standards for student literacy in technology.

Performance goal 2: By 2013–2014, all students will be proficient in reading by the end of the third grade.

2.1 *Performance indicator:* The percentage of students in third grade reading at grade level or above.

Performance goal 3: All limited English proficient students will become proficient in English.

3.1 *Performance indicator:* The percentage of children identified as limited English proficient who have attained English proficiency by the end of the school year.

Performance goal 4: By 2005–2006, all students will be taught by highly qualified teachers.

4.1 *Performance indicator:* The percentage of classes being taught by "highly qualified" teachers (as the term is defined in section 9101(23) of the ESEA), in the aggregate and in "high-poverty" schools (as the term is defined in section 1111(h)(1)(C)(viii) of the ESEA).

4.1.1. *Example of a State performance target:* The percentage of classes being taught by highly qualified teachers, in the aggregate and in high-poverty schools, will increase from the baseline of "x" percent in 2001–2002 to "y" percent in 2002–2003, "z" percent in 2003–2004, etc.

4.2 *Performance indicator:* The percentage of teachers receiving high-quality professional development (See definition of "professional development" in section 9101 (34)).

4.3 *Performance indicator:* The percentage of teachers qualified to use technology for instruction.

Performance goal 5: All students will be educated in learning environments that are safe, drug free, and conducive to learning.

5.1 *Performance indicator:* The percentage of students who carried a weapon (for example, a gun, knife, or club) on school property (in the 30 days prior to the survey).

5.2 *Performance indicator:* The percentage of students who engaged in a physical fight on school property (in the 12 months preceding the survey).

5.3 *Performance indicator:* The percentage of students offered, sold, or given an illegal drug on school property (in the 12 months preceding the survey).

5.4 *Performance indicator:* The number of persistently dangerous schools, as defined by the State.

5.5 *Performance indicator:* The number of schools in which all students are able to work from a networked computer.

Performance Goal 6: All students will graduate from high school.

6.1 *Performance indicator:* The percentage of students who complete high school, disaggregated by poverty, limited English proficient and migrant status, and major ethnic and racial group membership.

6.2 *Performance indicator:* The number of students who drop out of school after entering grades 7 through 12, disaggregated by the poverty, limited English proficient and migrant status, and major ethnic and racial group membership.

Note: During 2002 and beyond, the Department will work with LEAs and SEAs to establish data standards for performance indicators and other information collected from States and districts. The Department will also confer with LEA and SEA officials, the research community, information technology vendors, and other interested parties on ways in which States, LEAs, and schools can collect and electronically record useful baseline and follow-up data through an internet-based format. The new format should accommodate the measurement of success relative to the various indicators that the Department and States have adopted. Future application and reporting guidelines, therefore, will stress electronic reporting and provide States with additional options in fulfilling federal information requests.

Appendix B: State Activities To Implement ESEA Programs

States will conduct a number of activities to ensure effective implementation of the ESEA programs included in their consolidated applications. Many of the activities may serve multiple programs. For example, a State may develop a comprehensive approach to monitoring and technical assistance that would be used for several (or all) programs. In responding to the items in this section, SEAs would indicate the ESEA programs that will benefit from the activities it describes. Where applicable, States may include html references, electronic files, or other existing documentation to comply with the requirements listed in the application.

1. Describe the State's system of standards, assessments, and accountability and provide evidence that it meets the requirements of the ESEA. In doing so—

a. Provide evidence that the State has adopted challenging content standards in mathematics and reading/language arts in accordance with Title I, Part A of the ESEA, where not previously submitted. If the State has modified its currently approved content standards in mathematics, reading, or language arts, submit evidence that the modified standards meet the requirements of section 1111(b)(1). (Note: A number of items request that States provide "evidence." The Department will issue guidance on what kind of evidence it will expect to see.)

b. Provide evidence that the State has adopted challenging academic content standards in science that meet the requirements of section 1111(b)(1) or, if these standards have yet to be adopted, submit a timeline for their development and submit evidence when it is available, but no later than May 2005.

c. Provide a detailed timeline for the development and implementation, in consultation with LEAs, of assessments that meet the requirements of section 1111(b)(3) in the required subjects and grade levels. When assessments are in place, provide evidence that they meet those requirements. Provide this evidence as early as it is available, but no later than indicated in the following schedule.

Assessments

Subject: Mathematics.
Grades: 3–8.
Implement by: 2005–06.
Submit evidence by: December 2006.

Subject: Reading/Language Arts.
Grades: 3–8.
Implement by: 2005–06.
Submit evidence by: December 2006.

Subject: Science.
Grades: Elementary (3–5); Middle (6–9); High School (10–12).
Implement by: 2007–2008.
Submit evidence by: December 2008.

d. Provide a detailed timeline for setting, in consultation with LEAs, academic achievement standards in mathematics, reading or language arts, and science that meet the requirements of section 1111(b)(1). When academic achievement standards have been set, provide evidence that they have been adopted and meet those requirements. Provide such evidence as early as it is available, but no later than indicated in the following schedule.

Academic Achievement Standards

Subject: Mathematics.
Grades: 3–8.
Implement by: 2005–06.
Submit evidence by: December 2006.

Subject: Reading/Language Arts.
Grades: 3–8.
Implement by: 2005–06.
Submit evidence by: December 2006.

Subject: Science.
Grades: Elementary (3–5); Middle (6–9): High School (10–12).
Implement by: 2007–2008.
Submit evidence by: December 2008.

e. Describe how the State defines its adequate yearly progress "starting point" for the percentage of students meeting or exceeding the State's proficient level (or provide a timeline for defining the starting point and for submitting this information).

f. Provide the State's definition of adequate yearly progress (or provide a timeline for determining the definition and for submitting the definition) including—

i. For the percentage of students meeting or exceeding the State's proficient level, provide—

- The starting point percentage;
- The intermediate goals;
- The timeline; and
- Annual objectives.

ii. Current high school graduation rate and target rate.

iii. One other academic indicator, applicable to elementary schools, and its target.

iv. Any other (optional) indicators and their targets.

g. Provide evidence that the State has a single accountability system that uses the same criteria, based primarily on assessments consistent with section 1111(b), for determining whether a school has made adequate yearly progress, regardless of whether the school receives Title I, Part A or other Federal funds.

h. Identify the languages present in the student population to be assessed, languages in which the State administers assessments, and languages in which the State will need to administer assessments.

i. Provide evidence that, beginning not later than the school year 2002–2003, LEAs will provide for an annual assessment of English proficiency that meets the requirements of section 1111(b)(7).

j. Describe the status of the State's effort to establish standards and annual measurable achievement objectives that relate to the development and attainment of English proficiency by limited English proficient children. These standards and objectives must be derived from the domains of speaking, listening, reading, writing, and comprehension, and be aligned with the State academic content and student academic achievement standards as required by section 1111(b)(1) of the ESEA. If they are not yet established, describe the State's plan and timeline for completing the development of these standards and achievement objectives.

2. Describe key procedures, selection criteria, and priorities the State will use to award competitive subgrants (or contracts) to the entities and for the activities required by the program statutes of applicable programs included in the consolidated application. States should include a description of how, for each program, these selection criteria and priorities will promote improved academic achievement. Applicable included programs are:

- Even Start Family Literacy (Title I, Part B).
- Education of Migrant Children (Title I, Part C).

• Prevention and Intervention for Children Who Are Neglected, Delinquent, or At-Risk—Local Agency Programs (Title I, Part D, Subpart 2).

• Comprehensive School Reform (Title I, Part F).

• Teacher and Principal Training and Recruiting Fund—subgrants to eligible partnerships (Title II, Part A, Subpart 3).

• Enhanced Education Through Technology (Title II, Part D).

• Safe and Drug-Free Schools and Communities—reservation for the Governor (Title IV, Part A, section 4112).

• Community Service Grants (Title IV, Part A, section 4126).

• 21st Century Community Learning Centers (Title IV, Part B).

3. Describe how the State will monitor and provide professional development and technical assistance to LEAs, schools, and other subgrantees to help them implement their programs and meet the States' (and those entities' own) performance goals and objectives. This should include a description of assistance the SEA will provide to LEAs, schools, and other subgrantees in identifying and implementing effective instructional programs and practices based on scientific research.

4. Describe the Statewide system of support under section 1117 to ensure that all schools meet the State's academic content and student achievement standards, including how the State will provide assistance to low-performing schools.

5. Describe the activities the State will conduct to—

a. Help Title I schools make effective use of schoolwide programs to improve the achievement of all students;

b. Ensure that all teachers, particularly those in high-poverty areas and those in schools in need of improvement, are highly qualified. This description should include the help States will provide to LEAs and schools to—

(i) Conduct effective professional development activities;

(ii) Recruit and hire highly qualified teachers, including those licensed or certified through alternative routes; and

(iii) Retain highly qualified teachers.

• Help LEAs with a high need for technology, high percentages or numbers of children in poverty, and low-performing schools to form partnerships with other LEAs, institutions of higher education (IHEs), libraries, and other private and public profit and non-profit entities with technology expertise to improve the use of technology in instruction.

• Promote parental and community participation in schools.

• Secure the baseline and follow-up data discussed in the "Framework for ESEA Accountability" section of the foregoing Supplementary Information.

6. Briefly describe how State officials and staff will coordinate the various ESEA-funded programs and State-level activities the State administers, and how the State will coordinate with other organizations, such as businesses, IHEs, nonprofit organizations and other State agencies, and with other Federal programs (including those authorized by Individuals with Disabilities Education Act, the Perkins Vocational and Technical Education Act, the Head Start Act, the Adult Education and Family Literacy Act, and the McKinney-Vento Homeless Assistance Act).

7. Describe the strategies the State will use to determine, on a regular basis, whether LEAs, schools, and other subgrantees are making satisfactory progress in meeting State and local goals and desired program outcomes. In doing so, the SEA should also describe how it will use data it gathers from subgrantees on how well they are meeting State performance targets, and the actions the State will take to determine or revise interventions for any LEAs, schools, and other subgrantees that are not making substantial progress.

Appendix C: Key Programmatic and Fiscal Information

The Department has an overall responsibility for ensuring the programmatic and fiscal integrity of the ESEA programs. To met this responsibility, the Department proposes that before it would award FY 2002 program funds on the basis of a consolidated application, it would need to review and approve information on how the State would comply with a few key requirements of the individual ESEA programs included in the application. In particular, the Department would need the SEA to respond to the following:

I. Key Program Requirements

1. Title I, Part B, Subpart 3—Even Start Family Literacy

a. Describe how the SEA will use its indicators of program quality to monitor, evaluate, and improve its projects, and to decide whether to continue operating them.

b. Describe what constitutes sufficient program progress when the SEA makes continuation awards.

c. Explain how the State's Even Start projects will provide assistance to low-income families participating in the program to help children in those families to achieve to the applicable State content and student achievement standards.

2. Title I, Part C—Education of Migrant Children

a. Describe the process the State will use to develop, implement, and document a comprehensive needs assessment that identifies the special educational and related needs of migrant children.

b. Describe the State's priorities for the use of migrant education program funds in order to meet the State's performance targets for indicators 1.1, 1.2, and 2.1 as appendix A (as well as 1.4, 6.1, and 6.2 that expressly include migrant students), and how they relate to the State's assessment of needs for services.

c. Describe how the State will determine the amount of any subgrants the State will award to local operating agencies, taking into account the numbers and *needs* of migratory children, the statutory priority for service in section 1304(d), and the availability of funds from other Federal, State, and local programs.

d. Describe how the State will promote continuity of education and the interstate and intrastate coordination of services for migratory children.

e. Describe the State's plan to evaluate the effectiveness of its migrant education program and projects.

3. Title I, Part D—Children and Youth Who Are Neglected, Delinquent, or At-Risk

a. Describe the program goals, performance indicators, performance objectives, and data sources that the State has established for its use in assessing the effectiveness of the program in improving the academic and vocational and technical skills of students participating in the program.

b. Describe how the SEA is assisting projects funded under the program in facilitating the transition of children and youth from correctional facilities to locally operated programs.

4. Title I, Part F—Comprehensive School Reform

a. Describe the process the State educational agency will use to ensure that programs funded include and integrate all eleven required components of a comprehensive school reform program.

b. Describe the percentage of schools that participate in the Comprehensive School Reform program (CSR) meeting or exceeding the proficient level of performance on State assessments in reading and mathematics.

5. Title II, Part A—Teacher and Principal Training and Recruiting Fund

a. If not fully addressed in the State's response to the information on performance goals, indicators, and targets in Appendix A, describe the remainder of the State's annual measurable objectives under section 1119(a)(2).

b. Describe how the SEA will hold LEAs accountable both for (1) meeting the annual measurable objectives described in section 1119(a)(2) of the ESEA, and (2) ensuring that the professional development the LEAs offer their teachers and other instructional staff is consistent with the definition of "professional development" in section 9101(34).

6. Title II, Part D—Enhanced Education Through Technology

a. Provide a brief summary of the SEA's long-term strategies for improving student academic achievement, including technology literacy, through the effective use of technology in the classroom, and the capacity of teachers to integrate technology effectively into curricula and instruction.

b. Describe key activities that the SEA will conduct or sponsor with the funds it retains at the State level. These may include such activities as provision of distance learning in rigorous academic courses or curricula; the establishment or support of public-private initiatives for the acquisition of technology by high-need LEAs; and the development of performance measurement systems to determine the effectiveness of educational technology programs.

c. Provide a brief description of how—

i. The SEA will ensure that students and teachers, particularly those in the schools of high-need LEAs, have increased access to technology, and

ii. The SEA will coordinate the application and award process for State discretionary grant and formula grant funds under this program.

7. Title III, Part A—English Language Acquisition and Language Enhancement

a. Describe how the SEA will ensure that subgrantees use program funds only to carry out activities that reflect scientifically based research on the education of limited English proficient children while allowing those grantees flexibility (to the extent permitted under State law) to select and implement such activities in a manner that they determine best reflects local needs and circumstances.

b. Describe how the SEA will hold subgrantees accountable for meeting all annual measurable achievement objectives for limited English proficient children, and making adequate yearly progress for limited English proficient children.

8. Title IV, Part A—Safe and Drug-Free Schools and Communities

a. Describe the key strategies in the State's comprehensive plan for the use of funds by the SEA and the Governor of the State to provide safe, orderly, and drug-free schools and communities through programs and activities that—

i. Complement and support activities of LEAs under section 4115(b) of the ESEA;

ii. Comply with the principles of effectiveness under section 4115(a); and

iii. Otherwise are in accordance with the purpose of Title IV, Part A.

Note: The reauthorized provisions of the Safe and Drug-Free Schools and Communities (SDFSC) Program clearly emphasize well-coordinated SEA and Governors Program activities. The statute requires that significant parts of the program application be developed for each State's program, not for the SEA and Governors Programs individually. For this reason, each State must submit a single application for SDFSC SEA and Governors Program funds. States may choose to apply for SDFSC funding through this consolidated application or through a program-specific application.

9. Title VI, Part B, Subpart 2—Rural and Low-Income School Program

a. Describe how the State elects to make awards under the Rural and Low-Income School Program:

i. By formula proportionate to the numbers of students in eligible districts;

ii. Competitively (please explain any priorities for the competition); or

iii. By a State-designed formula that results in equal or greater assistance being awarded to school districts that serve higher concentrations of poor students.

Note: If a State elects this option, the formula must be submitted for ED approval. States that elect this option may submit their State-designed formulas for approval as part of this submission.

II. Key Fiscal Information

1. Consolidated Administrated Funds

a. Does the SEA plan to consolidate State-level administrative funds?

If yes, please provide information and analysis concerning Federal and other funding that demonstrates that Federal funds constitute less than half of the funds used to support the SEA.

If yes, are there any programs whose funds are available for administration that the SEA will not consolidate?

b. Please describe your plans for any additional uses of funds

2. Transferability

Does the State plan to transfer non-administrative State-level ESEA funds under the provisions of the State and Local Transferability Act (sections 6121 to 6123 of the ESEA)? If so, please list the funds and the amounts and percentages to be transferred, the program from which funds are to be transferred, and the program into which funds are to be transferred.

Note: If the State elects to notify ED of the transfer in this document, the plan described in response to provisions of appendix B should be that in effect after the transfer. If the State does not plan to transfer funds at this time, it may do so at a later date. To do so, the State must (1) establish an effective date for the transfer, (2) notify the Department (at least 30 days before the effective date of the transfer) of its intention to transfer funds, and (3) submit the resulting changes to the plan as discussed in this appendix C by 30 days after the effective date of the transfer.

3. Program Specific Fiscal Information

a. Title I, Part A—Improving Basic Programs Operated By LEAs

i. Identify the amount of the reservation in section 1003(a) for school improvement that the State will use for State-level activities and describe those activities.

ii. For the 95 percent of the reservation in section 1003(a) that must be made available to LEAs, describe how the SEA will allocate funds to assist LEAs in complying with the school improvement, corrective action, and restructuring requirements of section 1116 and identify any SEA requirements for use of those funds.

iii. Identify what part, if any, of State administrative funds the SEA will use for assessment development under section 1004 of the ESEA, and describe how those funds will be used.

iv. Describe the State's procedures for distributing funds for schools to use for supplemental services under section 1116(e)(7), and identify the amount of funds those schools will receive.

v. Describe how the State will use funds awarded under section 6113(b)(1) for the development and implementation of State assessments in accordance with section 6111(b)(1).

b. Title I, Part B—Even Start Family Literacy

Identify the amount of the reservation under subsection 1233(a) that the State will use for each category of State-level activities listed in that section, and describe how the SEA will carry out those activities.

c. Title I, Part C—Education of Migratory Children

Identify the amount of funds that the SEA will retain from its Migrant Education Program (MEP) allocation, under section 200.41 of the Title I regulations (34 CFR 200.41), to carry out administrative and program functions that are unique to the MEP, and describe how the SEA will use those funds.

d. Title I, Part D—Children and Youth Who Are Neglected, Delinquent, or At-Risk

Describe how the funds reserved under section 1418 will be used for transition services for students leaving institutions for schools served by LEAs, or postsecondary institutions or vocational and technical training programs.

e. Title II, Part A—Teacher and Principal Training and Recruiting Fund.

i. Identify the amount of the State's total allocation for Title II, Part A funds that would be reserved for administration and planning (administration) costs under section 2113(d) and the amount of those funds that would be provided to the SEA and State agency for higher education (SAHE), respectively. The total amount that a State may reserve for administration may not exceed 1 percent of the State's total allocation under Part A of Title II.

Note: While the statute authorizes an SEA and SAHE to reserve program funds for administrative expenses, it does not prescribe how those funds are to be apportioned between the SEA and SAHE. The Department is proposing that the two entities determine together how much of the State's total administrative set-aside each entity would receive. The Department also proposes that it would not award any of the Title II, Part A funds available to the State for administration unless the Department receives information that identifies (1) the total amount that the State would reserve for administrative costs; (2) the amount that would be made available to the SEA and the SAHE, respectively, for administration; and (3) an assurance that named senior officers of the SEA and the SAHE have agreed to the apportionment of State administrative funds.

The Department will provide further guidance on within-State allocations of Title II, Part funds reserved for administration in the Title II, Part A nonregulatory guidance it is developing for the program.

ii. Describe how the SEA will use funds reserved for State activities described in section 2113(c) of the ESEA to meet the teacher professional development and paraprofessional requirements in section 1119.

f. Title III, Part A—English Language Acquisition and Language Enhancement

In order that the Department may make FY 2002 State program allocations, provide the most recent data available on—

i. A total amount not to exceed 5 percent of the State's allotment may be reserved by the State under section 3111(b)(2) to carry out one or more of the following categories

of State-level activities: professional development; planning, evaluation, administration, and interagency coordination; technical assistance; and providing recognition to subgrantees that have exceeded their annual measurable achievement objectives. Specify the percentage of the State's allotment that the State will reserve and the percentage of the reserved funds that the State will use for each of the categories of activities.

ii. A total amount not to exceed 15 percent of the State's allotment must be reserved by the State under section 3114(d)(1) to award subgrants to eligible entities that have experienced a significant increase in the percentage or number of immigrant children and youth. Specify the percentage of the State's allotment that the State will reserve for these subgrants.

iii. The number of limited English proficient children in the State. (See definitions of "child" in section 3301(1), and "limited English proficient" in section 9101(25).)

vi. The most recent data available on the number of immigrant children and youth in the State. (See definition of "immigrant children and youth" in section 3301(6).)

Note: Section 3111 of the ESEA requires that State allocations for the Language Acquisition State grants be calculated on the basis of the number of limited English proficient children in the State compared to the number of such children in all States (80 percent) and the number of immigrant children and youth in the State compared to the number of such children and youth in all States (20 percent). The Department plans to use data from the 2000 Census Bureau to calculate State shares of limited English proficient students. However, these data on limited English proficient students will not be available for all States until September 2002. To ensure that States have access to funds as soon as they are available, the Department proposes, for FY 2002 only, to provide an initial distribution of 50 percent of the funds under the limited English proficient portion of the formula based on State-reported data. As soon as Census data become available, the Department will recalculate and make final State allocations using Census data.

For the 20 percent of formula funds distributed to States based on State shares of immigrant children and youth, the Department intends to use State-reported data in allocating these funds. Census does not collect data that can be used to calculate State allocations for this part of the formula.

g. Title IV, Part A, Subpart 1, Section 4112(a)—Safe and Drug-Free Schools and Communities: Reservation of State Funds for the Governor

i. The Governor may reserve up to 20 percent of the State's allocation under this program to award competitive grants or contracts. Indicate the percentage of the State's allocation that is to be reserved for the Governor's program.

ii. The Governor may administer these funds directly or designate an appropriate State agency to receive the funds and administer this allocation. Provide the name of the entity designated to receive these funds, contact information for that entity (the name of the head of the designated agency, address, telephone number) and the "DUNS" number that should be used to award these funds.

h. Title IV, Part A, Subpart 2, Section 4126—Safe and Drug-Free Schools and Communities: Community Service Grants

The statute provides for grants to States to carry out programs under which students expelled or suspended from school are required to perform community service. The Department proposes to award funds available under this program to State educational agencies, after they have consulted with their Governors. SEAs and LEAs in some States are already implementing community service activities for students, and we believe that awards to SEAs are most likely to result in the integration of these program funds into a more comprehensive, coordinated strategy. Although the statutory language for this program would permit the Department to award grants to a Governor, or to another entity designated by the Governor, we believe that most students eligible to benefit from this program are likely to be served by SEAs or LEAs. We would like to receive comments on our tentative plan for awarding grants under this program.

- Describe how funds will be used by the designated entity(ies) to develop and implement a community service program for suspended and expelled students.

i. Title V, Part A—Innovative Programs

i. In accordance with section 5112(a)(1) of the ESEA, provide the SEA's formula for distributing program funds to LEAs. Include information on how the SEA will adjust its formula to provide higher per-pupil allocations to LEAs that have the greatest numbers or percentages of children whose education imposes a higher-than-average cost per child, such as—

- Children living in areas with concentrations of economically disadvantaged families;
- Children from economically disadvantaged families; and
- Children living in sparsely populated areas.

ii. Identify the amount the State will reserve for State-level activities under section 5121, and describe those activities.

Appendix D: Assurances

1. *General and Cross-Cutting Assurances.* Section 9304(a) requires States to have on file with the Secretary, as part of their consolidated application, a single set of assurances, applicable to each program included in the consolidated application, that provide that—

a. Each such program will be administered in accordance with all applicable statutes, regulations, program plans, and applications;

b.i. The control of funds provided under each such program and title to property acquired with program funds will be in a public agency, a nonprofit private agency, institution, or organization, or an Indian tribe, if the law authorizing the program provides for assistance to those entities; and

ii. The public agency, nonprofit private agency, institution, or organization, or Indian tribe will administer those funds and property to the extent required by the authorizing law;

c. The State will adopt and use proper methods of administering each such program, including—

i. The enforcement of any obligations imposed by law on agencies, institutions, organizations, and other recipients responsible for carrying out each program;

ii. The correction of deficiencies in program operations that are identified through audits, monitoring, or evaluation; and

iii. The adoption of written procedures for the receipt and resolution of complaints alleging violations of law in the administration of the programs;

d. The State will cooperate in carrying out any evaluation of each such program conducted by or for the Secretary or other Federal officials;

e. The State will use such fiscal control and fund accounting procedures as will ensure proper disbursement of, and accounting for, Federal funds paid to the State under each such program;

f. The State will—

i. Make reports to the Secretary as may be necessary to enable the Secretary to perform the Secretary's duties under each such program; and

ii. Maintain such records, provide such information to the Secretary, and afford such access to the records as the Secretary may find necessary to carry out the Secretary's duties; and

g. Before the plan or application was submitted to the Secretary, the State afforded a reasonable opportunity for public comment on the plan or application and considered such comment.

2. *ESEA Specific Assurances and Crosscutting Declaration.* Each SEA that submits a consolidated application also must provide an assurance that they will—

a. Comply with all requirements of the ESEA programs included in their consolidated applications, whether or not the program statute identifies these requirements as a description or assurance that States would have addressed, absent this consolidated application, in a program-specific plan or application, and

b. Maintain records of their compliance with each of those requirements.

Note: For the Safe and Drug-Free Schools programs, the SEA must have all appropriate assurances from the Governor on record.

Through this general assurance and assurance (1) in section 9304(a), the SEA agrees to comply with all requirements of the ESEA and other applicable program statutes. While all requirements are important, we have identified a number of those to which we believe SEAs should pay particular attention in order to ensure the effective use of ESEA program funds in promoting increased student achievement. The Department will include in the application package for the consolidated application and on its website a list of these requirements of individual programs that the SEA, through its assurances, is agreeing to meet. At the same

time we stress that the list of program-specific requirements that the SEA is assuring the Department it will meet is not meant to be exhaustive and that States are accountable for all program requirements.

3. *Cross-Cutting Declaration: Certification of Compliance with Unsafe School Choice Option Requirements.* The State certifies that it has established and implemented a Statewide policy requiring that students attending persistently dangerous public elementary or secondary schools, as determined by the State (in consultation with a representative sample of local educational agencies), or who become victims of violent criminal offenses, as determined by State law, while in or on the grounds of public elementary and secondary schools that the students attend, be allowed to choose to attend a different, safe public elementary or secondary school (which may include a public charter school) within the local educational agency.

Appendix E: Enhanced Assessment Instruments Competitive Grant Program (Title VI, section 6112)—Program Information and Proposed Selection Criteria

Overview. Proficiency on State assessments required under Title I, Part A of the ESEA is the primary indicator in the ESEA of student academic achievement and, hence, the primary measure of State success in meeting the goals of No Child Left Behind. In view of the critical importance of these State assessments, section 6112 of the ESEA authorizes the Secretary to make competitive grant awards to State educational agencies (SEAs) to help them enhance the quality of assessment and accountability systems.

Because of the close relationship between this program and Title I, Part A, section 6112 requires States wishing to apply for these grants to include their applications in the State plans they prepare under Title I, Part A. For this reason, the Secretary has designated this program for voluntary inclusion in a State's ESEA consolidated application even though it is not a formula grant program. In doing so, the Secretary proposes the following procedures and requirements to be used under this competition.

Eligible applicants. By law, all eligible applicants must be SEAs or consortia of SEAs. An application from a consortium of SEAs must designate one SEA as the fiscal agent.

Proposed Award Amounts and Timelines. The statute requires that any funds appropriated in excess of the required amount for State assessment formula allocations (section 6111) be allocated as competitive grants. From the amount appropriated, approximately $17 million is available for the upcoming fiscal year 2002 competition. Subject to the minimum size of award provided in section 6113(b)(2)(A)(ii) (which is based on a State's enrollment of students ages 5–17), the Department estimates that it will make 20 awards ranging from $300,000 to $2,000,000, with an average size of $850,000.

The Department expects to require that all applications be submitted on or before September 15, 2002, and to make awards by December 1, 2002. Project periods would run until September 30, 2004.

Application requirements. Section 6112(a) requires that all funded applications demonstrate that States (or consortia of States) will—

1. Collaborate with institutions of higher education, other research institutions, or other organizations to improve the quality, validity, and reliability of State academic assessments *beyond the requirements* for the assessments described in section 1111(b)(3) of Title I, Part A;

2. Measure student academic achievement using multiple measures of student academic achievement from multiple sources;

3. Chart student progress over time; or

4. Evaluate student academic achievement through the development of comprehensive academic assessment instruments, such as performance and technology-based academic assessments.

Proposed competitive preferences. There is a great need for enhancing assessment instruments so that they take into consideration alternatives for assessing students with disabilities and limited English proficient students. In addition, we believe that collaborative efforts between and among States and effective dissemination of project results will yield procedures that can be applied in varied contexts, reinforcing the flexibility of the statute while increasing the likelihood that projects will result in significant improvement of State assessment systems.

For these reasons, the Secretary proposes the following competitive preferences and would award up to 35 points to an applicant based on how well its application meets these preferences. These preference points would be in addition to points an applicant earns under the selection criteria.

1. Alternate assessments. (20 points)

Applications that can be expected to advance practice significantly in the area of assessment of students with disabilities or limited English proficiency, or both, including strategies for test design, administration with accommodations, scoring, and reporting.

2. Collaborative efforts. (10 points)

Applications that are sponsored by a consortium of States.

3. Dissemination. (5 points)

Applications that include an effective plan for dissemination of results.

Proposed selection criteria. The Secretary proposes to use the following criteria and weights authorized by sections 75.209–210 of the Education Department General Administrative Regulations (EDGAR):

1. Need for the Project (10 Points)

- The magnitude and severity of the problem to be addressed by the proposed project;
- The extent to which the proposed project will provide services or otherwise address the needs of students at risk of educational failure; and
- The extent to which the proposed project will focus on serving or otherwise addressing the needs of disadvantaged individuals.

2. Scope (10 Points)

- The extent to which the goals and objectives to be achieved by the proposed project are clearly specified and measurable, and
- The extent to which the goals and objectives are sufficiently broad to be likely to result in significant change or improvement of one or more State assessment systems.

3. Significance (15 Points)

- The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies;
- The potential contribution of the proposed project to the development and advancement of theory, knowledge, and practices in the field of study;
- The extent to which the proposed project is likely to yield findings that may be used by other appropriate agencies and organizations; and
- The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies.

4. Quality of Project Design (30 Points)

- The extent to which there is a conceptual framework underlying the proposed research or demonstration activities, and the quality of that framework;
- The quality of the proposed design and procedures for documenting project activities and results;
- The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project;
- The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance;
- The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice;
- The extent to which the proposed project represents an exceptional approach for meeting statutory purposes and requirements; and
- The quality of the methodology to be employed by the proposed project.

5. Quality of the Management Plan (5 Points)

- The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks; and
- The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

6. Quality of Project Personnel (10 Points)

- The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented

based on race, color, national origin, gender, age, or disability;

• The qualifications, including relevant training and experience, of the project director or principal investigator;

• The qualifications, including relevant training and experience, of key project personnel; and

• The qualifications, including relevant training and experience, of project consultants or subcontractors.

7. Adequacy of Resources (10 Points)

• The adequacy of support, including facilities, equipment, supplies, and other resources from the SEA or the lead applicant SEA;

• The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project; and

• The extent to which the budget is adequate to support the proposed project.

8. Quality of Evaluation Plan (10 Points)

• The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project;

• The extent to which the methods of evaluation are appropriate to the context within which the project operates;

• The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible; and

• The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other situations.

Appendix F—Optional Interim Application for FY 2002 Funds Under the Safe and Drug-Free Schools and Communities State Grants Program (Title IV, Part A, Subpart 1)

The Safe and Drug-Free Schools and Communities State Grants program authorizes States that desire to submit a program-specific application for FY 2002 funds to do so in either of two ways. A State may either submit (1) the comprehensive State application described in section 4113(a) of the ESEA or (2) an interim application that, under section 4113(b), offers the State an opportunity to fully develop and submit the comprehensive application prior to its receipt of fiscal year 2003 funds under the program. Section 4113(b)(1) provides that the content of the interim application must be consistent with the requirements of that section of the law and contain the information that "the Secretary may specify in regulations." So that States may understand their various options for applying for Safe and Drug-Free Schools and Communities State Grants program, the Department is using the vehicle of this notice to propose rules for this interim program application for FY 2002 funds.

The Department proposes that States that desire to use this interim application to apply for FY 2002 Safe and Drug-Free Schools and Communities State Grants program funds be required to submit the following:

• A description of how the SEA will coordinate the agency's activities under this subpart with the chief executive office's drug and violence prevention programs and with the prevention efforts of other State agencies and other programs, as appropriate.

The State's performance measures for drug and violence prevention programs and activities to be funded under this subpart, which will be focused on student behavior and attitudes, derived from the State's needs assessment in section 4113(a)(9), developed through consultation between the State and local officials, and include levels of performance for each indicator.

The State must submit performance measures for the following indicators, as well as for other indicators that it identifies as appropriate based on its analysis of need and its comprehensive plan for use of funds:

Performance indicator 1: The percentage of students who carried a weapon (for example, a gun, knife, or club) on school property (in the 30 days prior to the survey).

Performance indicator 2: The percentage of students who engaged in a physical fight on school property (in the 12 months preceding the survey).

Performance indicator 3: The percentage of students offered, sold, or given an illegal drug on school property (in the 12 months preceding the survey).

Performance indicator 4: The number of persistently dangerous schools, as defined by the State.

• A description of how the State educational agency will review applications from local educational agencies, including how the agency will receive input from parents in such review.

• A description of how the State educational agency will monitor the implementation of activities, and provide technical assistance for local educational agencies, community-based organizations, other public entities, and private organizations.

• A description of how the chief executive officer of the State will award funds under section 4112(a) and implement a plan for monitoring the performance of, and providing technical assistance to grant recipients.

[FR Doc. 02–5345 Filed 3–5–02; 8:45 am]
BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

President's Board of Advisors on Historically Black Colleges and Universities Meeting

AGENCY: President's Board of Advisors on Historically Black Colleges and Universities, U.S. Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and agenda of the meeting of the President's Board of Advisors on Historically Black Colleges and Universities. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. Individuals who will need accommodations for a disability in order to attend the meeting (i.e. interpreting services, assistive listening devices, materials in alternative format) should notify Treopia Washington at 202–502–7900 by not later than Monday, March 11, 2002.

Date and Time: Tuesday, March 19, 2002 from 5 p.m. to 7 p.m. & Wednesday, March 20, 2002 from 8:30 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Madison Hotel, 15 & M Street, NW., Washington, DC 20005

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Ward, White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 400 Maryland Avenue, SW., Suite 7C103, Washington, DC 20202. Telephone: (202) 401–1311.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities was established under Executive Order 13256 of February 12, 2002. The Board was established to advise on federal policies that impact upon Historically Black Colleges and Universities, to advise on strategies to increase participation of Historically Black Colleges and Universities in federally sponsored programs and funding opportunities, and to advise on strategies to increase private sector support for these colleges. The meeting of the Board is open to the public. The meeting will focus on the status and future of federal agency support for Historically Black Colleges and Universities. Records are kept of all Board procedures and are available for public inspection at the White House Initiative on Historically Black Colleges and Universities located at 1990 K Street, NW., Suite 8099, Washington, DC 20006, from the hours of 8:30 a.m. to 5 p.m.

How May I Obtain Electronic Access to This Document?

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

Authority: 5 U.S.C. 5701–5707

Kenneth W. Tolo,

Acting Deputy Assistant Secretary for, Policy, Planning, and Innovation, Office of Postsecondary Education.

[FR Doc. 02–5278 Filed 3–5–02; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Solicitation Number DE–PS07–02ID14305 Early Site Permit License Demonstration Project

AGENCY: Idaho Operations Office, Department of Energy.

ACTION: Notice of availability.

SUMMARY: The U.S. Department of Energy is seeking proposals from U.S. power generating companies to conduct a regulatory demonstration project for Early Site Permit (ESP) applications to the Nuclear Regulatory Commission (NRC) in accordance with 10 CFR part 52. The project objective is to implement the technical and regulatory required activities to demonstrate the ESP licensing process for a selected site(s) including ESP application development and submittal to and approval by the NRC.

DATES: The deadline for receipt of applications is 4:00 p.m. EST on April 15, 2002.

ADDRESSES: The formal solicitation document will be disseminated electronically as Solicitation Number DE–PS07–02ID14305, Early Site Permit License Demonstration Project, through the Industry Interactive Procurement System (IIPS) located at the following URL: *http://e-center.doe.gov*. IIPS provides the medium for disseminating solicitations, receiving financial assistance applications and evaluating the applications in a paperless environment. Completed applications are required to be submitted via IIPS. Individuals who have the authority to enter their company into a legally binding contract/agreement and intend to submit proposals/applications via the IIPS system must register and receive confirmation that they are registered prior to being able to submit an application on the IIPS system. An IIPS "User Guide for Contractors" can be obtained by going to the IIPS Homepage at the following URL: *http://e-center.doe.gov* and then clicking on the "Help" button. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at *helpdesk@pr.doe.gov* or call the help desk at (800) 683–0751.

FOR FURTHER INFORMATION CONTACT: Carol Van Lente, Contract Specialist, at *vanlencl@id.doe.gov*.

SUPPLEMENTARY INFORMATION: The authorizing statutes for this program are: Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*), as amended and Public Law 95–91, Department of Energy Organization Act of 1977. DOE anticipates making one or more cooperative agreement awards. Approximately $3,000,000 in federal funds is expected to be available in FY 2002 to initiate the demonstration project(s). The project performance period for the demonstration of the ESP process is anticipated to be no more than forty-eight months.

Issued in Idaho Falls on February 26, 2002.

Cheryl A. Thompson,

Acting Director, Procurement Services Division.

[FR Doc. 02–5304 Filed 3–5–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 02–21; Medical Applications Program

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving grant applications to support radiopharmaceutical research for Noninvasive Radiotracer-cell Imaging (NRI) *In Vivo*. The specific goals include radiotracer labeling of progenitor cells for noninvasively imaging and tracking their behavior and fate in vivo and their overall role in organ and tissue regeneration in disease states. The applicants should clearly demonstrate the relevance and important clinical need of the research proposed. Special consideration will be given to applications arising from a well integrated, multidisciplinary team effort of scientists with relevant skills in radiopharmaceutical chemistry, biology, pharmacology and clinical nuclear medicine. The access to, or availability of specialized radiotracer-labeling and imaging instrumentation, equipment and facilities for real time imaging in animals to humans, will be important factors for funding considerations.

DATES: Potential applicants are encouraged to submit a brief preapplication before preparing a formal application. All preapplications in response to Program Notice 02–21 should be received by DOE by 4:30 p.m., E.D.T., April 1, 2002. A response encouraging or discouraging the submission of a formal application will be communicated via email by April 15, 2002.

Formal applications submitted in response to this notice must be received by 4:30 p.m., E.D.T., May 15, 2002, to be accepted for merit review and consideration for award in Fiscal Year 2002.

ADDRESSES: Preapplications referencing Program Notice 02–21 must be sent via electronic mail to: *sharon.betson@science.doe.gov* or by fax to (301) 903–0567.

Formal applications referencing Program Notice 02–21, should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 02–21. This address must also be used when submitting applications by U.S. Postal Service Express Mail or any other commercial overnight delivery service, or hand-carried by the applicant. An original and seven copies of the application must be submitted.

FOR FURTHER INFORMATION CONTACT: Dr. Prem C. Srivastava, Office of Biological and Environmental Research, Medical Sciences Division (SC–73), U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–4071, fax: (301) 903–0567, e-mail: *prem.srivastava@science.doe.gov*. The full text of Program Notice 02–21 is available via the Internet using the following web site address: *http://www.science.doe.gov/production/grants/grants.html*.

SUPPLEMENTARY INFORMATION:

Progenitor Cells

The term progenitor cells implies non-embryonic stem cells, and does not include embryonic stem cells. For definitions, refer to National Institutes of Health (NIH) web sites, and all grantees must adhere to federal guidelines when involving human subjects. *http://www.nih.gov/news/stemcell/primer.htm; http://www.nih.gov/news/stemcell/index.htm.*

Biological and Environmental Research (BER), Medical Applications Program

For more than 50 years the Biological and Environmental Research (BER) program has been advancing environmental and biomedical knowledge that promotes national security through improved energy production, development, and use, international scientific leadership that underpins our nation's technological advances, and environmental research that improves the quality of life for all Americans. BER supports these vital national missions through competitive and peer-reviewed research at National Laboratories, universities, and private institutions.

The mission of the BER Medical Applications subprogram is to deliver relevant scientific knowledge that will lead to innovative diagnostic and treatment technologies for human health. The research builds on unique DOE capabilities in physics, chemistry, engineering, and biology. Research will lead to new metabolic labels and imaging detectors for medical diagnosis, and tailor-made radiopharmaceutical agents. The basic research technologies growing out of this program offer applications for study, detection, diagnosis and early intervention of natural causes of disease; as well as of biochemical, bacterial, and viral health risks from biological and/or gross environmental insults such as bioterrorism.

The modern era of nuclear medicine is an outgrowth of the original charge of the Atomic Energy Commission (AEC), "to exploit nuclear energy to promote human health." Today the program through radiopharmaceutical, molecular nuclear medicine and multimodal imaging systems research, seeks to develop new applications of radiotracers and radionuclide detectors in diagnosis and treatment by integrating the latest concepts and developments in chemistry, pharmacology, genomic sciences and transgenic animal models, structural, computational and molecular biology, and instrumentation.

Molecules directing or affected by homeostatic controls always interact and, thus, are targets for specific molecular substrates. The substrate molecules can be tailored to fulfill a specific need and labeled with appropriate radioisotopes to become measurable in real time in the body on their way to, and in interaction with their targets allowing the analysis of molecular, cellular and metabolic organ functions in health and disease. The function of radiopharmaceuticals at various sites in the body is imaged by nuclear medical instruments, such as, gamma cameras and positron emission tomographs (PET). This type of imaging refines diagnostic differentiation at molecular, cellular and metabolic organ function levels between health and disease, and among various diseases such as of the heart, brain and cancer, often leading to more effective therapy.

New technological advancements have offered a paradigm shift in the current level of nuclear medicine research challenges and opportunities. Molecular nuclear medicine techniques can permit analysis of the cellular elements as markers of genetic manipulations, cell transformations, organ and tissue regeneration and progression of the disease, and provide insights to molecular pathways of disease and cell function. Such studies are therefore a major focus of this program.

Breakthrough research in the biology of inter-organ and tissue cell repopulation and transformation has offered new paradigms for radiotracer imaging research in resolving the issues of progenitor cell administration including their trafficking, biodistribution, fate and progeny in organ and tissue regeneration, repair and replacement, with wide applications to human disease states such as neurogenesis, myogenesis, hematopoiesis, including stroke, ischemic heart disease, Parkinson's disease, hematopoetic disorders and cancers. This NRI specific program announcement offers challenging research opportunities for new radiotracer technology Innovations for emerging new clinical research needs and medical applications.

Program Funding

It is anticipated that approximately $2 million will be available for multiple grant awards during Fiscal Year 2002, contingent upon the availability of appropriated funds. Previous awards have ranged from $200,000 per year up to $400,000 per year (direct plus indirect costs) with terms lasting up to three years. Similar award sizes are anticipated for new grants. Applications may request project support up to three years, with out-year support contingent on the availability of funds, progress of the research and programmatic needs.

Preapplications

A brief preapplication should be submitted. The preapplication should identify, on the cover sheet, the title of the project, the institution, principal investigator name, address, telephone, fax, and E-mail address. The preapplication should consist of two to three pages identifying and describing the research objectives, methods for accomplishment, and the key members of the scientific team responsible for undertaking this effort. Preapplications will be evaluated relative to the scope and research needs of this program notice.

Merit Review

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project;
2. Appropriateness of the Proposed Method or Approach;
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources; and
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and the agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Submission Information

Information about the development, submission of applications, eligibility, limitations, evaluation, the selection process, and other policies and procedures may be found in 10 CFR Part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: *http://www.science.doe.gov/production/grants/grants.html*. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

In addition, for this Notice, the Project Description must be 20 pages or less, exclusive of attachments, and the application must contain a Table of Contents, an abstract or project summary, letters of intent from collaborators (if any), and short curriculum vitae consistent with National Institutes of Health guidelines. On the SC grant face page, form DOE F4650.2, in block 15, also provide the

PI's phone number, fax number, and E-mail address.

DOE policy requires that potential applicants adhere to 10 CFR 745 "Protection of Human Subjects", or such later revision of those guidelines as may be published in the **Federal Register.**

The Office of Science as part of its grant regulations requires at 10 CFR 605.11(b) that a recipient receiving a grant and performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with NIH "Guidelines for Research Involving Recombinant DNA Molecules," which is available via the world wide web at: *http://www.niehs.nih.gov/odhsb/biosafe/nih/rdna-apr98.pdf,* (59 FR 34496, July 5, 1994,) or such later revision of those guidelines as may be published in the **Federal Register.**

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC, on February 28, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–5305 Filed 3–5–02; 8:45 am]

BILLING CODE 6450–02–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–579–000]

Capital District Energy Center, Cogeneration Associates; Notice of Issuance of Order

February 28, 2002.

Capital District Energy Center Cogeneration Associates (Capital District) submitted for filing a tariff under which Capital District will engage in the sale of energy and capacity at market-based rates and for the reassignment of transmission capacity. Capital District also requested waiver of various Commission regulations. In particular, Capital District requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Capital District.

On February 5, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-East, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Capital District should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Capital District is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Capital District, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Capital District's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 7, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–5289 Filed 3–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–600–000]

Delta Energy Center, LLC; Notice of Issuance of Order

February 28, 2002.

Delta Energy Center, LLC (Delta Center), a wholly-owned subsidiary of Calpine Corporation, submitted for filing an initial rate schedule under which Delta Center will engage in: (1) The wholesale sales of electric energy, capacity, replacement of reserves and certain ancillary services, (2) reassign transmission capacity, and (3) resell firm transmission rights. Delta Center also requested waiver of various Commission regulations. In particular, Delta Center requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Delta Center.

The Commission's February 13, 2001 Order granted Delta Center's request for blanket approval under Part 34, subject to the conditions found in Appendix A in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Delta Center 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.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, Delta Center is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Delta Center, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Delta Center's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 15, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–5291 Filed 3–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 184–065, California]

El Dorado Irrigation District; Notice of Public Meetings

February 28, 2002.

The Federal Energy Regulatory Commission (Commission) is reviewing the application for a new license for the El Dorado Project (FERC No. 184), which was filed on February 22, 2000. The El Dorado Project, licensed to the El Dorado Irrigation District (EID), is located on the South Fork American River, in El Dorado, Alpine, and Amador Counties, California. The project occupies lands of the Eldorado National Forest.

The EID, several state and federal agencies, and several non-governmental agencies have asked the Commission for time to work collaboratively with a facilitator to resolve certain issues relevant to this proceeding. These meetings are a part of that collaborative process. On Monday, March 11, there will be a meeting of the aquatics-hydrology workgroup. On Tuesday, March 12, the recreation-socioeconomics-visual resources workgroup will meet. The meetings will focus on further defining interests and development of management objectives for the various project reaches. We invite the participation of all interested governmental agencies, non-governmental organizations, and the general public in this meeting.

Both meetings will be held from 9am until 4 p.m. in the Sacramento Marriott, located at 11211 Point East Drive, Rancho Cordova, California.

For further information, please contact Elizabeth Molloy at (202) 208–0771 or John Mudre at (202) 219–1208.

Magalie R. Salas,

Secretary.

[FR Doc. 02–5292 Filed 3–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–564–000]

Entergy Nuclear Vermont Yankee, LLC; Notice of Issuance of Order

February 28, 2002.

Entergy Nuclear Vermont Yankee, LLC (ENVY) submitted for filing a tariff under which ENVY will engage in the sale of energy, capacity, and ancillary at market-based rates and for the reassignment of transmission capacity. ENVY also requested waiver of various Commission regulations. In particular, ENVY requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by ENVY.

On February 5, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-Central, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by ENVY should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, ENVY is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of ENVY, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of ENVY's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 7, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–5287 Filed 3–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2318–002]

Erie Boulevard Hydropower L.P. and Hudson River-Black River Regulating District E.J.West Project, NY; Notice of Meeting Concerning Draft License Conditions for the Conklingville Dam/Great Sacandaga Lake Project

February 28, 2002.

a. *Date and Time of Meeting:* March 12, 2002, 1 p.m. to 4 p.m.

b. *Place:* New York State Department of Environmental Conservation, Public Assembly Room 129B, First Floor, 625 Broadway, Albany, New York 12233–0001.

c. *FERC Contact:* Lee Emery at (202) 219–2779 or lee.emery@ferc.fed.us.

d. *Purpose of the Meeting:* For the New York State Department of Environmental Conservation (NYSDEC), the Hudson River-Black River Regulating District (District), Erie Boulevard Hydropower L.P.(Erie), and Commission staff to discuss draft license conditions for the Conklingville Dam/Great Sacandaga Lake Project, located at the E.J. West project site.

e. *Proposed Agenda:*

A. Introduction of participants

B. Discussion of draft license articles

C. Summary of discussion regarding draft license articles

E. Follow-up

f. All local, state, and Federal agencies, Indian Tribes, and interested parties, that are on the service list for the E.J.West Project No. 2318–002, will be allowed to attend this meeting. Participation will be limited to Commission staff, the District, NYSDEC, and Erie. However, other attendees will be allowed to comment at the end of the meeting if time permits.

Magalie R. Salas,

Secretary.

[FR Doc. 02–5293 Filed 3–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–163–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

February 28, 2002.

Take notice that on February 25, 2002, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective April 1, 2002:

Fifty-First Revised Sheet No. 8A
Forty-Third Revised Sheet No. 8A.01
Forty-Third Revised Sheet No. 8A.02
First Revised Sheet No. 8A.04
Forty-Seventh Revised Sheet No. 8B
Fortieth Revised Sheet No. 8B.01

FGT states that the tariff sheets listed above are being filed pursuant to Section 27 of the General Terms and Conditions (GTC) of FGT's Tariff which provides for the recovery by FGT of gas used in the operation of its system and gas lost from the system or otherwise unaccounted for. The fuel reimbursement charges pursuant to Section 27 consist of the Fuel Reimbursement Charge Percentage ("FRCP"), designed to recover current fuel usage on an in-kind basis, and the Unit Fuel Surcharge ("UFS"), designed to recover or refund previous under or overcollections on a cash basis. Both the FRCP and the UFS are applicable to Market Area deliveries and are effective for seasonal periods, changing effective each April 1 (for the Summer Period) and each October 1 (for the Winter Period).

FGT states that it is filing herein to establish an FRCP of 3.06% to become effective April 1, 2002 based on the actual company fuel use, lost and unaccounted for volumes and Market Area deliveries for the period from April 1, 2001 through September 30, 2001. The proposed FRCP of 3.06%, to become effective April 1, 2002, is an increase of 0.59 % from the currently effective FRCP of 2.47%. FGT is also filing herein to establish a Summer Period UFS of $0.0154 per MMBtu to become effective April 1, 2001, an increase of $0.0133 per MMBtu from the currently effective UFS of $0.0021.

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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–5297 Filed 3–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–162–000]

Gulf South Pipeline Company, LP; Notice of Proposed Changes to FERC Gas Tariff

February 28, 2002.

Take notice that on February 22, 2002, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to become effective March 25, 2002:

First Revised Sheet No. 3705
Second Revised Sheet No. 3706
Second Revised Sheet No. 3707

Gulf South is proposing these tariff changes to provide consistency between the timing associated with the right of first refusal (ROFR) notice provisions applicable to firm transportation and firm storage services.

Gulf South states that copies of this filing have been served upon Gulf South's customers, state commissions and other interested parties.

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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–5296 Filed 3–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–566–000]

Meriden Gas Turbines, LLC; Notice of Issuance of Order

February 28, 2002.

Meriden Gas Turbines, LLC (Meriden Turbines) submitted for filing a tariff under which Meriden Turbines will engage in the sale of energy, capacity, and ancillary services at market-based rates and for the reassignment of transmission capacity. Meriden Turbines also requested waiver of various Commission regulations. In particular, Meriden Turbines requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Meriden Turbines.

On February 5, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-East, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Meriden Turbines should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and

Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Meriden Turbines is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Meriden Turbines, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Meriden Turbines' issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 7, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–5290 Filed 3–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–88–000]

Natural Gas Pipeline Company of America; Notice of Request Under Blanket Authorization

February 28, 2002.

Take notice that on February 19, 2002, Natural Gas Pipeline Company of America (Natural), 747 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP02–88–000 a request pursuant to Sections 157.205 and 157.214 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.214) for authorization to increase the maximum certificated inventory of gas at the Cooks Mills Storage Field, in Coles and Douglas Counties, Illinois from 5,200 MMCF to 6,400 MMCF, under Natural's blanket certificate issued in Docket No. CP82–402–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" from the RIMS Menu and follow the instructions (please call 202–208–2222 for assistance).

Natural proposes to increase the maximum certificated inventory at Cooks Mills from 5,200 MMCF to 6,400 MMCF by increasing the maximum bottom-hole reservoir pressure from 846 psia to 1,017 psia. Natural's request is based on the strong market demand for Natural's NSS service and the recognition that the Cooks Mills field has the characteristics to safely increase the total inventory level. Natural will not be required to construct any new facilities as part of this proposal.

Any questions regarding the prior notice request should be directed to Floyd Hofstetter, Vice President, Storage Operations 747 East 22nd Street, Lombard, Illinois, 60148, at (630) 691–3660.

Any person or the Commission's staff may, within 45 day after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act. Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–5285 Filed 3–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–580–000]

Pawtucket Power Associates, LP; Notice of Issuance of Order

February 28, 2002.

Pawtucket Power Associates, LP (PPA) submitted for filing a tariff under which PPA will engage in the sale of energy and capacity at market-based rates and for the reassignment of transmission capacity. PPA also requested waiver of various Commission regulations. In particular, PPA requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by PPA.

On February 5, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-East, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by PPA should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, PPA is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of PPA, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of PPA's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 7, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the

internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–5288 Filed 3–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–59–002]

Petal Gas Storage, L.L.C.; Notice of Compliance Filing

February 28 , 2002.

Take notice that on February 8, 2002, Petal Gas Storage L.L.C. (Petal), tendered for filing the Tariff Sheets listed Appendix A attached to the filing. Petal requests that these sheets be made effective March 15, 2002.

Petal states that the tariff sheets are being filed in compliance with the Commission's September 15, 2000 Letter Order (September 15 Order) issued in the underlying certificate proceeding in Docket Nos. CP00–59–000 and CP00–59–001. The September 15 Order granted Petal's request to construct storage-related facilities on, and adjacent to, Petal's salt dome storage facilities, and approved Petal's tariff changes, subject to Petal filing actual tariff sheets that conform to its pro forma sheets when filing to implement the expanded service.

Petal states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–5284 Filed 3–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–164–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

February 28, 2002.

Take notice that on February 25, 2002, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, certain tariff sheets to implement a new Limited Firm Transportation Service under proposed Rate Schedule LFS–1. GTN requests that these tariff sheets become effective March 27, 2002.

GTN further states that a copy of this filing has been served on GTN's jurisdictional 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–5298 Filed 3–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–513–013]

Questar Pipeline Company; Notice of Negotiated Rate

February 28, 2002.

Take notice that on February 25, 2002, Questar Pipeline Company's (Questar) FERC Gas Tariff, Questar filed a tariff filing to implement a negotiated-rate contract as authorized by Commission orders issued October 27, 1999, and December 14, 1999, in Docket Nos. RP99–513, et al. The Commission approved Questar's request to implement a negotiated-rate option for Rate Schedules T–1, NNT, T–2, PKS, FSS and ISS shippers. Questar submitted its negotiated-rate filing in accordance with the Commission's Policy Statement in Docket Nos. RM95–6–000 and RM96–7–000 (Policy Statement) issued January 31, 1996.

Questar states that copies of this filing has been served upon all parties to this proceeding and to Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–5295 Filed 3–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–54–000]

TXU Generation Company LP; Notice of Amended Application for Commission Determination of Exempt Wholesale Generator Status

February 28, 2002.

Take notice that on February 22, 2002, TXU Generation Company LP tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to application for exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). 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.

Comment Date: March 7, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–5286 Filed 3–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2541–002, et al.]

Northern Indiana Public Service Company, et al., Electric Rate and Corporate Regulation Filings

February 27, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Northern Indiana Public Service Company

[Docket No. ER01–2541–002]

Take notice that on February 21, 2002, Northern Indiana Public Service Company (Northern Indiana) filed with the Federal Energy Regulatory Commission (Commission) First Revised Service Agreement No. 137 (Interconnection and Operating Agreement with Whiting Clean Energy, Inc.). The filing is made in compliance with an order issued by the Commission in Docket No. ER01–2541–000.

Northern Indiana has requested an effective date of July 9, 2001. Copies of this filing have been sent to Whiting Clean Energy, Inc., the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment Date: March 13, 2002.

2. Duke Energy Marshall, LLC

[Docket Nos. ER02–530–001]

Take notice that on February 22, 2002, Duke Energy Marshall, LLC (Duke Marshall) tendered for filing with the Federal Energy Regulatory Commission (Commission) additional information to the supporting material of Duke Marshall's application for market based rates. This filing is made pursuant to the Commission's February 7, 2002, letter in which the Commission requested additional data regarding uncommitted capacity for non-Duke Marshall generation within Duke Marshall's local market (TVA).

Duke Marshall requests pursuant to Section 35.11 of the Commission's regulations that the Commission waive the 60-day minimum notice requirement under Section 35.3(a) of its regulations and grant an effective date for Duke Marshall's market based rate tariff of February 1, 2002, as requested in its initial market based rates application filed on December 12, 2001.

Comment Date: March 15, 2002.

3. Bluegrass Generation Company, L.L.C., Cabrillo Power I LLC, Cabrillo Power II LLC, Calcasieu Power, LLC, Dynegy Danskammer, L.L.C., Dynegy Midwest Generation, Inc., Dynegy Power Marketing, Inc., Dynegy Power Services, Inc., Dynegy Roseton, L.L.C., El Segundo Power, LLC, Foothills Generating, L.L.C., Heard County Power, L.L.C., Illinova Energy Partners, Inc., Long Beach Generation LLC, Nicor Energy, LLC, Renaissance Power, L.L.C., Riverside Generating Company, L.L.C., Rockingham Power, L.L.C., Rocky Road Power, LLC, Rolling Hills Generating, L.L.C.

[Docket Nos. ER02–506–002, ER99–1115–005, ER99–1116–005, ER00–1049–003, ER01–140–002, ER00–1895–002, ER99–4160–003, ER94–1612–026, ER01–141–002, ER98–1127–005, ER02–554–001, ER01–943–002, ER94–1475–021, ER98–1796–004, ER01–1169–002, ER01–3109–002, ER01–1044–002, ER99–1567–002, ER99–2157–002, ER02–553–001]

Take notice that on February 22, 2002, Dynegy Inc. filed corrections to the updated market power study originally filed on February 8, 2002 in the above-referenced dockets.

Comment Date: March 15, 2002.

4. PJM Interconnection, L.L.C.

[Docket No. ER02–1061–000]

Take notice that on February 22, 2002, PJM Interconnection, L.L.C. (PJM), tendered for filing with the Federal Energy Regulatory Commission (Commission) the following executed agreements: (i) An umbrella agreement for firm point-to-point service with Appalachian Power Co. with American Electric Power Service Corp. as Agent (AEPAP); (ii) an umbrella agreement for non-firm point-to-point transmission service with AEPAP; (iii) an umbrella agreement for firm point-to-point transmissions service with Powerex Corp (Powerex); and (iv) an umbrella agreement for non-firm point-to-point transmission service with Powerex.

PJM requested a waiver of the Commission's notice regulations to permit effective date of February 23, 2002 for the agreements.

Copies of this filing were served upon AEPAP and Powerex, as well as the state utility regulatory commissions within the PJM control area.

Comment Date: March 15, 2002.

5. Entergy Services, Inc.

[Docket No. ER02–1062–000]

Take notice that on February 22, 2002, Entergy Services, Inc., (Entergy Services) on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc.,

tendered for filing a Service Agreement for Network Integration Transmission Service and a Network Operating Agreement between Entergy Services and Cleco Power LLC.

Comment Date: March 15, 2002.

6. WPS Westwood Generation, LLC

[Docket No. ER02–1063–000]

Take notice that on February 22, 2002, WPS Westwood Generation, LLC (the Company) filed umbrella short-term service agreements under the Company's market-based rates tariff, FERC Electric Tariff, Second Revised Volume No. 1 (Tariff) for Sunbury Generation, LLC (Sunbury) and WPS Energy Services Inc. (ESI).

A copy of the filing was served upon Sunbury and ESI.

Comment Date: March 15, 2002.

7. Sunbury Generation, LLC

[Docket No. ER02–1064–000]

Take notice that on February 22, 2002, Sunbury Generation, LLC (the Company) filed umbrella short-term service agreements under the Company's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 1 (Tariff) for WPS Westwood Generation, LLC (WPS Westwood) and WPS Energy Services Inc. (ESI).

A copy of the filing was served upon WPS Westwood and ESI.

Comment Date: March 15, 2002.

8. WPS Canada Generation, Inc.

[Docket No. ER02–1065–000]

Take notice that on February 22, 2002, WPS Canada Generation, Inc. (the Company) filed three service agreements under the Company's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 1 (Tariff). The agreements include a long-term service agreement with WPS New England Generation, Inc. (WPS New England), an umbrella short-term service agreement with WPS New England, and an umbrella short-term service agreement with WPS Energy Services Inc. (ESI).

A copy of the filing was served upon WPS New England and ESI.

Comment Date: March 15, 2002.

9. WPS New England Generation, Inc.

[Docket No. ER02–1066–000]

Take notice that on February 22, 2002, WPS New England Generation, Inc. (the Company) filed three service agreements under the Company's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 1 (Tariff). The agreements include a long-term service agreement with WPS Energy Services, Inc. (ESI), and umbrella short-term service agreement with ESI, and umbrellas short-term service agreement with WPS Canada Generation, Inc. (WPS Canada).

A copy of the filing was served upon ESI and WPS Canada.

Comment Date: March 15, 2002.

10. Niagara Mohawk Power Corporation

[Docket No. ER02–1067–000]

Take notice that on February 22, 2002, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing the revised Nine Mile Point Unit 2 Interconnection Agreement effective November 7, 2001 between Niagara Mohawk and Constellation Nuclear LLC (NMP–2 ICA) to reflect the docket number of this proceeding and fill in the various blanks or similar placeholders. At the closing, Constellation Nuclear LLC assigned all of its rights and obligations under the NMP–2 ICA to Nine Mile LLC pursuant to an Assignment and Assumption Agreement dated November 7, 2001.

Niagara Mohawk states that this filing has been served on the persons listed in the service list for Docket No. ER01–1986–000.

Comment Date: March 15, 2002.

11. Cinergy Services, Inc.

[Docket No. ER02–1068–000]

Take notice that on February 22, 2002, Cinergy Services, Inc. (Cinergy) and Griffin Energy Marketing, L.L.C. are requesting a cancellation of Service Agreement No. 62, under Cinergy Operating Companies, FERC Electric Resale of Transmission Rights and Ancillary Service Rights, FERC Electric Tariff Original Volume No. 8.

Cinergy requests an effective date of February 25, 2002.

Comment Date: March 15, 2002.

12. Entergy Services, Inc.

[Docket No. ER02–1069–000]

Take notice that on February 22, 2002, Entergy Services, Inc., on behalf of Entergy Louisiana, Inc., tendered for filing an unexecuted, amended and restated Interconnection and Operating Agreement with Washington Parish Energy Center, L.L.C. (Washington Parish), and an updated Generator Imbalance Agreement with Washington Parish (the First Revised Interconnection Agreement).

Comment Date: March 15, 2002.

13. Niagara Mohawk Power Corporation

[Docket No. ER02–1070–000]

On February 22, 2002, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing a revised top-sheet for the Nine Mile Point Unit 1 Interconnection Agreement effective November 7, 2001 between Niagara Mohawk and Constellation Nuclear LLC (NMP–1 ICA) to reflect the docket number if this proceeding. At the closing, Constellation Nuclear LLC assigned all of its rights and obligations under the NMP–1 ICA to Nine Mile LLC pursuant to an Assignment and Assumption Agreement dated November 7, 2001.

Niagara Mohawk states that this filing has been served on the persons listed in the service list for Docket No. ER01–1986–000.

Comment Date: March 15, 2002.

14. Cinergy Services, Inc.

[Docket No.ER02–1071–000]

Take notice that Cinergy Services, Inc. (Cinergy) and Griffin Energy Marketing, L.L.C. on February 21, 2002 are requesting a cancellation of Service Agreement No 228, under Cinergy Operating Companies, FERC Electric Market-Based Power Sales Tariff, FERC Electric Tariff Original Volume No. 7.

Cinergy requests an effective date of February 25, 2002.

Comment Date: March 15, 2002.

15. American Electric Power Service Corporation

[Docket No. ER02–1072–000]

Take notice that on February 22, 2002, American Electric Power Service Corporation (AEPSC), on behalf of Appalachian Power Company, submitted pursuant to section 205 of the Federal Power Act and part 35 of the Commission's regulations, rate schedule changes for sales of electricity to North Carolina Electric Membership Corporation (NCEMC).

AEPSC states that a copy of this filing has been mailed to NCEMC and the regulatory commissions for the states of North Carolina, Virginia, and West Virginia. AEPSC requests that the rate schedule changes become effective on March 1, 2002.

Comment Date: March 15, 2002.

16. Southern California Edison Company

[Docket No. ER02–1073–000]

Take notice, that on February 22, 2002, Southern California Edison Company (SCE) tendered for filing an Interconnection Facilities Agreement (IFA) between SCE and High Desert Power Trust (HDPT). This IFA specifies the terms and conditions pursuant to which SCE will interconnect the 850 MW High Desert Power Project of the California Independent System Operator Controlled Grid pursuant to SCE's

Transmission Owner Tariff, FERC Electric Tariff, Substitute First Revised Original Volume No. 6.

SCE requests that the IFA become effective on February 23, 2002. Copies of this filing were served upon the Public Utilities Commission of the State of California, HDPT and High Desert Power Project, LLC.

Comment Date: March 15, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–5283 Filed 3–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

February 28, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12145–000.

c. *Date filed:* January 28, 2002.

d. *Applicant:* Suburban Hennepin Regional Park District.

e. *Name of Project:* Coon Rapids Project.

f. *Location:* On the Mississippi River, in Hennepin and Anoka Counties, Minnesota. The project would not use any federal lands or facilities.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)—825(r).

h. *Applicant Contact:* Mr. Tim Marr, District Engineer, Suburban Hennepin Regional Park District, 12615 County Road 9, Plymouth, MN 55441–1299, phone (763) 559–6762.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

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: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. Please include the project number (P–12145–000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Competing Application:* Project No. 12142–000, Date Filed: January, 8, 2002, Date Notice Closed: April 22, 2002.

l. *Description of Project:* The proposed project would consist of: (1) An existing 260-foot-long, 30-foot-high dam, (2) an existing impoundment having a surface area of 600 acres with negligible storage and a normal water surface elevation of 830.1 feet NGVD, (3) a proposed powerhouse containing 2 generating units having a total installed capacity of 7.2 MW, (4) a proposed 600-foot-long, 4.16 kV underground transmission line, and (5) appurtenant facilities.

The project would have an annual generation of 41.3 GWh that would be sold to a local utility.

m. Copies of this filing are on file with the Commission and are available for public inspection. 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, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–5294 Filed 3–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southwestern Power Administration

Notice of Floodplain/Wetland Involvement for the OG&E Clarksville to Little Spadra Transmission Line Project

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of Floodplain/Wetland Involvement.

SUMMARY: Southwestern Power Administration (Southwestern), a power marketing agency of the U.S. Department of Energy (DOE), is the lead federal agency for a proposal to connect the Oklahoma Gas and Electric (OG&E) Little Spadra Substation, northeast of Clarksville, Arkansas in Johnson County to Southwestern's system at the Clarksville Substation on the west side of Clarksville, Arkansas. The proposal includes the construction of 5.2 miles of 161 kilovolt (kV) electric transmission line (single pole or H-frame structures). Some of the proposed construction activity will likely occur within a 100-year floodplain.

In accordance with the DOE's Floodplain/Wetland Review Requirements, Southwestern will prepare a floodplain/wetland impact assessment. The proposed action will be performed in a manner so as to avoid or minimize potential harm to or within any affected floodplain/wetland.

DATES: Comments on the proposed floodplain/wetland action are due to the address below no later than March 21, 2002.

ADDRESSES: Comments should be addressed to Ms. Darlene Low, Environmental, Safety, Health and Aviation Program Manager, Southwestern Power Administration, One West Third Street, Tulsa, OK, 74103–3519, fax (918) 595–6656, email *Low@swpa.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Orr, Environmental Specialist, RMC-Consultants, Inc., 2858 S. Golden, Springfield, MO, 65808, phone (417) 891–2668, email *orr@swpa.gov*.

SUPPLEMENTARY INFORMATION: The proposed project will involve construction activities within floodplain and wetland areas. Southwestern Power Administration or their representative will be performing the construction. Some construction activities would take place during the winter months when the ground is frozen to facilitate access in extremely wet areas. The floodplain/wetland assessment will examine the proposed construction activities. The transmission line will extend from the Clarksville Substation to OG&E's Little Spadra Substation in Johnson County, Arkansas. The proposed transmission line routing would cross four streams.

These streams include Little Spadra Creek (perennial), Little Willett Branch (intermittent), unnamed tributary of Little Willett Branch, and an unnamed tributary of Little Spadra Creek. Maps and further information are available from the Southwestern contacts identified above.

Dated: February 26, 2002.

Michael A. Deihl,

Administrator.

[FR Doc. 02–5306 Filed 3–5–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Southwestern Power Administration

White River Lock and Dam No. 1, 2 and 3 Hydroelectric Projects, Independence County, AR

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of floodplain/wetland involvement.

SUMMARY: Southwestern Power Administration (Southwestern), a power marketing agency of the U.S. Department of Energy (DOE), is a cooperating federal agency with the Federal Energy Regulatory Commission (FERC) for a proposal to amend three existing hydroelectric project licenses, in Independence County, Arkansas. This amendment includes changing the route for proposed transmission line construction, and constructing an electrical substation adjacent to and partially within an existing Southwestern transmission line right-of-way. Wetland areas would be avoided to the extent practicable. Those wetlands that would be crossed will be spanned to reduce disturbances. Much of the proposed construction activity will likely occur within a 100-year floodplain of the White River. In accordance with the DOE's Floodplain/Wetland Review Requirements (10 CFR part 1022), Southwestern will prepare a floodplain/wetland impacts assessment. The proposed action will be performed in a manner so as to avoid or minimize potential harm to or within any affected floodplain/wetland.

DATES: Comments on the proposed floodplain/wetland action are due to the address below no later than Mach 21, 2002.

ADDRESSES: Comments should be addressed to Ms. Darlene Low, Manager Environmental, Safety, Health and Aviation, Southwestern Power Administration, One West Third Street, Tulsa, OK, 74103–3519, fax (918) 595–6656, e-mail *Low@swpa.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Orr, Environmental Specialist, RMC-Consultants, Inc., 2858 S. Golden, Springfield, MO, 65808, phone (417) 891–2668, e-mail *orr@swpa.gov*.

SUPPLEMENTARY INFORMATION: The proposed project will involve construction activities within floodplain and wetland areas. Independence County or their representative will perform the construction. The proposed transmission line consists of approximately 20-miles of 25 kilovolt (kV) electric transmission line (single pole wood or metal structures). Construction of the proposed transmission line route will minimize forest clearing and habitat destruction through use of existing transportation corridors (e.g., railroad corridor), agricultural corridors and pasture land. Some construction activities would take place during the winter months when the ground is frozen to facilitate access in the extremely wet areas. The floodplain/wetland assessment will examine the proposed construction activities. The White River Project is located along the White River in Independence County, Arkansas. The project is located in and around the City of Batesville. The transmission would extend along the north side of the White River eastward nine miles from Lock and Dam No. 3 (Project No. 4659) to the proposed substation.

The electric substation would be located approximately two miles east of

the White River Lock and Dam No. 2 (Project No. 4660), on the north side of the White River. Maps and further information are available from the Southwestern contacts identified above.

Dated: February 26, 2002.

Michael A. Deihl,

Administrator.

[FR Doc. 02–5307 Filed 3–5–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Salt Lake City Area Integrated Projects Firm Power, Colorado River Storage Project Transmission, and Ancillary Services Rates

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed rate adjustments.

SUMMARY: The Western Area Power Administration's (Western) Colorado River Storage Project Management Center (CRSP MC) is proposing adjustments to the Salt Lake City Area Integrated Projects (SLCA/IP) firm power, the CRSP transmission, and the ancillary services rates. The SLCA/IP consists of the CRSP, Collbran, and Rio Grande projects, which were integrated for marketing and ratemaking purposes on October 1, 1987. Two CRSP participating projects that have power facilities, the Dolores and Seedskadee projects, are also integrated with CRSP. The current firm power, transmission, and ancillary services rates expire March 30, 2003. The current rate is not sufficient to pay all annual costs including operating, maintenance, replacement, and interest expenses, and to repay investment and irrigation assistance obligations within the required period. The proposed rates will provide sufficient revenue to pay all annual costs, including operation, maintenance, replacement, purchased power, and interest expenses, and to repay investment and irrigation assistance obligations within the allowable period. A brochure that identifies the reasons for the rate adjustment will be available in February 2002. Proposed rates are scheduled to become effective on October 1, 2002, the beginning of Federal fiscal year (FY) 2003. This **Federal Register** notice initiates the formal process for the proposed rates.

DATES: The consultation and comment period begins today and ends June 4, 2002. Western representatives will explain the proposed rates at a public forum on March 19, 2002, beginning at 10 a.m., Salt Lake City, UT. Interested parties can provide oral and written comments at a public forum on April 23, 2002, beginning at 10 a.m., at the same location.

ADDRESSES: The meetings will be held at Hilton Salt Lake City Center, 255 South West Temple, Salt Lake City, UT. If you are interested in sending comments, address them to: Mr. David Bennion, Acting CRSP Manager, CRSP Management Center, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, e-mail *bennion@wapa.gov*. Western must receive comments by the end of the consultation and comment period to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Ms. Carol Loftin, Rates Manager, CRSP Management Center, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, telephone (801) 524–6380, e-mail *loftinc@wapa.gov*, or visit CRSP MC's home page at: *www.wapa.gov/crsp/crsp.htm*.

SUPPLEMENTARY INFORMATION:

Proposed Rate for SLCA/IP Firm Power

The proposed rate for SLCA/IP firm power is designed to return an annual amount of revenue to meet the repayment of power investment, payment of interest, purchased power, operation, maintenance and replacement expenses, and the repayment of irrigation assistance costs, as required by law. A brochure that identifies the reasons for the rate adjustment will be available in February 2002.

The Department of Energy (DOE) Deputy Secretary approved Rate Schedule SLIP–F6 for SLCA/IP firm power on March 23, 1998 (Rate Order No. WAPA–78, April 6, 1998), and the Federal Energy Regulatory Commission (FERC) confirmed and approved the rate schedule on July 17, 1998, in FERC Docket No. EF98–5171–000. Rate Schedule SLIP–F6 became effective on April 1, 1998, for the period ending March 30, 2003. Under Rate Schedule SLIP–F6, the energy rate is 8.10 mills/kilowatthour (kWh), and the capacity rate is $3.44 per kilowattmonth (kWmonth). The composite rate (revenue requirements per kWh usage) is 17.57 mills/kWh.

The proposed rate would consist of a base rate and a purchase adder rate (PAR). The base rate would meet all estimated firm power revenue requirements except the cost for purchased power. The proposed base rate for SLCA/IP firm power under SLIP–F7, is 8.4 mills/kWh for energy and $3.57 per kWmonth for capacity. The proposed composite base rate is 18.32 mills/kWh.

The PAR would be established for 2-year periods to meet the cost of purchased power based on near-term projections of energy purchases and prices. The PAR estimate would be based on current energy pricing levels and the Bureau of Reclamation's (Reclamation) current 24-month hydrological study.

Both the firm power base rate and the PAR will apply to all firm power customers and become effective October 1, 2002.

Base Rate

The proposed base rate revenue requirements are based on the FY 2003 work plans for Western and Reclamation. These work plans form the bases for the FY 2003 Congressional budgets for the two agencies. The most current work plans will be included in the rate order submission. The FY 1999 historical data are the latest available for the rate proposal. As FY 2000 and FY 2001 historical data become available, they will be incorporated into the final rate-setting study.

The rate increase results from the increase in net annual revenue requirements of $2.9 million per year over the rate-setting period. The increased revenue requirements primarily stem from an increase of $25.8 million in annual operation and maintenance (O&M) costs, which include costs for both Western and Reclamation. The purchased power costs of $5.4 million per year in the existing rate are no longer included in the base rate. Other miscellaneous revenue requirement increases amount to $2.1 million. These increases in projected annual expenses are offset by an increase in projected revenues amounting to about $13.4 million per year, most of which are a result of the CRSP merchant function activities, CRSP transmission sales, and ancillary services sales. Furthermore, integrated projects' revenue requirements, interest, and principal payments collectively decreased by about $6.2 million.

Purchase Adder Rate

The PAR is computed by reviewing Reclamation's 24-month hydrological study for the Upper Colorado River Basin to project generation resources. This amount is compared with contractual Sustainable Hydro Power (SHP) customer commitments for energy to determine purchase requirements. The purchased requirements are

multiplied by the forecasted future prices during the same time period.

The estimated purchased power costs based on these projections for energy requirements and prices for the two future years are divided by the total customer sales commitments (6,007 GWH) to determine the adder energy rate.

At the end of the 2-year period, Western in consultation with the SLCA/IP customers, will compare the actual purchased power costs with what was projected for the same period. The surplus or deficit amount resulting from this comparison will be combined with a recalculation of the PAR formula for the following 2 years.

The following table is a comparison of the current and proposed SLCA/IP firm power rate and an example of the PAR. For the PAR example, the table assumes purchased power requirements of 514 GWH per year and an energy price of 30 mills/kWh. For FY 2003 and FY 2004 the PAR would be 2.6 mills/kWh.

COMPARISON OF CURRENT AND PROPOSED FIRM POWER RATES AND PURCHASE ADDER RATE EXAMPLE

Rate schedule	Current rate April 1, 1998–30–Mar–03 SLIP–F6	Proposed rate Oct. 1, 2002–30–Sep–07 SLIP–F7	Increase
Base Rate:			
Energy (mills/kWh)	8.1	8.4	0.3
Capacity ($/kWmonth	3.44	3.57	0.13
Composite Rate:			
Base Rate	17.57	18.32	0.75
PAR Example (mills/kWh)	N/A	2.6	N/A
Total	17.57	20.92	3.35

Adjustment Clauses Associated With the Proposed Rate for SLCA/IP Firm Power

All adjustment clauses for the proposed rate remain the same as those included in the current rate with the exception of the purchased resources adjustment. Since all customers have signed the Replacement Purchase Options Amendment, it is no longer necessary to include the statement that "contractors who are not receiving service under the Replacement Purchase Options Amendment will also receive additional firming on a pass-through-cost basis. This adjustment is to ensure that Western recovers the purchased power costs and any other associated costs for the firming purchases."

Proposed Rate Formula for CRSP Transmission Services

A new rate methodology is being proposed that is more consistent with the methodology used at other Western regions and other utilities. The proposed methodology is an annual fixed charge formula that will be used to determine the revenue requirement to be recovered from firm and non-firm transmission service. The annual transmission revenue requirements include O&M expenses, administrative and general expenses, interest expense, and depreciation expense. This revenue requirement is offset by appropriate CRSP transmission system revenues. The proposed rates apply to current and future CRSP transmission service and include the cost for scheduling, system control, and dispatch service. The cost of transmission service to provide Western's Firm Electric Service will continue to be included in the SLCA/IP firm power rate, consistent with existing contracts.

Firm Point-to-Point

The firm point-to-point rate is based on a test year using an annual fixed charge methodology. This test year relies upon the most recent historical audited data available. The annual revenue requirements are reduced by revenue credits such as non-firm transmission and phase shifter revenues. The resultant net annual revenue requirement is divided by the capacity reservation needed to meet firm power and transmission commitments in kW, plus the total network integration loads at system peak, to derive a cost/kilowattyear (kWyear). As current FY financial data becomes available, they will be incorporated and used as the test year. The proposed rate for firm point-to-point CRSP transmission service is $25.96 per kWyear, which equates to $2.14 per kWmonth for FY 2003, based on FY 1999 audited data. As FY 2000 and FY 2001 audited data become available, these will be incorporated and used as the test year. Each year, the formula will be recalculated to determine if a revised rate needs to be implemented. The rate formula is proposed to be in effect until September 30, 2007. The cost/kWyear is calculated using the following formula:

(1) ARR—TRC = NARR

(2) $\frac{\text{NARR}}{\text{TSTL}}$

Where:

ARR = Annual Revenue Requirements
TRC = Transmission Revenue Credits
NARR = Net Annual Transmission Revenue Requirements
TSTL = CRSP Transmission System Total Load

Non-Firm Point-to-Point

The proposed rate for non-firm point-to-point CRSP transmission service is a mills/kWh rate based on market conditions but never higher than the firm point-to-point rate. This rate will remain in effect concurrently with the firm point-to-point rate.

Network

The proposed rate for network transmission, if offered by CRSP MC, will be consistent with Western's Tariff, the rate methodology in FERC Order No. 888, and will be based on the annual revenue requirements then in effect, as determined by the annual fixed charge methodology.

Western is not currently providing network transmission on its CRSP transmission system and only has available transmission capacity on isolated portions of the CRSP transmission system.

Adjustment Clauses Associated with the Proposed Rates for Firm and Non-Firm Transmission Services

Reactive Power

This provision in Rate Schedules SP–PTP5, SP–NW1, and SP–NFT4 will remain the same under the proposed rates for CRSP transmission.

Adjustment for Losses

The adjustment for losses provision contained in Rate Schedules SP–PTP5, SP–NW1, and SP–NFT4 will remain the

same and also include a statement to allow for financial compensation to recover losses. The following statement will be added to the existing provision: "If losses are not fully provided by a transmission customer, charges for financial compensation may apply." This provides for compensation to Western for those instances in which losses were not adequately provided for in the form of energy.

Adjustment for Industry Restructuring

The proposed rates for CRSP transmission include a provision to pass through electric industry restructuring costs associated with providing transmission service. These costs will be passed through to each appropriate transmission customer. This provision will be included as an adjustment clause in the transmission rate schedules for firm and non-firm transmission.

Proposed Rates for Ancillary Services

On April 1, 1998, the Western Area Upper Colorado (WAUC) control area, within which most of the CRSP transmission system lies, operated by the CRSP MC, was merged into two other control areas. These control areas are the Western Area Colorado Missouri (WACM), operated by Western's Rocky Mountain Region (RMR), and the Western Area Lower Colorado (WALC), operated by Western's Desert Southwest Region (DSWR). The boundary between these control areas is the Shiprock Substation.

Six ancillary services will be offered by CRSP MC; they are (1) scheduling, system control, and dispatch service, (2) reactive supply and voltage control service, (3) regulation and frequency response service, (4) energy imbalance service, (5) spinning reserve service, and (6) supplemental reserve service. The first two, scheduling, system control, and dispatch service, and reactive supply and voltage control service are required to be purchased by the CRSP transmission customer. The remaining four will also be offered either from the control area or from the CRSP MC Merchant. The following table summarizes the ancillary services available.

PROPOSED SLCA/IP ANCILLARY SERVICES RATES

Ancillary service type	Ancillary service description	Rate
Scheduling, System Control, and Dispatch.	Required to schedule the movement of power through, out of, within, or into a control area.	Included in transmission rate.
Reactive Supply and Voltage Control ..	Reactive power support provided from generation facilities that is necessary to maintain transmission voltages within acceptable limits of the system.	DSWR rate schedule—DSW–RS1, or RMR rare schedule—L–AS2 or as superseded will apply.
Regulation and Frequency Response	Providing generation to match resources and loads on a real-time continuous basis.	If available from SLCA/IP resources, the firm capacity rate will apply. If unavailable, DSWR rate schedule—DSW–FR1, or RMR rate schedule—L–AS3 or as superseded will apply.
Energy Imbalance	Provided when a difference occurs between the scheduled and actual delivery of energy to a load or from a generation resource within a control area over a single hour.	Provided through DSWR rate schedule—DSW–EI1 and RMR rate schedule—L–AS4 or as superseded, or the customer can make alternative comparable arrangements.
Spinning Reserve	Needed to serve load immediately in the event of a system contingency.	Market-based rate.
Supplement Reserve	Needed to serve load in the event of a system contingency; however, it is not available immediately to serve load, but rather within a short period of time.	Market-based rate.

Scheduling, System Control, and Dispatch

This is the only service included in the CRSP transmission rate. Firm power and transmission customers receive this service at no additional charge.

Reactive Supply and Voltage Control

This ancillary service is not included in the CRSP transmission service rate. CRSP transmission customers will be required to purchase this service from the WACM or WALC control area operator. The rate schedules of DSWR or RMR will apply, according to which control area provides this service.

Regulation and Frequency Response

If the CRSP MC has regulation available for sale, it will charge the SLCA/IP firm power capacity rate currently in effect. If regulation is unavailable from the CRSP MC, the customer may obtain it from the WALC or WACM control areas. Transmission customers serving loads within the transmission provider's control area must acquire this ancillary service from Western, from a third party, or by self supply.

Energy Imbalance

This ancillary service is not included in the CRSP transmission service rate. Transmission customers serving loads within the transmission provider's control area must acquire this ancillary service from Western, from a third party, or by self supply. If this service is provided by Western, the rate schedules of DSWR or RMR will apply, according to which control area provides this service.

Spinning and Supplemental Reserves

These ancillary services are not included in the CRSP transmission service rate. The CRSP MC will charge current market rates for these reserves. Transmission customers serving loads within the transmission provider's control area must acquire these ancillary services from Western, from a third party, or by self supply.

Procedural Requirements

Since the proposed rates constitute a major rate adjustment as defined by the procedures for public participation in general rate adjustments, as cited below, Western will hold both public information forums and public comment forums. After considering comments, Western will recommend proposed rates for interim approval by the DOE Deputy Secretary.

The proposed SLCA/IP firm power, CRSP transmission, and ancillary services rates are being established pursuant to the Department of Energy Organization Act, 42 U.S.C. 7101–7352;

the Reclamation Act of 1902, ch. 1093, 32 Stat. 388, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c); and other acts specifically applicable to the projects involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of DOE delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to Western's Administrator, (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary, and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) became effective on September 18, 1985.

Availability of Information

Interested parties may review and copy all brochures, studies, comments, letters, memorandums, or other documents made or kept by Western in developing the proposed rates. These documents are at the CRSP MC, located at 150 East Social Hall Avenue, Suite 300, Salt Lake City, Utah.

Regulatory Prodedural Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. This action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*); Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; therefore, this notice requires no clearance by the Office of Management and Budget.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from Congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Dated: February 15, 2002.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 02–5308 Filed 3–5–02; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL –7153–6]

EPA Science Advisory Board; PM Research Center Interim Review Panel; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the PM Research Center Interim Review Panel of the US EPA Science Advisory Board (SAB) will conduct a contingency conference call on Wednesday, March 27, 2002, if it is needed to complete work on the report of the Panel stemming from its public meeting on February 11–12, 2002 (see 67 FR 2434, January 17, 2002). The call will be convened in Conference Room 6013, USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW., Washington, DC 20004. The meeting will begin at 11 am and end no later than 1 pm Eastern Time. This meeting is open to the public, however, seating is limited and available on a first come basis. A decision will be made no later than Wednesday, March 20th as to whether or not the teleconference will be needed—this notification will be posted on the SAB Web site *(www.epa.gov/sab)* under the "NEW" heading.

Purpose of the Meeting: The Panel met in public session on February 11–12, 2002, and developed draft responses to each of the Charge questions posed by the Agency (see 67 FR 2434, January 17, 2002). The Panel set aside time for a late March teleconference in order to discuss any issues that remain after the formal report drafting process. The meeting will not be held, if, in the opinion of the Panel Chair, the are no issues that require additional discussion. In any event, the final report will be reviewed by the SAB Executive Committee in an announced public meeting prior to the report's being submitted to the Administrator.

Availability of Review Materials: If the meeting takes place, the draft Panel report will be posted on the SAB Web site *(www.epa.gov/sab)* no later than Friday, March 22. The underlying documents that are the subject of SAB reviews were made available to the public as described in the earlier referenced FR notice.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (three to five minutes maximum) must contact Dr. Donald Barnes, Designated Federal Officer, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–4533; FAX (202) 501–0323; or via e-mail at *barnes.don@epa.gov*. Requests for oral comments must be received by Dr. Barnes no later than noon Eastern Time on March 25, 2002. Information concerning access to the teleconference in person in the conference room, or via telephone, may be obtained from Ms. Betty Fortune at (202) 564–4533 or via e-mail at *fortune.betty@epa.gov*.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Oral Comments: In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their oral comments and presentation slides for distribution to the reviewers and public at the meeting.

Written Comments: Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the

comments may be made available to the SAB committee or panel for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail [acceptable file format: Adobe Acrobat (PDF), WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format)]. Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

General Information: Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on the SAB Web site *(http://www.epa.gov/sab)* and in *The FY2001 Annual Report of the Staff Director* which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0323. Committee rosters, draft Agendas and meeting calendars are also located on our Web site.

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Dr. Barnes at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: February 25, 2002.

Donald G. Barnes,

Staff Director, EPA Science Advisory Board.

[FR Doc. 02–5312 Filed 3–5–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66299; FRL–6824–9]

Acephate; Cancellation Order for Certain Uses and Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the cancellation order for all O,S-dimethyl acetylphosphoramidothioate (or acephate) product registrations cited in voluntary cancellation requests by acephate registrants Valent USA Corporation, Micro Flo Company LLC, Drexel Chemical Company, United Phosphorus, Inc., Whitmire Micro-Gen Research Labs, The Scotts Company, and Pursell Technologies, Inc., and approved by EPA, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The product cancellation and use deletion requests were submitted to reduce certain residential risks which exceeded the Agency's level of concern. In a Notice of Receipt of Requests For Amendments to Delete Uses and to Voluntarily Cancel Certain Product Registrations (66 FR 59422) (FRL–6810–1) November 28, 2001, EPA indicated that it would consider any public comments submitted within the comment period before acting on the requests. The Agency, however, received neither a comment nor withdrawal request. EPA hereby issues in this notice a cancellation order approving the requested cancellations and use deletions. Any distribution, sale, or use of the products subject to this cancellation order is only permitted in accordance with the terms of the existing stocks provisions of this cancellation order.

DATES: The approved product cancellation and use deletion dates are outlined in Tables 1, 2, and 3 of this notice.

FOR FURTHER INFORMATION CONTACT: By mail: Kimberly Lowe, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460: telephone number: (703) 308–8059: fax number: (703) 308–8005: e-mail address: lowe.kimberly@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply To Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use acephate products. The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet homepage at http://www.epa.gov/. To access this document, on the homepage select "Laws and Regulations," "Regulations and Proposed Rules" and then look up the entry for this document under the **"Federal Register—Environmental Documents."** You can also go directly to the *Federal Register* listings at http://www.epa.gov/fedrgstr/. To access information about the risk assessment for acephate, go to the homepage for the Office of Pesticide Programs or go directly to http://www.epa.gov/pesticides/op/acephate.htm.

2. *In person.* The Agency has established an official record for the Interim Reregistration Eligibility Decision action on acephate under docket control number OPP–34164A. The official record consists of the documents referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Requests to Cancel and Amend Registrations to Delete Uses

A. Background

During development of the Interim Reregistration Eligibility Decision (IRED) on the organophosphorus pesticide, acephate, EPA identified risks of concern for residents, including children, who contact treated surfaces in homes following indoor application. EPA also identified a risk of concern for young children playing on lawns treated with acephate. To voluntarily address these health risk concerns, Valent and all other relevant acephate registrants agreed to request amendment of their registrations to delete these uses.

The IRED for acephate completed on September 30, 2001, and announced in the **Federal Register** (January 30, 2002) (67 FR 4426) (FRL–6821–1), noted the need to consult with the Secretary of Health and Human Services prior to approving a certain request to cancel

products or delete uses associated with a public health pesticide. Although it is unclear whether acephate is a public health pesticide, as a courtesy, EPA consulted with the Centers for Disease Control and Prevention, as well with officials from the Department of Agriculture's Animal and Plant Health Inspection Service before issuing this cancellation order.

The primary technical registrant, Valent, submitted a written request on October 15, 2001 to EPA, seeking to amend its manufacturing-use product (MUP) registrations and end-use product (EUP) registrations for acephate. Valent requested that EPA amend all of its registered products to delete the use of acephate on residential indoor and turfgrass sites (except golf courses, sod farms, and spot or mound treatment for harvester and fire ant control). The use deletion requests involved seven FIFRA section 3 registrations held by Valent. Valent also requested the voluntary cancellation of one section 3 manufacturing use registration and eight Special Local Need registrations under FIFRA section 24(c). These cancellation requests were conditioned on EPA granting certain existing stock provisions.

Nearly identical use deletion requests were received from the other three technical registrants of acephate: Drexel Chemical Company, United Phosphorus, Inc., and Micro Flo Company LLC. Furthermore, the remaining end use product registrants, Whitmire Micro-Gen Research Labs, The Scotts Company, and Pursell Technologies, Inc., made similar use deletion requests. All registrants requested that EPA waive any applicable 180–day public comment period for EPA action on its requests.

For the purposes of this use deletion action, "residential use" refers to use sites within the definition of the term at 40 CFR 152.3(u). Thus, residential indoor sites refers to all "residential use" sites that are indoors. The "turfgrass" use deletion refers to any turfgrass use site, unless the specific turf use site or pest is excepted, as described in this notice. Thus, turfgrass use directions on revised labeling would be limited to golf course, sod farm, and spot or mound treatment for harvester or fire ant control.

In response to the requests to delete uses and cancel certain product registrations, EPA published a Notice of Receipt of Requests For Amendments to Delete Uses and to Voluntarily Cancel Certain Product Registrations for acephate (66 FR 59422, November 28, 2001). In that notice, EPA waived the 180–day public comment period, as requested, and indicated that during the 30–day public comment period that was provided it would consider any comments submitted by December 28, 2001 before deciding whether to act on the requests. Neither a comment was received from any member of the public nor a withdrawal request made by any registrant in regard to this announcement. EPA also considered the registrants' existing stocks request and believes that such a provision is consistent with EPA policy on existing stocks and standards established under FIFRA.

B. Requests for Voluntary Amendments of Manufacturing-Use Product Registrations to Delete Certain Uses

Table 1 specifies the time frame for the use deletions and use of existing stocks of manufacturing use products by formulators. "Turfgrass" in the context of Table 1 does not include the excepted uses of golf course, sod farm, and/or spot or mound treatment for harvester and fire ant control (unless otherwise specified). In addition to conditions specified in Table 1, registrants may continue formulating acephate products from these manufacturing use products labeled with deleted uses into end use products labeled exclusively for non-deleted uses, provided the other time frames in the following Table 1 are followed. Such formulation may continue until registrant supplies of the manufacturing use product are exhausted. In accordance with the proposed timetable for the use deletions, all manufacturing use product registrations labeled for formulation into pesticides with indoor residential uses or turfgrass uses were officially amended on or shortly after the proposed use deletion date of December 31, 2001. Based on proposed labeling submitted by MUP registrants to terminate the subject uses, the Agency approved amendments to three MUPs on December 31, 2001 and one MUP on January 11, 2002.

TABLE 1.—ACEPHATE MANUFACTURING USE PRODUCTS: USE DELETIONS AND USE OF EXISTING STOCKS

Company	MUP Registration Number	Actual Amended Label Date	Last Date for Use of Existing Stocks to Formulate End Use Products with Deleted Uses		Last Date for Registrant to Sell and Distribute Existing Stocks of Products Bearing Deleted Uses
			Indoor Residential	Turfgrass	
Drexel Chemical Company	19713–410	1–11–02	1–11–02	10–31–02	1–11–02
Micro Flo Company	51036–246	12–31–01	12–31–01	10–31–02	12–31–01
Valent USA Corp.	59639–41	12–31–01	12–31–01	10–31–02	12–31–01
United Phosphorus, Inc.	70506–3	12–31–01	12–31–01	10–31–02	12–31–01

C. Requests for Voluntary Amendments of End-Use Product Registrations to Delete Certain Uses

Table 2 specifies the time frame for implementing the requested use deletions and outlines the conditions for use of existing stocks for affected end use products. The conditions described in this table pertain to the end use registrants of acephate. (N/A in Table 2 means "not applicable.") In accordance with the proposed timetable for the use deletions and in response to proposed labeling submitted by EUP registrants, all EUP registrations labeled for indoor residential uses were officially amended to terminate indoor residential uses on (or within one month of) the proposed use deletion date of December 31, 2001.

End use products labeled for turfgrass will be amended to terminate certain

turfgrass uses, no later than October 31, 2002. "Turfgrass" in the context of Table 2 does not include the excepted uses of golf course, sod farm, and/or spot or mound treatment for harvester and fire ant control (unless otherwise specified). Nearly all registrants of product registrations labeled for turfgrass uses have submitted proposed labeling to terminate the subject turfgrass uses before the proposed use deletion date. EPA has already approved five label amendments and is currently reviewing the balance of the submissions. Product registrations shown in the following Table 2 with the entry, "no later than 10–31–02", refers to turfgrass product registrations for which proposed labels are still under EPA review or pending. The effective date for the turfgrass use deletion is either the date of EPA approval for the label amendment terminating the use, or October 31, 2002, whichever comes first.

TABLE 2.—ACEPHATE END USE PRODUCTS: USE DELETIONS AND USE OF EXISTING STOCKS

Company	EUP Registration Number	Effective Date of Use Deletions	Last Date for Sale and Distribution of Existing Stocks by the Registrant	
			Indoor Residential	Turfgrass
The Scotts Company	239–2406	N/A	No later than 10–31–02	12–31–02
	239–2436	N/A	No later than 10–31–02[1]	12–31–02
	239–2440	1–30–02	N/A	12–31–02
	239–2461	N/A	No later than 10–31–02[1]	12–31–02
	239–2632	N/A	No later than 10–31–02	12–31–02
Whitmire Micro-Gen	499–373	12–31–01	N/A	12–31–02
Drexel Chemical Co.	19713–495	1–11–02	N/A	12–31–02
	19713–497	N/A	1–28–02	12–31–02
Micro Flo Company	51036–236	N/A	12–31–01	12–31–02
	51036–252	N/A	1–28–02	12–31–02
	51036–237	12–31–01	N/A	12–31–02
	51036–337	N/A	12–31–01	12–31–02
Valent USA Corporation	59639–26	N/A	No later than 10–31–02	12–31–02
	59639–28	N/A	No later than 10–31–02	12–31–02
	59639–31	1–11–02	N/A	12–31–02
	59639–33	N/A	No later than 10–31–02	12–31–02
	59639–87	N/A	No later than 10–31–02	12–31–02
	59639–91	N/A	No later than 10–31–02	12–31–02
United Phosphorus, Inc.	70506–1	N/A	No later than 10–31–02[1]	12–31–02
Pursell Technologies	73614–1	N/A	1–30–02	12–31–02

[1]Exception for harvester ant control on turfgrass does not apply to this product; other turfgrass exceptions do apply.

D. Requests for Voluntary Cancellation of Product Registrations

As mentioned above, Valent also requested the voluntary cancellation of nine acephate product registrations. The products identified by Valent's one section 3 MUP registration and eight section 24(c) (or Special Local Need) registrations are shown in the following Table 3. Insofar as these cancelled product registrations contain one or more of the subject indoor residential

and turfgrass uses, the existing stocks provisions outlined in Table 2 apply.

TABLE 3.—ACEPHATE PRODUCT REGISTRATION CANCELLATION REQUESTS

Company/ Address	Product Registration Number	Product Name
Valent USA Corporation 1333 N. California Blvd., Ste. 600 Walnut Creek, CA 94596	59639–42	Valent Orthene MFG
	AL960001	Pinpoint 15 granular
	FL890016	Orthene turf, tree and ornamental spray
	FL960007	Pinpoint 15 granular
	GA970002	Pinpoint 15 granular
	LA950011	Pinpoint 15 granular
	MS960016	Pinpoint 15 granular
	SC960001	Pinpoint 15 granular
	TX960011	Pinpoint 15 grandular

III. Cancellation Order

Pursuant to section 6(f) of FIFRA, EPA hereby approves the requested acephate product registration cancellations and amendments to terminate all indoor residential uses and all turfgrass uses, except golf course, sod farm, and/or spot or mound treatment for harvester and fire ant control, as identified for deletion in the acephate 6(f) notice of receipt published on November 28, 2001. Accordingly, the Agency orders that all of the uses identified in Tables 1, and 2 are hereby deleted from the acephate product registrations in accordance with the time frames given in this notice. The Agency also orders that the acephate product registrations identified in Table 3 are hereby canceled. Any distribution, sale, or use of existing stocks of the products identified in Tables 1, 2, and 3 in a manner inconsistent with the terms of this Order or the Existing Stock Provisions in Unit IV of this notice will be considered a violation of section 12(a)(2)(K) of FIFRA and/or section 12(a)(1)(A) of FIFRA.

IV. Existing Stocks Provisions

Pursuant to section 6 of FIFRA, EPA grants the existing stocks provisions contained within the requests for voluntary amendment and cancellation, as described in large part by the time frames shown in Tables 1, and 2. For purposes of this cancellation order, the term "existing stocks" is defined, pursuant to EPA's Existing Stocks Policy published in the **Federal Register** of June 26, 1991 (56 FR 29362), as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the amendment or cancellation. Any distribution, sale, or use of existing stocks after the effective date of this cancellation order that is not consistent with the terms of this order will be considered a violation of section 12(a)(2)(K) and/or 12(a)(1)(A) of FIFRA.

A. Distribution, Sale, and Use of Products with Deleted Uses by Registrants

The distribution, sale, or use of such stocks by the registrants (including supplemental registrants) of acephate products is not lawful under FIFRA after the sale, distribution, and use dates listed in Tables 1, and 2, except for the purposes of returns and relabeling, shipping such stocks for export consistent with the requirements of section 17 of FIFRA, or for proper disposal. The effective date of the use cancellations for the manufacturing-use products is the approval date of the label amendment. The effective date of the use cancellations for the end-use products labeled for indoor residential use is either the approval date of the label amendment or, if the label amendment is still unapproved, the date of this cancellation order. The effective date of the use deletions for the end-use products labeled for use on turfgrass is either the approval date of the label amendment or October 31, 2002, whichever occurs first.

B. Distribution, Sale, and Use of Products with Deleted Uses by Persons Other than Registrants

Retailers, distributors, and end-users may sell, distribute, or use existing stocks of end-use products subject to this order, as presented in Table 2, until such supplies are exhausted.

C. Distribution, Sale, and Use of Canceled Products

The effective date of the product cancellations is the date of this cancellation order. Except as provided below, the registrant may sell or distribute existing stocks for 1 year after the date that the cancellation request was received by the Agency, which in this case was October 15, 2001. Registrants are also subject to the time frames and existing stocks provisions above in Units IV. A, and B for products with any uses subject to the use deletions in this order and existing stocks provisions. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s).

Lists of Subjects

Environmental protection, Cancellation, Pesticides and pests.

Dated: February 22, 2002.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–5315 Filed 3–5–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34225G; FRL–6826–2]

Diazinon Products Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's cancellation order for the product and use cancellations as requested by companies (hereinafter collectively referred to as the "end-use products registrants") that hold the registrations of pesticide end-use products containing the active ingredient diazinon and accepted by EPA, pursuant to section 6(f) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This order follows up a January 4, 2002 notice of receipt from the end-use products registrants, of requests for cancellations and or amendments of their diazinon product registrations to terminate all indoor uses, certain agricultural uses and certain outdoor non-agricultural uses. In the January 4, 2002 notice, EPA indicated that it would issue an order granting the voluntary product and use registration cancellations unless the

Agency received any substantive comment within the comment period that would merit its further review of these requests. The Agency did not receive any comments. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is only permitted in accordance with the terms of the existing stocks provisions of this cancellation order.

DATES: The cancellations are effective March 6, 2002.

FOR FURTHER INFORMATION CONTACT: John Hebert, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–6249; fax number: 703–308–7042; e-mail address: hebert.john@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use diazinon products. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access information about the risk assessment for diazinon, go to the Home Page for the Office of Pesticide Programs or go directly to http://www.epa.gov/pesticides/op/diazinon.htm.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–34225. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Receipt of Requests to Cancel and Amend Registrations to Delete Uses

A. Background

Certain registrants requested in letters dated July, August, September, and October 2001, that their diazinon registrations be amended to delete all indoor uses, certain agricultural uses, and any other uses that the registrants do not wish to maintain. The requests also included deletions of outdoor non-agricultural uses from the labeling of certain end-use products so that such products would be labeled for agricultural uses only. Similarly, other diazinon end-use registrants requested voluntary cancellation of their diazinon end-use product registrations with indoor use and/or certain outdoor non-agricultural uses, and any other uses that the registrants do not wish to maintain. EPA announced its receipt of these above-mentioned cancellation requests in the **Federal Register** of January 4, 2002 (67 FR 587) (FRL–6812–6).

These requested cancellations and amendments are consistent with the requests in December 2000 by the manufacturers of diazinon technical products, and EPA's approval of such requests, to terminate all indoor uses and certain agricultural uses from their diazinon product registrations because of EPA's concern with the potential exposure risk, especially to children. The indoor uses and agricultural uses subject to cancellation are identified in List 1 below:

List 1--Uses Requested for Termination

Indoor uses: Pet collars, or inside any structure or vehicle, vessel, or aircraft or any enclosed area, and/or on any contents therein (except mushroom houses), including but not limited to food/feed handling establishments, greenhouses, schools, residences, commercial buildings, museums, sports facilities, stores, warehouses and hospitals.

Agricultural uses: Alfalfa, bananas*, Bermuda grass, dried beans, dried peas, celery*, red chicory (radicchio), citrus, clover, coffee, cotton, cowpeas, cucumbers*, dandelions, forestry (ground squirrel/rodent burrow dust stations for public health use)*, kiwi, lespedeza, parsley*, parsnips*, pastures, peppers*, potatoes (Irish and sweet)*, sheep, sorghum, squash (winter and summer)*, rangeland, Swiss chard*, tobacco, and turnips (roots and tops)*. (The Agency does not intend to disapprove or cancel any 24(c) Special Local Need registrations issued for the uses designated with an asterisk).

In today's Cancellation Order, EPA is approving the registrants' requested cancellations and amendments of their diazinon end-use products registrations to terminate all uses identified in List 1.

B. Requests for Voluntary Cancellation of End-Use Products

The end-use product registrants for which cancellation was requested are identified in the following Table 1.

TABLE 1.—END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS

Company	Registration Number	Product
Bonide Products, Inc.	4-191 4-204 4-209 4-272 4-284 4-359 4-411 4-416 4-417	Bonide Lawn and Garden Insect Control with Diazinon 25% EC Bonide Ant Dust with Diazinon Bonide Diazinon 2 1/2 G Bonide Diazinon Soil Insect Granules Bonide Garden Soil Insecticide Diazinon 5% G Bonide Diazinon 4E Insecticide Bonide Diazinon Insect Control Ready-To-Use Bonide Lawn and Garden Spray with Diazinon Bonide Ant and Soil Insect Granules
The Scotts Company	239-2350 239-2602 239-2659 239-2660	Ortho Fruit and Vegetable Insect Control Ortho Home Pest Insect Killer Formula II Ortho Diazinon Reacy Spray Insect Killer Ortho Diazinon Lock'n Spray Insect Killer
Value Garden Supply, LLC	769-509	Diazinon 4-E
Southern Agricultural Insecticides, Inc.	829-261	SA-50 Brand Diazinon 4E Insecticide
Agriliance	1381-151 1381-164	Imperial 5% Diazinon Granular Insect Control Agrox DL Plus
Voluntary Purchasing Groups, Inc.	7401-86 7401-96 7401-99 7401-102 7401-103 7401-104 7401-105 7401-110 7401-214 7401-223 7401-236 7401-262 7401-277 7401-278 7401-295 7401-442	Ferti-lome® Worm Spray Ferti-lome® Lawn Insect Killer Ferti-lome® Special Cricket Spray Ferti-lome® Bagworm Spray Ferti-lome® Diazinon Chinch Bug Spray Ferti-lome® Vegetable Spray Ferti-lome® Aphid Spray Ferti-lome® Liquid Rose Spray Ferti-lome® Improved Rose Dust Ferti-lome® White Grub Spray Ferti-lome® White Grub Killer Ferti-lome® Lawn Food Containing Diazinon Ferti-lome® Wasp and Hornet Killer Ferti-lome® Ant and Roach Spray Ferti-lome® Garden Dust Hi-Yield Diazinon 4E Insect Spray
Gowan Company	10163-68 10163-103	Prokil Diazinon 4EC Gowan Diazinon 50WP
Lesco	10404-11	Diazinon 500 Insecticide
Platte Chemical Co.	34707-229 34704-288	Clean Drop Diazinon 4E Clean Drop Diazinon Seed Protectant
Hi-Yield Chemical Company	34911-3 34911-14 34911-15 34911-22 34911-24	Hi-Yield® Diazinon Insect Spray Hi-Yield® Diazinon Dust Hi-Yield® Ready-to-Use Professional Kill-A-Bug Hi-Yield® General Purpose Garden Dust Hi-Yield® Imported Fire Ant Killer
Control Solutions Inc.	53883-47	Martin's Diazinon Household Insect Spray Ready to Use

EPA did not receive any substantive comments that would merit further review expressing a need of diazinon products for indoor use. Accordingly, the Agency is issuing an order in this notice canceling the registrations identified in Table 1, as requested by the end-use products registrants.

C. Requests for Voluntary Amendments of End-Use Product Registrations to Terminate Certain Uses

Pursuant to section 6(f)(1)(A) of FIFRA, many end-use products registrants submitted requests to amend a number of their diazinon end-use product registrations to terminate the uses identified in List 1 of this notice or any other uses as specified for each product in the September 13, 2001 Diazinon 6(f) Notice and reiterated in Table 2 below. EPA did not receive any comments expressing a need for any of the canceled uses. The registrations for which amendments to terminate specific uses were requested are identified in the following Table 2:

TABLE 2.—END-USE PRODUCT REGISTRATION AMENDMENT REQUESTS

Company	Registration Number	Product Name: Use Deletions
Value Garden Supply, LLC	192-161	Dexol Diazinon 5% Granules: Celery
Riverdale	228-177	Riverdale 5% Diazinon Insect Killer Granules: Celery
The Scotts Company	239-2364	Ortho Diazinon Insect Spray: Almonds
	239-2619	Ortho Hi-Power Ant, Roach, and Spider Spray Formula II: Indoor Uses
	239-2643	Diazinon Insect Spray 2: Almonds
Value Garden Supply, LLC	769-689	SMCP Diazinon AG500: Lawn Pest Control, Nuisance Pests in Outside Areas, and Barrier Strips
	769-841	Miller Diazinon AG Insecticide: Field and Forage Uses, Mushroom Houses, Olives, Figs, Filberts and Pineapples
	769-954	AllPro Diazinon 50 WP Insecticide: Lawn Uses, Nuisance Pests, and Grassland Pests
Voluntary Purchasing Groups, Inc.	7401-213	Hi-Yield® Diazinon AG500 Insecticide: Almonds, celery, cucumbers, parsley, parsnips, peppers, potatoes (Irish), squash (summer and winter), sweet potatoes, swiss chard, turnips, grassland insects, and lawn pest control
	7401-216	Ferti-lome® Diazinon Insect Spray: Almonds
	7401-441	Ferti-lome® Diazinon Water Base Concentrate: Almonds
Gowan Company	10163-100	Diazinon 4E: Beans, cucumbers, parsley, parsnips, peas, peppers, potatoes, squash (summer and winter), sweet potatoes, swiss chard, turnips, indoor ornamentals, lawn pest control, and nuisance pests
	10163-104	Diazinon 14G: Beans, celery, cucumbers, parsley, peas, peppers, potatoes, squash (summer and winter), sweet potatoes, swiss chard, turnips, and indoor ornamentals
	10163-116	Diazinon 5G: Beans, celery, cucumbers, parsley, peas, peppers, potatoes, squash (summer and winter), sweet potatoes, swiss chard, turnips, indoor ornamentals, and lawn pest control
	10163-163	Diazinon 50-WSB: Beans, cucumbers, parsley, parsnips, peas, peppers, potatoes, squash (summer and winter), sweet potatoes, swiss chard, turnips, grassland insects, livestock Insects, fly control in livestock structures, and indoor ornamentals
	10163-241	Diazinon 5F: Beans, cucumbers, parsley, parsnips, peas, peppers, potatoes, squash (summer and winter), sweet potatoes, swiss chard, turnips, grassland insects, lawn pest control, nuisance pests, and indoor ornamentals
Hi-Yield Chemical Co.	34911-13	Hi-Yield 5% Diazinon Insect Killer Granules: Celery
Control Solutions Inc.	53883-45	Martin's Diazinon 25E Lawn and Garden Insect Control: Almonds and Walnuts
	53883-51	Martin's 5% Diazinon Granules: Celery

III. Cancellation Order

Pursuant to section 6(f) of FIFRA, EPA hereby approves the requested cancellations of diazinon product and use registrations identified in Tables 1 and 2 of this Notice. Accordingly, the Agency orders that the diazinon end-use product registrations identified in Table 1 are hereby canceled. The Agency also orders that all of the uses identified in List 1 and all other uses (including specific outdoor non-agricultural uses) identified for deletion in Table 2 are hereby canceled from the end-use product registrations identified in Table 2. Any distribution, sale, or use of existing stocks of the products identified in Tables 1 and 2 in a manner inconsistent with the terms of this Order or the Existing Stock Provisions in Unit IV. of this Notice will be considered a violation of section 12(a)(2)(K) of FIFRA and/or section 12(a)(1)(A) of FIFRA.

IV. Existing Stocks Provisions

For purposes of this Order, the term "existing stocks" is defined, pursuant to EPA's existing stocks policy published in the **Federal Register** of June 26, 1991 (56 FR 29362), as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation or amendment. The existing stocks provisions of this Cancellation Order are as follows:

EPA intends that the cancellation order includes the following existing stocks provisions:

1. *Distribution or sale of products bearing instructions for use on agricultural crops.* The distribution or sale of existing stocks by the registrant of any product listed in Table 1 or 2 that bears instructions for use on the agricultural crops identified in List 1 will not be lawful under FIFRA 1 year after the effective date of the cancellation order, except for the purposes of shipping such stocks for export consistent with section 17 of FIFRA or for proper disposal. Persons other than the registrant may continue to sell or distribute the existing stocks of any product listed in Table 2 that bears instructions for any of the agricultural uses identified in List 1 after the effective date of the cancellation order.

2. *Distribution or sale of products bearing instructions for use on outdoor non-agricultural sites.* The distribution or sale of existing stocks by the registrant of any product listed in Table 1 or 2 that bears instructions for use on outdoor non-agricultural sites will not be lawful under FIFRA 1 year after the effective date of the cancellation order, except for the purposes of shipping such stocks for export consistent with section 17 of FIFRA or for proper disposal.

Persons other than the registrant may continue to sell or distribute the existing stocks of any product listed in Table 1 or 2 that bears instructions for use on outdoor non-agricultural sites after the effective date of the cancellation order.

3. *Distribution or sale of products bearing instructions for use on indoor sites.* The distribution or sale of existing stocks by the registrant of any product listed in Table 1 or 2 that bears instructions for use at or on any indoor sites (except mushroom houses), shall not be lawful under FIFRA as of the effective date of the cancellation order, except for the purposes of shipping such stocks for export consistent with section 17 of FIFRA, or for proper disposal.

4. *Retail and other distribution or sale of existing stock of products for indoor use.* The distribution or sale of existing stocks by any person other than the registrants of products listed in Table 1 or 2 bearing instructions for any indoor uses except mushroom houses will not be lawful under FIFRA after December 31, 2002, except for the purposes of shipping stocks for export consistent with section 17 of FIFRA or for proper disposal.

5. *Use of existing stocks.* EPA intends to permit the use of existing stocks of products listed in Table 1 or 2 until such stocks are exhausted, provided such use is in accordance with the existing labeling of that product.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 22, 2002.

Lois A. Rossi,

Director, Special Review and Registration Division, Office of Pesticide Programs.

[FR Doc. 02–5326 Filed 3–5–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66298; FRL–6823–9]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by September 3, 2002 unless indicated otherwise, orders will be issued canceling all of these registrations..

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Information Resources Services Division (7205C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305-5761; e-mail address: *hollins.james@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

Electronically. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov.* To access this document, on the Home Page select "Laws and Regulations,"" Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr.*

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to cancel 69 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1:

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration no.	Product Name	Chemical Name
000070–00224	Rigo Livestock Dust	2-Chloro-1-(2,4,5-trichlorophenyl)vinyl dimethyl phosphate
000239–02423	Ortho Lawn Insect Spray	O,O-Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
000239–02490	Ortho Home Pest Insect Control	O,O-Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
000239–02513	Ortho-Klor Soil Insect and Termite Killer	O,O-Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
000239–02517	Ortho-Klor Indoor & Outdoor Insect Killer	O,O-Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
000239–02520	Ortho Mole Cricket Bait Formula II	O,O-Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
000239–02521	Ortho Mole Cricket Bait Formula III	O,O-Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
000239–02570	Ortho-Klor 1% Dursban Lawn & Soil Granules	O,O-Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
000239–02633	Ortho Dursban Lawn Insect Formula II	O,O-Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
000239–02635	Ortho Multipurpose Borer & Insect Spray	O,O-Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
000241 NJ–94–0004	Abate 4E Insecticide	Phosphorothioic acid, O,O'-(thiodi-4,1-phenylene) O,O,O',O'-tetramethyl ester
000241 NJ–94–0005	Abate 5-G Insecticide	Phosphorothioic acid, O,O'-(thiodi-4,1-phenylene) O,O,O',O'-tetramethyl ester
000264–00584	Sedagri Trifluralin 480	Trifluralin (a,a,a-trifluro-2,6-dinitro-N,N-dipropyl-p-toluidine) (Note: a =
000279 FL–77–0039	Niagara Ethion 4 Miscible Miticide Insecticide	O,O,O',O'-Tetraethyl S,S'-methylene bis(phosphorodithioate)
000279 LA–95–0014	First Line (Sulfluramid) Termite Bait	1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-
000279 LA–98–0010	Firstline GT Plus Termite Bait Station	1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-
000432–00895	Chipco Mocap Brand 10G GC	O-Ethyl S,S-dipropyl phosphorodithioate
000538–00087	Scotts Turf Builder with Halts	Dimethyl tetrachloroterephthalate
000538–00128	Scotts Vegetable Garden Weed Preventer	Dimethyl tetrachloroterephthalate
000538–00235	Flower and Garden Weed Preventer	Dimethyl tetrachloroterephthalate

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
000541–00168	Galahad Neutral Detergent-Germicide Hospital Grade	4-tert-Amylphenol
		o-Phenylphenol
000541–00265	Puritan #6790 Detergent-Germicide	4-tert-Amylphenol
		o-Phenylphenol
000655–00019	Prentox Warfarin Concentrate Rax Powder	3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin
000655–00457	Prentox Diazinon 4E Insecticide	O,O-Diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000655–00519	Prentox Liquid Household Spray #1	O,O-Diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
002792–00041	Pennwalt Decco 273 Aerosol Potato Sprout Inhibitor	Isopropyl N-(3-chlorophenyl)carbamate
002792 WA–95–0039	Deccoquin 305 Concentrate	6-Ethoxy-1,2-dihydro-2,2,4-trimethyl quinoline
004822–00356	Raid Max Ant Bait	1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-
004822–00508	Raid Double Control Ant Baits	1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-
005481–00054	Alco Cygon 2 E	O,O-Dimethyl S-((methylcarbamoyl)methyl) phosphorodithioate
005481 WA–89–0019	Dibrom 8 Emulsive	1,2-Dibromo-2,2-dichloroethyl dimethyl phosphate
007401–00024	Ferti-Lome Spring Crabgrass Preventer	Dimethyl tetrachloroterephthalate
007401–00067	Ferti-Lome Rose Spray containing Diazinon & Daconil	O,O-Diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
		Tetrachloroisophthalonitrile
007401–00076	Ferti-Lome Crabgrass and Weed Preventer	Dimethyl tetrachloroterephthalate
007401–00140	Ferti-Lome Year-Arourid Grabgrass and Weed Preventer	Dimethyl tetrachloroterephthalate
007401–00385	Ferti-Lome Weed & Grass Preventer	Dimethyl tetrachloroterephthalate
008329–00058	Abate 2-CG Insecticide	Phosphorothioic acid, O,O'-(thiodi-4,1-phenylene) O,O,O',O'-tetramethyl ester
008329–00059	Abate 5-G Insecticide	Phosphorothioic acid, O,O'-(thiodi-4,1-phenylene) O,O,O',O'-tetramethyl ester
008329 NJ–99–0008	Abate 5-G Insecticide	Phosphorothioic acid, O,O'-(thiodi-4,1-phenylene) O,O,O',O'-tetramethyl ester
008660–00022	Vertagreen Crabgrass Preventer	Dimethyl tetrachloroterephthalate
008660–00033	Vertagreen Professional Use with Dacthal	Dimethyl tetrachloroterephthalate
008660–00062	Garden Weed Preventer (contains Dacthal)	Dimethyl tetrachloroterephthalate
008660–00098	Turf Pro Dacthal 5G	Dimethyl tetrachloroterephthalate
008660–00100	Turf Pro Dacthal 5G Plus	Dimethyl tetrachloroterephthalate
008660–00189	Holiday Crabgrass Preventer Pre-Emergence	Dimethyl tetrachloroterephthalate
009779 TX–94–0014	Terranil 6L	Tetrachloroisophthalonitrile
010163 MT–00–0002	Supracide 25W	O,O-Dimethyl phosphorodithioate, S-ester with 4-(mercaptomethyl)-2-
010163 OR–94–0052	Metasystox-R Spray Concentrate	S-(2-(Ethylsulfinyl)ethyl) O,O-dimethyl phosphorothioate
010163 OR–94–0054	Metasystox-R Spray Concentrate	S-(2-(Ethylsulfinyl)ethyl) O,O-dimethyl phosphorothioate
010163 OR–97–0013	Savey Ovicide/Miticide 50-WP	trans-5-(4-Chlorophenyl)-N-cyclohexyl-4-methyl-2-oxo-3-thiazolidinecarboxamide
010163 WA–95–0005	Metasystox-R Spray Concentrate	S-(2-(Ethylsulfinyl)ethyl) O,O-dimethyl phosphorothioate
010163 WA–97–0020	Savey Ovicide/Miticide 50-WP	trans-5-(4-Chlorophenyl)-N-cyclohexyl-4-methyl-2-oxo-3-thiazolidinecarboxamide
010163 WA–99–0030	Supracide 25W	O,O-Dimethyl phosphorodithioate, S-ester with 4-(mercaptomethyl)-2-
010707 ID–98–0001	Magnacide H Herbicide	2-Propenal
010707 NE–90–0002	Magnacide H Herbicide	2-Propenal
010707 WA–94–0039	Magnacide H Herbicide	2-Propenal
019713–00307	Pearson's Kleen-Gro	Dimethyl tetrachloroterephthalate
033753–00024	Myacide GDA	Glutaraldehyde
045017–00033	Slime-Trol DPD-865	Bis(trichloromethyl) sulfone
		Alkyl* dimethyl benzyl ammonium chloride *(50%C14, 40%C12, 10%C16)
050534–00004	Daconil 2787 W75	Tetrachloroisophthalonitrile
050534–00023	Bravo W-75 Agricultural Fungicide	Tetrachloroisophthalonitrile
050534–00029	Ole 75% Fungicide	Tetrachloroisophthalonitrile
050534–00117	Tuffcide 960S	Tetrachloroisophthalonitrile

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
050534–00218	Tuffcide Ultrex ADG	Tetrachloroisophthalonitrile
050534–00224	Tuffcide Xtra	Tetrachloroisophthalonitrile
051036–00080	PCNB-M 10-3G	O-Ethyl S,S-dipropyl phosphorodithioate Pentachloronitrobenzene
051036–00090	Ethion 8 EC	O,O,O',O'-Tetraethyl S,S'-methylene bis(phosphorodithioate)
059639 TX–98–0005	Orthene 75 S Soluble Powder	O,S-Dimethyl acetylphosphoramidothioate
070856 PA–97–0002	Du Pont Benlate SP Fungicide	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate

Unless a request is withdrawn by the registrant within 180 days (unless indicated otherwise) of publication of this notice, orders will be issued canceling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during the indicated comment period.

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number:

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION[1]

EPA Company no.	Company Name and Address
000070	Value Gardens Supply, LLC, Box 585, St. Joseph, MO 64502.
000239	The Scotts Co., D/b/a The Ortho Group, Box 1749, Columbus, OH 43216.
000241	BASF Corp., Box 13528, Research Triangle Park, NC 27709.
000264	Aventis Cropscience USA LP, 2 T.W. Alexander Drive, Box 12014, Research Triangle Park, NC 27709.
000279	FMC Corp.Agricultural Products Group, 1735 Market St, Philadelphia, PA 19103.
000432	Aventis Environmental Science USA LP, 95 Chestnut Ridge Rd., Montvale, NJ 07645.
000538	The Scotts Co., 14111 Scottslawn Rd, Marysville, OH 43041.
000541	Ecolab Inc., Agent For: Puritan Services, Inc., 370 N. Wabasha Street, St. Paul, MN 55102.
000655	Prentiss Inc., C.B. 2000, Floral Park, NY 11001.
002792	Decco, Cerexagri, Inc., 1713 S. California Ave, Monrovia, CA 91016.
004822	S.C. Johnson & Son Inc., 1525 Howe Street, Racine, WI 53403.
005481	AMVAC Chemical Corp., Attn: Jon C. Wood, 4695 Macarthur Ct., Suite 1250, Newport Beach, CA 92660.
007401	Brazos Associates, Inc., Agent For: Voluntary Purchasing Group Inc., 2001 Diamond Ridge Drive, Carrollton, TX 75010.
008329	Clarke Mosquito Control Products Inc., 159 N. Garden Ave, Roselle, IL 60172.
008660	Pursell Industries, Inc., 1500 Urban Center Parkway, Suite 520, Birmingham, AL 35242.
009779	Agriliance, LLC, Box 64089, St Paul, MN 55164.
010163	Gowan Co., Box 5569, Yuma, AZ 85366.
010707	Baker Petrolite Corp., Box 5050, Sugarland, TX 77487.
019713	Drexel Chemical Co, 1700 Channel Ave., Box 13327, Memphis, TN 38113.
033753	Steptoe & Johnson, LLP, Agent For: BASF Microcheck Limited, 1330 Connecticut Ave., NW, Washington, DC 20036.
045017	Hercules Inc. (Attn: Kevin Manning), Pulp & Paper Division., 4636 Somerton Rd, Trevose, PA 19053.
050534	GB Biosciences Corp., 410 Swing Rd., Box 18300, Greensboro, NC 27419.
051036	Micro-Flo Co. LLC, Box 772099, Memphis, TN 38117.
059639	Valent U.S.A. Corp., 1333 N. California Blvd, Ste 600, Walnut Creek, CA 94596.
070856	American Mushroom Institute, 1 Massachusetts Ave, NW, #800, Washington, DC 20001.

[1] There is a 30–day comment period on registrations for EPA company numbers 000070, 000279, 007401 and 051036.

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

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before September 3, 2002. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-

specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product. Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a Special Review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 11, 2002.

Richard D. Schmitt,

Acting Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 02–5318 Filed 3–5–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–1073; FRL–6825–9]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–1073, must be received on or before April 5, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1073 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Treva Alston, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703.308–8373; e-mail address: alston.treva@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

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

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

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–1073. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1073 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–1073. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 21, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

ARCTECH, Inc.,

6E4705

EPA has received a pesticide petition 6E4705 from 14100 Park Meadow Drive, Chantilly, VA 20151 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to establish an exemption from the requirement of a tolerance for residues of humic acid, potassium salt when used as an inert ingredient in pesticide formulations applied to growing crops, raw agricultural commodities (RAC) after harvest, or to animals. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Product Identity

1. *Product chemistry.* Humic substances are the naturally occurring brown or black organic multifunctional polymers with major agricultural and environmental roles. They are one of Earth's richest carbon reservoirs. They are considered a complex aromatic macromolecule with various linkages between the aromatic groups. The different compounds involved in linkages include amino acids, amino sugars, peptides, aliphatic acids and other aliphatic compounds. The various functional groups in humic substances include carboxylic groups (COOH), phenolic, aliphatic and enolic - OH and carbonyl (C=O) structures of various types.

Humic acid (CAS No. 68131–04–4) is a hydrophilic, reversible colloid whose molecular weight ranges from 2,000 daltons for the more soluble form to 500,000 daltons for the less soluble form. The average molecular weight for humic acids is in the 20,000–50,000 daltons range.

Chemically, humic acids are complex, polymeric polyhydroxy acids formed by the process of degradation of organic matter under the action of soil microorganisms and ground worms.

Most humic acids of commercial use are produced by extraction of naturally occurring low rank coals with alkali. The potassium salt of humic acid is produced by extraction of Leonardite with potassium hydroxide.

2. *Proposed use practice.* Humic acid, potassium salt is proposed for use as an inert ingredient in pesticide formulations that would typically be applied to growing crops. Humic acid, potassium salt has been used safely in commercial agriculture for many years, and is generally applied via tank mixing with fertilizers, and/or pesticides, or as granules. Humates such as humic acid, potassium salt are beneficial to growing plants, and are reported to affect germination speed, nutrient uptake, promote root and plant growth, and increase pesticide effectiveness. Use levels of humic acid, potassium salt are anticipated to be in the range of 5 to 50% by weight of the product formulation, with the typical use level expected to be in the 5 to 10% use range. It is anticipated that humic acid, potassium salt would be added directly to the pesticide active ingredient at the time of manufacture/formulation, or it would be tank-mixed with the pesticide at the time of application.

3. *Magnitude of residues.* It is not expected that, when used as proposed, humic acid, potassium salt would result in residues that would remain in human food items.

B. Toxicological Profile

1. *Acute toxicity.* Humic acid, potassium salt is ubiquitous in the environment, and is derived from soil or soil deposits. Potassium or sodium salts of humic acid are generally recognized as having low mammalian, aquatic and avian toxicity. Humic acid is less toxic compared to the conventional chelating

agents used in agriculture such as ethylenediaminetetraacetic acid (EDTA). The acute oral LD_{50} for humic acid is 5.5 gms/kg, for EDTA it is 2 gms/kg, thus humic acid is three times less toxic than EDTA. This poses no significant human health risks. Published literature reports that humic acid is nongenotoxic, nonteratogenic and nonmutagenic to test animals. There are no reports in the literature of humic acid, potassium salt causing disease or injury to man or other animals. No incidents of hypersensitivity have been reported in the published literature by researchers, manufacturers or users.

2. *Mutagenicity.* Studies performed on A-MAX, a humic acid, potassium salt based material, indicate that humic acid is not mutagenic in *S. typhimurim* tester strains or in *E.coli* strain in either the presence or the absence of metabolic activation. The test results were also negative upon utilization of both the plate incorporation and pre-incubation methods.

3. *Genotoxicity.* A study published on the *in vivo* cytogenic effects of natural humic acid determined that "humic acid has not been demonstrated to be genotoxic either *in vitro* or *in vivo.*"

4. *Endocrine disruption.* To date there is no evidence to suggest that humic acid, potassium salt functions in a manner similar to any known hormone, or that it acts as an endocrine disrupter.

C. Aggregate Exposure

1. *Dietary exposure.* Dietary exposure from use of humic acid, potassium salt in pesticide formulations is minimal. Even if exposure occurred, the lack of reports of disease in man or animals indicates there is no risk for these exposures.

i. *Food.* Dietary exposure from use of humic acid, potassium salt in pesticide formulations is minimal. Residues of humic acid, potassium salt are not expected on agricultural commodities. Humic substances are ubiquitous in nature and have been used for many years in commercial agriculture without adverse effect.

ii. *Drinking water.* Humic substances are ubiquitous in nature, including soils, fresh water and oceans. Increased drinking water exposure from use of humic acid, potassium salt in pesticide formulations would not be expected. Humic acid, potassium salt has been widely used in commercial agriculture for many years without adverse effect.

2. *Non-dietary exposure.* The potential for non-dietary exposure to the general population, including infants and children, is unlikely as the proposed use sites of pesticide formulations that would contain humic acid, potassium salt are commercial, agricultural and horticultural settings. However, non-dietary exposures would not be expected to pose any quantifiable risk due to a lack of residues of toxicological concern. In addition, the personal protective equipment required for use of most pesticide formulations mitigates the potential for exposure to applicators and handlers of the proposed products, when used in commercial, agricultural and horticultural settings.

D. Cumulative Effects

Humate residues such as humic acid, potassium and sodium salts, when used as proposed, will not remain in human food items. As indicated previously in the acute toxicity section, the humic acid, potassium or sodium salts have shown a lack of toxicity to humans or other animal species, and there is no information in the literature indicating a cumulative effect with any other compound. A cumulative risk assessment is therefore, not necessary.

E. Safety Determination

1. *U.S. population.* Humic substances are ubiquitous in the environment. Based on known acute toxicity studies, humic acid, potassium salt is not toxic to humans. There have been no reports of toxins or secondary metabolites associated with humic acid, potassium salt, and the acute toxicity studies conducted have shown that it is nontoxic and nonirritating to test animals. Published literature reports that humic acid is nongenotoxic, nonteratogenic and nonmutagenic to test animals. Residues of humic acid, potassium salt are not expected on agricultural commodities, and therefore, exposure to the general U.S. population, from the proposed uses, is not anticipated.

2. *Infants and children.* Residues of humic acid, potassium salt, when used in pesticide formulations, are not expected on agricultural commodities. There is a reasonable certainty of no harm for infants and children from exposure to humic acid, potassium salt from the proposed use.

F. International Tolerances

There are no international tolerances or tolerance exemptions for humic acid, potassium salt. No CODEX maximum residue levels have been established for humic acid, potassium salt.

[FR Doc. 02–5316 Filed 3–5–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404–CO/B; FRL–6823–2]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; State of Colorado Lead-Based Paint Activities Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; requests for comments and opportunity for public hearing.

SUMMARY: On September 28, 2001, the State of Colorado submitted a self-certification letter stating that Colorado's Lead-Based Paint Abatement Program is at least as protective of human health and the environment as the Federal program under section 402 (15 U.S.C. 2682) of the Toxic Substances Control Act (TSCA). Colorado certifies that its program meets the requirements for approval of a State program under section 404 of TSCA and that Colorado has the legal authority and ability to implement the appropriate elements necessary to enforce the program. Therefore, pursuant to section 404, the program is deemed authorized as of the date of submission. If EPA finds that the program does not meet the requirements for approval of a State program, EPA will disapprove the program, at which time a notice will be issued in the **Federal Register** and the Federal program will be established. Today's notice announces the receipt of Colorado's application, provides a 45–day public comment period, and an opportunity to request a public hearing on the application.

DATES: Comments on the application must be received on or before April 22, 2002.

ADDRESSES: Submit all written comments and/or requests for a public hearing identified by docket number PB–402404–CO/B (in duplicate) to: Amanda Hasty, Environmental Protection Agency, Region VIII, 8P–P3T, 999 18th St., Suite 300, Denver, CO 80202–2466

Comments, data, and requests for a public hearing may also be submitted electronically to: hasty.amanda@epa.gov. Follow the instructions under Unit V. of this document. No information claimed to be Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: Dave Combs, Regional Toxics Team Leader, 999 18th St., Suite 300, 8P–P3T, Denver, CO 80202–2466; telephone: 303–312–6021; e-mail address combs.dave@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 1992, the Housing and Community Development Act of 1992, Public Law 102–550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. The Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681-92), titled *Lead Exposure Reduction.*

Section 402 of TSCA (15 U.S.C. 2682) authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges and other structures. On August 29, 1996 (61 FR 45777) (FRL–5389–9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). These regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under section 404 (15 U.S.C. 2684), a State or Indian Tribe may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. EPA will review those applications within 180 days of receipt of the complete application. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684 (b)). EPA's regulations (40 CFR part 745, subpart Q), provide the detailed requirements a State or Tribal program must meet in order to obtain EPA authorization.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA authorization, by submitting a letter signed by the Governor or Attorney General stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized until such time as EPA disapproves the program application or withdrawals the application.

On December 21, 1998, the State of Colorado submitted an application for EPA interim approval to administer and enforce the training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of TSCA. Colorado provided a self-certification letter stating that its program is at least as protective of human health and the environment as the Federal program and it possesses the legal authority and ability to implement the appropriate elements necessary to receive interim enforcement approval. Based upon the State's self-certification, Lead-Based Paint Activities Interim Program Authorization was granted to the State of Colorado effective on December 21, 1998.

On September 7, 1999 (64 FR 48618) (FRL–6099–1), EPA published a notice in the **Federal Register** granting interim-approval of the Colorado TSCA Section 402/404 Lead-Based Paint Accreditation and Certification Program. Full-approval was not granted at the time due to the State of Colorado's Environmental Audit Privilege and Penalty Immunity Statute, sometimes known as S.B. 94–139 (codified at sections 13-25-126.5, 13–90–107(1)(j), and 25–1–114– 5, C.R.S.). This statute impaired the State's ability to fully administer and enforce the lead-based paint program. Interim compliance and enforcement approval was granted to provide the State the opportunity to address problems and issues associated with its Environmental Audit Privilege and Penalty Immunity statute. During the 2000 Legislative Session, the Colorado State Legislature amended the State's Environmental Audit Privilege and Immunity Statute.

On May 30, 2000, EPA and the State of Colorado signed a Memorandum of Agreement resolving all of the issues with the State's Environmental Audit Privilege and Immunity statute. Based upon the revised statute and the MOA between Colorado and EPA, the legal barriers for final EPA approval of Colorado's Lead Based Paint Abatement and Certification Program have been removed.

On September 28, 2001, Colorado provided a self-certification letter from the Governor that its program meets the requirements for authorization of a state program under section 404 of TSCA. Therefore, pursuant to section 404, the program is deemed authorized as of the date of submission.

Section 404(b) of TSCA provides that EPA may approve a program application only after providing notice and an opportunity for a public hearing on the application. Therefore, by this notice EPA is soliciting public comment on whether Colorado's application meets the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the application. If EPA finds that the program does not meet the requirements for authorization of a state program, EPA will disapprove the program application, at which time a notice will be issued in the **Federal Register** and the Federal program will be established in Colorado.

II. State Program Description Summary

The following is a summary of the State of Colorado's Lead-Based Paint Abatement Regulation Number 19, and is intended to meet the requirement of 40 CFR 745.324(a)(3)(iii). The Agency responsible for administering and enforcing the program is the Air Pollution Control Division, Colorado Department of Public Health and Environment, of the State of Colorado. The official at the Agency designated as the point contact with US EPA is Mr. Steven Fine, Supervisor of the CFC, Indoor Air, Asbestos, and Lead-Based Paint Abatement Unit, Air Pollution Control Division. Mr. Fine can be reached by telephone at (303) 692–3164 or by mail at APCD-SS-B1, 4300 Cherry Creek Drive South, Denver, CO 80246–1530. There is only one agency responsible for administering and enforcing the Lead-Based Paint Abatement program. However, pursuant to section 25-7-1104(1)(b)(2), C.R.S., the Division may delegate the "implementation or enforcement" of standards to local health or building departments, as appropriate, if requested by such a local department. Such standards regarding such delegations are part of Regulation No. 19. If the Division approves such a delegation to a local health or building department, the Division shall be the primary agency responsible for overseeing and coordinating administration and enforcement of the program and Mr. Fine shall serve as the primary contact with US EPA.

At this time, there is no delegation to a local health or building department; therefore, the Division has not developed a description of the functions to be performed by each agency. If the Division ever performs such a delegation, it will submit to EPA the required information as detailed in 40 CFR 745.324(b)(1)(iii).

A. Program Elements

The Division has followed EPA's regulation at 40 CFR part 745 and the State Legislature's statutory requirements to develop Regulation Number 19 to be consistent with the Federal program and to be acceptable to

EPA. Implementation of Regulation Number 19 is an appropriate step to begin to protect children from exposure to lead as a result of lead-based paint abatement in "target housing" and "child-occupied facilities." Regulation Number 19 will also achieve uniformity in the regulation of lead abatement practices and in the qualifications for, and certification of, persons who perform such abatement.

Regulation Number 19 includes procedures for training and certification of persons and companies involved in inspection, risk assessment, planning, project design, supervision, or conduct of the abatement of surfaces containing lead-based paint. Regulation Number 19 has a training and certification program that is nearly identical to EPA's program. Training is to be provided by private contractors. In order to facilitate the scheduling of course audits by the Division, Regulation Number 19 includes an additional requirement that training course providers must receive the Division's approval or acknowledgment of each course prior to offering the course.

Regulation Number 19 includes work practice standards and practices for lead-based paint abatement. These standards include EPA's work practice standards and work practice measures that an abatement contractor must include in an occupant protection plan and comply with before, during, and after abatement. The program also includes a requirement, similar to HUD's requirement, that a contractor must sample the soil to ensure that the soil is not contaminated. The sampling would be required unless the contractor is removing or permanently covering the contaminated soil. Colorado's program requires a certified supervisor to be on site during all work site preparation, abatement, and during post-abatement cleanup of the work areas.

The regulation includes procedures for the approval of persons or companies who provide training or accreditation of workers, supervisors, inspectors, risk assessors, or project designers performing lead-based paint activities in "target housing" or "child-occupied facilities." Also included in Regulation Number 19 are procedures for the Division notifying appropriate persons regarding lead-based paint projects in "target housing" or "child-occupied facilities." Colorado's program requires a contractor to notify the Division 10 working days prior to the commencement of lead-based paint abatement activities if the amount of lead-based paint, lead contaminated soil, or lead contaminated dust is greater than 2 square feet on interior surfaces or 10 square feet on exterior surfaces. This time period for a notification is necessary because of document review and inspection planning. The regulation includes *de minimis* levels that trigger the notification requirement based upon proposed EPA identified triggers for risk assessment requirements and HUD's trigger levels for onsite preparation requirements. The State is in the process of revising Colorado Regulation No. 19 in order to incorporate the new EPA 403 Rule. The tentative completion date is late summer of 2002.

The program includes requirements for fees for certification of persons conducting lead abatement services, for any necessary monitoring of such persons to ensure compliance with Regulation No. 19 and for approval of persons or companies involved in the training or accreditation of workers.

The State of Colorado's program provides adequate enforcement fulfilling the criteria in 40 CFR 745.324(e)(2).

The Division has legal authority and ability to immediately implement the standards and requirements of Regulation No. 19. The Division has authority to immediately commence an enforcement action for violation of lead-based paint activities and requirements, including: Accreditation of training programs; certification of individuals; standards for the conduct of lead-based paint abatement activities; and requirements that regulate the conduct of pre-renovation notification activities.

The Division has authority to enter, through consent, warrant, or other authority, premises or facilities where lead-based activities may occur for purposes of conducting inspections. The Division has authority to enter premises or facilities where those engaged in training for lead-based paint activities conduct business; to enter a renovator's place of business for the purposes of enforcing a pre-renovation program; and to take samples and review records as part of the lead-based paint activities inspection process.

The Division has available to it a diverse and flexible array of enforcement remedies that apply to the State's lead-based paint abatement program. The Division has authority to utilize enforcement remedies, including: Requests for information, warning letters, and notices of violation; administrative and civil actions, including authority to suspend, revoke, or modify accreditation or certification; and criminal sanctions.

B. Performance Elements

The State of Colorado's lead-based paint abatement program includes the necessary performance elements as required pursuant to 40 CFR section 745.327(c). The Division has in place a training program which teaches inspectors case development procedures, proper maintenance of case files, violation discovery, methods of obtaining consent, evidence gathering, preservation of evidence, and chain of custody and sampling procedures. The Division requires that its inspectors attend continuing education courses.

The Division has in place an enforcement-tracking data base that allows inspectors to process and react to tips and complaints and track enforcement cases. The Division has the ability to target inspections to ensure compliance with Regulation No. 19, including a notification requirement for the commencement of abatement activities. The Division has more than 15 years of experience in implementing a compliance monitoring and enforcement program in asbestos. Elements of the asbestos program will allow for a smooth transition to lead-based paint abatement compliance monitoring and enforcement that will result in correction of violations found during either routine inspections or those conducted in response to tips, complaints, and emergencies.

C. Statement of Resources (40 CFR 745.327(a)(2)(i)(B))

Richard Fatur, an Environmental Protection Specialist, is employed full time to assist with the development and maintenance of Colorado's LBP Program. The States are currently in the process of hiring another FTE to assist with the program. Four additional Environmental Protection Specialists in the Asbestos Program, trained as Lead-Based Paint Inspectors & Risk Assessors or Supervisors, provide support to the lead-based paint program as needed.

While the legislature did grant the Division authority to assess fees for certain aspects of the Lead Program, the level of abatement activity and numbers of individuals and firms seeking certification may not generate sufficient revenues for several more years to fully fund the program. In consideration of this, the Division will be submitting a grant application request to EPA for supplemental funding until such time as the program can operate in the black based solely on revenues collected.

D. Summary on Progress and Performance

The Division agrees to submit to EPA a Summary on Progress and Performance of lead-based paint abatement compliance and enforcement activities.

III. Federal Overfiling

TSCA section 404(b) (15 U.S.C. 2684(b)) makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

IV. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established under docket control number PB–402404–CO/B. Copies of this notice, the State of Colorado's authorization application, and all comments received on the application are available for inspection in the Region VIII office, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket is located at EPA, Region VIII, and 8P-P3T, 999 18th Street, Suite 300, Denver CO 80202.

Commenters are encouraged to structure their comments so as not to contain information for which CBI claims would be made. However, any information claimed as CBI must be marked "confidential," "CBI," or with some other appropriate designation, and a commenter submitting such information must also prepare a nonconfidential version (in duplicate) that can be placed in the public record. Any information so marked will be handled in accordance with the procedures contained in 40 CFR part 2. Comments and information not claimed, as CBI at the time of submission will be placed in the public record.

Electronic comments can be sent directly to EPA at: hasty.amanda@epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number PB–402404–CO/B. Electronic comments on this document may be filed online at many Federal Depository Libraries. Information claimed as CBI should not be submitted electronically.

V. Submission to Congress and the Comptroller General

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

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: February 20, 2002.

Jack McGraw,

Acting Regional Administrator, EPA Region VIII.

[FR Doc. 02–5190 Filed 3–5–02 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7153–4]

Notice of Proposed Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, ("CERCLA"), 42 U.S.C. 9601–9675, notice is hereby given that a proposed prospective purchaser agreement ("Purchaser Agreement") associated with the Recticon/Allied Steel Superfund Site, Parkerford, Chester County, Pennsylvania was executed by the Environmental Protection Agency and the Department of Justice and is now subject to public comment, after which the United States may modify or withdraw its consent if comments received disclose facts or considerations which indicate that the Purchaser Agreement is inappropriate, improper, or inadequate. The Purchaser Agreement would resolve certain potential EPA claims under sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607, against Longstreth Sporting Goods, Inc. and Parkerford Property, Inc. ("Purchasers"). The settlement would require the Purchasers to, among other things, reimburse the Environmental Protection Agency $ 38,000.00 for response costs incurred and to be incurred at the Site.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the Purchaser Agreement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

DATES: Comments must be submitted on or before April 5, 2002.

Availability: The Purchaser Agreement and additional background information relating to the Purchaser Agreement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the Purchaser Agreement may be obtained from John J. Monsees (3RC42), Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103. Comments should reference the "Recticon/Allied Steel Superfund Site, Prospective Purchaser Agreement" and "EPA Docket No. CERCLA–03–2002–0079," and should be forwarded to John J. Monsees at the above address.

FOR FURTHER INFORMATION CONTACT: John J. Monsees (3RC42), Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103, Phone: (215) 814–2632.

Dated: February 20, 2002.

James W. Newsom,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region III.

[FR Doc. 02–5310 Filed 3–5–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7153–5]

New York State Prohibition on Marine Discharges of Vessel Sewage; Receipt of Petition and Tentative Determination

Notice is hereby given that a petition was received from the State of New York on July 5, 2001 requesting a determination by the Regional Administrator, Environmental Protection Agency (EPA); pursuant to section 312(f) of Public Law 92–500, as amended by Public Law 95–217 and Public Law 100–4 (the Clean Water Act), that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably

available for the waters of the Peconic Estuary, County of Suffolk, State of New York. The Towns of East Hampton, Riverhead, Shelter Island, Southampton, and Southold, and the Villages of Dering Harbor, Greenport, North Haven, and Sag Harbor are seeking to establish a New York State Designated No-Discharge Zone for the open waters, harbors and creeks on the Peconic Estuary, Suffolk County, New York west of a line from Orient Point (41.16133, –72.23065) to Montauk Point (41.07312, –71.8570).

Once the EPA has determined that the waterbody contains an adequate number of pumpouts, it is automatically a State designated No-Discharge Zone, pursuant to Section 33.e.1. of the New York State Navigation Law. Within the No-Discharge Zone, discharges from marine toilets are prohibited under Section 33.e.2 of the State Navigation Law, and marine sanitation devices on board vessels operated in a No-Discharge Zone must be secured to prevent discharges. This statute may be enforced by any police officer or peace officer acting pursuant to their special duties.

A New York State Designated No-Discharge Zone has already been established in the Town of East Hampton (1998) for the enclosed harbors and creeks on the Peconic Estuary from the Sag Harbor Village line to Montauk Point, Town of East Hampton, Suffolk County, New York. The existing NDA includes Northwest Creek, Accabonac Harbor, Three Mile Harbor, Napeague Harbor, Hog Creek and Lake Montauk.

The open waters, harbors and creeks of the Peconic Estuary support significant shellfisheries, fish spawning, nursery and feeding areas, primary contact recreation such as swimming, and are or have within them State designated Significant Coastal Fish and Wildlife Habitats. Vessel counts indicate that there are approximately 7,000 to 11,300 boats in the area on an average summer weekend.

These areas provide important natural and recreational resources that contribute significantly to the local, regional and state economy and the protection and enhancement of these waters is crucial to maintaining the natural resource values and economic viability of traditional maritime commercial and recreational activities.

For many years, most of the Peconic Estuary was open for shellfishing. However, beginning in the mid-1980's, the creeks and embayments experienced partial seasonal closures due to coliform bacteria levels. At present, the major creeks and embayments experience closure on a year round or a seasonal basis due to high levels of coliform bacteria in the water. Although vessel waste may be a relatively small contributor to marine pollution in general in the Peconic Estuary, pollution from boats has been identified in the New York State Priority Waterbodies List as one of several key pollution sources that has led to shellfish being classified as an impaired use in water quality classifications within the Peconic Estuary.

According to the State's petition, the maximum daily vessel population for the waters of the Peconic Estuary is 11,247 vessels which are docked or moored. An inventory was developed including the number of recreational, commercial and estimated transient vessels that occupy the estuary. The following table summarizes the location of pumpout facilities and vessel populations:

Waterbody	Vessels	Pumpouts
Orient Harbor	281	0
Greenport Harbor	1026	2
Southold Bay	1319	4
Hog Neck Bay	251	0
Cutchogue Harbor Complex	699	2
Southold	449	2
Flanders Bay Complex	572	4
Red Creek Pond	187	0
Cold Springs Pond	341	3
Bullhead Bay/Sebonac Complex	76	1
North Sea Harbor	253	0
Noyack Sea Harbor	300	0
Sag Harbor Complex	1867	2
Three Mile Harbor	1262	8
Accabonac Harbor	56	0
Napeague Harbor	20	0
Lake Montauk	1274	6
Dering Harbor	381	1
Coecles Harbor	287	1
West Neck Harbor	346	0
Total	11247	36

The ratio of boats to pumpout facilities has been based on the total number of vessels which could be expected. With thirty shore-side pumpout facilities and six pumpout vessel available to boaters, the ratio of docked or moored boats (including transients) is approximately 311 vessels per pumpout. Standard guidelines refer to acceptable ratios failing in the range of 300 to 600 vessels per pumpout.

There are commercial vessel operators active in and around the Peconic Estuary. These include the Cross Sound Ferry, the Plum Island Ferry, the Shelter Island Ferry and the commercial fishing fleets which operate out of Greenport and East Hampton. Cross Sound Ferry has a fleet of seven vessels. Six of these accommodate autos, trucks, buses and passengers. Cross Sound Ferry also offers high speed ferry service on its passenger only vessel, Sea Jet I. The ferries run hourly from each location, generally between 7 a.m. and 9 p.m., although the schedule varies with the season and at holidays. All of the Cross Sound Ferry fleet have holding tanks. These are pumped out at its facility in New London. Waste is emptied into the sewer system for treatment at the New London Sewage Treatment Plant. The Plum Island Ferry operates three vessels between Orient Point and the USDA facility on Plum Island. Vessel waste from the ferries is pumped out and treated at the sewage treatment facility at Plum Island.

Two vehicle ferries run between Shelter Island and the mainland. The North Ferry Co., Inc. provides ferry service between the Village of Greenport and the Town of Shelter Island. The North Ferry operates four 100-ton, 90-foot-long ferries, each capable of carrying cars, trucks, bicycles, and passengers. The ferry operates between 5:40 a.m. and 11:45 p.m., running every 15 minutes between 7:15 a.m. and 10:15 p.m., with additional trips on holiday weekends. No restroom facilities are on board.

South Ferry Inc. of Shelter Island provides ferry service between the Town of Shelter Island and the Village of North Haven. The South Ferry operates 3 ferries, each capable of carrying cars, trucks, bicycles, and passengers. The ferry operates between 6 a.m. and 11:45 p.m., running every 10–12 minutes, with additional trips on holiday weekends. No restroom facilities are on board.

Greenport is home to a commercial fishing fleet. Although subject to turnover and change, the fleet has an estimated 16 vessels. The Village of Greenport Harbor Management Plan (December 1998) identified 3 bay draggers operating out of Stirling Basin and 11 trawlers and 2 scallopers operating from facilities in Greenport Harbor, including Coopers, Greenport Yacht and Shipbuilding and the Village of Greenport's commercial fishing dock. The Greenport Seafood Dock and Market and the Greenport Fish factory provide facilities for the unloading and distribution of fish and are used by both local and offshore fleets. The Village's commercial fishing dock, known as the railroad dock, is a layover facility for commercial craft and is not a full service facility. Discussions with the commercial fishing fleet indicate that they discharge holding tanks outside the three mile limit.

Commercial fishing facilities in East Hampton are concentrated in Three

Mile Harbor and Lake Montauk. Data from the Town of East Hampton Draft LWRP (Feb 1999) indicate that the Town's Commercial Dock at the end of Gann Road on Three Mile Harbor serves 5–6 bay trawlers, 3–5 lobster boats and three or more trap fishermen. Lake Montauk is an important commercial fishing center and has an extensive and varied fleet. Although subject to turnover and change, the fleet has at times comprised as many as 44 ground fish trawlers, 12 inshore and 7 offshore lobster boats, and 53 long-liners, including as many as 30 transient boats from other areas of the East Coast. (A. T. Kearney, Development of a Commercial Fisheries Industry Strategy for the State of New York, 1989). Commercial dock space is available at two municipal and four private docks on Star Island and on West Lake Drive, two facilities on East Lake Drive and two facilities on the west side of the Inlet. Discussions with the commercial fishing fleet indicate that they discharge holding tanks outside the three mile limit.

There is one recreational party fishing boat that operates out of Greenport, the Peconic Star II. It docks at the Mitchell site and has a capacity for up to 150 persons. This vessel has two 60 gallon holding tanks and these are pumped out by a septic truck. The Peconic Queen operates out of the Peconic River in Riverhead and tours the estuary. This vessel has a holding tank and pumps out at the Town of Riverhead pumpout in downtown Riverhead. Montauk is also home to charter boats for offshore sport fishing and the Viking passenger ferry fleet. Interviews indicate that these vessels discharge holding tanks outside the three mile limit.

The EPA hereby makes a tentative affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the Peconic Estuary in the County of Suffolk, New York. A final determination on this matter will be made following the 30-day period for public comment and will result in a New York State prohibition of any sewage discharges from vessels in the Peconic Estuary.

Comments and views regarding this petition and EPA's tentative determination may be filed on or before April 5, 2002. Comments or requests for information or copies of the applicant's petition should be addressed to Walter E. Andrews, U.S. Environmental Protection Agency, Region II, Water Programs Branch, 290 Broadway, 24th Floor, New York, New York, 10007–1866. Telephone: (212) 637–3880.

Dated: February 20, 2002.

Jane M. Kenny,

Regional Administrator, Region II.

[FR Doc. 02–5313 Filed 3–5–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority 5 CFR 1320 Authority, Comments Requested

February 26, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments on or before May 6, 2002.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0236.

Title: Section 74.703, Interference.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 10.

Estimated Time per Response: 2 hours.

Frequency of Response: Reporting, on occasion.

Total Annual Burden: 20.

Total Annual Costs: $12,000.

Needs and Uses: 47 CFR 74.703(f) requires licensees of low power TV or TV translator stations causing interference to other stations to submit a report to the FCC detailing the nature of interference, source of interfering signals, and remedial steps taken to eliminate the interference. This report is to be submitted after operation of the station has resumed. The data is used by FCC staff to determine that the licensee has eliminated all interference caused by operation of their station.

OMB Control Number: 3060–0248.

Title: Section 74.751, Modification of Transmission Systems.

Form Number: None.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 400.

Estimated Time Per Response: 0.5 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirements.

Total Annual Burden: 200.

Total Annual Costs: None.

Needs and Uses: 47 CFR 74.751(c) requires licensees of low power TV or TV translator stations to send written notification to the FCC of equipment changes which may be made at licensee's discretion without the use of a formal application. Section 74.751(d) requires that licensees of low power TV or TV translator stations place in the station records a certification that the installation of new or replacement transmitting equipment complies in all respects with the technical requirements of this section and the station authorization. The notifications and certifications of equipment changes are used by FCC staff to assure that the equipment changes made are in full compliance with the technical requirements of this section and the station authorizations and will not cause interference to other authorized stations.

OMB Control Number: 3060–0404.

Title: Application for an FM Translator or FM Booster Station License.

Form Number: FCC 350.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entity.

Number of Respondents: 350.

Estimated Time per Response: 1.0 hours.

Total Annual Burden: 350.

Total Annual Costs: 24,150.

Needs and Uses: Licensees and permittees of FM Translator or FM Booster stations are required to file FCC Form 350 to obtain a new or modified station license. The data are used by FCC staff to confirm that the station has been built to terms specified in the outstanding construction permit. Data are then extracted from FCC 350 for inclusion in the subsequent license to operate the station.

OMB Control Number: 3060–0407.

Title: Section 73.3598, Period of Construction.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 100.

Estimate Time per Response: 0.75–3.0 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 131 hours.

Total Annual Cost: $7,000.

Needs and Uses: When a permit is subject to tolling because construction is encumbered due to an act of God, or when a construction permit is the subject of administrative or judicial review, Section 73.3598 requires a permittee to notify the Commission as promptly as possible and, in any event, within 30 days, and to provide supporting documentation. Tolling resulting from an act of God will normally cease six months from the date of the notification. A permittee must also notify the Commission promptly when a relevant administrative or judicial review is resolved. Any construction permit for which construction has not been completed shall be automatically forfeited upon expiration of the construction permit. The data are used by FCC staff to ensure that legitimate obstacles are preventing permittees from the construction of broadcast facilities.

OMB Control Number: 3060–0886.

Title: Section 73.3534, Period of Construction for ITFS Construction Permits and Requests for Extension Thereof.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Not-for profit institutions; and State, local or tribal government.

Number of Respondents: 610.

Estimated Time per Response: 1.0 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 519 hours.

Total Annual Cost: $18,300.

Needs and Uses: 47 CFR Section 73.3534 allows permittees to request an extension of time to construct an Instructional Television Fixed Station (ITFS). This request should include a specific and detailed showing that the failure to complete construction was due to causes not under the control of the permittee. An extension of time to construct will be limited to a period of no more than 6 months. Any construction permit for which construction has not been completed shall be automatically forfeited upon expiration of the construction permit. The data are used by FCC staff to ensure that legitimate obstacles are preventing permittees from the construction of ITFS facilities.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–5276 Filed 3–5–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:25 a.m. on Friday, March 1, 2002, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate, supervisory, and resolution activities.

In calling the meeting, the Board determined, on motion of Director John M. Reich (Appointive), seconded by Director James E. Gilleran (Director, Office of Thrift Supervision), concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to the public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: March 1, 2002.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 02–5422 Filed 3–4–02; 11:21 am]

BILLING CODE 6714–01–M

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission ("FTC").

ACTION: Notice.

SUMMARY: The FTC seeks public comments on its proposal to extend through June 30, 2005 the current Paperwork Reduction Act ("PRA") clearance for information collection requirements contained in its Children's Online Privacy Protection Act Rule ("COPPA Rule" or "Rule"). That clearance expires on June 30, 2002.

DATES: Comments must be submitted on or before May 6, 2002.

ADDRESSES: Send written comments to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580. All comments should be captioned "COPPA Rule: Paperwork comment." Comments in electronic form should be sent to: *COPPApaperwork@ftc.gov,* as prescribed below.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Elizabeth Delaney, Attorney, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, Room S–4002, 601 Pennsylvania Ave., NW, Washington, DC 20580, (202) 326–2903.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" means agency requests or requirements that members of the public submit reports, keeps records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the COPPA

Rule, 16 CFR Part 312 (OMB Control Number 3084–0117).

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including 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.

If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following e-mail box: *COPPApaperwork@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

The COPPA Rule prohibits unfair and deceptive acts and practices in connection with the collection and use of personally identifiable information from and about children on the Internet. Under the terms of the Act, the Commission's rules must:

(1) Require each Web site and online service operator directed to children, and any Web site or online service operator with actual knowledge that it is collecting personal information from children, to provide notice of how it collects, uses and discloses such information and, with exceptions, to obtain the prior consent of the child's parent in order to engage in such collection, use and disclosure;

(2) Require the operator to provide the parent with notice of the specific types of personal information being collected from the child, to give the parent the opportunity for forbid the operator at any time from further collecting, using, or maintaining such information, and to provide reasonable means for the parent to obtain the information;

(3) Prohibit a child's participation in a game, a prize offer, or other activity from being conditioned on the child's disclosure of more personal information than is "reasonably necessary" for the child to participate in that activity; and

(4) require Web site and online service operators to establish procedures that protect the confidentiality, security and integrity of personal information collected from children.[1]

The above-described "notice" requirements do not mandate the maintenance or reporting of any records or other information for or on behalf of the government. Nonetheless, the FTC seeks OMB approval because the aforementioned provisions constitute "collection(s) of information" under the PRA.[2] Likewise, the FTC seeks OMB clearance regarding the information collected under the Rule's safe harbor provisions because, while the submission by operators of such requests to the agency is voluntary, the Rule includes specific information requirements that all such requesters must provide to receive Commission approval.[3] Thus, the safe harbor provisions include a "collection of information" under the PRA and implementing OMB regulations. *See* 44 U.S.C. 3502(3)(A), 5 CFR 1320.3(c).

Estimated annual hours burden: 2,065 hours.

FTC staff projects an estimated 30 new web entrants each year will fall within the rule's coverage and that each will require, on average, 60 hours per year to craft a privacy policy, design a mechanism to provide the required notice, and post it online.[4] Accordingly, staff estimates that newly affected entities will require approximately 1,800 hours to comply with these requirements of the Rule.[5] Consistent with staff's prior estimated apportionment (5:1) of legal (lawyers or similar professionals) and technical (computer programmers) time spent on compliance,[6] staff estimates that 1,500 hours of this total would be time spent by lawyers (developing the notice policy) and 300 hours would be attributable to computer programmers' efforts (posting the policy on the Web site).

With regard to the Rule's safe harbor provisions, staff estimates, based on industry input, that it would require, on average, 265 hours per new safe harbor program applicant to prepare and submit their safe harbor proposal in accordance with section 310.12(c) of the Rule. Industry sources have also advised staff that all of this time would be attributable to lawyers' time and costs. Based on past experience and industry input, staff believes that no more than one applicant per year (if that) will submit a request. Staff believes, however, that most of the records listed in the Rule's safe harbor provisions consist of records that marketing and online industry representatives have kept in the ordinary course of business preceding the Rule. PRA "burden" does not include effort expended in the ordinary course of business independent of a regulatory requirement. 5 CFR 1320.3(b)(2). Any incremental burden, such as that for maintaining the results of indepdenent assessments under section 312.10(d)(3), would be, in staff's view, de minimis. Accordingly, staff estimates that total hours per year for start-up efforts and for safe harbor application would be approximately 2,065 hours (1,800 + 265).

Labor costs: Labor costs are derived by applying appropriate hourly cost figures to the burden hours described

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[1] 15 U.S.C. 6502(b)(1)(A)-(D).

[2] 44 U.S.C. 3502(3), (13); 5 CFR 1320.3(c) (identical questions or reporting requirements directed to ten or more persons). The Commission does not seek OMB approval for the COPPA requirement that state attorneys general notify the Commission when filing a civil action under the Commission's rule, since the rule does not incorporate that statutory requirement. *See* 15 U.S.C. 6504(2)(A). Likewise, the Commission does not seek OMB approval for the portion of section 312.5 of the Rule that requires operators to ensure they have parental consent before collecting information from children, since the Rule does not require that operators report or maintain any records of such consent on behalf of the government. *See* 5 CFR 1320.3(c), (m).

[3] *See* section 312.10(c). Under section 312.10 operators will be deemed to be in compliance with the Rule if they meet the terms of industry self-regulatory guidelines approved by the Commission after notice and comment.

[4] The hours estimate per new entrant is the same that staff projected in this initial PRA analysis published in the notice of proposed rulemaking. *See* 64 FR 22750, 22761 (April 27, 1999). staff also retains its prior projection that roughly 30 new children's sites subject to the rule would be posted each year. Although staff can not determine with any degree of certainly the number of new entrants potentially subject to the rule, it believes its empirical estimate is reasonable. Moreover, the Commission received no prior comments challenging staff's prior PRA analysis notwithstanding its receipt of numerous comments on the Rule itself. Accordingly, staff retains those estimates for the instant PRA analysis.

[5] Web site operators that have previously created or adjusted their sites to comply with the Rule will incur no further burden associated with the rule, unless they opt to change their policies and information collection in ways that will further invoke the Rule's provisions. Moreover, staff believes that existing COPPA-compliant operators who introduce additional sites beyond those they already have created will incur minimal, if any, incremental PRA burden. This is because such operators already have been through the startup phase, and can carry over the results of that to the new sites they create.

[6] See *http://www.ftc.gov/os/1999/9906/childprivsup.htm* (text of the PRA supporting statement sent to OMB contemporaneous with publication of the proposed rule).

above. Staff conservatively assumes hourly rates of $75 and $25, respectively, for lawyers and computer programmers.[7] Based on these inputs, staff further estimates that the associated annual labor costs for new entrants would be $120,000 [(1,500 hours × $75/hour for legal) + (300 hours × $25/hour for technical.] and $19,875 for safe harbor applicants [265 hours × $75/hour for legal × one applicatioan per year] for a total labor cost of $140,000, rounded to the nearest thousand.

Non-labor costs: Sine Web sites will already be equipped with the computer equipment and software necessary to comply with the Rule's notice requirements, the sole costss incurred by the website are the aforementioned estimated labor costs. Similarly, industry members should already have in place the means to retain and store the records the Rule's safe habor recordkeeping provisions specify (and that members likely have been keeping indepdenent of the Rule).

John D. Graubert,

Acting General Counsel.

[FR Doc. 02–5330 Filed 3–5–02; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Remedial Use of Disgorgement

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Notice; extension of public comment period.

SUMMARY: The Commission is extending the period for comments on the use of disgorgement as a remedy for violations of the Hart-Scott-Rodino (HSR) Act, FTC Act and Clayton Act.

DATES: Comments must be received by March 29, 2002.

ADDRESSES: An original and twelve (12) copies of any comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW, Washington, DC 20580. Comments filed in electronic form should be directed to *disgorgementcomment@ftc.gov*, as described below.

FOR FURTHER INFORMATION CONTACT: John Graubert, Office of General Counsel, FTC, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326–2186, jgraubert@ftc.gov.

SUPPLEMENTARY INFORMATION: In a notice published at 66 FR 67254 (Dec. 28, 2001), the Commission solicited public comment on the factors the Commission should consider in applying disgorgement in competition cases and how this remedy should be calculated. In consideration of a request from a potential commentor, the Commission has determined that it would be in the public interest to extend the original deadline of March 1, 2002, so that all interested parties have the fullest opportunity to prepare and submit their comments on the questions set forth in the previously published notice. Accordingly, the Commission invites public comment until March 29, 2002, which may be submitted as specified above in the **ADDRESSES** section of this notice.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW, Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *disgorgementcomment@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii).

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–5328 Filed 3–5–02; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

Public Workshop: Consumer Information Security

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice announcing public workshop and requesting public comment and participation.

SUMMARY: The FTC is planning to host a public workshop to explore issues relating to the security of consumers' computers and the personal information stored in them or in company databases.

DATES: The workshop will be held on Thursday, May 16, 2002, from 9:00 a.m. to 5:00 p.m., and Friday, May 17, 2002, from 9:00 a.m. to 2:00 p.m., at the Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

Pre-registration: The event is open to the public and there is no fee for attendance. However, attendees are strongly encouraged to pre-register, as seating will be limited. To pre-register, please e-mail your name and affiliation by April 29, 2002, to *securityworkshop@ftc.gov*.

Requests to participate as a panelist: As discussed below, written requests to participate as a panelist in the workshop must be filed on or before April 1, 2002. Persons filing requests to participate as a panelist will be notified on or before April 22, 2002, if they have been selected to participate.

Written comments: Whether or not selected to participate, persons may submit written comments on the Questions to be Addressed at the workshop. Such comments must be filed on or before April 29, 2002. For further instructions on submitting comments and requests to participate, please see the "Form and Availability of Comments" and "Requests to Participate as a Panelist in the Workshop" sections below. To read our policy on how we handle the information you may submit, please visit *http://www.ftc.gov/ftc/privacy.htm*.

ADDRESSES: Written comments and requests to participate as a panelist in the workshop should be submitted to: Secretary, Federal Trade Commission, Room 159, 600 Pennsylvania Avenue, NW, Washington, DC 20580. Alternatively, they may be e-mailed to *securityworkshop@ftc.gov*.

FOR FURTHER INFORMATION CONTACT: L. Mark Eichorn, Division of Advertising Practices, 202–326–3053, Ellen Finn, Division of Financial Practices, 202–326–3296, or Laura Berger, Division of Financial Practices, 202–326–2471. The above staff can be reached by mail at:

[7] Previously, staff's stated estimates for such labor, were $65.33/hour for legal and $23.18 for computer programmers, based on adding ten percent to 1996 statistics found in "Occupational Compensation Survey: National Summary 1996," U.S. Department of Labor, Bureau of Labor Statistics. In September 2001, however, the Department of Labor published its "National Compensation Survey: Occupational Wages in the United States 2000," which integrates data from the Occupational Compensation Survey, the Employment Cost Index, and the Employee Benefits Survey. According to this more recent compilation, the mean hourly earnings of lawyers and computer programmers, based on a survey of all 50 states from June 1999 to April 2001, was $38.70 and $23.33, respectively. More generally, regarding most other Commission information collection activities that invoke the PRA, Commission staff has estimated lawyer's national average hourly rates to be $75, which staff will also apply here. The $25 estimate for computer programmers is merely a rough rounding based on the above-noted data.

Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Background and Workshop Goals

The security of consumers' home computers is an issue of growing importance. The terms "virus," "worm," and "Trojan horse" have gained new meanings as "Melissa," "ILOVEYOU," and "Code Red" infected computers across the globe. News of hackers' "exploits" make front page news. At the same time, more and more consumers access the Internet through "always on" DSL or cable Internet connections, which allow quick access to Internet content but also may be vulnerable to attack even when the consumer is not actively using the Internet. As consumers use their computers as repositories for sensitive information such as passwords, financial records, and health information, the potential destruction or disclosure of that information is cause for concern.

Another aspect of consumer security is whether consumers' personal information held by businesses is secure. When consumers interact with businesses—whether to check a bank account balance, register to receive information, or purchase a product or service—those businesses become custodians of consumers' personal information. An employee processing a consumer's payment or a consumer checking his or her account balance may want access to this information, but at the same time businesses face the challenge of securing it from access by external threats such as hackers or even by unauthorized insiders. Should a hacker gain access to a business' customer credit card database, for example, that intrusion may not only have serious consequences for that particular business and the consumer's financial well-being, but may also affect consumers' confidence and willingness to engage in e-commerce generally.

This workshop provides an opportunity for the Commission to explore information security issues that affect consumers. The questions to be addressed at the workshop would include:

1. The Current State of Information Security

- What are the security risks facing consumers?
- Are consumers aware of the risks?
- What are the costs to consumers of security measures and of security failures?
- Do consumers accurately assess security risks?
- How does consumers' security affect the network as a whole?

2. Security Issues Relating to Consumers' Home Information Systems

- What steps can consumers take to reduce their security risks?
- What information resources or security products are available to help consumers protect themselves?
- If consumers' lack of awareness or technical expertise lead to security vulnerabilities, what steps can be taken to raise awareness or educate consumers?
- What types of awareness and education initiatives are currently being pursued?
- What are the "best practices" being implemented by businesses to assist consumers in safeguarding their home information systems?

3. Security Issues for Businesses That Maintain Consumers' Personal Information

- What practical challenges do businesses face in securing their computer systems, and specifically consumers' personal information that is stored on them?
- What are the costs to businesses of security measures and of security failures?
- What measures can businesses, especially smaller businesses, take to secure their computer systems and the consumer information stored on them?
- What information resources are available to help these businesses?
- What are the "best practices" being implemented by businesses to address these issues?

4. Emerging Business Models, Technologies, and Best Practices

- What are the existing business models for security, and are they sustainable over the long term?
- What technologies, business models, or initiatives are emerging in the marketplace to address the security of consumers' information?

5. Revising the OECD Security Guidelines

Commissioner Orson Swindle is leading the U.S. delegation to the Organization for Economic Cooperation and Development ("OECD") Experts Group reviewing the OECD Guidelines for the Security of Information Systems. These voluntary guidelines contain principles which provide a framework for participants to think about information and network security practices, policies, and procedures. The guidelines discuss cultivating a "culture of security" and contain nine policy principles for the security of information systems and networks, as well as principles relating to the life cycle of information systems and networks. The guidelines specifically address: raising awareness of security risks; responsibility for the security of information systems; designing security into system architecture; and risk management, assessment, and monitoring. Because the principles provide a helpful framework for thinking about security issues, the Commission plans to present a panel discussion on the Security Guidelines.

Form and Availability of Comments

The FTC requests that interested parties submit written comments on the above questions to facilitate greater understanding of the issues. Of particular interest are any studies, surveys, research, and empirical data. Comments should indicate the number(s) of the specific question(s) being answered, provide responses to questions in numerical order, and use a separate page for each question answered. Comments should be captioned "Consumer Information Security Workshop—Comment, P024512," and must be filed on or before April 29, 2002.

Parties sending written comments should submit an original and two copies of each document. To enable prompt review and public access, paper submissions should include a version on diskette in PDF, ASCII, WordPerfect, or Microsoft Word format. Diskettes should be labeled with the name of the party, and the name and version of the word processing program used to create the document. Alternatively, comments may be e-mailed to *securityworkshop@ftc.gov*.

Written comments will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and FTC regulations, 16 CFR 4.9, Monday through Friday between the hours of 8:30 a.m. and 5:00 p.m. at the Public Reference Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. This notice and, to the extent technologically possible, all comments will also be posted on the FTC Web site at *www.ftc.gov/securityworkshop*.

Registration Information

The workshop will be open to the public and there is no fee for attendance. As discussed above, pre-registration is strongly encouraged, as seating will be limited. To pre-register, please e-mail your name and affiliation

to *securityworkshop@ftc.gov* by April 29, 2002. A detailed agenda and additional information on the workshop will be posted on the FTC's Web site at *www.ftc.gov/securityworkshop* before May 16, 2002.

Requests to Participate as a Panelist in the Workshop

Those parties who wish to participate as panelists in the workshop must notify the FTC in writing of their interest in participating on or before April 1, 2002, either by mail to the Secretary of the FTC or by e-mail to *securityworkshop@ftc.gov*. Requests to participate as a panelist should be captioned "Consumer Information Security Workshop—Request to Participate, P024512." Parties are asked to include in their requests a statement setting forth their expertise in or knowledge of the issues on which the workshop will focus and their contact information, including a telephone number, facsimile number, and e-mail address (if available), to enable the FTC to notify them if they are selected. An original and two copies of each document should be submitted. Panelists will be notified on or before April 22, 2002 whether they have been selected.

Using the following criteria, FTC staff will select a limited number of panelists to participate in the workshop. The number of parties selected will not be so large as to inhibit effective discussion among them.

1. The party has expertise in or knowledge of the issues that are the focus of the workshop.

2. The party's participation would promote a balance of interests being represented at the workshop.

3. The party has been designated by one or more interested parties (who timely file requests to participate) as a party who shares group interests with the designator(s). In addition, there will be time during the workshop for those not serving as panelists to ask questions.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–5327 Filed 3–5–02; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 022 3070]

Kris A. Pletschke d/b/a/ Raw Health; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement, final complaint and decision and order.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibition unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations. The Commission has simultaneously issued the complaint and the consent order in final form.

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

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW, Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed below.

FOR FURTHER INFORMATION CONTACT: Heather Hippsley or Richard Cleland, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326–3285 or 326–3088 and Andrea Foster or James Rohrer, Federal Trade Commission, Southeast Regional Office, 225 Peachtree St., NE, Suite 1500, Atlanta, GA 30303, (404) 656–1356 or 656–1361.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with an accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 27, 2002), on the World Wide Web, at *http://www.ftc.gov/os/2002/02/index.htm*. A paper copy can be obtained from the FTC Public Reference Room 130–H, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW, Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(iii)).

Analysis of Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a consent order from Kris A Pletschke, d/b/a Raw Health ("respondent"), and has issued a Complaint and the Decision and Order ("Order") contained in the Consent Agreement. Respondent marketed "Colloidal Silver," a dietary supplement allegedly containing submircoscopic particles of silver that was intended to be taken orally and in other manners for the cure and treatment of more than 650 diseases.

The Commission's complaint charges that respondent made false claims that his Collodial Silver product (1) is effective in treating or curing 650 diseases; (2) eliminates all pathogens in the human body in six minutes or less; and (3) has been medically proven to kill every destructive bacterial, viral and fungal organism in the body, including anthrax, Ebola, Hunta, and "flesh-eating bacteria." The Commission's complaint also charges that respondent failed to have a reasonable basis for claims he made that his colloidal Silver product (1) is effective in treating 650 diseases and health-related conditions, including AIDS, allergies, anthrax, arthritis, blood poisoning, boils, wounds of the cornea, chronic fatigue, cerebral spinal meaningitis, candida, cholera, colitis, cystitis, dental plaque, diabetes, diphtheria, dysentery, enlarged prostate, gonorrhea, herpes, hepatitis, infantile diseases, lesions, leukemia, lupus, Lyme disease, parasites, rheumatism, ringworm shingles, skin cancer, staph and strep infections, stomach flu, thyroid conditions, tonsilitis, toxemia, stomach uclers and whooping cough; (2) kills the HIV virus and can be used as an antibiotic for all acquired diseases of active AIDS; (3) is superior to antibiotics in killing disease-causing organisms and the treatment of burns; (4) protects and strengthens the immune system; (5) can safely be used on open wounds, sprayed

into the eye, injected, used orally, vaginally, anally, atomized or inhaled into the nose or lungs and dropped into the eyes; (6) has no side effects, even at double or tiple the normal dose of 260 ppm, and is safe for children and pregnant and nursing women; and (7) aids the growth and health of the developing fetus and cases delivery and recovery.

Part I of the consent order prohibits respondent from misrepresenting any claims that Collidal Silver or any food, dietary supplement, drug, device, or health-related service or program has been medically proven to kill disease-causing organisms or any number of infections in the body. Part II of the order requires competent and reliable scientific evidence to substantiate representations that Colloidal Silver or any covered product (1) is effective in treating 650 diseases and health-related conditions, including AIDS, allergies, anthrax, arthritis, blood poisoning, boils, wounds of the cornea, chronic fatigue, cerebral spinal meningitis, candida, cholera, colitis, cystitis, dental plaque, disabetes, diphtheria, dyesentery, enlarged prostate, gonorrhea, herpes, hepatitis, infantile diseases, lesions, leukemia, lupus, Lyme disease, parasites, rheumantism, ringworm shingles, skin cancer, staph and strep infections, stomach flu, thyroid conditions, tonsillitis, toxemia, stomach ulcers and whooping cough; (2) kills the HIV virus and can be used as an antibiotic for all acquired diseases of active AIDS; (3) is superior to antibiotics in killing disease-causing organisms and the treatement of burns; (4) protects and strengthens the immune system; (5) can safely be used on open wounds, sprayed into the eye, injected, used orally, vaginally, anally, atomized or inhaled into the nose or lungs and dropped into the eyes; (6) has no side effects, even at double or tripe the normal dose of 260 ppm, and is safe for children and pregnant and nursing women; (7) aids the growth or health of the developing fetus or eases delivery or recovery; (8) is effective in the mitigation, treatment, prevention, or cure of any disease, illness or health conditions; or (9) has any health, performance, safety, or efficacy benefits.

Part III of the order prohibits respondent from misrepresenting, including by means of metatags, the existence, contents or interpretation of any test, study, or research. Part IV of the order permits respondent to make certain claims for drugs or dietary supplements, respectively, that are permitted in labeling under laws and/or regulations administered by the U.S. Food and Drug Administration.

Part V and VI of the order require respondents to offer refunds to all of his past consumers and wholesale purchasers of Colloidal Silver. Part VII requires respondent to file a sworn affidavit with the Commission concerning his compliance with the refund provisions.

The remainder of the order contains standard requirements that respondent maintain advertising and any materials relied upon as substantiation for any representation covered by substantiation requirements under the order; distribute copies of the order to certain company officials and employees; notify the Commission of any change in the business entity that may affect compliance obligations under the order; and file one or more reports detailing his compliance with the order. Part XV of the order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

This order will resolve the claims alleged in the complaint against the named respondent. It is not the Commission's intent that acceptance of this consent agreement and issuance of a decision and order will release any claims against any unnamed persons or entities associated with the conduct described in the complaint.

Effective Date of Order and Opportunity for Public Comment

The Commission issued the Complaint and the Decision and Order, and served them upon the Respondent, at the same time it accepted the Consent Agreement for public comment. As a result of this action, the Order has already become effective. In August 1999, the Commission adopted procedures to allow for immediate effectiveness of an Order prior to a public comment period. The Commission announced that it "contemplates doing so only in exceptional cases where, for example, it believes that the allegedly unlawful conduct to be prohibited threatens substantial and imminent public harm." 64 FR 46267 (1999).

This case is an appropriate one in which to issue a final order before receiving public comment because the complaint alleges that the respondent made false and unsubstantiated health and safety claims of a serious nature, and the respondent continued to make the challenged claims after signing the consent agreement. Accordingly, the Commission believes it is important to prohibit the respondent from making these claims as quickly as possible.

The Order has also been placed on the public record for 30 days for receipt of comments by interested persons, and comments received during this period will become part of the public record. Thereafter, the Commission will review the Order, and may determine, on the basis of the comments or otherwise, that the Order should be modified.[1]

The Commission anticipates that the order, as issued, will satisfactorily address the deceptive practices alleged in the Complaint. The purpose of this analysis is to invite public comment on the Order to aid the Commission in determining whether to modify the Order in any respect, and is not intended to constitute an official interpretation of the agreement and order, or to modify in any way their terms.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–5329 Filed 3–5–02; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Amendment of Statement of Organization, Functions, and Delegations of Authority for the Office of Human Research Protections

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office for Human Research Protections.

ACTION: Notice.

SUMMARY: This amendment describes modifications in the functions of the Immediate Office of the Director, Office for Human Research Protection, (OHRP), to include international functions, changes the name and functions of the former Division of Policy and Assurance, establishes a Division of Policy Planning and Special Projects, and updates the delegations of authority.

Part A, Office of the Secretary (OS), of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS), Chapter AC, Office of Public Health and Science (OPHS), Office for Human Research Protections (OHRP), as last amended at

[1] If the Respondent does not agree to such modifications, the Commission may (1) initiate a proceeding to reopen and modify the Order in accordance with Rule 3.72(b), 16 CFR 3.72(b), or (2) commence a new administrative proceeding by issuing an administrative complaint in accordance with Rule 3.11, 16 CFR 3.11. *See* 16 CFR 2.34(e)(2).

65 FR 37136, dated June 13, 2000, is being amended as following:

I. Part L, description of OHRP, is deleted in its entirety and replaced with the following:

L. Office for Human Research Protections (ACN)—The Office for Human Research Protections (OHRP) fulfills responsibilities set forth in the Public Health Service Act. These include: (1) Providing leadership for human research subjects protections within the Department of Health and Human Services (DHHS) and for the U.S. Government in cooperation with other Federal Agencies; (2) developing and monitoring as well as exercising compliance oversight relative to DHHS regulations for the protection of human subjects in research conducted or supported by any component of the Department of Health and Human Services; (3) promoting and coordinating appropriate DHHS regulations, policies, and procedures both within DHHS and in coordination with other Departments and Agencies in the Federal Government; (4) establishing criteria for approval of assurances of compliance for the protection of human subjects with both domestic and foreign institutions engaged in DHHS-conducted or supported research involving human subjects; (5) conducting programs of clarification and guidance for both the Federal and non-Federal sectors with respect to the involvement of humans in research; and directing the development and implementation of educational and instructional programs and generating educational resource materials; (6) evaluating the effectiveness of DHHS policies and programs for the protection of human subjects; (7) serving as liaison to Presidential, Departmental, Congressional, interagency, non-governmental, and international commissions and boards to examine ethical issues in medicine and research and exercises leadership in identifying and addressing such ethical issues; and (8) promoting the development of approaches to enhance and improve methods, particularly quality improvement at the institutional level, to avoid unwarranted risks to humans participating as subjects in research covered by applicable statutes.

II. Amend Part L, subpart 1, by replacing it in its entirety with the following:

1. Office of the Director (ACN1)—The Office of the Director reports to the Assistant Secretary for Health, and (1) provides leadership within DHHS on ethical and other issues associated with protection of human subjects in research; (2) supervises and manages the development and promulgation of policies, procedures, and plans for meeting the responsibilities set forth above; (3) advises the Secretary, Assistant Secretary for Health and other DHHS officials on ethical issues pertaining to medical, biomedical, behavioral, social, health services, public health and other research, including all issues relative to the implementation of DHHS Regulations for the Protection of Human Subjects; (4) directs the development, implementation, and compliance oversight activities for DHHS Regulations and for the protection of human subjects; (5) establishes criteria for approval of and exercises oversight of assurances of compliance for protection of human subjects in all areas of human subject research; (6) maintains liaison and coordinates policy implementation with components throughout DHHS that conduct and support research involving human subjects; (7) directs the implementation of quality improvement programs through the development and implementation of educational and instructional programs, including generation of resource materials relating to the responsibilities of the research community for the protection of human subjects; and (8) engages in international activities related to human research subject protections, particularly global efforts to achieve harmonization of policies and procedures and for the building of global capacity to enhance protections for human subjects participating in research.

III. Amend Part L, subpart 2, by replacing it in its entirety with the following:

2. Division of Assurances and Quality Improvement (ACN 2)—(1) Receives and approves assurances of compliance from research entities; (2) provides liaison, guidance and regulatory interpretation to research entities, investigators, Federal officials and the public; (3) operates and maintains a registration system for institutional review boards; (4) maintains and modifies as necessary assurance mechanisms and procedures; (5) develops and conducts quality improvement activities to improve protections for human research subjects; and (6) develops and implements new procedures and instruments to ensure DHHS human subjects protections regulations are appropriately and effectively applied in a manner consistent with the changing needs of the Federal Government, the research community and society.

III. Amend Part L, by adding a subpart 5 as follows:

5. Division of Policy Planning and Special Projects (ACN 5)—(1) Maintains, develops, promulgates, and updates policy and guidance documents regarding regulatory requirements, and ethical issues for biomedical and behavioral research involving human subjects; (2) coordinates appropriate DHHS regulations, policies and procedures with other Departments and Agencies in the Federal Government; (3) conducts public outreach and education or information programs to promote and enhance public awareness of the activities of OHRP and human subject protections; (4) provides staff support to the National Human Research Protections Advisory Committee; (5) provides staff support to the Human Subjects Research Subcommittee, Committee on Science, National Science and Technology Council; (6) organizes and coordinates consultations with panels of experts for research involving prisoners and children, when required by DHHS regulations for the protection of human subjects at 45 CFR 46.306 and 46.407, respectively; (7) coordinates responses to requests for information, technical assistance and guidance from Congress, other DHHS agencies, other Federal Departments and agencies, and non-governmental entities; (8) coordinates responses to requests for OHRP documents and information under the Freedom of Information act; and (9) manages and conducts special projects as requested by the Director, OHRP.

IV. Amend Part E, Chapter AC as follows:

E. Delegation of Authority: The Secretary's authority under Title IV of the Public Health Service Act (42 U.S.C. 281 et seq.) has been delegated to the Assistant Secretary for Health, 44 Fed. Reg. 46318 (August 7, 1979). Authority under Section 491 of the Public Health Service Act (42 U.S.C. 289) is re-delegated to the Director, OHRP, to perform all of the authorities previously delegated to the Assistant Secretary for Health, 44 Fed. Reg. 46318. Consistent with the prior delegation of authority to the Assistant Secretary for Health, this re-delegation to the Director, OHRP, excludes the authorities to promulgate regulations, submit reports to the President or the Congress, approve organizational changes, and establish and select members of national advisory councils and boards. Previous delegations and re-delegations of authority under section 491 of the PHS act are superceded.

V. Amend Part G, Chapter AC as follows:

G. Effective Date: The effective date of the foregoing amendments to the

organization, functions and delegations of authority for the Office for Human Research Protections is March 18, 2002.

Dated: February 28, 2002.

Eve E. Slater,

Assistant Secretary for Health.

[FR Doc. 02–5303 Filed 3–5–02; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Oak Ridge Reservation Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Oak Ridge Reservation Health Effects Subcommittee (ORRHES).

Time and Date: 12 p.m.—8 p.m., March 26, 2002.

Place: YWCA of Oak Ridge, 1660 Oak Ridge Turnpike, Oak Ridge, Tennessee, 37830. Telephone: (865) 482–2008.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Background: A Memorandum of Understanding (MOU) signed in October 1990 and renewed in September 2000 between ATSDR and DOE, delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles. In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 2000, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, pertaining to CDC's and ATSDR's public health activities and research at this DOE site. Activities shall focus on providing the public with a vehicle to express concerns and provide advice and recommendations to CDC and ATSDR. The purpose of this meeting is to receive updates from ATSDR and CDC, and to address other issues and topics, as necessary.

Matters To Be Discussed: The agenda includes a discussion of the public health assessment process, updates from the Public Health Assessment, Health Needs Assessment, Agenda, and Outreach and Communications Workgroup. Agenda items are subject to change as priorities dictate.

FOR MORE INFORMATION CONTACT: La Freta Dalton, Designated Federal Official, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE, M/S E–54, Atlanta, Georgia 30333, telephone 1–888–42–ATSDR(28737), fax 404/498–1744.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 27, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–5279 Filed 3–5–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Childhood Lead Poisoning Prevention: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee on Childhood Lead Poisoning Prevention.

Time and Date: 8:30 a.m.–5:00 p.m., March 12, 2002.

Place: Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202, telephone 410/539–2000.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 90 people.

Purpose: The Committee shall provide advice and guidance to the Secretary; the Assistant Secretary for Health; and the Director, CDC, regarding new scientific knowledge and technological developments and their practical implications for childhood lead poisoning prevention efforts. The Committee shall also review and report regularly on childhood lead poisoning prevention practices and recommend improvements in national childhood lead poisoning prevention efforts.

Matters to be Discussed: Agenda items include: Updates on Primary Prevention issues, Medicaid Targeted Screening issues, and Discussions on Future of Lead Poisoning Prevention Research, Revision of Adopted Children Letter, and Recent International Lead Activities by CDC's Lead Poisoning Prevention Branch. Agenda items are subject to change as priorities dictate.

Opportunities will be provided during the meeting for oral comments. Depending on the time available and the number of requests, it may be necessary to limit the time of each presenter.

Contact Person for More Information: Gary Noonan, Acting Chief, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 1600 Clifton Road, NE, M/S E–25, Atlanta, Georgia 30333, telephone 404/498–1442, fax 404/498–1444.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the

Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 27, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–5280 Filed 3–5–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0055]

Agency Information Collection Activities; Proposed Collection; Comment Request; Infant Formula Recall Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements related to the recall of infant formula.

DATES: Submit written or electronic comments on the collection of information by May 6, 2002.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm*. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under 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, including each proposed extension of an existing 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.

Infant Formula Recall Regulations—21 CFR 107.230, 107.240, 107.250, 107.260, and 107.280 (OMB Control No. 0910–0188)—Extension

Section 412(e) of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 350a(e)) provides that if the manufacturer of an infant formula has knowledge that reasonably supports the conclusion that an infant formula processed by that manufacturer has left its control and may not provide the nutrients required in section 412(i) of the act or is otherwise adulterated or misbranded, the manufacturer must promptly notify the Secretary of Health and Human Services (the Secretary). If the Secretary determines that the infant formula presents a risk to human health, the manufacturer must immediately take all actions necessary to recall shipments of such infant formula from all wholesale and retail establishments, consistent with recall regulations and guidelines issued by the Secretary. Section 412(f)(2) of the act states that the Secretary shall by regulation prescribe the scope and extent of recalls of infant formula necessary and appropriate for the degree of risk to human health presented by the formula subject to recall. FDA's infant formula recall regulations (part 107, subpart E (21 CFR part 107, subpart E)) implement these statutory provisions.

Section 107.230 requires each recalling firm to: (1) Evaluate the hazard to human health, (2) devise a written recall strategy, (3) promptly notify each affected direct account (customer) about the recall, and (4) furnish the appropriate FDA district office with copies of these documents. If the recalled formula presents a risk to human health, the recalling firm must also request that each establishment that sells the recalled formula post (at point of purchase) a notice of the recall and provide FDA with an FDA approved notice of recall. Section 107.240 requires the recalling firm to: (1) Notify the appropriate FDA district office of the recall by telephone within 24 hours, (2) submit a written report to that office within 14 days, and (3) submit a written status report at least every 14 days until the recall is terminated. Before terminating a recall, the recalling firm is required to submit a recommendation for termination of the recall to the appropriate FDA district office and wait for written FDA concurrence (§ 107.250). Where the recall strategy or implementation is determined to be deficient, FDA may require the firm to change the extent of the recall, carry out additional effectiveness checks, and issue additional notifications (§ 107.260). In addition, to facilitate location of the product being recalled, the recalling firm is required to maintain distribution records for at least 1 year after the expiration of the shelflife of the infant formula (§ 107.280).

The reporting and recordkeeping requirements described previously are designed to enable FDA to monitor the effectiveness of infant formula recalls in order to protect babies from infant formula that may be unsafe because of contamination or nutritional inadequacy or otherwise adulterated or misbranded. FDA uses the information collected under these regulations to help ensure that such products are quickly and efficiently removed from the market. If manufacturers were not required to provide this information to FDA, FDA's ability to ensure that recalls are conducted properly would be greatly impaired.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
107.230	3	1	3	4,500	13,500
107.240	3	1	3	1,482	4,446
107.250	3	1	3	120	360
107.260	3	1	3	650	650
Total					18,956

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Under 5 CFR 1320.3(b)(2), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary because they would occur in the normal course of activities. No burden has been estimated for the recordkeeping requirement in § 107.280 because these records are maintained as a usual and customary part of normal business activities. Manufacturers keep infant formula distribution records for the prescribed period as a matter of routine business practice. The reporting burden estimate is based on agency records, which show that there are five manufacturers of infant formula and that there have been three recalls in the last 3 years, or one recall annually.

Dated: February 26, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–5245 Filed 3–5–02; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0053]

Agency Information Collection Activities; Proposed Collection; Comment Request; State Petitions for Exemption From Preemption

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting requirements contained in existing FDA regulations governing State petitions for exemption from preemption.

DATES: Submit written or electronic comments on the collection of information by May 6, 2002.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm*. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under 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, including each proposed extension of an existing 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. State Petitions for Exemption From Preemption—21 CFR 100.1(d) (OMB Control No. 0910–0277)—Extension

Under section 403A(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343–1(b)), States may petition FDA for exemption from Federal preemption of State food labeling and standard of identity requirements. Section 100.1(d) (21 CFR 100.1(d)) sets forth the information a State is required to submit in such a petition. The information required under § 100.1(d) enables FDA to determine whether the State food labeling or standard of identity requirement satisfies the criteria of section 403A(b) of the act for granting exemption from Federal preemption.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
100.1(d)	1	1	1	40	40

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The reporting burden for § 100.1(d) is insignificant because petitions for exemption from preemption are seldom submitted by States. In the last 3 years, FDA has not received any new petitions; therefore, the agency estimates that one or fewer petitions will be submitted annually. Because § 100.1(d) implements a statutory information collection requirement, only the additional burden attributable to the regulation has been included in the estimate. Although FDA believes that the burden will be insignificant, it believes these information collection provisions should be extended to provide for the potential future need of a State or local government to petition for an exemption from preemption under the provisions of section 403(A) of the act.

Dated: February 26, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–5246 Filed 3–5–02; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0052]

Agency Information Collection Activities; Proposed Collection; Comment Request; Temporary Marketing Permit Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting requirements contained in existing FDA regulations governing temporary marketing permit applications.

DATES: Submit written or electronic comments on the collection of information by May 6, 2002.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm.* Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under 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, including each proposed extension of an existing 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.

Temporary Marketing Permit Applications—21 CFR 130.17(c) and (i) (OMB Control No. 0910–0133)—Extension

Section 401 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 341) directs FDA to issue regulations establishing definitions and standards of identity for food "[w]henever * * * such action will promote honesty and fair dealing in the interest of consumers * * *". Under section 403(g) of the act (21 U.S.C. 343(g)), a food that is subject to a definition and standard of identity prescribed by regulation is misbranded if it does not conform to such definition and standard of identity. Section 130.17 (21 CFR 130.17) provides for the issuance by FDA of temporary marketing permits that enable the food industry to test consumer acceptance and measure the technological and commercial feasibility in interstate commerce of experimental packs of food that deviate from applicable definitions and standards of identity. Section 130.17(c) specifies the information that a firm must submit to FDA to obtain a temporary marketing permit. The information required in a temporary marketing permit application under § 130.17(c) enables the agency to monitor the manufacture, labeling, and distribution of experimental packs of food that deviate from applicable definitions of standards of identity. The information so obtained can be used in support of a petition to establish or amend the applicable definition or standard of identity to provide for the variations. Section 130.17(i) specifies the information that a firm must submit to FDA to obtain an extension of a temporary marketing permit.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR section	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
130.17(c)	7	1	7	25	175
130.17(i)	4	2	8	2	16
Total					191

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated number of temporary marketing permit applications and hours per response is an average based on the agency's experience with applications received October 1, 1998, through September 30, 2001, and information from firms that have submitted recent requests for temporary marketing permits.

Dated: February 26, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–5299 Filed 3–5–02; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cardiovascular and Renal 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: Cardiovascular and Renal 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 April 12, 2002, from 8:30 a.m. to 4:30 p.m.

Location: Holiday Inn, Kennedy Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Contact: Jaime Henriquez or La'Nise S. Giles, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12533. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss new drug application (NDA) 20–386/S028, COZAAR (losartan potassium), Merck and Co., Inc., for the treatment of type II diabetic patients with nephropathy.

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 April 4, 2002. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 4, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Jaime Henriquez at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 27, 2002.

Linda A. Suydam,

Senior Associate Commissioner for Communications and Constituent Relations.

[FR Doc. 02–5300 Filed 3–5–02; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The Persistent Effects of Treatment Studies (PETS)—(OMB No. 0930–0202, extension)—SAMHSA's Center for Substance Abuse Treatment (CSAT) will request an extension of OMB approval to allow for completion of data collection in two studies being conducted under the PETS program. CSAT has developed PETS as a family of coordinated studies that evaluates the outcomes of drug and alcohol treatment received through a wide range of publicly funded programs. Populations being studied are diverse in the nature and severity of their substance abuse and in their personal characteristics and circumstances. The conceptual underpinning of the PETS studies is a recognition that substance abuse disorders, while variable in their manifestations, are often chronic and prone to relapse. PETS focuses on the longitudinal course of substance abuse and treatment. While most previous outcome studies in the field have examined changes taking place for only several months after a particular treatment episode, PETS looks at outcomes over a longer time period of three years or more. In the context of the client's life history, careful attention has been given to the stage in his or her experience of substance abuse and treatment to what has preceded their current treatment episode, and to any

sequence of aftercare, relapse, and subsequent treatment that may follow.

The PETS Chicago study continues data collection activities initiated under a grant to local investigators as part of CSAT's Target Cities project. This study will collect two- to six-year treatment followup data on a sample of clients originally assessed for treatment services at any of 22 service delivery units on Chicago's West Side.

The PETS Longer-term Adolescent Study builds upon CSAT's adolescent substance abuse treatment outcome studies in the Adolescent Treatment Models (ATM) and Cannabis Youth Treatment (CYT) grant programs. This study includes all four CYT sites and three first-round ATM sites, and will collect followup interviews for as long as 42 months after admission to treatment.

CSAT is conducting these studies in order to develop a better understanding of the longer-term outcomes for adults and adolescents receiving substance abuse treatment and factors that influence these outcomes. The information will be used to refine treatment approaches for these populations. The tables that follow summarize the burden for the two-year period of data collection for which approval will be sought.

Adult study	Number of respondents		Responses/ respondent	Burden/ response (in hours)	Total burden (in hours)
	60-month interview	72-mo. interview			
Chicago	706	550	1	1.5	1,884

Adolescent Studies	Number of Respondents			Responses/ Respondent	Burden/ Response (in hours)	Total Burden (in hours)
	24-month	30-month	42-month			
7 site total	30	183	993	1	1.85	2,231

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 28, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–5281 Filed 3–5–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Request for Comments Regarding the Prevention, Identification, and Treatment of Co-occurring Disorders

In compliance with section 503A of the Public Health Service Act (42 U.S.C. 290aa-2a), the Substance Abuse and Mental Health Services Administration (SAMHSA) is required to provide to the United States Congress a report on the prevention, identification, and treatment of co-occurring disorders. Public comment is solicited in order to aid in the development of this report.

SUMMARY: The report, due by October 17, 2002, is mandated to include the following:

- A summary of the manner in which individuals with co-occurring disorders are receiving treatment.
- A summary of improvements necessary to ensure that individuals with co-occurring mental illnesses and substance abuse disorders receive the services they need.
- A summary of practices for preventing substance abuse among individuals who have a mental illness and are at risk of having or acquiring a substance abuse disorder.
- A summary of evidence-based practices for treating individuals with co-occurring disorders and recommendations for implementing such practices.

We understand that your time is limited and you probably will not be able to respond to every issue. Where possible, however, it would be most helpful in responding to the key issues outlined below if you could identify those issues that you consider to be either a major problem or a minor problem. Further, for those issues that you consider to be a major problem, it would be helpful if you could explain the source of your concern and your recommendations for responding to the issue. Finally, you are in no way limited to the list below. If there are additional major problems related to the prevention, identification and treatment of co-occurring disorders that should come to the attention of SAMHSA, please describe and comment on those as well.

The issues are organized by topic area in an outline form. For example, issue A.1., "Commitment demonstrated by key decision-makers to address co-occurring disorders," is under the System-Level topic area. It would be appreciated if you would provide your responses using the alphanumeric designations in this outline (e.g., A.1., B.1., etc.). This will allow us to process your indications of major and minor problem areas and your concerns and recommendations most efficiently.

A. System-Level Issues

1. Commitment demonstrated by key decision-makers to address co-occurring disorders.
2. Presence of an interagency coordinating body.
3. Presence of a strategic plan guiding community/interagency activities.
4. Opportunities for cross-training of staff.
5. Presence of interagency agreements.
6. Uniform application and eligibility criteria.
7. Pooled or joint funding.
8. Co-occurring disorders regarded as a likely presentation, not an exception.
9. Community efforts to reduce stigma of both disorders and encourage treatment.

B. Program-Level Issues

Access

1. Admission criteria that recognize the multifaceted needs of clients with co-occurring disorders.
2. Availability of professional staff trained in the area of co-occurring disorders.
3. Availability of staff whose culture(s) and language(s) match those of clients.
4. Services available at nontraditional hours (e.g. evenings and weekends).
5. Outreach to individuals not connected to the system.

Screening

6. Screening for both disorders.
7. Standardized instruments normed for gender and culture, and policies, and procedures that reflect gender and culture.
8. Level of accuracy in detecting the presence and severity of both disorders.

Assessment

9. Methods that allow for accurate recognition of the interaction between serious mental illnesses and substance abuse disorders.
10. Methods that are sufficiently comprehensive to allow for the entire range of client need.
11. Methods that are gender and culturally relevant.

Treatment

12. Process for flexible and individualized plans.
13. Use of clinical treatment guidelines for co-occurring disorders.
14. Use of staged interventions (e.g., engagement, persuasion, active treatment, relapse).
15. Longitudinal perspective.
16. Recognition of non-linear recovery process for both disorders.
17. Provisions for relapse.
18. Services for both disorders available concurrently, with the same agency.
19. Clients participate in developing treatment plans.
20. Availability of social support networks.
21. Assistance in securing needed wraparound services (housing, employment, childcare, etc.)

Follow-Up

22. Discharge planning policies and procedures that account for the full range of community supports that are required.
23. Long-term follow-up as standard practice.
24. Policies and procedures to address relapse to substance use and/or reoccurrence of psychiatric symptoms.

C. Prevention Issues

1. Interventions directed at risk and protective factors, rather than specific problem behaviors.
2. Longitudinal interventions (e.g., from kindergarten to high school).
3. Interventions designed for appropriate developmental stages.
4. Interventions that focus on the child at home and in school.
5. School-based programs that use a well-tested, standardized intervention with detailed lesson plans and student materials.
6. Family-based interventions that include skills training for parents.
7. Interventions that use media and community education strategies to increase public awareness and support.
8. Links between prevention programs and treatment systems.
9. Interventions that are universal (for all), selective (for those at risk), and indicated (for those at highest risk).

D. Research and Evaluation Issues

1. Availability of prevalence data for planning.
2. Availability of measures of access and cost.
3. Availability of measures of quality of care, including monitoring and quality assurance for the treatment of both disorders.
4. Availability of outcome measures, including quality of life, clinical and functional improvement, and maintenance and relapse prevention.
5. Data linked across programs and systems.
6. Management information systems designed to gather and analyze data on both disorders.
7. Adequate resources for data collection and evaluation.

DATES: In order for comments to be considered in the development of this policy report on co-occurring disorders, they must be received no later than March 27, 2002.

ADDRESSES: All comments should be sent to James Winarski; Advocates for Human Potential; 323 Boston Post Road; Sudbury, MA 01776.

FOR FURTHER INFORMATION CONTACT: Eileen Elias, M.Ed., Special Expert, SAMHSA, 301–443–8742

Dated: February 28, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–5309 Filed 3–5–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Sport Fishing and Boating Partnership Advisory Council Charter

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of renewal of the Public Advisory Council Charter-Sport Fishing and Boating Partnership Council.

SUMMARY: This notice is published in accordance with section 9a(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988). Following consultation with the General Services Administration, the Secretary of the Interior hereby renews the Sport Fishing and Boating Partnership Council (Council) charter to continue for 2 years.

DATES: The charter will be filed under the Act March 21, 2002.

FOR FURTHER INFORMATION CONTACT: Laury Parramore, Council Coordinator, U.S. Fish and Wildlife Service (Service), (703) 358–1711.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to provide advice to the Secretary of the Interior through the Director of the Service to help the Department of the Interior (Department) and the Service achieve their goal of increasing public awareness of the importance of aquatic resources and the social and economic benefits of recreational fishing and boating. The Council will represent the interests of the sport fishing and boating constituencies and industries and will consist of no more than 18 members appointed by the Secretary to assure a balanced, cross sectional representation of public and private sector organizations. The Council will consist of two ex-officio members: Director, U.S. Fish and Wildlife Service, and the President, International Association of Fish and Wildlife (IAFWA). The 16 remaining members will be appointed at the Secretary's discretion to achieve balanced representation for recreational fishing and boating interests. The membership will be comprised of senior-level representatives for recreational fishing, boating, and aquatic resource conservation. These appointees must have demonstrated expertise and experience in one or more of the following areas of national interest: the director of a State agency responsible for the management of recreational fish and wildlife resources, selected from a coastal State if the President of IAFWA is from an inland State, or selected from an inland State if the President of IAFWA is from a coastal State; saltwater and freshwater recreational fishing; recreational

boating; recreational fishing and boating industries; conservation of recreational fishery resources; aquatic resource outreach and education; and tourism. The Council will function solely as an advisory body and in compliance with provisions of the Federal Advisory Committee Act (Act.)

The Certification of renewal is published below.

Certification

I hereby certify that the renewal of the Sport Fishing and Boating Partnership Council is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by those statutory authorities as defined in Federal laws including, but not restricted to, the Federal Aid in Sport Fish Restoration Act, Fish and Wildlife Coordination Act, and the Fish and Wildlife Act of 1956 in furtherance of the Secretary of the Interior's statutory responsibilities for administration of the U.S. Fish and Wildlife Service's mission to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people. The Council will assist the Secretary and the Department of the Interior by providing advice on activities to enhance fishery and aquatic resources.

Dated: February 15, 2002.

Gale Norton,

Secretary of the Interior.

[FR Doc. 02–5282 Filed 3–5–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Review of Existing Coordinated Long-Range Operating Criteria for Colorado River Reservoirs

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of extension of comment period, corrections.

SUMMARY: The 1970 Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs (Operating Criteria), promulgated pursuant to Public Law 90–537, were published in the **Federal Register** on June 10, 1970. The Operating Criteria provided for the coordinated long-range operation of the reservoirs constructed and operated under the authority of the Colorado River Storage Project Act, Boulder Canyon Project Act, and Boulder Canyon Project Adjustment Act for the purposes of complying with and carrying out the provisions of the Colorado River Compact, Upper Colorado River Basin Compact, and the Mexican Water Treaty.

The 1970 Operating Criteria specified that a formal review take place at least once every five years with participation by such Colorado River Basin state representatives as each Governor may designate, and other parties and agencies as the Secretary of the Interior (Secretary) may deem appropriate. Public law 90–537 allows the Secretary, as a result of actual operating experience or unforeseen circumstances, to modify the Operating Criteria to better accomplish the purposes of the two basin compacts and the Mexican Water Treaty. The Commissioner of the Bureau of Reclamation (Reclamation) is the authorized agent of the Secretary for the purpose of conducting and coordinating this review.

As part of the Operating Criteria review, Reclamation has incorporated an active public involvement process that includes all interested parties and stakeholders. This public process is designed to solicit comments on Operating Criteria provisions that may need revision as the result of actual operating experience, and to disclose the results of this analysis.

Reclamation is extending the comment period for written comments through Friday, March 29, 2002. The various public view points expressed during the review process will be considered in determining if a change to the Operating Criteria is warranted. Reclamation is also requesting feedback to determine if a public meeting should be held to solicit comments from the public on the need to revise the Operating Criteria. Please let us know by Friday, March 29, 2002, if and where you would like us to conduct a public meeting.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

DATES: Written comments on the Operating Criteria and/or feedback on whether or not to conduct a public meeting must be received on or before Friday, March 29, 2002.

ADDRESSES: Written comments on the Operating Criteria and/or feedback on whether or not to conduct a public meeting may be mailed to: Regional Director, Attention: BCOO–4600, Lower Colorado Region, Bureau of Reclamation, PO Box 61470, Boulder City, Nevada 89006–1470.

FOR FURTHER INFORMATION CONTACT: Jayne Harkins, Bureau of Reclamation, PO Box 61470, Boulder City, Nevada 89006–1470, faxogram number (702) 293–8042, telephone number (702) 293–8190; or Tom Ryan, Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, faxogram number (801) 524–5499, telephone number (801) 524–3732.

Supplementary Information and Corrections: This will be the sixth review of the Operating Criteria conducted since their initial promulgation in 1970. Previous reviews of the Operating Criteria resulted in no changes. The public review process for this review began with a **Federal Register** notice published on January 15, 2002 (Vol. 67, No. 10, p. 1986), announcing formal review of the Operating Criteria and inviting comments during the 60 days following the notice. In the January 15, 2002, notice, an e-mail address was published where comments could be sent. We regret that this e-mail address is currently unavailable. Please use the information cited above to provide written comments on the Operating Criteria and/or feedback on whether or not Reclamation should conduct a public meeting, or contact members of the Reclamation review team. The January 15, 2002, notice also included a copy of the Operating Criteria that contained several errors. This notice includes a corrected version of the Operating Criteria.

Notification of dates, times, and locations for future public meetings or comment periods will be made through the **Federal Register**, media outlets, and to all respondents to this notice.

Dated: February 21, 2002.

John W. Keys, III,

Commissioner, Bureau of Reclamation.

Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act of September 30, 1968 (Pub. L. 90–537)

These Operating Criteria are promulgated in compliance with

Section 602 of Public Law 90–537. They are to control the coordinated long-range operation of the storage reservoirs in the Colorado River Basin constructed under the authority of the Colorado River Storage Project Act (hereinafter "Upper Basin Storage Reservoirs") and the Boulder Canyon Project Act (Lake Mead). The Operating Criteria will be administered consistent with applicable Federal laws, the Mexican Water Treaty, interstate compacts, and decrees relating to the use of the waters of the Colorado River.

The Secretary of the Interior (hereinafter the "Secretary") may modify the Operating Criteria from time to time in accordance with Section 602(b) of Public Law 90–537. The Secretary will sponsor a formal review of the Operating Criteria at least every 5 years, with participation by State representatives as each Governor may designate and such other parties and agencies as the Secretary may deem appropriate.

I. Annual Report

(1) On January 1, 1972, and on January 1 of each year thereafter, the Secretary shall transmit to the Congress and to the Governors of the Colorado River Basin States a report describing the actual operation under the adopted criteria for the preceding compact water year and the projected plan of operation for the current year.

(2) The plan of operation shall include such detailed rules and quantities as may be necessary and consistent with the criteria contained herein, and shall reflect appropriate consideration of the uses of the reservoirs for all purposes, including flood control, river regulation, beneficial consumptive uses, power production, water quality control, recreation, enhancement of fish and wildlife, and other environmental factors. The projected plan of operation may be revised to reflect the current hydrologic conditions, and the Congress and the Governors of the Colorado River Basin States shall be advised of any changes by June of each year.

II. Operation of Upper Basin Reservoirs

(1) The annual plan of operation shall include a determination by the Secretary of the quantity of water considered necessary as of September 30 of that year to be in storage as required by Section 602(a) of Public Law 90–537 (hereinafter "602(a) Storage"). The quantity of 602(a) Storage shall be determined by the Secretary after consideration of all applicable laws and relevant factors, including, but not limited to, the following:

(a) Historic streamflows;

(b) The most critical period of record;

(c) Probabilities of water supply;

(d) Estimated future depletions in the upper basin, including the effects of recurrence of critical periods of water supply;

(e) The "Report of the Committee on Probabilities and Test Studies to the Task Force on Operating Criteria for the Colorado River," dated October 30, 1969, and such additional studies as the Secretary deems necessary;

(f) The necessity to assure that upper basin consumptive uses not be impaired because of failure to store sufficient water to assure deliveries under Section 602(a)(1) and (2) of Public Law 90–537.

(2) If, in the plan of operation, either:

(a) The Upper Basin Storage Reservoirs active storage forecast for September 30 of the current year is less than the quantity of 602(a) Storage determined by the Secretary under Article II(1) hereof, for that date; or

(b) The Lake Powell active storage forecast for that date is less than the Lake Mead active storage forecast for that date:

the objective shall be to maintain a minimum release of water from Lake Powell of 8.23 million acre-feet for that year. However, for the years ending September 30, 1971 and 1972, the release may be greater than 8.23 million acre-feet if necessary to deliver 75,000,000 acre-feet at Lee Ferry for the 10-year period ending September 30, 1972.

(3) If, in the plan of operation, the Upper Basin Storage Reservoirs active storage forecast for September 30 of the current water year is greater than the quantity of 602(a) Storage determination for that date, water shall be released annually from Lake Powell at a rate greater than 8.23 million acre-feet per year to the extent necessary to accomplish any or all of the following objectives:

(a) To the extent it can be reasonably applied in the States of the Lower Division to the uses specified in Article III(e) of the Colorado River Compact, but no such releases shall be made when the active storage in Lake Powell is less than the active storage in Lake Mead,

(b) To maintain, as nearly as practicable, active storage in Lake Mead equal to the active storage in Lake Powell, and

(c) To avoid anticipated spills from Lake Powell.

(4) In the application of Article II(3)(b) herein, the annual release will be made to the extent that it can be passed through Glen Canyon Powerplant when operated at the available capability of the powerplant. Any water thus retained in Lake Powell to avoid bypass of water at the Glen Canyon Powerplant will be released through the Glen Canyon Powerplant as soon as practicable to equalize the active storage in Lake Powell and Lake Mead.

(5) Releases from Lake Powell pursuant to these criteria shall not prejudice the position of either the upper or lower basin interests with respect to required deliveries at Lee Ferry pursuant to the Colorado River Compact.

III. Operation of Lake Mead

(1) Water released from Lake Powell, plus the tributary inflows between Lake Powell and Lake Mead, shall be regulated in Lake Mead and either pumped from Lake Mead or released to the Colorado River to meet requirements as follows:

(a) Mexican Treaty obligations;

(b) Reasonable consumptive use requirements of mainstream users in the Lower Basin;

(c) Net river losses;

(d) Net reservoir losses;

(e) Regulatory wastes.

(2) Until such time as mainstream water is delivered by means of the Central Arizona Project, the consumptive use requirements of Article III(1)(b) of these Operating Criteria will be met.

(3) After commencement of delivery of mainstream water by means of the Central Arizona Project, the consumptive use requirements of Article III(1)(b) of these Operating Criteria will be met to the following extent:

(a) Normal: The annual pumping and release from Lake Mead will be sufficient to satisfy 7,500,000 acre-feet of annual consumptive use in accordance with the decree in *Arizona* v. *California,* 376 U.S. 340 (1964).

(b) Surplus: The Secretary shall determine from time to time when water in quantities greater than "Normal" is available for either pumping or release from Lake Mead pursuant to Article II(b)(2) of the decree in *Arizona* v. *California* after consideration of all relevant factors, including, but not limited to, the following:

(i) The requirements stated in Article III(1) of these Operating Criteria;

(ii) Requests for water by holders of water delivery contracts with the United States, and of other rights recognized in the decree in *Arizona* v. *California;*

(iii) Actual and forecast quantities of active storage in Lake Mead and the Upper Basin Storage Reservoirs; and

(iv) Estimated net inflow to Lake Mead.

(c) Shortage: The Secretary shall determine from time to time when insufficient mainstream water is available to satisfy annual consumptive use requirements of 7,500,000 acre-feet after consideration of all relevant factors, including, but not limited to, the following:

(i) The requirements stated in Article III(1) of these Operating Criteria;

(ii) Actual and forecast quantities of active storage in Lake Mead;

(iii) Estimate of net inflow to Lake Mead for the current year;

(iv) Historic streamflows, including the most critical period of record;

(v) Priorities set forth in Article II(A) of the decree in *Arizona* v. *California;* and

(vi) The purposes stated in Article I(2) of these Operating Criteria.

The shortage provisions of Article II(B)(3) of the decree in *Arizona* v. *California* shall thereupon become effective and consumptive uses from the mainstream shall be restricted to the extent determined by the Secretary to be required by Section 301(b) of Public Law 90–537.

IV. Definitions

(1) In addition to the definitions in Section 606 of Public Law 90–537, the following shall also apply:

(a) "Spills," as used in Article II(3)(c) herein, means water released from Lake Powell which cannot be utilized for project purposes, including, but not limited to, the generation of power and energy.

(b) "Surplus," as used in Article III(3)(b) herein, is water which can be used to meet consumptive use demands in the three Lower Division States in excess of 7,500,000 acre-feet annually. The term "surplus" as used in these Operating Criteria is not to be construed as applied to, being interpretive of, or in any manner having reference to the term "surplus" in the Colorado River Compact.

(c) "Net inflow to Lake Mead," as used in Article III(3) (b)(iv) and (c)(iii) herein, represents the annual inflow to Lake Mead in excess of losses from Lake Mead.

(d) "Available capability," used in Article II(4) herein, means that portion of the total capacity of the powerplant that is physically available for generation.

[FR Doc. 02–5322 Filed 3–5–02; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–988 (Preliminary)]

Pneumatic Directional Control Valves From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of pneumatic directional control valves, provided for in subheading 8481.20.00 of the harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On January 14, 2002, a petition was filed with the Commission and the U.S. Department of Commerce by the Pneumatics Group, a trade association of pneumatic directional control valve producers and wholesalers consisting of Festo Corp., of Hauppage, NY; IMI Norgren, Inc., of Littleton, CO; Numatics, Inc., of Highland, MI; and Parker Hannifin Corp. of Cleveland, OH, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of pneumatic directional control valves from Japan. Accordingly, effective January 14, 2002, the Commission instituted antidumping duty investigation No. 731–TA–988 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference 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 January 23, 2002 (67 FR 3230). The conference was held in Washington, DC, on February 4, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

[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] Commissioner Lynn M. Bragg dissenting.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on February 28, 2002. The views of the Commission are contained in USITC Publication 3491 (March 2002), entitled Pneumatic Directional Control Valves from Japan: Investigation No. 731–TA–988 (Preliminary).

By order of the Commission.

Issued: February 28, 2002.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–5333 Filed 3–5–02; 8:45 am]

BILLING CODE 7020–02–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–432]

Certain Semiconductor Chips with Minimized Chip Package Size and Products Containing Same; Notice of Commission Determination To Terminate Investigation on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to terminate the above-captioned investigation based on a settlement agreement between the parties.

FOR FURTHER INFORMATION CONTACT: Michael Diehl, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3095. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server, *http://www.usitc.gov*. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION: On May 3, 2000, the Commission instituted this investigation of allegations of unfair acts in violation of section 337 of the Tariff Act of 1930 in the importation and sale

of certain semiconductor chips with minimized chip package size and products containing same. 65 FR 25758 (May 3, 2000). The complaint alleged that three firms had infringed at least claims 6 and 22 of U.S. Letters Patent 5,679,977 (the '977 patent) and claims 1, 3, and 11 of U.S. Letters Patent 5,852,326 (the '326 patent) held by complainant Tessera, Inc. of San Jose, California. The notice of investigation named the following respondents: Texas Instruments of Dallas, Texas ("TI"); Sharp Corporation of Osaka, Japan; and Sharp Electronics Corporation of Mahwah, New Jersey (collectively, "Sharp"). On March 2, 2001, the Commission determined not to review an initial determination ("ID") of the presiding administrative law judge ("ALJ") granting Tessera's motion to withdraw the complaint allegations as to TI, and to terminate the investigation as to TI. An evidentiary hearing commenced April 5, 2001 and concluded on April 19, 2001. On June 1, 2001, the ALJ issued Order No. 33, denying Sharp's motion to reopen the hearing record.

On September 25, 2001, the presiding ALJ issued his final ID, finding that the Sharp respondents violated section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), by infringing the asserted claims of the '977 and '326 patents. On October 1, 2001, the ALJ issued a recommended determination in which he recommended that, if the Commission finds a violation of section 337, it issue a limited exclusion order and a cease and desist order.

On October 9, 2001, Sharp appealed Order No. 33 and petitioned for review of the final ID. The Commission investigative attorney ("IA") did not file a petition for review. On October 16, 2001, complainant and the IA filed responses opposing Sharp's petition for review and its appeal of Order No. 33. On November 15, 2001, the Commission determined to affirm Order No. 33 and not to review the ALJ's final ID, and issued a notice to that effect. 66 FR 58524 (Nov. 21, 2001).

Having determined that a violation of section 337 has occurred in this investigation, the Commission sought comments on and considered the issues of the appropriate form of relief, whether the public interest precludes issuance of such relief, and the bond during the 60-day Presidential review period.

On January 25, 2002, Tessera and Sharp filed a joint motion with the Commission to extend the target date by 33 days, until February 27, 2002. The parties represented in the motion that they had settled their dispute, and would file with the Commission a joint motion to terminate the investigation on that basis.

On January 30, 2002, Tessera and Sharp filed a joint motion to terminate the investigation by settlement, and attached copies of a Settlement and Release Agreement and an Immunity Agreement, dated January 24, 2002, between Tessera and Sharp. On February 8, 2002, the IA filed a response to the motion, stating that the motion and agreements meet the procedural requirements relating to termination by settlement under Commission rules.

Having considered the joint motion and the IA's response, the Commission determined to terminate the investigation on the basis of the settlement agreement.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and section 210.21(b) of the Commission's Rules of Practice and Procedure, (19 CFR 210.21(b)).

By Order of the Commission.

Issued: February 27, 2002.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–5334 Filed 3–5–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Ethical Nutritional, L.L.C.; Denial of Application

On or about March 21, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Ethical Nutritional, L.L.C. (Ethical), located in Pomona, California, notifying it of an opportunity to show cause as to why the DEA should not deny its application, dated October 28, 1998, for a DEA Certificate of Registration as an importer of Schedule I controlled substances pursuant to 21 U.S.C. 952(a), proposing to import marijuana and peyote to manufacture and distribute homeopathic substances containing the Schedule I controlled substances for human consumption, a purpose not in conformity with the provisions of the Controlled Substances Act, pursuant to 21 U.S.C. 812(b)(1), 822(b), 823(f)(4), and 841(a)(1). The order also notified Ethical that, should no request for hearing be filed within 30 days the right to a hearing would be waived.

The OTSC was received on or about March 29, 2000, as indicated by the signed postal return receipt. On or about April 25, 2000, Ethical, through counsel, filed with the Office of Administrative Law Judges (ALJ) a request for extension of time to respond to the OTSC; an extension was granted until May 25, 2000. On May 21, 2000, the Government filed a Motion for Summary Disposition. On May 26, 2000, Ethical, through counsel, filed a Memorandum stating that Ethical "no longer intends to pursue the importation of Peyote and Marijuana. Accordingly, no response to the Order to Show Cause * * * will be submitted." On June 8, 2000, the ALJ issued a Termination Order finding that Ethical had waived its right to a hearing. Since that time, no further response has been received from the applicant nor any person purporting to represent the applicant. Therefore, the Administrator of the DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no further request for a hearing having been received, concludes that Ethical is deemed to have waived its right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(e) and 1301.46.

The Administrator finds that on or about May 28, 1998, Ethical was initially registered and issued DEA Certificate of Registration RE0235083, as a manufacturer of controlled substances in Schedules I–V. Ethical submitted an application, dated May 20, 1998, to be registered as an importer of *inter alia* the Schedule I controlled substances marijuana and peyote, pursuant to 21 U.S.C. 823(a). Ethical proposed to import these substances for the production of homeopathic remedies for human consumption. Ethical did not assert that the proposed importation of these substances was for any purpose authorized pursuant to 21 U.S.C. 952(a)(2).

The Administrator finds that Ethical's application is fundamentally incompatible with the Controlled Substances Act (CSA). Pursuant to the CSA, Schedule I controlled substances by definition have "a high potential for abuse," "no currently accepted medical use in treatment in the United States," and "a lack of accepted safety for use * * * under medical supervision." 21 U.S.C. 812(b). Accordingly, the CSA prohibits the use of Schedule I controlled substances for human consumption outside of research that has been approved by the Food and Drug Administration (FDA) and registered with DEA. 21 U.S.C. 822(b), 823(f), 841(a)(1); 21 CFR 5.10(a)(9),

1301.18, 1301.32. *See, e.g. Kuromiya* v. *United States*, 78 F.Supp. 2d 367 *and* 37 F.Supp. 2d 717 (E.D.Pa. 1999) (upholding constitutionality of CSA provisions prohibiting use of marijuana).

Ethical proposes to import marijuana and peyote to manufacture products that will be marketed for human consumption. This proposed use of Schedule I controlled substances is not permissible under the CSA.

Ethical does not attempt to show that it proposes to engage in FDA-approved research. Nor has Ethical attempted to establish the statutory elements required to become a registered importer of Schedule I controlled substances pursuant to 21 U.S.C. 952(a)(2). Further, the Administrator finds no evidence that allowing the proposed importer registration would be consistent with the public interest pursuant to 21 U.S.C. 958(a).

For the above-stated reasons, the application of Ethical must be denied.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by Ethical Nutritional, L.L.C., be, and it hereby is, denied. This order is effective March 6, 2002.

Dated: February 22, 2002.

Asa Hutchinson,

Administrator.

[FR Doc. 02–5240 Filed 3–5–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Matthew D. Graham; Denial of Application

On or about December 21, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Matthew D. Graham (Graham), residing in Rosehill, Kansas, notifying him of an opportunity to show cause as to why the DEA should not deny his application, dated November 30, 1999, for a DEA Certificate of Registration as a distributor of the List I chemicals ephedrine and pseudoephedrine, pursuant to 21 U.S.C. 823(h), as being inconsistent with the public interest. The order also notified Graham that, should no request for hearing be filed within 30 days, the right to a hearing would be waived.

The OTSC was received, as indicated by the signed postal return receipt that was returned to DEA on or about February 5, 2001. Since that time, no further response has been received from the applicant nor any person purporting to represent the applicant. Therefore, the Administrator of the DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Graham is deemed to have waived his right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Administrator finds as follows. List I chemicals are chemicals that may be used in the manufacture of a controlled substance in violation of the Controlled Substance Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine and ephedrine are List I chemicals that are commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a growing problem in the United States.

The Administrator finds that on November 17, 1997, a DEA Certificate of Registration was issued to John's Fashions of Augusta, Kansas. The owner of this establishment was John Snodell, Jr. (Snodell). Among the listed chemicals handled by John's Fashions were ephedrine and pseudoephedrine. These listed chemicals are precursors used in the illicit manufacture of methamphetamine.

A routine traffic stop on November 24, 1998, by the Pratt County (Kansas) Police Department resulted in the seizure of 16 cases of pseudoephedrine tablets from the trunk of a rental car bound for California. The pseudoephedrine had been obtained from a local business called Discount Smoke Mart, whose owner stated to Kansas State law enforcement personnel that he routinely purchased 16 cases of pseudoephedrine tablets at a time for cash from Snodell at John's Fashions. This individual further stated to Kansas State law enforcement personnel that Snodell was well aware of the arrangement whereby these 16 case shipments were routinely being sent to California in rental cars.

On December 16, 1998, DEA and Kansas Bureau of Investigation (KBI) agents observed a delivery of 64 cases of 60 mg. pseudoephedrine tablets to Snodell's residence. Several male individuals were observed to assist in unloading the pseudoephedrine, including Snodell and an individual later identified as Matthew D. Graham.

On December 22, 1998, Snodell was observed by DEA and KBI agents to deliver 16 cases of pseudoephedrine 60 mg. tablets to Discount Smoke Mart. Pursuant to a Federal Search and Seizure Warrant, the 16 cases were seized by DEA and KBI. Subsequently, DEA and KBI agent seized 534,150 pseudoephedrine and 206,730 ephedrine tablets from Snodell's residence.

During a subsequent interview with DEA and KBI agents, Snodell admitted he sold cases of pseudoephedrine to individuals he considered "suspicious" but continued to do so because the profit he made on such cash sales was "* * * too great an incentive to pass up." At the conclusion of this interview, Snodell surrendered his DEA Certificate of Registration.

On November 30, 1999, less than a year later, Matthew D. Graham submitted the subject application for registration as a distributor of the List I chemicals ephedrine and pseudoephedrine. In January of 2000, Graham informed a DEA investigator of his intention to sell from his residence certain sundry items, including List I chemical products. Graham further stated to the investigator that he "need[ed] the pills to sell * * * the other items." He also stated he learned about the business of distributing listed chemical products from friends who service convenient stores, and it was his intent also to supply convenience stores and smoke shops.

On May 22, 2000, Graham informed DEA that he intended to enter into a wholesale business arrangement with has friend Snodell. The DEA investigation revealed Graham is co-owner with Snodell of a wholesale business outlet called Retailers Wholesale, Inc. (RWI), located in Wichita, Kansas. Although Graham assured DEA investigators Snodell would not handle listed chemical products in the business, Graham did state Snodell would have contact with RWI customers and would be responsible for referring List I chemical orders to Graham. Graham further stated he planned to obtain List I chemical products from the same supplier previously used by Snodell and John's Fashions.

During the June 7, 2000, pre-registration inspection, Graham informed DEA investigators that RWI has established customer accounts with local convenience stores and smoke shops by selling lighters, gloves,

batteries, incense, and rolling papers. Graham reiterated that, in order to maintain business relations with these firms, he needed to supply List I chemical products in both single dose packets and 60 count bottles. He further stated that his customers were already requesting certain name-brand List I chemical products. DEA information reveals that the specifically-requested products mentioned by Graham are often diverted to the illicit manufacture of methamphetamine.

Pursuant to 21 U.S.C. 823(h), the Administrator may deny an application for a DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest. Section 823(h) requires the following factors be considered:

(1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State, and local law;

(3) Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Like the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. *See, e.g.,* Energy Outlet, 64 FR 14269 (1999). *See* also Henry J. Schwartz, Jr., M.D., 54 FR 16422 (1989).

The Administrator finds factors one, four, and five relevant to this application.

Regarding factor one, the maintenance of effective controls against the diversion of listed chemicals, the DEA pre-registration inspection documented inadequate security arrangements for the proposed storage of listed chemical products, in that Graham was unable to satisfy DEA investigator's security concerns with his various suggested arrangements. Graham made no apparent provision for an alarm system, and no sufficient provision for a separate, locked storage enclosure for the List I chemical products. In addition, the Administrator is concerned with Graham's business partnership with Snodell, and notes that Graham failed to explicate any arrangement at the business whereby Snodell's access to listed chemical products would be controlled.

Regarding factor four, the applicant's past experience in the distribution of chemicals, the DEA investigation revealed that Graham has no previous experience related to handling or distributing listed chemicals. As set forth previously, however, his business partner Snodell surrendered a DEA registration because a DEA and KBI investigation revealed he was distributing large quantities of List I chemical products having reasonable cause to believe the chemical would be used to manufacture a controlled substance. Graham admitted to DEA investigators that Snodell was his source of information concerning the business of distributing listed chemicals.

Regarding factor five, other factors relevant to and consistent with the public safety, the Administrator finds that in response to DEA investigator requests, Graham provided proposed supplier and customer lists. The DEA investigation shows that of the two suppliers proposed, one is currently under investigation for diversion of listed chemicals, and the other had its application for DEA registration as a distributor of listed chemicals denied by DEA. Of the four proposed customers provided by Graham, one was closed, another would not respond to DEA inquirers, and only one of the remaining two was interested in List I chemical products. The Administrator finds this lack of a legitimate customer base, combined with insufficient security arrangements, lack of experience in handling listed chemicals, and a business partnership with an individual who in the recent past was the subject of a DEA investigation and who was forced to surrender his DEA registration as a result, creates an unacceptable risk of diversion and is contrary to the public interest.

Therefore, for the above-stated reasons, the Administrator concludes that it would be inconsistent with the public interest to grant the application of Graham.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by Matthew D. Graham be denied. This order is effective April 5, 2002.

Dated: February 22, 2002.

Asa Hutchinson,

Administrator.

[FR Doc. 02–5239 Filed 3–5–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Hadid International, Inc.; Denial of Application

On or about July 27, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Hadid International, Inc. (Hadid), located in Orlando, Florida, notifying it of an opportunity to show cause as to why the DEA should not deny its application, dated November 12, 1999, for a DEA Certification of Registration as a distributor of the List I chemicals pseudoephedrine, norpseudoephedrine, and phenylpropanolamine, pursuant to 21 U.S.C. 823(h) as being inconsistent with the public interest. The order also notified Hadid that, should no request for hearing be filed within 30 days, the right to a hearing would be waived.

The OTSC was returned, marked "Return to Sender—Unclaimed." In addition, on August 2, 2000, DEA investigators from the Orlando, Florida District Office traveled to Hadid's business premises and, when there was no answer to repeated knocking, affixed a copy of the OTSC to the front door. Since that time, no further response has been received from the applicant nor any person purporting to represent the applicant. Therefore, the Administrator of the DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Hadid is deemed to have waived its right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Administrator finds as follows. List I chemicals are chemicals that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine, ephedrine, and phenylpropanolamine are List I chemicals that are commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Methamphetamine is an extremely

potent central nervous system stimulant, and its abuse is a growing problem in the United States.

The Administrator finds that on or above November 12, 1999, an application was received by the DEA Chemical Operations Registration section on behalf of Hadid for DEA registration as distributor of the three above-mentioned List I chemicals. The DEA pre-registration inspection revealed that Hadid had no prior experience in distributing List I chemical products, and appeared unprepared to accept the responsibilities of a DEA registrant. The inspection noted deficiencies in Hadid's recordkeeping system that threw doubt the firm's ability to comply with DEA's recordkeeping requirements. The DEA investigation also revealed a number of Hadid's proposed customers and suppliers were being investigated for violations related to the distribution of List I chemicals.

Pursuant to 21 U.S.C. 823(h), the Administrator may deny an application for a DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest. Section 823(h) requires the following factors be considered:

(1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State, and local law;

(3) Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Like the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. *See, e.g. Energy Outlet,* 64 FR 14,269 (1999). *See also Henry J. Schwartz, Jr., M.D.,* 54 FR 16,422 (1989)

Regarding factor one, the maintenance of effective controls against the diversion of listed chemicals, the DEA pre-registration inspection documented inadequate warehouse security, in that the side walls separating Hadid from the businesses on either side appeared to be drywall, and there was no separate secure enclosure wherein the List I chemical products would be stored. The inspection also revealed inadequate recordkeeping arrangements, in that only generic receipts/invoices with carbon copies were being generated, and there was no computerized data whatsoever.

Also relevant to this factor, on various weekdays, and at various times during Hadid's stated business hours, investigators drove by Hadid's business premises and did not see any sign of its sole officer/employee Khaled Salem's (Salem) presence at the business.

Regarding factor two, the applicant's compliance with appliance law, the Administrator finds that Salem apparently falsified Hadid's application for DEA registration. During the pre-registration inspection, Salem provided two telephone numbers, each different than the one provided in Hadid's application.

Regarding factor three, there is no evidence that Hadid nor Salem has any record of convictions related to controlled substances or to chemicals controlled under Federal or State law.

Regarding factor four, the applicant's past experience in the distribution of chemicals, the DEA investigation revealed that neither Hadid nor Salem has previous experience related to handling or distributing listed chemicals.

Regarding factor five, other factors relevant to and consistent with the public safety, the Administrator finds that Salem's citizenship status is in question, as he stated he had only been in the United States for approximately one and a half years. At the time of the pre-registration inspection, he was unable to provide DEA investigators with any documentation concerning his citizenship status.

When asked about his proposed supply and distribution network during the pre-registration inspection, Salem stated to investigators that he did not know who would be his supplier, nor did he know which of his customers would be interested in List I chemical products. Salem also did not know what quantities of List I chemical products he would be handling.

Hadid provided a customer list subsequent to the inspection. The list was in a computer-generated format, despite Salem having stated to investigators that he did not keep any computer records. The list provided appears identical to that provided to DEA by a List I chemical distributor whose registration was subject to an immediate suspension for diversion of List I chemicals two days following the issuance of the OTSC to Hadid. The proposed customer and supplier list provided by Hadid further contained a number of firms and individuals that are currently under investigation for alleged diversion of List I chemicals.

The DEA investigation also revealed information from a reliable Confidential Source that Salem is currently involved in the diversion of List I chemicals to be manufacture of methamphetamine, and that he plans to use his DEA registration to continue these activities, by serving as a front for the above-referenced distributor whose DEA registration was subject to an immediate suspension. The Confidential Source further revealed that Salem recently had left the United States for Germany "to avoid arrest by law enforcement authorities," in the context of his involvement in List I chemical diversion activities.

Therefore, for the above-stated reasons, the Administrator concludes that it would be inconsistent with the public interest to grant the application of Hadid.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by Hadid International, Inc. be denied. This order is effective April 5, 2002.

Dated: February 22, 2002.

Asa Hutchinson,

Administrator.

[FR Doc. 02–5241 Filed 3–5–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Hologram Wonders, Inc.; Denial of Application

On or about July 27, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Hologram Wonders, Inc., d/b/a New Horizon Dist. (Hologram), located in Kissimmee, Florida, notifying it's owner/president Hani Solomon (Solomon) of an opportunity to show cause as to why the DEA should not deny its application, dated January 17, 1999, for a DEA Certificate of Registration as a distributor of the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, pursuant to 21

U.S.C. 823(h), as being inconsistent with the public interest. The order also notified Hologram that, should no request for hearing be filed within 30 days, the right to a hearing would be waived.

No return postal receipt was received for the OTSC sent by certified mail. On August 2, 2000, DEA investigators from the Orlando, Florida District Office traveled to Hologram's business premises and, when there was no answer to repeated knocking, affixed a copy of the OTSC to the front door. Since that time, no further response has been received from the applicant nor any person purporting to represent the applicant. Therefore, the Administrator of the DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Hologram is deemed to have waived its right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Administrator finds as follows. List I chemicals are chemicals that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine, ephedrine, and phenylpropanolamine are List I chemicals that are commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a growing problem in the United States.

The Administrator finds that on or about January 17, 1999, an application was received by the DEA Chemical Operations Registration section on behalf of Hologram for DEA registration as a distributor of the three above-mentioned List I chemicals.

The DEA investigation revealed a number of Hologram's proposed customers and suppliers were currently being investigated by DEA for violations related to the distribution of List I chemicals; and further that a former business partner of Solomon's, with whom he maintained close business ties, was under investigation for violations of law related to the distribution of List I chemicals.

The investigation further revealed that although Hologram and Solomon had no experience in distributing List I chemical products, Solomon expected this to constitute 25% of his business.

Pursuant to 21 U.S.C. 823(h), the Administrator may deny an application for a DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest. Section 823(h) requires the following factors be considered:

(1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State, and local law;

(3) Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Like the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. *See, e.g. Energy Outlet*, 64 FR 14,269 (1999). *See also Henry J. Schwartz, Jr., M.D.*, 54 FR 16,422 (1989).

The Administrator finds factors four and five relevant to this application.

Regarding factor four, the applicant's past experience in the distribution of chemicals, the DEA investigation revealed that the applicant has no previous experience related to distributing listed chemicals, except at the retail level.

Regarding factor five, other factors relevant to and consistent with the public safety, the Administrator finds that, while Hologram and Solomon have no previous experience in distributing List I chemical products, Solomon expected these products to account for 25% of Hologram's business.

In addition, Hologram provided a proposed customer list that contained a substantial number of firms that were already being supplied by one of four distributors, and each of the named distributors currently had an OTSC pending. The customers shared by these firms and Hologram were requesting Solomon to supply them List I chemical products. The DEA investigation revealed substantial evidence that a number of business associates of Solomon are List I chemical distributors involved in an organization that trafficks illegal pseudoephedrine supplying clandestine methamphetamine laboratories in California. Hologram's proposed customer list indicates it will be supplying the same illicit market as these business associates. Solomon has failed to demonstrate either a legitimate supplier or a legitimate customer base for List I chemical products. Granting Hologram's application would be tantamount to adding another List I chemical distributor supplying the illicit market.

Therefore, for the above-stated reasons, the Administrator concludes that it would be inconsistent with the public interest to grant the application of Hologram.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by Hologram Wonders, Inc. be denied. This order is effective April 5, 2002.

Dated: February 22, 2002.

Asa Hutchinson,

Administrator.

[FR Doc. 02–5244 Filed 3–5–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Sinbad Distributing; Denial of Application

On or about July 6, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Sinbad Distributing (Sinbad), located in Las Vegas, Nevada, notifying it of an opportunity to show cause as to why the DEA should not deny its application, dated April 10, 2001, for a DEA Certificate of Registration as a distributor of the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, pursuant to 21 U.S.C.. 823(h), as being inconsistent with the public interest. The order also notified Sinbad that, should no request for hearing be filed within 30 days, the right to a hearing would be waived.

The OTSC was received July 16, 2001, as indicated by the signed postal receipt. Since that time, no response has been received from the applicant nor any person purporting to represent the applicant. Therefore, the Administrator of the DEA, finding that (1) thirty days

having passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Sinbad is deemed to have waived its right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Administrator finds as follows. List I chemicals are chemicals that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine, ephedrine, and phenylpropanolamine are List I chemicals that are commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a growing problem in the United States.

The Administrator finds that on April 10, 2001, an application was received by the DEA Chemical Operations Registration section on behalf of Sinbad for DEA registration as a distributor of the List I chemicals pseudoephedrine, phenlypropanolamine, and ephedrine.

During the August 18, 2001, pre-registration investigation of Sinbad, DEA investigators learned that Sinbad is a wholesale grocery distributorship with no prior experience in handling List I chemical products. The DEA investigation further revealed Sinbad distributes its products almost exclusively to liquor stores, mini marts, and other convenience stores in Las Vegas, Clark County, and Henderson, Nevada.

DEA investigators requested information concerning Sinbad customers who previously have requested pseudoephedrine products. The DEA investigation revealed that most of Sinbad's potential pseudoephedrine customers have in the past obtained excessive quantities of pseudoephedrine products from multiple sources.

In response to requests by DEA investigators, Sinbad also provided a list of potential suppliers. A number of these suppliers have received Warning Letters from DEA documenting that the products they distribute have been found in illicit settings.

Pursuant to 21 U.S.C. 823(h), the Administrator may deny an application for a DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest. Section 823(h) requires the following factors be considered:

(1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State, and local law;

(3) Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Like the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may relay on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. *See, e.g. Energy Outlet*, 64 FR 14,269 (1999). *See also Henry J. Schwartz, Jr., M.D.*, 54 FR 16,422 (1989).

Regarding factor one, the maintenance of effective controls against the diversion of listed chemicals, the Administrator finds that the during the preregistration inspection of the applicant conducted August 18, 2000, Sinbad did not demonstrate that it possessed adequate security and recordkeeping arrangements to prevent the diversion of List I chemical products. Sinbad's owner stated to DEA investigators that he did not plant to segregate List I chemical products in a separate, secure enclosure, but that such products would be stored on open shelves along with other products. The investigation thus revealed that the applicant was unprepared to address the responsibilities that a DEA registration would entail.

Regarding factor two, the applicant's compliance with applicable law, the Administrator finds that there no evidence that the applicant has a record for violations of applicable Federal, State, or local law.

Regarding factor three, there is no evidence that the applicant has any record of convictions related to controlled substances or to chemicals controlled under Federal or State law.

Regarding factor four, the applicant's past experience in the distribution of chemicals, the Administrator finds that the DEA investigation revealed that the applicant has no experience in the handling of List I chemicals.

Regarding factor five, other factors relevant to and consistent with the public safety, the Administrator finds that past DEA investigations and experience has shown that the primary source of diversion of List I chemicals in the areas in which Sinbad seeks to distribute are mini marts and other types of convenience stores. The DEA investigation in this case revealed that Sinbad's customer base is primarily these same types of stores. Sinbad's proposed customer list includes numerous stores of record with DEA as having excessive ordering histories.

One such proposed customer, a mini mart located in Las Vegas, Nevada, on April 17, 2000, ordered one case (144 bottles) of 60 mg. pseudoephedrine tablets in 120 count bottles from a distributor in Michigan. Four days later, the proposed customer ordered another case (144 bottles) of the exact same product from a distributor located in Las Vegas, Nevada. Six days later, a third case was ordered. During this ten day period, approximately 51,840 dosage units of 60 mg. pseudoephedrine tablets were received and distributed. Between March 22 and August 8, 2000, this proposed customer ordered and distributed approximately 200,000 pseudoephedrine 60 mg. tablets.

Two other proposed customers, both mini marts located in Las Vegas, between them ordered and distributed about 629,600 dosage units of pseudoephedrine during an approximately 18 month period. A third proposed customer was indicted of four counts of illegal distribution of a List I chemical with knowledge it would be used to manufacture a controlled substance. The owner later pleaded guilty to one count of the indictment.

The DEA investigation also revealed information concerning potential suppliers named by Sinbad. Three of the proposed suppliers of List I chemicals have each received numerous Warning Letters from DEA. These letters notified the above firms that their distribution practices have contributed to the diversion of List I chemical products to the illicit manufacture of methamphetamine. Among these suppliers, two had received 15 Warning Letters between them, and the third had surrendered its DEA List I chemical registration following the service of a criminal search warrant. During the search, approximately 1736 cases of pseudoephedrine and $385,000 were seized. These three suppliers additionally were responsible for distributing 11,303,160 dosage units of 60 mg. pseudoephedrine products

during an approximately 18 month period. This amount of pseudoephedrine is theoretically capable of producing approximately 1370 pounds of methamphetamine.

Therefore, for the above-stated reasons, the Administrator concludes that it would be inconsistent with the public interest to grant the application of Sinbad Distributing.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by Sinbad Distributing be denied. This order is effective April 5, 2002.

Dated: February 22, 2002.

Asa Hutchinson,

Administrator.

[FR Doc. 02–5242 Filed 3–5–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Y & M Distributions, Inc.; Denial of Application

On or about July 27, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Y & M Distributors, Inc. (Y & M), located in Kissimmee, Florida, notifying it of an opportunity to show cause as to why the DEA should not deny its application, dated November 9, 1999, for a DEA Certificate of Registration as a distributor of the List I chemicals ephedrine, pseudoephedrine, and plhenylpropanolamine, pursuant to 21 U.S.C. 823(h), as being inconsistent with the public interest. The order also notified Y & M that, should no request for hearing be filed within 30 days, the right to a hearing would be waived.

The OTSC was received August 4, 2000, as indicated by the signed postal receipt. In addition, on August 2, 2000, DEA investigators from the Orlando, Florida District Office traveled to Y & M's business premises and, when there was no answer to repeated knocking, affixed a copy of the OTSC to the front door. Since that time, no further response has been received from the applicant nor any person purporting to represent the applicant. Therefore, the Administrator of the DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Y & M is deemed to have waived its right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Administrator finds as follows. List I chemicals are chemicals that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine, ephedrine, and phenylpropanolamine are List I chemicals that are commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a growing problem in the United States.

The Administrator finds that on or about November 9, 1999, an application was received by the DEA Chemical Operations Registration section on behalf of Y & M for DEA registration as a distributor of the three above-mentioned List I chemicals. The DEA pre-registration inspection revealed that Y & M had no prior experience in distributing List I chemical products, and appeared unprepared to accept the responsibilities of a DEA registrant. The DEA investigation also revealed a number of Y & M's proposed customers and suppliers were being investigated for violations related to the distribution of List I chemicals; and further revealed substantial evidence that one of Y & M's corporate officers was involved in the illegal trafficking of pseudoephedrine.

Pursuant to 21 U.S.C. 823(h), the Administrator may deny an application for a DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest. Section 823(h) requires the following factors be considered:

(1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State, and local law;

(3) Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Like the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. *See, e.g. Energy Outlet,* 64 FR 14,269 (1999). *See also Henry J. Schwartz, Jr., M.D.* 54 FR 16, 422 (1989).

The Administrator finds factors two, four, and five relevant to this application.

Regarding factor two, the applicant's compliance with applicable law, the investigation revealed evidence tha a corporate officer of Y & M is currently in violation of applicable law. the DEA investigation revealed substantial evidence from a reliable Confidential Source that a corporate officer of Y & M is involved in trafficking illegal pseudoephedrine.

Regarding factor four, the applicant's past experience in the distribution of chemicals, the DEA investigation revealed that the applicant has no previous experience related to handling or distributing listed chemicals.

Regarding factor five, other factors relevant to and consistent with the public safety, the Administrator finds that a corporate officer stated to investigators that, at the time of the pre-registration investigation, Y & M had only been in business approximately one year. Further, while Y & M and its employees/officers have no previous experience in distributing List I chemical products, a corporate officer expected these products to account for 20% of Y & M's business.

In addition, Y & M provided a proposed customer and supplier list that contains a number of firms that are currently under investigation for alleged diversion of List I chemicals. A corporate officer stated to investigators that Y & M planned to distribute List I chemical products to customers based outside of its usual geographical sales area. The corporate officer admitted that he knew maybe one or two of the 39 proposed customers listed. A number of the proposed customers are listed in a DEA computerized database as having derogatory information concerning their List I chemical handling practices. Therefore, Y & M has failed to adequately demonstrate either a legitimate supplier or a legitimate customer base for List I chemical products.

Therefore, for the above-stated reasons, the Administrator concludes

that it would be inconsistent with the public interest to grant the application of Y & M. The Administrator finds the lack of knowledge concerning the proposed customers, the number of proposed suppliers and customers currently under investigation, and the lack of an adequately demonstrated legitimate supply of and demand for List I chemical products creates an environment conducive to diversion, and thus poses an unacceptable risk of diversion.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by Y & M be denied. This order is effective April 5, 2002.

Dated: February 22, 2002.

Asa Hutchinson,

Administrator.

[FR Doc. 02–5243 Filed 3–5–02; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL SCIENCE FOUNDATION

Sunshine Act; Meeting

AGENCY HOLDING MEETING: National Science Foundation National Science Board

DATE AND TIME: March 13, 2002: 2:00 p.m.—3:00 p.m. Closed Session.

March 14, 2002: 2:00 p.m.—12:30 p.m. Closed Session.

March 14, 2002: 1:30 p.m.—4:00 p.m. Open Session.

PLACE: The National Science Foundation, Room 1235, 4201 Wilson Boulevard, Arlington, VA 22230, *www.nsf.gov/nsb.*

STATUS: Part of this meeting will be closed to the public.

Part of this meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Wednesday, March 13, 2002

Closed Session (2:00 P.M.—3:00 P.M.)

—Closed Session Minutes, November, 2001
—NSB Vannevar Bush Award
—NSF Waterman Award
—NSB Member Proposals
—Election NSB Nominating Committee

Thursday, March 14, 2002

Closed Session (12:30 P.M.—1:30 P.M.)

—Awards and Agreements
NSF Budget, FY 2003, 2004

Open Session (1:30 P.M.—4:00 P.M.)

—Open Session Minutes, November, 2001
—Closed Session Items for May, 2002
—Chairman's Report
—Director's Report
—Director's Merit Review Report
—Environmental Activities Report
—Committee Reports
—NSF Long Range Planning Environment
—Other Business

Marta Cehelsky,

Executive Officer.

[FR Doc. 02–5436 Filed 3–4–02; 12:00 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285]

Omaha Public Power District Fort Calhoun Station Exemption

1.0 Background

The Omaha Public Power District (OPPD/the licensee) is the holder of Facility Operating License No. DPR–40 which authorizes operation of the Fort Calhoun Station. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a pressurized-water reactor located in Washington County, Nebraska.

2.0 Purpose

Title 10 of the *Code of Federal Regulations* (10 CFR) part 50, Appendix G, requires that pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak-rate testing conditions. Specifically, 10 CFR part 50, Appendix G, states that, "The appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions." In addition, 10 CFR part 50, Appendix G, specifies that the requirements for these limits "must be at least as conservative as the limits obtained by following the methods of analysis and the margins of safety of Appendix G of Section XI of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code)." The approved methods of analysis in Appendix G of Section XI require the use of K_{Ia} fracture toughness curve in the determination of the P–T limits.

By letter dated December 14, 2001, OPPD submitted a license amendment request to update the P–T limit curves for the Fort Calhoun Station. By letter dated December 14, 2001, OPPD requested NRC approval for an exemption to use Code Case N–640 as an alternative method for complying with the fracture toughness requirements in 10 CFR part 50, Appendix G, for generating the P–T limit curves. Requests for such exemptions may be submitted pursuant to 10 CFR 50.60(b), which allows licensees to use alternatives to the requirements of 10 CFR part 50, Appendices G and H, if the Commission grants an exemption pursuant to 10 CFR 50.12 to use the alternatives.

Code Case N–640 (formerly Code Case N–626)

Code Case N–640 permits application of the lower bound static initiation fracture toughness value equation (K_{Ic} equation) as the basis for establishing the curves in lieu of using the lower bound crack arrest fracture toughness value equation (i.e., the K_{Ia} equation, which is based on conditions needed to arrest a dynamically propagating crack, and which is the method invoked by Appendix G to Section XI of the ASME Code). Use of the K_{Ic} equation in determining the lower bound fracture toughness in the development of the P–T operating limits curve is more technically correct than the use of the K_{Ia} equation since the rate of loading during a heatup or cooldown is slow and is more representative of a static condition than a dynamic condition. The K_{Ic} equation appropriately implements the use of the static initiation fracture toughness behavior to evaluate the controlled heatup and cooldown process of a reactor vessel. However, since use of Code Case N–640 constitutes an alternative to the requirements of Appendix G, licensees need staff approval to apply the code case methods to the P–T limit calculations.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule

or is not necessary to achieve the underlying purpose of the rule."

Code Case N–640 (formerly Code Case N–626)

OPPD has requested, pursuant to 10 CFR 50.60(b), an exemption to use ASME Code Case N–640 (previously designated as Code Case N–626) as the basis for establishing the P–T limit curves. Appendix G to 10 CFR part 50 has required use of the initial conservatism of the K_{Ia} equation since 1974 when the equation was codified. This initial conservatism was necessary due to the limited knowledge of RPV materials. Since 1974, the industry has gained additional knowledge about RPV materials, which demonstrates that the lower bound on fracture toughness provided by the K_{Ic} equation is well beyond the margin of safety required to protect the public health and safety from potential RPV failure. In addition, the RPV P–T operating window is defined by the P–T operating and test limit curves developed in accordance with the ASME Code, Section XI, Appendix G, procedure.

The ASME Working Group on Operating Plant Criteria (WGOPC) has concluded that application of Code Case N–640 to plant P–T limits is still sufficient to ensure the structural integrity of RPVs during plant operations. The staff has concurred with ASME's determination. The staff has concluded that application of Code Case N–640 would not significantly reduce the safety margins required by 10 CFR part 50, Appendix G. The staff had concluded that application of Code Case N–640 would provide that adequate safety margins are maintained such that the underlying purpose of 10 CFR part 50, Appendix G is met, pursuant to 10 CFR 50.12(a)(2)(ii), for the Fort Calhoun Station RPV and reactor coolant pressure boundary (RCPB). Therefore, the staff concludes that Code Case N–640 is acceptable for application to the Fort Calhoun Station P–T limits.

The staff has determined that OPPD has provided sufficient technical bases for using the methods of Code Case N–640 for the calculation of the P–T limits for the Fort Calhoun Station RCPB. The staff has also determined that application of Code Case N–640 to the P–T limit calculations will continue to serve the purpose in 10 CFR part 50, Appendix G, for protecting the structural integrity of the Fort Calhoun RPV and RCPB. In this case, since strict compliance with the requirements of 10 CFR part 50, Appendix G, is not necessary to serve the underlying purpose of the regulation, the staff concludes that application of Code Case N–640 to the P–T limit calculations meets the special circumstances provision stated in 10 CFR 50.12(a)(2)(ii), for granting this exemption to the regulation.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Also, special circumstances are present. Therefore, the Commission hereby grants Omaha Public Power District an exemption from the requirements of 10 CFR part 50, Appendix G, for the Fort Calhoun Station.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (67 FR 9008).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 28th day of February 2002.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–5273 Filed 3–5–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25448; File No. 812–12770]

Jackson National Life Insurance Company, et al.

February 27, 2002.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") granting exemptions from the provisions of sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to permit the recapture of contract enhancements applied to purchase payments made under certain deferred variable annuity contracts.

Applicants: Jackson National Life Insurance Company ("Jackson National"), Jackson National Separate Account—I (the "Separate Account") and Jackson National Life Distributors, Inc. ("Distributor," and collectively, "Applicants").

Summary of Application: Applicants seek an order under section 6(c) of the Act to the extent necessary to permit the recapture, under specified circumstances, of certain contract enhancements applied to purchase payments made under the deferred variable annuity contracts described herein that Jackson National will issue through the Separate Account (the "Contracts"), as well as other contracts that Jackson National may issue in the future through their existing or future separate accounts ("Other Accounts") that are substantially similar in all material respects to the Contracts ("Future Contracts"). Applicants also request that the order being sought extend to any other National Association of Securities Dealers, Inc. ("NASD") member broker-dealer controlling or controlled by, or under common control with, Jackson National, whether existing or created in the future, that serves as distributor or principal underwriter for the Contracts or Future Contracts ("Affiliated Broker-Dealers"), and any successors in interest to the Applicants.

Filing Date: The Application was filed on November 21, 2001; an amendment substantially conforming to this notice will be filed during the pendency of the notice period.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, in person or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 21, 2002, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, Jackson National Life Insurance Company, 1 Corporate Way, Lansing, Michigan 48951, Attn: Susan Rhee, Esq.; copies to Joan E. Boros, Esq., Jorden Burt LLP, 1025 Thomas Jefferson Street, NW, Suite 400 East, Washington, DC 20007–0805.

FOR FURTHER INFORMATION CONTACT: Harry Eisenstein, Senior Counsel, at (202) 942–0552, or William J. Kotapish, Assistant Director, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 ((202) 942–8090).

Applicants' Representations

1. Jackson National is a stock life insurance company organized under the laws of the state of Michigan in June 1961. Its legal domicile and principal business address is 1 Corporate Way, Lansing, Michigan 48951. Jackson National is admitted to conduct life insurance and annuity business in the District of Columbia and all states except New York. Jackson National is ultimately a wholly-owned subsidiary of Prudential plc (London, England).

2. The Separate Account was established by Jackson National on June 14, 1993, pursuant to the provisions of Michigan law and the authority granted under a resolution of Jackson National's Board of Directors. Jackson National is the depositor of the Separate Account. The Separate Account meets the definition of a "separate account" under the federal securities laws and is registered with the Commission as a unit investment trust under the Act (File No. 811–08664). The Separate Account will fund the variable benefits available under the Contracts. The offering of the Contracts will be registered under the Securities Act of 1933 (the "1933 Act").

3. The Distributor is a wholly-owned subsidiary of Jackson National and serves as the distributor of the Contracts. The Distributor is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 (the "1934 Act") and is a member of the NASD. The Distributor enters into selling group agreements with affiliated and unaffiliated broker-dealers. The Contracts are sold by licensed insurance agents, where the Contracts may be lawfully sold, who are registered representatives of broker-dealers which are registered under the 1934 Act and are members of the NASD.

4. The Contracts require a minimum initial premium payment of $10,000 under most circumstances ($2,000 for a qualified plan contract). Subsequent payments may be made at any time during the accumulation phase. Each subsequent payment must be at least $500 ($50 under an automatic payment plan). Prior approval by Jackson National is required for aggregate premium payments of over $1,000,000.

5. The Contracts permit owners to accumulate contract values on a fixed basis through allocations to one of four fixed accounts (the "Fixed Accounts"), including two "Guaranteed Fixed Accounts" which offer guaranteed crediting rates for specified periods of time (one and three years), and two "DCA+ Fixed Accounts" (used in connection with dollar cost averaging transfers, each of which from time to time offers special crediting rates).

6. The Contracts also permit owners to accumulate contract values on a variable basis, through allocations to one or more of the investment divisions of the Separate Account (the "Investment Divisions," collectively with the Fixed Accounts, the "Allocation Options"). 34 Investment Divisions are expected to be offered under the Contracts, but additional Investment Divisions may be offered in the future and some of those currently expected to be offered could be eliminated or combined with other Investment Divisions in the future. Similarly, Future Contracts may offer additional or different Investment Divisions.

7. Transfers among the Investment Divisions are permitted. The first 15 transfers in a contract year are free; subsequent transfers cost $25. Certain transfers to, from and among the Fixed Accounts are also permitted during the Contracts' accumulation phase, but are subject to certain adjustments and limitations. Dollar cost averaging and rebalancing transfers are offered at no charge and do not count against the 15 free transfers permitted each year.

8. If one of the optional Contract Enhancement endorsements is elected, each time an owner makes a premium payment during the first contract year, Jackson National will add an additional amount to the owner's contract value (a "Contract Enhancement"). All Contract Enhancements are paid from Jackson National's general account assets. The Contract Enhancement is equal to two percent of the premium payment. Jackson National will allocate the Contract Enhancement to the Guaranteed Accounts and/or Investment Divisions in the same proportion as the premium payment allocation. The Contract Enhancement is not credited to any premiums received after the first contract year.

9. There is an asset-based charge for each of the Contract Enhancements. The Contract Enhancement has a 0.67% charge that applies for three years. These charges will also be assessed against any amounts an owner has allocated to the Guaranteed Fixed Accounts, resulting in a credited interest rate of 0.67% less than the annual credited interest rate that would apply to the Guaranteed Fixed Accounts if the Contract Enhancement had not been elected. However, the interest rate will never go below three percent.

10. Jackson National will recapture all or a portion of any Contract Enhancements by imposing a recapture charge whenever an owner: (i) Makes a total withdrawal within the recapture charge period (three years after a first year payment) or a partial withdrawal of corresponding premiums within the recapture charge period in excess of those permitted under the Contracts' free withdrawal provisions, unless the withdrawal is made for certain health-related emergencies specified in the Contracts; (ii) elects to receive payments under an income option within the recapture charge period; or (iii) returns the Contract during the free look period.

11. The amount of the recapture charge varies, depending upon which Contract Enhancement is elected and when the charge is imposed, as follows:

Contract Enhancement Recapture Charge (as a percentage of first year premium payments)

Completed Years Since Receipt of Premium			
0	*1*	*2*	*3+*
Recapture Charge (%)			
2	1.5	.75	0

12. The recapture charge percentage will be applied to the corresponding premium reflected in the amount withdrawn or the amount applied to income payments that remains subject to a withdrawal charge. Recapture charges only apply to premiums received in the first Contract Year.

13. Recapture charges will be waived upon death or exercise of a Terminal Illness claim, Accelerated Benefit claim, or Nursing Home claim. Recapture charges will be waived on minimum required distributions. Recapture charges will be applied upon annuitization, even in a situation where the Withdrawal Charge is waived. The amount recaptured will be taken from the Investment Division and the Guaranteed Fixed Accounts in the same proportion as the withdrawal charge. Partial withdrawals will be deemed to remove premium payments on a first-in-first-out basis (the order that entails payment of the lowest withdrawal and recapture charges).

14. Jackson National does not assess the recapture charge on any payments paid out as: death benefits; withdrawals necessary to satisfy the minimum distribution requirements of the Internal Revenue Code; if permitted by the owner's state, withdrawals of up to $250,000 from the Separate Account or from the Fixed Accounts in connection with the owner's terminal illness or if the owner needs extended hospital or nursing home care as provided in the

Contract; or if permitted by the owner's state, withdrawals of up to 25% of contract value (12.5% for each of two joint owners) in connection with certain serious medical conditions specified in the Contract.

15. The contract value will reflect any gains or losses attributable to a Contract Enhancement described above. Contract Enhancements, and any gains or losses attributable to a Contract Enhancement, distributed under the Contracts will be considered earnings under the Contract for tax purposes and for purposes of calculating free withdrawal amounts.

16. The Contracts have a "free look" period of ten days after the owner receives the Contract (or any longer period required by state law). Contract value, without the deduction for any sales charges, is returned upon exercise of free look rights by an owner unless state law requires the return of premiums paid. The Contract Enhancement recapture charge reduces the amount returned.

17. In addition to the Contract Enhancement charges and the Contract Enhancement recapture charges, the Contracts have the following charges: mortality and expense risk charge of 1.50% for the first six years and 1.30% thereafter (each as an annual percentage of average daily account value); administration charge of 0.15% (as an annual percentage of average daily account value); contract maintenance charge of $35 per year (waived if contract value is $50,000 or more at the time the charge is imposed); a transfer fee of $25 for each transfer in excess of 15 in a contract year (for purposes of which dollar cost averaging and rebalancing transfers are excluded); a commutation fee that applies only upon withdrawals from income payments for a fixed period; and a withdrawal charge that applies to total withdrawals, to certain partial withdrawals, and on the income date (the date income payments commence) if the income date is within a year of the date the Contract was issued.

18. In addition, the contracts have certain other charges for various optional features. These include an Earnings Protection Benefit charge of 0.30% (as an annual percentage of daily account value); a 20% additional free withdrawal benefit charge of 0.30% (as an annual percentage of daily account value); an optional death benefit charge of either 0.15% or 0.25% (as an annual percentage of daily account value), depending upon which (if any) optional death benefit endorsement is elected; and a charge for an optional guaranteed minimum income benefit.

19. The withdrawal charge for the Contracts varies, depending upon the contribution year of the premium withdrawn as follows:

Withdrawal Charge (as a percentage of premium payments):

Completed Years Since Receipt of Premium			
0	1	*2*	*3+*
Withdrawal Charge (%)			
8	7	6	0

20. The withdrawal charge is waived upon withdrawals to satisfy the minimum distribution requirements of the Internal Revenue Code and, to the extent permitted by state law, the withdrawal fee is waived in connection with withdrawals of: (i) up to $250,000 from the Investment Divisions or the Guaranteed Fixed Accounts of the Contracts in connection with the terminal illness of the owner of a Contract, or in connection with extended hospital or nursing home care for the owner; and (ii) up to 25% (12.5% each for two joint owners) of contract value in connection with certain serious medical conditions specified in the Contract.

Applicants' Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request that the Commission pursuant to section 6(c) of the Act grant the exemptions requested below with respect to the Contracts and any Future Contracts funded by the Separate Account or Other Accounts that are issued by Jackson National and underwritten or distributed by the Distributor or Affiliated Broker-Dealers. Applicants undertake that Future Contracts funded by the Separate Account or Other Accounts, in the future, will be substantially similar in all material respects to the Contracts. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Subsection (i) of Section 27 of the Act provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for such a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless such contract is a redeemable security. Section 2(a)(32) defines "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

3. Applicants submit that the recapture of the Contract Enhancement in the circumstances set forth in the application would not deprive an owner of his or her proportionate share of the issuer's current net assets. A Contract owner's interest in the amount of the Contract Enhancement allocated to his or her Contract value upon receipt of a premium payment is not fully vested until three complete years following a premium. Until or unless the amount of any Contract Enhancement is vested, Jackson National retains the right and interest in the Contract Enhancement amount, although not in the earnings attributable to that amount. Thus, Applicants urge that when Jackson National recaptures any Contract Enhancement it is simply retrieving its own assets, and because a Contract owner's interest in the Contract Enhancement is not vested, the Contract owner has not been deprived of a proportionate share of the Separate Account's assets, *i.e.*, a share of the Separate Account's assets proportionate to the Contract owner's contract value.

4. In addition, Applicants state that it would be patently unfair to allow a Contract owner exercising the free-look privilege to retain the Contract Enhancement amount under a Contract that has been returned for a refund after a period of only a few days. If Jackson National could not recapture the Contract Enhancement, Applicants claim that individuals could purchase a Contract with no intention of retaining it and simply return it for a quick profit. Furthermore, Applicants state that the recapture of the Contract Enhancement relating to withdrawals or receiving income payments within the first three years of a premium contribution is designed to protect Jackson National against Contract owners not holding the Contract for a sufficient time period. According to Applicants, it would provide Jackson National with insufficient time to recover the cost of the Contract Enhancement, to its financial detriment.

5. Applicants represent that it is not administratively feasible to track the Contract Enhancement amount in the Separate Accounts after the Contract Enhancement(s) is applied. Accordingly, the asset-based charges applicable to the Separate Accounts will be assessed against the entire amounts held in the Separate Accounts, including any Contract Enhancement amounts. As a result, the aggregate asset-based charges assessed will be higher than those that would be charged if the Contract owner's Contract value did not include any Contract Enhancement. Jackson National nonetheless represents that the Contracts' fees and charges, in the aggregate, are reasonable in relation to service rendered, the expenses expected to be incurred, and the risks assumed by Jackson National.

6. Applicants submit that the provisions for recapture of any Contract Enhancement under the Contracts do not violate sections 2(a)(32) and 27(i)(2)(A) of the Act. Applicants assert that the application of a Contract Enhancement to premium payments made under the Contracts should not raise any questions as to compliance by Jackson National with the provisions of Section 27(i). However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from Sections 2(a)(32) and 27(i)(2)(A), to the extent deemed necessary, to permit the recapture of any Contract Enhancement under the circumstances described in the Application, without the loss of relief from Section 27 provided by Section 27(i).

7. Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company to accomplish the same purposes as contemplated by Section 22(a). Rule 22c–1 under the Act prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

8. It is possible that someone might view Jackson National's recapture of the Contract Enhancements as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the Separate Accounts. Applicants contend, however, that the recapture of the Contract Enhancement does not violate Rule 22c–1. The recapture of some or all of the Contract Enhancement does not involve either of the evils that Rule 22c–1 was intended to eliminate or reduce as far as reasonably practicable, namely: (i) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or repurchase at a price above it; and (ii) other unfair results, including speculative trading practices. To effect a recapture of a Contract Enhancement, Jackson National will redeem interests in a Contract owner's Contract value at a price determined on the basis of the current net asset value of the Separate Accounts. The amount recaptured will be less than or equal to the amount of the Contract Enhancement that Jackson National paid out of its general account assets. Although Contract owners will be entitled to retain any investment gains attributable to the Contract Enhancement and to bear any investment losses attributable to the Contract Enhancement, the amount of such gains or losses will be determined on the basis of the current net asset values of the Separate Accounts. Thus, no dilution will occur upon the recapture of the Contract Enhancement. Applicants also submit that the second harm that Rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Contract Enhancement. Applicants assert that, because neither of the harms that Rule 22c–1 was meant to address is found in the recapture of the Contract Enhancement, Rule 22c–1 should not apply to any Contract Enhancement. However, to avoid any uncertainty as to full compliance with Rule 22c–1, Applicants request an exemption from the provisions of Rule 22c–1 to the extent deemed necessary to permit them to recapture the Contract Enhancement under the Contracts.

9. Applicants submit that extending the requested relief to encompass Future Contracts and Other Accounts is appropriate in the public interest because it promotes competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications prior to introducing new variable annuity contracts. Applicants assert that investors would receive no benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issues under the Act not already addressed in the Application.

Applicants further submit, for the reasons stated herein, that their exemptive request meets the standards set out in section 6(c) of the Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–5269 Filed 3–5–02; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45489/March 1, 2002]

Order Making Fiscal 2002 Mid-Year Adjustment to the Fee Rates Applicable Under Sections 31(b) and (c) of the Securities Exchange Act of 1934

I. Background

Section 31 of the Securities Exchange Act of 1934 ("Exchange Act") requires each national securities exchange and national securities association to pay transaction fees to the Commission.[1] Specifically, Section 31(b) requires each national securities exchange to pay the Commission fees based on the aggregate dollar amount of sales of certain securities transacted on the exchange.[2] Section 31(c) requires each national securities association to pay the Commission fees based on the aggregate dollar amount of sales of certain securities transacted by or through any member of the association otherwise than on an exchange.[3]

The Investor and Capital Markets Fee Relief Act ("Fee Relief Act") recently amended Section 31 to change the fee rates applicable under Sections 31(b) and (c).[4] The Fee Relief Act established an initial rate of $15 per $1,000,000 of the aggregate dollar amount of sales of

[1] 15 U.S.C. 78ee.

[2] 15 U.S.C. 78ee(b).

[3] 15 U.S.C. 78ee(c).

[4] Pub. L. 107–123, 115 Stat. 2390 (2002).

securities, which rate became effective December 28, 2001.[5]

Further, the Fee Relief Act requires the Commission to make annual adjustments to the fee rates applicable under Sections 31(b) and (c) for each of the fiscal years 2003 through 2011, and one final adjustment to fix the fee rates for fiscal 2012 and beyond.[6] The Fee Relief Act also requires the Commission, in certain circumstances, to make a mid-year adjustment to the fee rates in fiscal 2002 through fiscal 2011. The annual and mid-year adjustments are designed to adjust the fee rates in a given fiscal year so that, when applied to the aggregate dollar volume of sales for the fiscal year, they are reasonably likely to produce total fee collections under Section 31 equal to the "target offsetting collection amount" specified in the Fee Relief Act for that fiscal year.[7] For fiscal 2002, the target offsetting collection amount is $732,000,000.[8]

Congress determined the Fee Relief Act's target offsetting collection amounts by applying reduced fee rates to the Congressional Budget Office's ("CBO") January 2001 projections of dollar volume for fiscal years 2002 through 2011.[9] In any fiscal year through fiscal 2011, the annual and, in certain circumstances, mid-year adjustment mechanisms will result in additional fee rate reductions if the CBO's January 2001 projection of dollar volume for the fiscal year proves to be too low, and fee rate increases if the CBO's January 2001 projection of dollar volume for the fiscal year proves to be too high.

II. Determination of the Need for a Mid-Year Adjustment in Fiscal 2002

Under paragraph 31(j)(2) of the Exchange Act, the Commission must make a mid-year adjustment to the fee rates under Sections 31(b) and (c) in fiscal 2002 if, based on the actual aggregate dollar volume of sales during the first five months of the fiscal year, it determines that the amount $48,800,000,000,000 is reasonably likely to be 10% (or more) greater or less than the actual aggregate dollar volume of sales for fiscal 2002.[10] To make this determination, the Commission must estimate the actual aggregate dollar volume of sales for fiscal 2002.

Based on data provided by the national securities exchanges and the national securities association that are subject to Section 31,[11] the actual aggregate dollar volume of sales during the first four months of fiscal 2002 was $8,118,639,282,307.[12] Using these data and a methodology for estimating the aggregate dollar amount of sales for the remainder of fiscal 2002 (developed after consultation with the CBO and the Office of Management and Budget),[13] the Commission estimates that the aggregate dollar amount of sales for the remainder of fiscal 2002 to be $18,817,006,987,123. Thus, the Commission estimates that the actual aggregate dollar volume of sales for all of fiscal 2002 will be $26,935,646,269,430.

Because $48,800,000,000,000 is more than 10% greater than the $26,935,646,269,430 estimated actual aggregate dollar volume of sales for fiscal 2002, paragraph 31(j)(2) of the Exchange Act requires the Commission to issue an order adjusting the fee rates under Sections 31(b) and (c).

III. Calculation of the Uniform Adjusted Rate

Paragraph 31(j)(2) specifies the method for determining the mid-year adjustment for fiscal 2002. Specifically, the Commission must adjust the rates under Sections 31(b) and (c) to a "uniform adjusted rate that, when applied to the revised estimate of the aggregate dollar amount of sales for the remainder of [fiscal 2002], is reasonably likely to produce aggregate fee collections under Section 31 (including fees collected[14] during such 5-month period and assessments collected under [Section 31(d)]) that are equal to [$732,000,000]." In other words, the uniform adjusted rate is determined by subtracting fees collected prior to the effective date of the new rate and assessments collected under Section 31(d) during all of fiscal 2002 from $732,000,000, which is the target offsetting collection amount for fiscal 2002. That sum is then divided by the revised estimate of the aggregate dollar volume of sales for the remainder of the fiscal year following the effective date of the new rate.

The Commission estimates that it will collect $290,970,371 in fees for the period prior to the effective date of the mid-year adjustment[15] and $337,500 in assessments on round turn transactions in security futures products during all of fiscal 2002.[16] Using the methodology referenced in Part II above, the Commission estimates that the aggregate dollar volume of sales for the remainder of fiscal 2002 following the effective date of the new rate will be $14,626,040,810,789. Based on these estimates, the uniform adjusted rate is $30.10 per million.[17]

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[5] 15 U.S.C. 78ee; Fee Relief Act, Pub. L. 107–123, section 11, 115 Stat. 2390 (2002).

[6] 15 U.S.C. 78ee(j)(1) and (j)(3).

[7] *See* 15 U.S.C. 78ee(l)(1).

[8] *Id.*

[9] The target offsetting collection amounts for fiscal 2002 through 2006 were determined by applying a rate of $15 per million to the CBO's projections of dollar volume for those fiscal years. The target offsetting collection amounts for fiscal 2007 through 2011 were determined by applying a rate of $7 per million to the CBO's projections of dollar volume for those fiscal years. For example, CBO's projection of dollar volume for fiscal 2002 was $48,800,000,000,000. *See infra*, note 10. Applying the initial rate under the Fee Relief Act of $15 per million to that projection produces the target offsetting collection amount under the Fee Relief Act for fiscal 2002 of $732,000,000.

[10] The amount $48,800,000,000,000 is CBO's January 2001 projection of dollar volume for fiscal 2002.

[11] Each exchange is required to file a monthly report on Form R–31 containing dollar volume data on sales of securities subject to Section 31 on the exchange. The report is due by the end of the month following the month for which the exchange provides dollar volume data. The National Association of Securities Dealers, Inc. ("NASD") provides data separately.

[12] Although paragraph 31(j)(2) indicates that the Commission should determine the actual aggregate dollar volume of sales for fiscal 2002 "based on the actual aggregate dollar volume of sales during the first 5 months of such fiscal year," data are only available for the first four months of the fiscal year as of the date the Commission is required to issue this order, *i.e.*, March 1, 2002. Dollar volume data on sales of securities subject to Section 31 for February 2002 will not be available from the exchanges and the NASD for several weeks.

[13] The methodology for forecasting dollar volume is as follows. First, the Commission constructs a ten-year monthly time series of average daily dollar volume ("ADDV") for all securities transactions subject to Section 31 fees. The Commission then calculates the average monthly rate of change in ADDV. To obtain ADDV forecasts, the Commission assumes that this rate of change will hold through the end of fiscal 2002. Finally, the Commission multiplies each month's ADDV forecast by the number of trading days in that month to obtain a forecast of total monthly dollar volume. Future forecasts will be based on rolling ten-year periods of data.

[14] The term "fees collected" is not defined in Section 31. Because national securities exchanges and national securities associations are not required to pay the first installment of Section 31 fees for fiscal 2002 until March 15, the Commission will not "collect" any fees in the first five months of fiscal 2002. *See* 15 U.S.C. 78ee(e). However, the Commission believes that, for purposes of calculating the mid-year adjustment, Congress, by stating in paragraph 31(j)(2) that the "uniform adjusted rate . . . is reasonably likely to produce aggregate fee collections under Section 31 * * * that are equal to [$732,000,000]," intended the Commission to include the fees that the Commission will collect based on transactions in the six months before the effective date of the mid-year adjustment.

[15] This calculation is based on applying a fee rate of $33.33 per million to the actual aggregate dollar volume of sales of securities subject to Section 31 prior to December 28, 2001, and a fee rate of $15 per million to the projected aggregate dollar volume of sales of securities subject to Section 31 from December 28, 2001 through March 31, 2002.

[16] The estimate of $337,500 in assessments on round turn transactions in security futures products is based on CBO's August 2001 estimate for fiscal 2002, revised to reflect the reduced assessment amount on round turn transactions under the Fee Relief Act, 15 U.S.C. 78ee(d), and the delayed start date for trading in security futures products.

[17] ($732,000,000 − $290,970,371 − $337,500)/$14,626,040,810,789 = $0.00003013. Consistent with the system requirements of the exchanges and the NASD, the Commission rounds this result to the seventh decimal point, yielding a rate of $30.10 per million.

The Commission recognizes that this fee rate is substantially higher than $15 per million initial fee rate set forth in the Fee Relief Act. However, this higher fee rate is a direct consequence of the dramatic decline in dollar volume in fiscal 2002 compared to the CBO's January 2001 projection of dollar volume for fiscal 2002. The recent decline in dollar volume for securities transactions subject to Section 31 fees is illustrated in Appendix A.

IV. Effective Date of the Uniform Adjusted Rate

Subparagraph 31(j)(4)(B) of the Exchange Act provides that a mid-year adjustment shall take effect on April 1 of the fiscal year to which such rate applies. Therefore, the exchanges and the national securities association that are subject to Section 31 fees must pay fees under Sections 31(b) and (c) at the uniform adjusted rate of $30.10 per million for sales of securities transacted on April 1, 2002, and thereafter until the annual adjustment for fiscal 2003 is effective.[18]

[18] Paragraph 31(j)(1) and Section 31(g) of the Exchange Act require the Commission to issue an order no later than April 30, 2002, adjusting the fee rates applicable under Sections 31(b) and (c) for fiscal 2003. These fee rates for fiscal 2003 will be effective on the later of October 1, 2002 or thirty days after the enactment of the Commission's regular appropriation for fiscal 2003.

V. Conclusion

Accordingly, pursuant to Section 31 of the Exchange Act,[19]

It is hereby ordered that the fee rates under Sections 31(b) and (c) of the Exchange Act shall be $30.10 per $1,000,000 of the aggregate dollar amount of sales of securities subject to these sections effective April 1, 2002, and thereafter until the annual adjustment for fiscal 2003 is effective.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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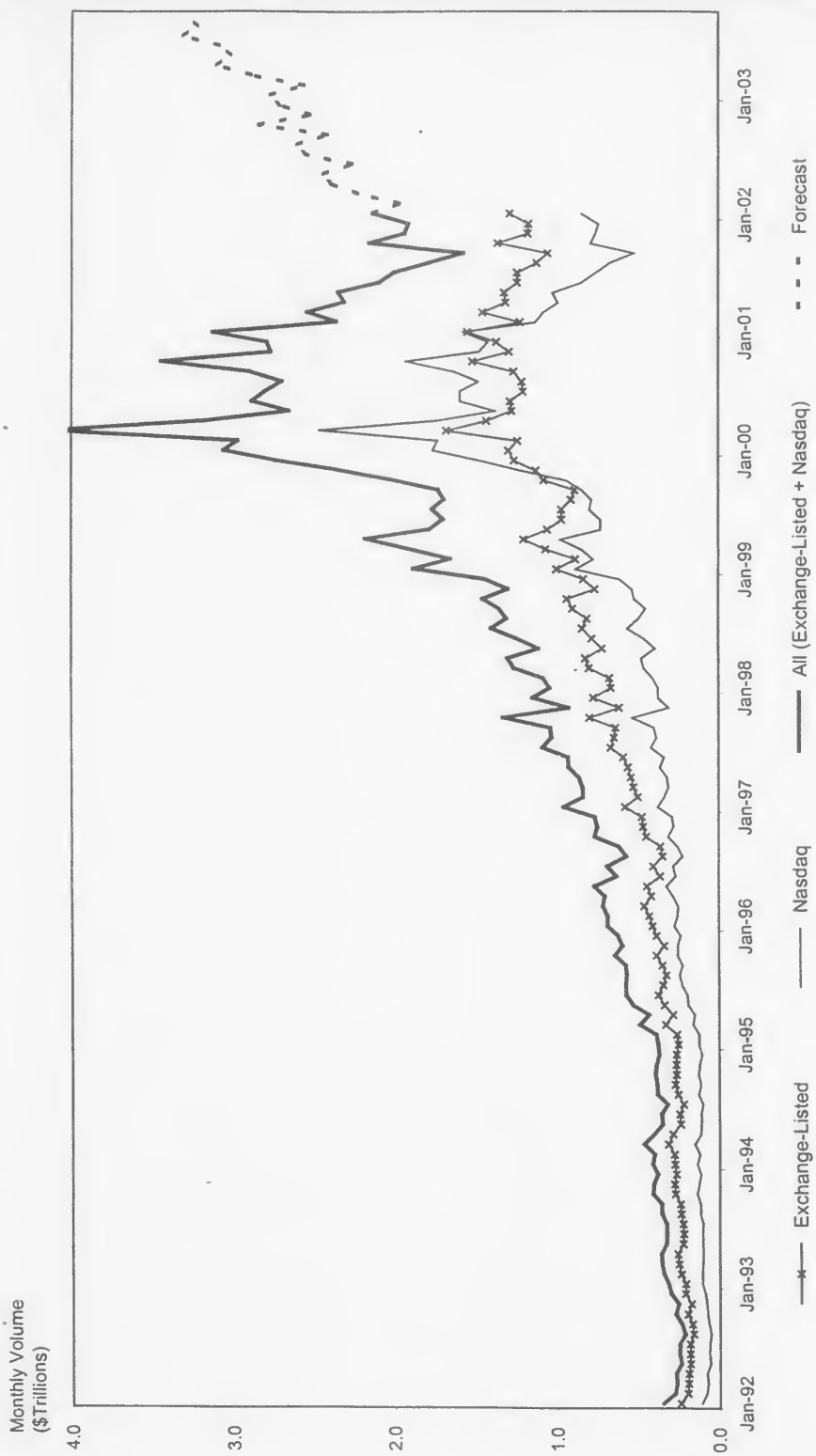
[19] 15 U.S.C. § 78ee.

APPENDIX A: Dollar Volume of U.S. Securities Transactions Subject to Exchange Act Section 31



[FR Doc. 02–5324 Filed 3–5–02; 8:45 am]
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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45482; File No. SR–CHX–2002–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Chicago Stock Exchange, Incorporated to Extend Pilot Rule Change Relating to Participation in Crossing Transactions Effected on the Exchange Floor

February 27, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 14, 2002, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend through April 15, 2002, a pilot rule change relating to participation in crossing transactions effected on the Exchange. The CHX does not propose to make any substantive or typographical changes to the pilot; the only change is an extension of the pilot's expiration date through April 15, 2002. The text of the proposed rule change is available at the Commission and at the CHX.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 24, 2000, the Commission approved, on a pilot basis through February 28, 2001, a pilot rule change to CHX Article XX, Rule 23[5] that permits a CHX floor broker to consummate cross transactions involving 5,000 shares or more, without interference by any specialist or market maker if, prior to presenting the cross transaction, the floor broker first requests a quote for the subject security. On February 23, 2001, the pilot was extended to an expiration date of July 9, 2001 and rendered applicable to both Dual Trading System issues and Nasdaq/NM securities.[6] Following a brief lapse of the pilot, it was extended through January 14, 2002.[7] The CHX does not propose to make any substantive or typographical changes to the pilot; the only change is an extension of the pilot's expiration date through April 15, 2002.

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).[8] The CHX believes the proposal is consistent with section 6(b)(5) of the Act[9] in that it is designed to promote just and equitable principles of trade, to remove impediments, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission waive the 5-day pre-filing requirement and accelerate the operative date. The Commission finds good cause to waive the 5-day pre-filing requirement and to designate the proposal to become operative immediately because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date and waiver of the 5-day pre-fling requirement will allow the pilot to continue uninterrupted through April 15, 2002. For these reasons, the Commission finds good cause to designate that the proposal is both effective and operative upon filing with the Commission.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 43203 (August 24, 2000), 65 FR 53067 (August 31, 2000) (SR–CHX–00–13). The pilot originally applied only to Dual Trading System issues, because the Nasdaq market had not yet converted to decimal pricing.

[6] *See* Securities Exchange Act Release No. 44000 (February 23, 2001), 66 FR 13361 (March 5, 2001) (SR–CHX–00–27).

[7] *See* Securities Exchange Act Release No. 45066 (November 15, 2001), 66 FR 58769 (November 23, 2001) (SR–CHX–2001–23).

[8] 15 U.S.C. 78(f)(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes only of waiving the 5-day pre-filing requirement and accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2002–03 and should be submitted by March 27, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–5270 Filed 3–5–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45481; File No. SR–CHX–2002–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Chicago Stock Exchange, Incorporated to Extend Pilot Rules for Decimals

February 27, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 14, 2002, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CHX. The Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend through April 15, 2002, the pilot rules amending certain CHX rules that were impacted by the securities industry transition to a decimal pricing environment. The pilot rules are due to expire on January 14, 2002. The CHX does not propose any substantive or typographical changes to the pilot; the only change is an extension of the pilot's expiration date through April 15, 2002. The text of the proposed rule change is available at the Commission and at the CHX.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 24, 2000, the Commission approved, on a pilot basis through February 28, 2001, changes proposed by the Exchange to amend certain CHX rules that would be impacted by the securities industry transition to a decimal pricing environment.[5] The pilot was extended three times.[6] The Exchange now requests an extension of the current pilot through April 15, 2002. The CHX does not propose to make any substantive or typographical changes to the pilot.

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).[7] The CHX believes the proposal is consistent with section 6(b)(5) of the Act[8] in that it is designed to promote just and equitable principles of trade, to remove impediments, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission waive the 5-day pre-filing requirement and accelerate the operative date. The Commission finds good cause to waive the 5-day pre-filing requirement and to designate the proposal to become operative immediately because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date and waiver of the 5-day pre-fling

[5] *See* Securities Exchange Act Release No. 43204 (August 24, 2000), 65 FR 53065 (August 31, 2000) (SR–CHX–00–22).

[6] *See* Securities Exchange Act Release Nos. 43974 (February 16, 2001), 66 FR 11621 (February 26, 2001) (SR–CHX–2001–03) (extending pilot through July 9, 2001); 44488 (June 28, 2001), 66 FR 35684 (July 6, 2001) (SR–CHX–2001–13) (extending pilot through November 5, 2001); and 45059 (November 15, 2001), 66 FR 58543 (November 21, 2001) (SR–CHX–2001–20) (extending pilot through January 14, 2002).

[7] 15 U.S.C. 78(f)(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

requirement will allow the pilot to continue uninterrupted through April 15, 2002, the deadline by which self-regulatory organizations must file proposed rule changes to set the minimum price variation for quoting in a decimals environment. For these reasons, the Commission finds good cause to designate that the proposal is both effective and operative upon filing with the Commission.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2002–01 and should be submitted by March 27, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–5271 Filed 3–5–02; 8:45 am]

BILLING CODE 8010–01–P

[11] For purposes only of waiving the 5-day pre-filing requirement and accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45483; File No. SR–NASD–2002–11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to NASD Rule 2260 To Require the Forwarding of Issuer and Trustee Communications to Beneficial Holders of Debt Securities

February 27, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 17, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Rule 2260 of the rules of the NASD to require a broker-dealer to make reasonable efforts to forward a communication from an issuer or trustee regarding a debt security to the beneficial owner of such security. The proposed rule change would also clarify IM–2260 (Suggested Rate of Reimbursement) to reflect that, in forwarding proxies and other materials, members may not charge for envelopes that are provided by the issuer or the trustee, as well as by persons soliciting proxies.

Below is the text of the proposed rule change.[3] Proposed new language is in *italics;* proposed deletions are in brackets.

* * * * *

2260. Forwarding of Proxy and Other Materials

(a) A member has an inherent duty [in carrying out high standards of commercial honor and just and equitable principles of trade] to forward *promptly certain information regarding a security to the beneficial owner (or the beneficial owner's designated investment adviser) if the member carries the account in which the security is held for the beneficial owner and the security is registered in a name other than the name of the beneficial owner.*

(1) Equity Securities

For an equity security, the member must forward:

(*A*)[(1)]all proxy material [which] *that* is properly furnished to *the member* [it] by the issuer of the securities or a stockholder of such issuer;[,to each beneficial owner of shares of that issue (or the beneficial owner's designated investment adviser) which are held by the member for the beneficial owner thereof] and

(*B*)[(2)]all annual reports, information statements and other materials sent to stockholders[, which] *that* are properly furnished to *the member*[it] by the issuer of the securities. [to each beneficial owner of shares of that issue (or the beneficial owner's designated investment adviser) which are held by the member for the beneficial owner thereof.]

(2) Debt Securities

For a debt security other than a municipal security, the member must make reasonable efforts to forward any communication, document, or collection of documents pertaining to the issue that: (A) was prepared by or on behalf of, the issuer, or was prepared by or on behalf of, the trustee of the specific issue of the security; and (B) contains material information about such issue including, but not limited to, notices concerning monetary or technical defaults, financial reports, information statements, and material event notices.

(b) No member shall give a proxy to vote stock [which] *that* is registered in its name, except as required or permitted under the provisions of paragraphs (c) or (d) hereof, unless such member is the beneficial owner of such stock.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In addition to the proposed changes to Rule 2260 set forth below, in 1999 the NASD proposed to amend Rule 2260 to allow NASD members to give proxies in the absence of written instructions from beneficial owners of securities. *See* SR–NASD–99–63 and Amendment No. 1 thereto, filed, respectively, on October 21, 1999, and November 10, 1999. Although the proposed change was published for notice and comment, SR–NASD–99–63 remains pending before the Commission. *See* Securities Exchange Act Release No. 42238 (December 15, 1999), 64 FR 71836 (December 22, 1999) (notice of filing of proposed rule change). The rule change proposed herein is based on the current text of Rule 2260, rather than on the amendments proposed in SR–NASD–99–63. The NASD represents that, if necessary, it will amend SR–NASD–99–63 to conform the rule text therein to the rule text proposed in this rule filing.

(c)—(1) No change.

(A) sufficient copies of all soliciting material [which] that such person is sending to registered holders, and

(B) satisfactory assurance that he *or she* will reimburse such member for all out-of-pocket expenses, including reasonable clerical expenses incurred by such member in connection with such solicitation,

such member shall transmit promptly to each beneficial owner of stock of such issuer (or the beneficial owner's designated investment adviser) [which] *that* is in its possession or control and registered in a name other than the name of the beneficial owner, all such material furnished. Such material shall include a signed proxy indicating the number of shares held for such beneficial owner and bearing a symbol identifying the proxy with proxy records maintained by the member, and a letter informing the beneficial owner (or the beneficial owner's designated investment adviser) of the time limit and necessity for completing the proxy form and forwarding it to the person soliciting proxies prior to the expiration of the time limit in order for the shares to be represented at the meeting. A member shall furnish a copy of the symbols to the person soliciting the proxies and shall also retain a copy thereof pursuant to the provisions of SEC Rule 17a–4 [under the Act].

(2) through (3) No change.

(d)—(1) No change.

(1) A member [which] *that* has in its possession or within its control stock registered in the name of another member and [which] *that* desires to transmit signed proxies pursuant to the provisions of paragraph (c), shall obtain the requisite number of signed proxies from such holder of record.

(3) No change.

(A) No change.

(B) any *designated investment adviser* [person registered as an investment adviser under the Investment Advisers Act of 1940 who exercises investment discretion pursuant to ad advisory contract for the beneficial owner to vote the proxies for stock which is in the possession or control of the member,]may vote such proxies.

(e)—(1) *As required in paragraph (a),* a[A] member[when so requested by an issuer and upon being furnished with:] *must forward promptly the material set forth in (a)(1), in connection with an equity security, or must make reasonable efforts to forward promptly the material set forth in (a)(2), in connection with a debt security, provided that the member:*

(A) *is furnished with* sufficient copies of[annual reports, information statements or other material sent to stockholders, and] *the material (e.g., annual reports, information statements or other material sent to security holders) by the issuer, stockholder, or trustee;*

(B) is requested by the issuer, stockholder, or trustee to forward the material to security holders; and,

(C) receives [(B)]satisfactory assurance that it will be reimbursed by such issuer, *stockholder, or trustee* for all out-of-pocket expenses, including reasonable clerical expenses[,].

[shall transmit promptly to each beneficial owner of stock of such issuer (or the beneficial owner's designated investment adviser) which is in its possession and control and registered in a name other than the name of the beneficial owner of all such material furnished.]

(2) No change.

(f) For purposes of this Rule, the term "designated investment adviser" is a person registered under the Investment Advisers Act of 1940 who exercises investment discretion pursuant to an advisory contract for the beneficial owner and is designated in writing by the beneficial owner to receive proxy and related materials and vote the proxy, and to receive annual reports and other material sent to [stockholders] *security holders.*

(1) No change.

(2) Members [who] *that* receive such a written designation from a beneficial owner must ensure that the designated investment adviser is registered with the Commission pursuant to the Investment Advisers Act [or] *of* 1940 and that the investment adviser is exercising investment discretion over the customer's account pursuant to an advisory contract to vote proxies and/or to receive proxy soliciting material, annual reports and other material. Members must keep records substantiating this information.

(3) No change.

(g) No change.

* For purposes of this Rule, the term "ERISA" is an acronym for the Employee Retirement Income Security Act of 1974.

IM–2260. Suggested Rates of Reimbursement

(a) No change.

(1) Charges for Initial Proxy and/or Annual Report Mailings

(A) No change.

(A) 20 cents for each copy, plus postage, for annual reports[, which] *that* are mailed separately from the proxy material pursuant to the instruction of the person soliciting proxies.

(2) No Change.

(3) No Change.

(4) No Change.

(5) No Change.

(a) Members may charge for envelopes, provided that they are not furnished by the *issuer, the trustee, or a* [the] person soliciting proxies.

(b) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. Introduction

Rule 2260 currently provides that a member has an inherent duty in carrying out high standards of commercial honor and just and equitable principles of trade to forward certain information regarding a security to the beneficial owner of such security (or the beneficial owner's designated investment advisor) if the security is held by the member for the beneficial owner, is in the member's possession and control, and is registered in a name other than the name of the beneficial owner.

As currently drafted, however, Rule 2260 does not impose an obligation on members to forward information relating to debt securities to the beneficial owners of such securities. For instance, the communications covered by the Rule are limited to proxy material, all annual reports, information statements, and "other material sent to *stockholders* (emphasis added)." The Rule also limits the member's obligation to forward proxy material to each beneficial owner of *shares* of that issue (or the beneficial owner's designated investment adviser) for *shares* that are held by the member for the beneficial owner. NASD Regulation believes that the lack of any affirmative requirement on broker-dealers to forward information to customers who are

beneficial owners of debt securities raises customer protection issues.

b. Background

When the securities industry, with the cooperation of the Commission, began to urge owners to hold securities in "street name," the transition from paper certificates to electronic record of ownership was to be accomplished by providing the beneficial owners of securities held in street name with the same rights and privileges as an owner holding paper certificates. Using the Depository Trust and Clearing Corporation's ("DTCC") book-entry system for establishing ownership results in a chain of records that documents securities ownership, but positions as many as three or four "nominee" owners above the beneficial owner. Through this chain, certain communications from issuers, trustees, and others regarding securities, whether or not covered explicitly by NASD Rule 2260 or parallel exchange rules,[4] are passed through from nominee to nominee until the communication reaches the broker-dealer that holds the securities in street name for its customers.

The current chain of communication was developed informally over a number of years through the efforts of the Commission, the Municipal Securities Rulemaking Board ("MSRB"), other federal and state regulators, and various industry groups, such as The Bond Market Association ("TBMA") (formerly, the Public Securities Association). In May 1998, a working group published certain "best practices" regarding communications from issuers to beneficial owners of defaulted municipal securities.[5] Industry compliance with the best practices, however, is voluntary. NASD Regulation determined to recommend rule amendments to address this issue.

c. Proposed Amendments to NASD Rule 2260

NASD Regulation believes that the customer protection issues arising from the lack of any affirmative requirement on broker-dealers to forward information to customers who are beneficial owners of debt securities should be remedied. To address the regulatory gap, NASD Regulation has developed amendments to Rule 2260 to extend its obligations to debt securities.

The proposed amendments would make Rule 2260 applicable to debt securities but do not otherwise materially change the basic principles and assumptions of the Rule. The proposed amendment would require members to forward information they receive that is "prepared by or on behalf of" the issuer of the security or the trustee and that contains information about such issue including, but not limited to, notices concerning monetary or technical defaults, financial reports, information statements, and material event notices. However, as is currently the case with equity securities, a member's obligation to forward the material does not arise unless the member "receives satisfactory assurance" that it will be reimbursed by such issuer or trustee for all out-of pocket expenses, is furnished with the material by the issuer or the trustee, and is requested by the issuer or the trustee to forward the material.[6]

The proposed amendment includes language that, as applied to equity securities communications and documentation, is meant to clarify the Rule's existing obligations, not to change them. The proposed change provides: "A member has an inherent duty to forward promptly certain information regarding a security to the beneficial owner (or the beneficial owner's designated investment adviser) if the member *carries the account* in which the security is held for the beneficial owner and the security is registered in a name other than the name of the beneficial owner (emphasis added)." The change was made in response to concerns that current Rule 2260 does not identify clearly which members are responsible for forwarding information to the beneficial holders of securities. The amendments intend to make clear that those firms that carry customer accounts and are capable of identifying the beneficial holders of the accounts are responsible for the member obligations in Rule 2260. As a result, the responsibility to forward information generally will fall on the clearing firm, provided the clearing firm is aware of the identity of the beneficial owners of the accounts. In those cases where a clearing firm is not aware of the identity of the beneficial owners of the accounts, such as when another firm opens an omnibus account with the clearing firm, the firm that opens the omnibus account will be the "carrying firm" for purposes of the Rule, and therefore will be responsible for forwarding the information.

NASD Regulation also is proposing an amendment to IM–2260 to clarify that, in forwarding proxies and other materials, members may not charge for envelopes that are provided by the issuer or the trustee, as well as by persons soliciting proxies.

2. Statutory Basis

NASD Regulation believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A(b)(6) of the Act,[7] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. According to NASD Regulation, the proposed rule is designed to provide customer protection for all holders of debt securities by establishing an affirmative obligation on broker-dealers to forward certain information regarding those securities to the beneficial owners.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

[4] *See, e.g.*, New York Stock Exchange Rule 451 ("Transmission of Proxy Material").

[5] *See* Joint Recommendations for Communicating With the Beneficial Owners of Defaulted Securities, (prepared by Working Group with representatives from National Association of Bond Lawyers, The Bond Market Association, American Bankers Association, Government Finance Officers Association, National Association of State Auditors, Comptrollers and Treasurers, and National Federation of Municipal Analysts) (unpublished report dated May 1998, on file with NASD).

[6] These conditions in Rule 2260 relating to equity securities are similar to those found in NYSE Rules (*e.g.*, 451 and 465), providing for forwarding of proxy and other materials.

[7] 15 U.S.C. 78*o*–3(b)(6).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–11 and should be submitted by March 27, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–5323 Filed 3–5–02; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Agency Information Collection; Transportation for Individuals With Disabilities—Accessibility of Over-the-Road Buses (OTRBs); Correction

AGENCY: Office of the Secretary, DOT.

ACTION: Correction to notice and request for comments.

SUMMARY: On February 5, 2002 (67 FR 5353), the Department of Transportation published a notice and request for comments on the information collection requirements in the Department's amendment of its final rule on Accessibility of Over-the-Road Buses. This document corrects certain editorial errors in that document. The corrections do not affect the substance of the notice.

FOR FURTHER INFORMATION CONTACT: Linda C. Lasley, Attorney-Advisor, Regulation and Enforcement, Office of the General Counsel, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4723.

SUPPLEMENTARY INFORMATION: On page 5354, column one, of the notice and request for comments, the abstract states in part:

The final rule has four different recordkeeping/reporting requirements. The first has to do with 48 hour advance notice and compensation. The second has to do with equivalent service and compensation."

Unfortunately, through an editorial error on the Department's part, the abstract erroneously refers to "compensation." All references to compensation were removed in the final rule. We regret any confusion caused by the inclusion of compensation in this notice. The Department is not seeking comments regarding compensation. The Department removed this provision from the final rule in response to a court decision.

Issued this 22nd day of February 2002, at Washington, DC.

Robert C. Ashby,

Deputy Assistant General Counsel for Regulation and Enforcement.

[FR Doc. 02–5154 Filed 3–5–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2001–11105]

Information Collection Under Review by the Office of Management and Budget (OMB): 2115–0638

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 one Information Collection Report (ICR) abstracted below to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for review and comment. Our ICR describes the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before April 5, 2002.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2001–11105] more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. (b) OIRA, 725 17th Street NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. (b) OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Docket Management Facility at 202–493–2251 or (b) OIRA 202–395–7285, attention: Desk Officer for the Coast Guard.

(4)(a) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.* (b) OIRA does not have a Web site on which you can post your comments.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 (Plaza level), 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.*

Copies of the complete ICR are available for inspection and copying in public dockets. A copy of it is available in docket USCG 2001–11105 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

[8] 17 CFR 200.30–3(a)(12).

Regulatory History

This request constitutes the 30-day notice required by OIRA. The Coast Guard has already published (66 FR 64897 (December 14, 2001)) the 60-day notice required by OIRA. That notice elicited no comments.

Request for Comments

The Coast Guard invites comments on the proposed collection of information to determine whether the collection is 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 collection; (2) the accuracy of the Department's estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collection; and (4) ways to minimize the burden of collection 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 Number of the ICR addressed. Comments to DMS must contain the docket number of this request, USCG 2001–11105. 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 Request

Title: The National Survey of Recreational Boating.

OMB Control Number: 2115–0638.

Type of Request: Extension of a currently approved collection.

Affected Public: Recreational boaters.

Forms: National Recreational Boating Survey.

Abstract: The mission of the national program of the U.S. Coast Guard on Safety of Recreational Boating is to minimize the loss of life, the personal injury, the property damage, and the environmental impact associated with the use of recreational boats. The purpose of the national survey of recreational boating is to capture information from recreational boaters nationwide so we can better serve their needs and more effectively accomplish our mission. Information captured from the survey will enable us to better understand current boating practices, the types and number of boats used in each State, and the various types of activities associated with recreational boating. Our collecting this type of information from boaters across the nation is critical in our efforts to implement effective safety initiatives and activities with our partners in the States.

Annual Estimated Burden Hours: The estimated burden is 11,458 hours a year.

Dated: February 26, 2002.

N.S. Heiner,

Acting Director of Information and Technology.

[FR Doc. 02–5340 Filed 3–5–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

High Density Traffic Airports; Slot Allocation and Transfer Method

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of waiver of the slot usage requirement.

SUMMARY: This action modifies and extends until October 26, 2002, the waiver of the minimum slot usage requirement for slots and slot exemptions at the four high density traffic airports that is scheduled to expire on April 6, 2002 (66 FR 51718; October 10, 2001). A continuation of this waiver in some form is necessary to assist carriers in resuming service that was disrupted and/or reduced in September 2001.

EFFECTIVE DATE: April 7, 2002.

FOR FURTHER INFORMATION CONTACT: Lorelei Peter, Office of the Chief Counsel, AGC–220, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone number 202–267–3073.

SUPPLEMENTARY INFORMATION:

Background

Following the aircraft hijackings and terrorist attacks on September 11, 2001, the FAA temporarily ceased all non-military flights in the United States and required the adoption of certain security measures prior to the resumption of commercial air service. Several air carriers reduced flight schedules below previously planned levels in order to adjust to operational changes brought on by the new security requirements. Therefore, the agency issued a waiver of the slot usage requirement through April 6, 2002, to assist carriers in managing their operations at the high density traffic airports as a result of the recent extraordinary events.

Statement of Policy

The regulations governing slots and slot allocation provide that any slot not utilized at least 80 percent of the time over a 2-month period shall be recalled by the FAA (14 CFR 93.277(a)). Additionally, paragraph (j) of that section provides that the Chief Counsel may waive the slot usage requirement in the event of a highly unusual and unpredictable condition that is beyond the control of the slot holder and exists for more than nine days (14 CFR 93.227(j)). These two provisions are also applicable to slot exemptions. The FAA determined that the facts described above met the criteria for a waiver under Section 93.227(j). That waiver is applicable from September 11, 2001, through April 6, 2002.

Currently, operations at the high-density airports are below the number of allocated slots and slot exemptions. At Chicago O'Hare International Airport, traffic is down 10 percent compared to the same winter months from 2001. Also, the slot limits will be eliminated at that airport on July 1, 2002. At John F. Kennedy International Airport and LaGuardia Airport, traffic is down respectively 17 and 14 percent compared to winter 2001. Additional flights at these three airports are expected to commence during the summer scheduling season. At Washington's Reagan National Airport (DCA), the Department of Transportation is phasing in additional flights and effective March 1, 2002, has authorized approximately 77 percent of pre-September 11 scheduled flights.

The FAA finds that since September 11, there are a number of additional factors involved in an individual airline's decision to operate flights at the high-density traffic airports, as well as at other airports. These factors include new security requirements, aircraft utilization plans, passenger demand, and other operational issues that may temporarily preclude the full use of slots while the air traffic system and the aviation industry adjust to the changing aviation environment. Operations at these airports, excluding DCA, are continually increasing towards the pre-September 11 levels. As carriers are planning and scheduling future schedules, the FAA will allow carriers to continue implementation of service as intended. At this time, the agency does not want slot usage to become entangled with the deciding factors specified above or the economics of resuming or commencing certain service. As evidenced by the level of operations at these airports, excluding DCA, we anticipate that carriers are scheduling accordingly and that there will be close to full resumption of service over the summer months. In order to assist carriers during this adjustment period, the FAA will continue to waive the minimum slot usage requirement set forth in 14 CFR section 93.227(a) for all slots and slot

exemptions at the high density traffic airports through October 26, 2002, with the following condition.

At the time that the FAA imposed this waiver, carriers were operating significantly reduced schedules and there was uncertainty as to when and how much service would increase over the next several months. Consequently, broad relief was necessary and the FAA issued a blanket waiver for all slots and slot exemptions until April 7, 2002. Today, the environment has changed and carriers are planning for more operations over the summer. Therefore, the waiver for slot usage at the four High Density Traffic Airports is revised by requiring carriers to return temporarily to the FAA in advance any slot or slot exemption that will not be used by a carrier for any specified period of time. Thus, if a carrier has not scheduled a slot or slot exemption for 80 percent usage, then the carrier must return the slot for the portion of time that it will not be using the slot, i.e., for the entire summer season, or for two weeks or certain frequencies, etc., or the use or lose requirement will be applied. Any carrier that chooses to temporarily return slots or slot exemptions to the FAA between now and October 26, 2002, may do so without jeopardizing the permanent loss of the slots or slot exemptions.

Although many carriers have not resumed their pre-September 11 planned system schedules, there may be some carriers seeking to add service or make changes to scheduled flight times that affect their slot holdings at an airport. While we advise carriers to work cooperatively with other airlines in order to maximize the use of available slots, the FAA may use temporarily returned slots or slot exemptions to accommodate short-term requests for additional slots or schedule adjustments. The FAA will continue to monitor any developments that may impact airlines' ability to meet the minimum usage requirements at any of the high density traffic airports.

Issued in Washington, DC, on February 28, 2002.

David G. Leitch,

Chief Counsel.

[FR Doc. 02–5338 Filed 3–5–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–15]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemptions received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before March 26, 2002.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2001–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Sandy Buchanan-Sumter, (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on March 1, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2001–10532.

Petitioner: Seattle Jet Services, Inc.

Section of 14 CFR Affected: 14 CFR 135.157(b)(2).

Description of Relief Sought:

To permit Seattle Jet Services to operate its Piper Meridian PA–46–500TP aircraft with the oxygen system installed by the manufacturer, which has a 25-minute supply of oxygen for the pilot's system, rather than the required 2-hour supply of oxygen.

[FR Doc. 02–5337 Filed 3–5–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues.

DATES: The meeting is scheduled for March 19–20, 2002, beginning at 9 a.m. on March 19. Arrange for oral presentations by March 15.

ADDRESSES: The Boeing Corporation, 1200 Wilson Boulevard, Room 816, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Effie M. Upshaw, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–7626, FAX (202) 267–5075, or e-mail at *effie.upshaw@faa.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held March 19–20, 2002, in Washington, DC.

The agenda will include:

Tuesday, March 19

- Opening Remarks
- FAA Report
- Joint Aviation Authorities Report/ Single Worldwide Certification Code
- Transport Canada Report
- Executive Committee Report

- Harmonization Management Team Report
- ARAC Tasking Priorities Discussion
- Design for Security Harmonization Working Group (HWG) Report
- Flight Guidance System HWG Report and Approval
- Loads & Dynamics HWG Report
- Human Factors HWG Report
- System Design and Analysis HWG Report
- Electrical Systems HWG Report and Aging Transport System Rulemaking Advisory Committee Update

Wednesday, March 20

- General Structures HWG Report
- Airworthiness Assurance Working Group Report
- Ice Protection HWG Report and Approval
- Extended Range with Two-Engine Aircraft (ETOPS) Tasking Update
- Written reports may be provided for the following HWGs: Electromagnetic Effects, Flight Test, Powerplant Installation, Engine, Mechanical Systems, Avionics, Seat Test, and Flight Control.

The Flight Guidance HWG plans to seek approval of a report addressing automatic pilot system. The Loads and Dynamics HWG plans to seek approval of a report that addresses fire protection of flight controls, engine mounts, and other structures. The Ice Protection HWG plans to seek approval of a concept paper discussing how the working group plans to discuss a tasking addressing certification requirements for aircraft operation in icing environments that includes supercooled large droplets.

Attendance is open to the public, but will be limited to the availability of meeting room space. Visitor badges are required to gain entrance to the Boeing building where the meeting is being held. Please confirm your attendance with the person listed in the **FOR FURTHER INFORMATION CONTACT:** section no later than March 14. Please provide the following information: full legal name, country of citizenship, and name of your company, industry association, or application affiliation. If you are attending as a public citizen, please indicate so.

The telephone number for participating in the teleconference will be available after March 12 by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section or by going to the ARAC calendar at *http://www.faa.gov/avr/arm/araccal.htm*. Callers outside the Washington metropolitan area will be responsible for paying long distance charges.

The public must make arrangements by March 15 to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 25 copies to the Assistant Executive Director for Transport Airplane and Engine issues or by providing copies at the meeting. Copies of the documents to be presented to ARAC for decision or as recommendations to the FAA may be made available by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

If you are in need of assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC, on February 28, 2002.

Tony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 02–5335 Filed 3–5–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–05–C–00–SYR To Impose a Passenger Facility Charge (PFC) and Use PFC Revenue at Syracuse-Hancock International Airport, Syracuse, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC and use PFC revenue at Syracuse-Hancock International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before April 5, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Charles R. Everett, Jr., Commissioner of Aviation, City of Syracuse Department of Aviation at the following address: Department of Aviation, Syracuse-Hancock International Airport, Syracuse, New York 13212.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Syracuse Department of Aviation under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Philip Brito, Manager, New York Airports District Office, 600 Old Country Road, Garden City, New York 11530, Telephone: (516) 2273800. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Syracuse-Hancock International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 11, 2002, the FAA determined that the application to impose a PFC submitted by the City of Syracuse Department of Aviation was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 7, 2002. The following is a brief overview of the application.

PFC Application No.: 02–05–C–00–SYR.

Level of the proposed PFC: $4.50.

Proposed charge effective date: April 1, 2002.

Proposed charge expiration date: November 1, 2004.

Total estimated PFC revenue: $10,509,851.

Brief description of proposed project(s):

—Taxiway "A" Rehabilitation
—Terminal Apron Rehabilitation
—ARFF Building Construction

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Nonscheduled/On-Demand Air Carriers Filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional airports office located at: Federal Aviation Administration, Eastern region, Airports Division, AEA–

610, 1 Aviation Plaza, Jamaica, New York 11434–4809.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Syracuse Department of Aviation.

Issued in Garden City, New York on February 12, 2002.

Philip Brito,

Manager, New York Airports District Office, Eastern Region.

[FR Doc. 02–5336 Filed 3–5–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Board of Directors on Thursday, May 2, 2002. The meeting runs from 1 p.m. to 5 p.m. The session includes the following items: (1) Welcome, introductions, ITS America antitrust policy, conflict of interest statements; (2) Review and acceptance of election results: installation of new Board members; (3) Presentation of nominees for Officers of the Board; (4) Acceptance of other nominations for Officers and Directors of the 2000–2001 Board of Directors; (5) Transfer of Gavel from outgoing Chairman to the New Chairman; (6) Recognition of Outgoing Board Members and Officers; (7) Consent Agenda: (a) Approval of Minutes from Jan. 17, 2002, Board Meetings; (b) March 18, 2002 Executive Committee Meeting Report; (c) Membership Report; (d) Federal Report; (e) Finance Committee Report; (f) Dues and Revenue Task Force Report; (g) Bylaws Task Force Report (Approval of Bylaw changes); (h) Meetings Location Task Force Report; (i) Homeland Security Task Force; (j) TEA–21 Reauthorization Task Force Report; (8) Executive Forum for Business and Trade Report; (9) State Chapters Council Report; (10) International Affairs Council Report; (11) Coordinating Council Reorganization and Report; (12) Future Board Meetings; (13) Board Retreat Agenda; (14) New Business; (15) Adjournment.

ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities.

The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA) 5 U.S.C. app. 2, when it provides advice or recommendation to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Board of Directors of ITS AMERICA will meet on Thursday, May 2, 2002, from 1 p.m.–5 p.m.

ADDRESSES: Hyatt Regency Long Beach, Sea View Ballroom A/B, 200 South Pine Avenue, Long Beach, California, 90802. Phone (562) 491–1234.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue SW., Suite 800, Washington, DC 20024. Persons needing further information or who request to speak at this meeting should contact Debbie M. Busch at ITS AMERICA by telephone at (202) 484–2904 or by FAX at (202) 484–3483. The DOT contact is Kristy Frizzell, FHWA, HOIT, Washington, DC 20590, (202) 366–9536. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except for legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: March 1, 2002.

Jeffrey F. Paniati,

Program Manager, ITS Joint Program Office, Department of Transportation.

[FR Doc. 02–5343 Filed 3–5–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2002–11719]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request approval for three years of a new information collection titled, "Intermodal Access to Shallow Draft Ports and Terminals Survey."

DATES: Comments should be submitted on or before May 6, 2002.

ADDRESSES: *Comments:* Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street. SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit*. Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Evie Chitwood, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone: 202–366–5127; FAX: 202–366–6988, or e-mail: *evie.chitwood@marad.dot.gov*. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Intermodal Access to Shallow Draft Ports and Terminals Survey.

Type of Request: Approval of a new information collection.

OMB Control Number: 2133–NEW.

Form Numbers: MA–1024B

Expiration Date of Approval: Three years from the date of approval.

Summary of Collection of Information. The Maritime Administration (MARAD) has primary responsibility for ensuring the availability of efficient water transportation service to shippers and consumers. This information collection is designed to be a survey of critical infrastructure issues that impact the Nation's shallow draft marine ports and terminals. The survey will provide MARAD with key road, rail, and waterside access data as well as security information and highlight the issues that affect the flow of cargo through U.S. shallow draft marine ports and terminals.

Need and Use of the Information: This collection will allow MARAD to assess the magnitude and nature of impediments to efficient intermodal connections to shallow draft marine ports and terminals and provide information on correcting deficiencies.

Description of Respondents: Officials at the Nation's key shallow draft marine ports and terminals.

Annual Responses: 45

Annual Burden: 22.5 hours

Dated: March 1, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–5342 Filed 3–5–02; 8:45 am]

BILLING CODE 4910–81–P

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 December 21, 2001.

DATES: Comments must be submitted on or before April 5, 2002.

ADDRESSES: 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.

FOR FURTHER INFORMATION CONTACT: Patricia Thomas, Maritime Administration, MAR–250, 400 Seventh St., SW., Washington, DC 20590. Telephone: 202–366–2646; FAX 202–493–2288 or E-MAIL: *patricia.thomas@marad.dot.gov.*

Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Regulations for Making Excess or Surplus Federal Property Available to the U.S. Merchant Marine Academy and State Maritime Academies.

OMB Control Number: 2133–0504.

Type of Request: Extension of currently approved collection.

Affected Public: Maritime training institutions interested in acquiring excess or surplus property from the Maritime Administration.

Form(s): None.

Abstract: In accordance with 46 U.S.C., MARAD requires approved maritime training institutions seeking excess or surplus property to provide a statement of need/justification prior to acquiring the property. The information provided is used by MARAD officials to determine compliance with applicable statutory requirements.

Annual Estimated Burden Hours: 60 hours.

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 March 1, 2002.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–5341 Filed 3–5–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on December 18, 2001 (66 FR 65248–65249).

DATES: Comments must be submitted on or before April 5, 2002.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Alan Block at the National Highway Traffic Safety Administration, Office of Research and Traffic Records (NTS–31), 202–366–6401, 400 Seventh Street, SW., Room 6240, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Buckle Up America Telephone Surveys 2002–2004.

OMB Number: 2127—New.

Type of Request: New information collection requirement.

Abstract: Buckle Up America is a Presidential initiative to increase seat belt use and child restraint use. As part of this initiative, two national mobilizations are conducted every year during May and November. The mobilizations are designed to increase seat belt use and child restraint use through education and enforcement of restraint laws. NHTSA proposes to conduct telephone surveys both before, and after, each mobilization during the next three years to help evaluate their impact.

Affected Public: Randomly selected members of the general public aged sixteen and older in telephone households.

Estimated Total Annual Burden: 9,133.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on February 28, 2002.

Delmas Maxwell Johnson,

Associate Administrator for Administration.

[FR Doc. 02–5339 Filed 3–5–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–2002–11270, Notice No. 02–2]

Safety Advisory: Unauthorized Marking of Compressed Gas Cylinders

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Safety advisory notice.

SUMMARY: This is to notify the public that RSPA and the Department of Transportation's Office of Inspector General (OIG) are investigating the unauthorized marking of high-pressure compressed gas cylinders by Fire Safety Products, Inc. Fire Safety Products, Inc. has two facilities: 203 Depot Street, Christiansburg, VA 24073, and 101 Beckley Road, Princeton, WV 24605. RSPA and the OIG determined that Fire Safety Products marked and certified an undetermined number of high pressure DOT specification and exemption cylinders as properly tested in accordance with the Hazardous Materials Regulations (HMR), when the cylinders were not hydrostatically retested or visually inspected, or when the cylinders were improperly tested and inspected.

A hydrostatic retest and visual inspection, conducted as prescribed in the HMR, are used to verify the structural integrity of a cylinder. If the hydrostatic retest and visual inspection are not performed in accordance with the HMR, a cylinder with compromised structural integrity may be returned to service when it should be condemned. Extensive property damage, serious personal injury, or death could result from rupture of a cylinder. Cylinders not retested in accordance with the HMR may not be charged or filled with compressed gas or other hazardous material and offered for transportation in commerce.

FOR FURTHER INFORMATION CONTACT: Anthony Lima, Hazardous Materials Enforcement Specialist, Eastern Region, Office of Hazardous Materials Enforcement, Research and Special Programs Administration, U.S. Department of Transportation, 820 Bear Tavern Road, Suite 306, W. Trenton, NJ 08034. Telephone: (609) 989–2256, Fax: (609) 989–2277.

SUPPLEMENTARY INFORMATION: Through its investigation of Fire Safety Products, RSPA and the OIG determined that Fire Safety Products marked and certified an undetermined number of cylinders as properly tested in accordance with the HMR without conducting proper testing of the cylinders. RSPA and the OIG also discovered that Fire Safety Products destroyed all records of retest and reinspection created prior to April 2001. As a result of this destruction of records, it is impossible to determine, at this time, the number of cylinders in question. The cylinders detailed on Fire Safety Products' records from April 2001 to August 2001 may only represent a limited number of the total number of cylinders that Fire Safety Products apparently marked and certified as in compliance with the HMR, without properly testing and inspecting them. Therefore, all cylinders marked and certified as requalified by Fire Safety Products after August 1998, may pose a safety risk to the public and should be considered unsafe for use in hazardous materials service until retested by a DOT-authorized facility.

Fire Safety Products' Retester Identification Number (RIN) is C716. The cylinders in question are stamped with RIN C716 in the following pattern:

C 7
M Y
61

M is the month of retest (e.g., 10), and Y is the year of the retest (e.g., 01).

Anyone who has a cylinder serviced by Fire Safety Products since August 3, 1998, and has not retested the cylinder since then, should consider the cylinder unsafe and not fill it with a hazardous material unless the cylinder is first properly retested by a DOT-authorized retest facility. Cylinders described in this safety advisory that are filled with an atmospheric gas should be vented or otherwise safely discharged and then taken to a DOT-authorized cylinder retest facility for proper retest . This action is to determine compliance with the HMR and to ensure the cylinders' suitability for continuing service. Cylinders described in this safety advisory that are filled with a material other than an atmospheric gas should not be vented, but instead should be safely discharged. Upon discharge, the cylinders should be taken to a DOT-authorized cylinder retest facility for proper retest to determine compliance with the HMR and to ensure their suitability for continuing service. The inspector can provide a list of authorized retest facilities in your area, or you may obtain the list at the following website: http://hazmat.dot.gov. Under no circumstance should a cylinder described in this safety advisory be filled, refilled or used for its intended purpose until it is reinspected and retested by a DOT-authorized retest facility.

RSPA requests that any person possessing a cylinder described in this safety advisory telephone or provide a facsimile to Inspector Lima with the following information for each cylinder: (1) The cylinder manufacturer's name, (2) the serial number of the cylinder, (3) the DOT specification or exemption information for the cylinder, and (4) the month and year of the last marked retest by Fire Safety Products.

Issued in Washington, DC, on February 28, 2002.

Frits Wybenga,

Deputy Associate Administrator for Hazardous Materials Safety.

[FR Doc. 02–5344 Filed 3–5–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–101 (Sub–No. 15X)]

Duluth, Missabe and Iron Range Railway Company—Abandonment Exemption—in St. Louis County, MN

Duluth, Missabe and Iron Range Railway Company (DM&IR) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances* to abandon and discontinue service over a 0.63-mile line of railroad known as the Virginia Branch, extending from milepost B5.5 to milepost B6.1, in St. Louis County, MN. The line traverses United States Postal Service Zip Code 55792.

DM&IR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has been handled over the line for at least 2 years; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment 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 April 5, 2002, 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 March 18, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 26, 2002 with: Surface Transportation 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: Thomas R. Ogorcuc, 135 Jamison Lane, Monroeville, PA 15146.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

DM&IR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by March 11, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation, Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. [TDD for the hearing impaired is available at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), DM&IR 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 DM&IR's filing of a notice of consummation by March 6, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

[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 decisions and notices are available on our website at "WWW.STB.DOT.GOV".

Decided: February 25, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–4928 Filed 3–5–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 27, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 5, 2002 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1570.

Regulation Project Number: REG–120168–97 (Final).

Type of Review: Extension.

Title: Preparer Due Diligence Requirements for Determining Earned Income Credit Eligibility.

Description: Income tax return preparers who satisfy the due diligence requirements in this regulation will avoid the imposition of the penalty under section 6695(g) of the Internal Revenue Code for returns or claims for refund due after December 31, 1997. The due diligence requirements include soliciting the information necessary to determine a taxpayer's eligibility for, and amount of, the Earned Income Tax Credit, and the retention of this information.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 100,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 5 hours, 4 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 507,136 hours.

Clearance Officer: George Freeland, Internal Revenue Service, Room 5577, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 02–5259 Filed 3–5–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0379]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to verify the actual number of hours worked by a work-study claimant.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 6, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0379" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 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. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: Time Record (Work-Study Program), VA Form 22–8690.

OMB Control Number: 2900–0379.

Type of Review: Extension of a currently approved collection.

Abstract: Claimant, who elects to receive an advance payment, must complete his or her first 50 hours of service. VA will make advance payment for 50 hours, but will withhold benefits (to recoup the advance payment) until the claimant completes his or her 50 hours of service. VA will not pay any additional amount in advance payment cases until the claimant completes a total of 100 hours of service (50 hours for the advance payment and 50 hours for an additional payment). If the claimant elects not to receive an advance payment, benefits are payable when the claimant completes 50 hours of service. VA Form 22–8690 is used to report the number of hours completed and to ensure that the amount of benefits payable to a claimant who is pursuing work-study is correct.

Affected Public: State, Local or Tribal Governments, Individuals or households, Business or other for-profit, Not-for-profit institutions.

Estimated Annual Burden: 13,667 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 41,000.

Estimated Annual Responses: 164,000.

Dated: February 20, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–5263 Filed 3–5–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0390]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine eligibility for certain surviving spouses and children of deceased veterans for REPS (Restored Entitlement Program for Survivors) benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 6, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0390" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 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. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: Application of Surviving Spouse or Child for REPS Benefits (Restored Entitlement Program for Survivors), VA Form 21–8924.

OMB Control Number: 2900–0390.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–8924 is used by survivors of deceased veterans to claim Restored Entitlement Program for Survivors (REPS) benefits. REPS pays benefits to certain surviving spouses and children of veterans who died in service prior to August 13, 1981 or who died as a result of a service-connected disability incurred or aggravated prior to August 13, 1981. The information on the form is used to determine if the applicant meets REPS eligibility criteria.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,500 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 7,500.

Dated: February 19, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–5264 Filed 3–5–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0064]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of

information, including each proposed reinstatement, with change, of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine the proper payee for certain accrued benefits upon the death of a beneficiary.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 6, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0064" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 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. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: Application for Amounts Due Estates of Person Entitled to Benefits, VA Form 21–609.

OMB Control Number: 2900–0064.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: The form is used to gather information to determine the individual(s) who may be entitled to accrued benefits of deceased beneficiaries.

Affected Public: Individuals or households.

Estimated Annual Burden: 375 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 750.

Dated: February 20, 2002.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 02–5265 Filed 3–5–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0055]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information to determine the eligibility of a surviving spouse of a veteran for VA home loan benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 6, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0055" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 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. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: Request for Determination of Loan Guaranty Eligibility—Unmarried Surviving Spouses, VA Form 26–1817.

OMB Control Number: 2900–0055.

Type of Review: Extension of a currently approved collection.

Abstract: Title 38, U.S.C. 3701(b)(2) authorizes VA to extend home loan benefits to unmarried surviving spouses of veterans whose death (1) occurred either while serving on active duty or (2) were a direct result of service-connected disabilities. The unmarried surviving spouse of a veteran completes VA Form 26–1817 as a formal request for a certificate of eligibility for home loan benefits. The information is used to determine the applicant's basic eligibility for the benefit.

Affected Public: Individuals or households.

Estimated Annual Burden: 250 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,000.

Dated: February 19, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–5266 Filed 3–5–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0009]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 5, 2002.

ADDRESSES: Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0009" in any correspondence.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0009."

SUPPLEMENTARY INFORMATION:

Title: Disabled Veterans Application for Vocational Rehabilitation, VA Form 28–1900.

OMB Control Number: 2900–0009.

Type of Review: Extension of a currently approved collection.

Abstract: Service-connected disabled veterans and servicepersons awaiting discharge for disability use VA Form 29–1900 to apply for vocational rehabilitation benefits. The application obtains information needed to evaluate an applicant's claim for benefits.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 30, 2001, at pages 59841–59842.

Affected Public: Individuals or households.

Estimated Annual Burden: 13,500 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 54,000.

Dated: February 20, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–5261 Filed 3–5–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0029]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 5, 2002.

ADDRESSES: Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0029" in any correspondence.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0029."

SUPPLEMENTARY INFORMATION:

Titles

a. Offer to Purchase and Contract of Sale, VA Form 26–6705.

b. Credit Statement of Prospective Purchaser, VA Form 26–6705b.

c. Addendum to Offer to Purchase and Contract of Sale, VA Form 26–6705d.

OMB Control Number: 2900–0029.

Type of Review: Extension of a currently approved collection.

Abstract

a. VA Form 26–6705 is used by the private sector sales broker to submit an offer to VA on behalf of a prospective purchaser of a VA-acquired property. The form is prepared for each proposed contract submitted to VA. If VA accepts the offer to purchase, it then becomes a contract of sale. The form defines the terms of sale, provides the prospective purchaser with a receipt for his/her earnest money deposit, eliminates the need for separate transmittal of a purchase offer and develops the contract without such intermediate processing steps and furnishes evidence of the station decision with respect to the acceptance of the contract as tendered. Without this information, a determination of the best offer for a property cannot be made.

b. VA Form 26–6705b is used as a credit application to determine the creditworthiness of a prospective purchaser in those instances when the prospective purchaser seeks VA vendee financing, along with VA Form 26–6705. In such sales, the offer to purchase will not be accepted until the purchaser's income and credit history have been verified and a loan analysis has been completed, indicating loan approval.

c. VA Form 26–6705d is an addendum to VA Form 26–6705 for use in Virginia. It includes requirements of State law, which must be acknowledged by the purchaser at or prior to closing.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 10, 2001, at pages 63746–63747.

Affected Public: Individuals or households.

Estimated Annual Burden: 57,917 hours.

a. VA Form 26–6705—35,000 hours.
b. VA Form 26–6705b—22,500 hours.
c. VA Form 26–6705d—417 hours.

Estimated Average Burden Per Respondent: 20 minutes (average).

a. VA Form 26–6705—21 minutes.
b. VA Form 26–6705b—20 minutes.
c. VA Form 26–6705d—5 minutes.

Frequency of Response: On occasion.

Estimated Number of Total Respondents: 172,500.

a. VA Form 26–6705—100,000.
b. VA Form 26–6705b—67,500.
c. VA Form 26–6705d—5,000.

Dated: February 19, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–5262 Filed 3–5–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Research and Development Office; Government Owned Invention for Licensing

AGENCY: Research and Development Office, VA.

ACTION: Notice of Government owned invention available for licensing.

SUMMARY: The invention listed below is owned by the U.S. Governments as represented by the Department of Veterans Affairs, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on this invention may be obtained by Writing to: Mindy Aisen, MD, Department of Veterans Affairs, Director, Technology Transfer Program, Research and Development Office, 810 Vermont Avenue, NW., Washington, DC 20420; Fax: (202) 275–7228; e-mail at *mindy.aisen@mail.va.gov*.

Any request for information should include the number and title for the relevant invention as indicated below. Issued patent may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20031.

SUPPLEMENTARY INFORMATION: The invention available for licensing is: 09/972,916 "Glucose Sensitive Regulator of Insulin Transcription"

Dated: February 27, 2002.

Anthony J. Principi,

Secretary, Department of Veterans Affairs.

[FR Doc. 02–5267 Filed 3–5–02; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 67, No. 44

Wednesday, March 6, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 217

[INS No. 2188–02; AG ORDER No. 2561–2002]

RIN 1115–AB93

Termination of the Designation of Argentina as a Participant Under the Visa Waiver Program

Correction

In rule document 02–4260 beginning on page 7943 in the issue of Thursday, February 21, 2002, make the following correction:

On page 7944, in the first column, under the heading **Why is Argentina's Designation in the VWP Being Terminated?**, in the ninth line "Nationalization" should read, "Naturalization".

[FR Doc. C2–4260 Filed 3–5–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
March 6, 2002

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 403

Medicare Program; Medicare-Endorsed Prescription Drug Card and Drug Discount Card Assistance Initiative; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 403

[CMS–4027–P]

RIN 0938–AL25

Medicare Program; Medicare-Endorsed Prescription Drug Card Assistance Initiative

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would describe the Department of Health and Human Services' (HHS) Medicare-Endorsed Prescription Drug Card Assistance Initiative, and set forth the necessary requirements to participate in the initiative. This proposed rule also cross-references an advance notice of proposed rulemaking entitled "Medicare Program; Medicare-Endorsed Prescription Drug Discount Card Assistance Initiative for State Sponsors", published elsewhere in this **Federal Register** issue, outlining steps that we are considering proposing in support of State efforts to make more readily available affordable prescription drugs to Medicare beneficiaries.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on May 6, 2002.

ADDRESSES: In commenting, please refer to file code CMS–4027–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and three copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4027–P, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses:

Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, Room 443–G, Washington DC 20201, or

Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Room C5–16–03, Baltimore, MD 21244–1850.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Debbie Van Hoven, (410) 786–8070.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, telephone (410) 768–7197.

I. Background

A. History of the Initiative

With limited exceptions, the Medicare benefit package currently does not include an outpatient prescription drug benefit. While approximately 73 percent of Medicare beneficiaries have drug coverage at any given time (under, for example, employer-sponsored retiree health plans or Medicaid), an estimated 10 million have no drug coverage. Without access to the discounts that come with most kinds of prescription drug coverage, many beneficiaries either pay list prices for drugs or have access only to drug discount programs that include modest discounts at the pharmacy. These beneficiaries often do not have access to the valuable services offered by some drug benefit and assistance programs, including services such as drug interaction, allergy monitoring, and advice on how medication needs might be met at a lower cost. Further, a substantial share of beneficiaries have little experience with choosing among prescription drug assistance plans as envisioned in almost all Medicare drug benefit proposals being considered by the Congress. This, along with the need for us to operationalize such a complex benefit, implies a substantial "lead time" for successful implementation of a prescription drug benefit. In his Fiscal Year 2002 and 2003 budgets, the President proposed adding a prescription drug benefit for all Medicare beneficiaries. In the interim before the Medicare drug benefit can be enacted and fully implemented, the President believes that beneficiaries should have access to rebates or discounts from pharmaceutical manufacturers on prescription drugs as well as to pharmaceutical management services that are commonly available in good private insurance plans.

On July 12, 2001, the President announced an initiative that would create a Medicare-Endorsed Prescription Drug Discount Card program to assist Medicare beneficiaries in accessing lower cost prescription drugs and better advice on using them, and understanding the private sector methods that are used to reduce prescription drug costs and improve the quality of pharmaceutical services. We published a notice in the **Federal Register** on July 18, 2001 (66 FR 37564) that contained the application we planned to use to select the entities eligible for the Medicare endorsement. Based on comments received on that application, we issued a revised application on August 2, 2001 on our Web site at *http://www.cms.gov*.

On September 11, 2001, the United States District Court for the District of Columbia issued a preliminary injunction against this Medicare-Endorsed Prescription Drug Discount Card program. *National Ass'n of Chain Drug Stores* v. *Thompson*, No. 01–1554 (D.D.C. 2001). In accordance with that order, we have ceased all work on implementing that program. Although we had received 28 proposals for the drug discount card endorsement in response to our August 2, 2001 solicitation before the September 11, 2001 order, we will not make any Medicare endorsements on the basis of those proposals.

On October 10, 2001, we filed a Motion for Stay with the United States District Court for the District of Columbia asking that the case giving rise to the preliminary injunction be stayed while we engage in notice and comment rulemaking on a modified prescription drug discount card program. On November 5, 2001, the court issued an order granting the Motion for Stay while we submit our proposed policy for comment by publishing this proposed rule in the **Federal Register**. By publishing this proposed rule, we are formally withdrawing the program described in the **Federal Register** on July 18, 2001. We are instead soliciting comments on all aspects of the proposed Medicare-Endorsed Prescription Drug Card Assistance Initiative described in this proposed rule.

This proposed rule describes a program that differs in important respects from the Administration's initial proposal, for example, by requiring card sponsors to obtain substantial manufacturer rebates or discounts, requiring that manufacturer rebates or discounts be shared with

beneficiaries directly or indirectly through pharmacies, and considering that the administrative consortium have an advisory body.

Furthermore, in an advance notice of proposed rulemaking entitled, "Medicare Program; Medicare-Endorsed Prescription Drug Discount Card Assistance Initiative for State Sponsors," published elsewhere in this issue of the **Federal Register**, we outline additional steps that we are considering to propose in support of State efforts to make more readily available affordable prescription drugs to Medicare beneficiaries.

The parameters of the initiative may change further based on the public comments we receive in response to this proposed rule.

If the plaintiffs in the case mentioned above believe that the initiative published in the final rule is substantially similar to the program that was described in the July 18, 2001 **Federal Register**, we expect that before implementation of that initiative, the plaintiffs would seek further judicial review, which could result in a delay in implementation.

B. Statutory Basis for Initiative

For several years we have considered ideas for obtaining significant discounts on prescription drug prices and higher quality drug services for Medicare beneficiaries. After exploring various means of enhancing the purchasing power of Medicare beneficiaries, we propose to use the authority granted to the Secretary under several statutes to achieve private purchasing power for Medicare beneficiaries by educating them about accessing certain qualified prescription drug discount programs.

First, under section 4359(a) of the Omnibus Budget Reconciliation Act of 1990 (OBRA)(Pub. L. 101–508), the Secretary is authorized to "establish a health insurance advisory service program * * * to assist Medicare-eligible individuals with the receipt of services under the Medicare and Medicaid programs and other health insurance programs." Under section 4359(c)(1)(B) of OBRA, the Secretary is authorized to "provide for information, counseling, and assistance for Medicare-eligible individuals" with respect to benefits, whether or not covered by Medicare. The statute is broadly written, with section 4359(c) authorizing the Secretary to provide "such other services as the Secretary deems appropriate to increase beneficiary understanding of, and confidence in, the Medicare program and to improve the relationship between beneficiaries and the program". Section 4359(f) of OBRA expressly anticipates that there will be "other health insurance informational and counseling services" for Medicare-eligible individuals.

We believe that this proposed initiative would meet the definition of a beneficiary assistance program because it would assist Medicare beneficiaries not just with their utilization of Medicare-covered services, but also with the receipt of services common under other health insurance programs. Access to more affordable prescription drugs would assist beneficiaries in receiving services under Medicare and other health insurance programs, since access could lead them to more effectively or efficiently use Medicare services, such as physician or hospital services. We also believe that this Medicare-Endorsed Prescription Drug Card Assistance Initiative would be a valuable educational tool for beneficiaries. It would improve their understanding of how to access prescription drug discounts, as well as increase their understanding of the private sector tools currently used to lower prescription drug costs and improve the quality of pharmaceutical services.

Outpatient prescription drugs generally are not a covered benefit under Medicare. However, we believe that access to prescription drugs is so fundamental to the delivery of modern health care benefits that beneficiaries should receive information, counseling, and assistance regarding the prescription drug discount programs. Section 4359(b) of OBRA already instructs the Secretary to provide education and assistance not just about Medicare-covered benefits, but also about benefits not covered by the Medicare program. For a number of years we have offered Medicare beneficiaries education and assistance in accessing several non-covered benefits that are complimentary to Medicare, Medicaid, and other health insurance programs. Our "Guide to Choosing a Nursing Home" discusses long-term care options outside Medicare coverage, including assisted living, subsidized senior housing, and private long-term care insurance. We provide further education to beneficiaries regarding options for long-term care, such as adult day care and community-based services, many of which are not covered by Medicare. Finally, we provide educational assistance concerning prescription drugs. For example, the Medicare Web site (*http://www.Medicare.gov*) provides information on programs that offer discounts or free medication to individuals in need. Beneficiaries may access information on pharmaceutical companies or associations that offer assistance programs for those with low incomes, on available State assistance programs, or on community-based programs available in their area. This Web site also provides a link to an article on internet pharmacies.

Moreover, by enhancing the buying power and knowledge of beneficiaries, we believe that we will further the Congressional goal in section 4359(c) of OBRA of "increas[ing] beneficiary understanding of, and confidence in, the Medicare program and * * * improv[ing] the relationship between beneficiaries and the program."

Beneficiary confidence in the program would be enhanced by education about drugs that are a critical component of comprehensive health care, and by facilitation of the means by which beneficiaries can purchase drugs at a discounted price and obtain other valuable pharmacy services. This proposed initiative would allow beneficiaries to make more efficient and effective use of their Medicare services, as well as benefits that may be available to them under Medigap plans, employer-sponsored group health plans, retiree health insurance, or other health insurance programs. We believe that the broad provisions of section 4359 of OBRA permit us to pursue these important objectives. (*See Texas Gray Panthers* v. *Thompson*, 139 F. Supp. 2d 66, 76 (D.D.C. 2001)), finding that section 4359 of OBRA is ambiguous in defining what types of "information, counseling, and assistance" are to be provided, and therefore deferring to the Secretary's reasonable interpretation of the statute).

Finally, in the United States District Court case mentioned previously, the judge made a preliminary finding that section 4359 of OBRA did not provide the necessary legal authority for the program published in the **Federal Register** on July 18, 2001. We anticipate that, if the plaintiffs believe that the final rule is substantially similar to the program announced July 12, 2001, they will seek further judicial review. The comments submitted on this issue, and our responses to them, would assist the court in any future review of the policy. If there are commenters who wish to address whether the Secretary has sufficient authority under the statute, we also invite them to comment on how the initiative could be structured to reflect their views.

We believe that sections 1102, 1140 and 1871 of the Social Security Act (the Act) also support the creation of this proposed initiative. Sections 1102 and 1871 of the Act provide the Secretary

with general rulemaking authority. Section 1102 of the Act provides the Secretary with the authority to publish such rules and regulations as "may be necessary to the efficient administration of the functions with which" he is charged. Facilitating beneficiary access to lower-cost prescription drugs, and improving their access to other valuable pharmacy services, will lead to greater efficiency in the Medicare program. For example, with improved access to prescription drugs, beneficiaries would be more inclined to follow their drug regimens, which could affect their need for Medicare-covered services.

Prescription drugs are an integral part of treatment of virtually all medical problems, and Medicare beneficiaries are more likely to have multiple and complex medical problems. Therefore, easier access to drug price comparisons, greater beneficiary access to affordable prescription drugs and expertise on how to use them will lead to more effective and efficient use of items and services covered by the Medicare program. Courts have acknowledged that the authority under section 1102 of the Act is "broad," (*National Welfare Rights Organization* v. *Mathews*, 533 F.2d 637 (D.C. Cir. 1976)) and have even stated that a "more plenary great (sic) of rule-making power would be difficult to devise." (*Serritella* v. *Engleman*, 339 F.Supp. 738, 752 (D.N.J.), aff'd per curiam, 462 F.2d 601 (3d Cir. 1972)).

Section 1140 of the Act also supports the Secretary's creation of this initiative. That section, among other things, prohibits misuse of the word, "Medicare," in a manner that a person knows or should know would convey the false impression that an item is approved, endorsed, or authorized by the Health Care Financing Administration (the predecessor to the agency CMS) or the Department of Health and Human Services. By prohibiting the use of the term "Medicare" to convey the false impression that an item is approved or endorsed by us, the statute implicitly recognizes that the impression may be accurate and authorized in some circumstances. Thus, section 1140 of the Act, in combination with the educational and assistance authority of section 4359 of OBRA, as well as the general rulemaking authority of sections 1102 and 1871 of the Act, provides further support for the Secretary to endorse qualified entities as being approved by the Medicare program.

C. Objectives of Proposed Initiative

The objectives of this proposed initiative would be to:

- Educate Medicare beneficiaries about private market methods available for securing substantial discounts from manufacturers and other competitive sources on the purchase of prescription drugs.
- Provide a mechanism for Medicare beneficiaries to gain access to the effective tools widely used by pharmacy benefit managers and pharmacies to get higher quality pharmaceutical care, for example monitoring for drug interactions and allergies.
- Publicize information (including drug-specific prices, formularies, and networks) to facilitate easy consumer comparisons that would allow Medicare beneficiaries to choose the best card for them.
- Enhance and stabilize participation of Medicare beneficiaries in effective prescription drug assistance programs, increasing the leverage and ability of these programs to negotiate manufacturer rebates or discounts for Medicare beneficiaries and to provide other valuable pharmacy services.
- Enhance the quality and use of Medicare-covered services by improving access to prescription drugs.
- Endorse qualified private sector prescription drug discount card programs (either for profit or nonprofit), based on structure and experience; customer service; pharmacy network adequacy; ability to offer manufacturer rebates or discounts (passing through a substantial portion to beneficiaries, either directly or indirectly through pharmacies), and available pharmacy discounts; and permit endorsed entities to market their programs as Medicare-endorsed.
- Provide Medicare beneficiaries a low (in Year One, $25 maximum) or no-cost opportunity to enroll in a Medicare-endorsed prescription drug discount card program.

We invite comments on all aspects of this proposed rule. We specifically solicit comments on whether additional objectives or requirements should be considered. We also welcome comments on whether beneficiaries currently have adequate information and understanding of the pharmaceutical management services that can help patients use prescription drugs more effectively—such as monitoring for drug interactions and allergies, services to help patients manage chronic illnesses, and education about drug side effects and how they can be managed or avoided. We welcome comments on whether the beneficiary population would benefit from easily being able to compare the formularies, discounts, drug prices, and pharmacy networks of prescription drug discount card programs.

We also invite comments from beneficiaries and others regarding how access to lower cost prescription drugs and to better information on using prescription drugs effectively would improve beneficiary use of Medicare-covered services, and whether this access would result in more efficient use of these services. We welcome comments that include examples of how access to discounted prescription and related services may improve a medical condition.

D. Overview of the Proposed Initiative and Requirements for Endorsement

1. General

We propose to endorse prescription drug card programs that meet defined requirements, and to permit successful applicants to market and label their programs as "Medicare-endorsed."

The proposed Medicare-Endorsed Prescription Drug Card Assistance Initiative would publicize information that would allow Medicare beneficiaries to compare endorsed prescription drug card programs, assist Medicare beneficiaries in understanding and accessing private market methods for securing discounts and other valuable services associated with the use of prescription drugs, and raise beneficiary awareness of certain qualified prescription drug card programs available in the commercial market.

Aspects of the proposed initiative would include the ability of each Medicare-endorsed drug card program sponsor to:

- Obtain substantial manufacturer rebates or discounts on brand name drugs, and provide a substantial portion of the manufacturer rebates or discounts to beneficiaries, either directly or indirectly through pharmacies, in order to reduce the price beneficiaries pay for prescription drugs or enhance the pharmacy services they receive.
- Enroll all Medicare beneficiaries who wish to participate.
- Provide discounts on at least one brand name or generic prescription drug in each of the therapeutic drug classes, groups, and sub-groups representing prescription drugs commonly needed by Medicare beneficiaries.
- Offer a broad national or regional contracted retail pharmacy network, providing convenient retail access.
- Charge no fees to us, or any other Federal agency.
- Charge a small one-time enrollment fee (of no more than $25 per beneficiary in Year One) or no fee.
- Provide customer service to beneficiaries, including enrollment

assistance, toll-free telephone customer service help, and education about the card program services, including any other prescription drug services offered by the program for no additional fee, such as drug interaction monitoring, and allergy alerts.

• Ensure that beneficiaries enroll in only one Medicare-endorsed prescription drug discount card program at a time, so as to facilitate obtaining discounts from drug manufacturers on their behalf.

• Provide notice to beneficiaries of the expected uses of beneficiary information and obtain authorization from each enrollee for the sharing of beneficiary-specific information necessary for the operation of the drug discount card program. Also, obtain separate authorization from each enrollee for sharing information for any purpose other than the operation of the aspects of the discount card program that are part of the endorsement.

• Agree to jointly administer, and abide by the guidelines of, a private administrative consortium funded by Medicare-endorsed discount card program sponsors, to perform administrative functions, consisting of publishing information on drug prices, operating an enrollment exclusivity system, and, by the second year of the initiative, assuming review of marketing materials. The administrative consortium would be financed by the Medicare-endorsed card sponsors.

We are proposing that drug discount card program sponsors in the proposed initiative would be required to limit enrollees in their Medicare-endorsed discount card programs to Medicare beneficiaries. Card sponsors could request the beneficiary's Medicare number or use other means to assess Medicare eligibility. We would not provide data or assistance to verify Medicare eligibility.

Drug discount card program sponsors in this proposed initiative would be able to accept groups of enrollees from insurance groups, such as Medicare+Choice (M+C) plan members, Medigap enrollees, and beneficiaries with employer-sponsored retiree health insurance. If they accept group enrollments, we would require the discount card program sponsors to advise each member of the group of the enrollment exclusivity requirement and other enrollment rules, expected uses of their personal information under the discount card program, and obtain the consent of each member of the group to be enrolled in the discount card program. Members who do not consent to group enrollment would be allowed to enroll individually in the endorsed program of their choice.

We propose to allow M+C organizations to subsidize the enrollment fee and to offer the drug discount card program as part of their Adjusted Community Rate filing, however they would not be allowed to require enrollment in a drug discount card program as a condition of enrollment in any of their M+C plans.

In addition, we believe that this proposed initiative would improve upon the current drug card market. The market-based design of this proposed initiative, and its ability to mimic many of the important design features of an insured product, would give Medicare-endorsed drug discount card programs features that current market products generally do not have.

This proposed initiative would improve upon the current market in several important respects by:

• Securing manufacturer rebates or discounts, and passing them through pharmacies or directly to beneficiaries, resulting in deeper discounts.

• Educating Medicare beneficiaries about formularies, generic substitution, drug utilization review, and other ways of lowering prices and improving the quality of pharmacy services.

• Ensuring that Medicare beneficiaries receive the lower of the negotiated drug discount card price or the pharmacy's lowest price to other cash paying customers.

• Providing the opportunity for Medicare beneficiaries to enroll in a low- or no-fee Medicare-endorsed prescription drug discount card program.

In a recently released report from the General Accounting Office (GAO) entitled "Prescription Drugs: Prices Available Through Discount Cards and From Other Sources" (December 5, 2001), the GAO collected specific price data on 12 brand name and 5 generic commonly used prescription drugs from one regional and four large discount card programs, as well as pharmacies' prices for the same prescription drugs in four selected geographic areas. Some of the pharmacies' prices reported included pharmacy discounts, others did not. The GAO simply reported prices on the 17 drugs; they did not calculate average discount card savings. The average discounts that could be calculated from the GAO reported data are difficult to compare to our estimate of roughly 10 to 13 percent savings off total beneficiary drug spending for several reasons.

First, while the impact analysis is built on an assumption of savings of 10 to 13 percent off total drug spending, we believe that more savings may be possible, depending on the ultimate design of card sponsors' programs. If Medicare-endorsed discount card programs rely heavily on the use of formularies, we expect that manufacturer rebates and discounts would be greater in response. We solicit comments and data on how to maximize manufacturer rebates and discounts.

Second, savings for the proposed initiative are not estimated on a per-prescription basis. For certain drugs for which manufacturer rebates or discounts are secured, we expect to see, under this initiative, drug-specific discounts comparable to insured products, which are often 25 to 30 percent or sometimes more per prescription.

Finally, the price data collected by the GAO do not include all drugs or indicate the relative market share that each drug represents; that is, they are not weighted. Savings estimates calculated by simply averaging selected drug prices do not account for the differences in utilization, and thus, market share.

2. Administrative Consortium Start-Up

Medicare-endorsed drug discount card program sponsors would be expected to fund the cost of administering their own drug card program, in addition to the activities of the administrative consortium. We would not pay for enrollment, management, participation, or any other cost associated with any drug discount card program.

However, we do anticipate providing some financial support toward the start-up of the consortium and its administrative activities, which in Year One would include operating and maintaining an enrollment exclusivity system and a web site for comparing drug prices among the Medicare-endorsed discount card programs. We would expect the administrative consortium to be operational no later than the first day that Year One enrollment may begin. That date would be announced in the final rule. We anticipate providing technical support and identifying options for the administrative consortium's structure, its financial arrangements, system to ensure enrollment exclusivity, and a web site to be used to compare drug prices. Further, we would develop a short-term administrative operating plan for the administrative consortium, and assist the consortium in a short-term transition to full operation.

We would expect the drug card sponsors to share in these start-up costs, as well as to be responsible for the

assurance that the administrative consortium structure and its operation adhere to Federal and State laws, and for the execution of any legal arrangements for the consortium's formation and the implementation of the administrative tasks.

Drug card program sponsors would be required to make a lump sum payment to a privately held escrow account as a term of endorsement to cover anticipated start-up costs to be incurred by the administrative consortium. We propose that the payment amount, which would be estimated by our contractor and may not represent payment in full for these start-up activities, would be prorated by the number of States included in each endorsed card program's network area, weighted by the number of Medicare beneficiaries residing in each State (and Washington, DC). This would not necessarily be the allocation methodology for any additional start-up costs or ongoing costs of the administrative consortium. One possible method for covering costs after the card program sponsors have gained experience would be to allocate costs based on a program's number of Medicare enrollees. We welcome comments on these allocation methods and alternative methods and rationale.

We solicit information on existing systems with the capacity to assure exclusive enrollment and web-based technology that could be used to compare prices. We would like to understand what data or systems variations we could expect across card programs that would need to interface with an exclusivity system and the price comparison web site.

In addition to supporting the administrative consortium start-up, it is our plan for us to be fully responsible in Year One for developing marketing guidelines and conducting review of marketing materials under a technical support contract. We propose that the consortium would assume this responsibility, beginning in Year Two, using guidelines we would develop. The administrative consortium would be free to use independent contractors to perform the review of marketing materials, as well as other consortium functions.

3. Education, Marketing and Other Services

Medicare-endorsed drug discount card program sponsors would be expected to administer and market their discount card program and educate Medicare beneficiaries about the program. In order to secure rebates and deeper discounts for beneficiaries, Medicare-endorsed drug card program sponsors would have the discretion to use formularies, patient education, pharmacy networks, mail order, and other commonly used tools. However, beneficiaries would always have the option to purchase drugs outside of a Medicare-endorsed card program and pay the retail price or a discount price secured through existing non-endorsed cards or some other means, as they do now. Further, pharmacies sometimes offer special prices on drugs for promotional purposes to the general public. If these prices are lower than the price that could be obtained through the drug card program, the card sponsor would be expected to arrange with its network pharmacies that these lower prices must also be made available to Medicare beneficiaries to the extent the drugs are included in the card program's formulary.

We propose that we also would educate beneficiaries about the Medicare-endorsed drug card assistance initiative, both at the time it is announced and as part of ongoing education efforts thereafter. We would create and authorize the use of a Medicare-endorsed prescription drug discount card assistance emblem. We would highlight the Medicare-endorsed drug card assistance initiative in Medicare publications, such as brochures, and in the pre-enrollment package that is sent to all beneficiaries when they become eligible for Medicare. We propose to provide general information about the initiative on the Medicare web site (*http://www.medicare.gov*). We propose to include on our web site information for each discount card program of the following types: Contact information, including toll free telephone numbers for individual programs; identification of the program's web site; enrollment fee; and customer service hours.

Since other prescription drug related services, such as drug interaction notification, drug allergy notification and pharmacy counseling, could improve the overall quality of the card program, we propose to identify these services on our web site as well, provided they are not associated with a separate fee. Additionally, we would consider reporting on our web site the card program sponsor's performance on reliable quality and satisfaction standards pertaining to the card program operation, customer service, and its network's pharmacy services (including the adequacy of the network for underserved populations and populations at risk for health disparities). We request comments on, and information about, available quality measurements, including whether they are standardized and reliable, how they are or could be reported, and whether they would be meaningful to beneficiaries in their selection of a drug discount card program.

We propose that the information made available on our web site also be available to Medicare beneficiaries through the toll-free Medicare information line (1–800–MEDICARE), which is available 24 hours per day, 7 days a week.

Although not required to do so, drug card sponsors could provide other services to beneficiaries who enroll in their card programs. These services could include both drug-related services or items for a fee, such as disease management, and additional non-drug-related services or items, whether for a fee or not, such as discounts on dental services and prescription eyeglasses. These services would not be covered, however, by the Medicare endorsement. Therefore, although program sponsors would be allowed to market these other services to Medicare beneficiaries who are enrolled in their drug discount card programs, they would not be allowed to describe the services as being Medicare-endorsed, or associate them directly with the Medicare endorsement. Sponsors also would be allowed to send marketing materials for these items and services only to those beneficiaries enrolled in their drug discount card programs that elect to receive these materials.

Card program sponsors would be required to follow our marketing guidelines, including the standards we develop for use of the Medicare endorsement emblem. Guidelines would also cover the presentation of the emblem and other information on each program sponsor's discount card.

We recognize that the prescription drug and pharmacy industries are moving toward electronic transmission systems for prescription transactions, due to their inherent efficiencies, and that various systems are being tested. We also recognize that some in the industry are interested in standardization of certain identification information cards.

We would like to better understand the state of development, testing, and market readiness for electronic transmittal of prescription transactions and the standardization of identification information. We solicit comments on how these advances could be implemented to improve the efficiency and effectiveness of individual card programs, and how they could interact with the Medicare-endorsed prescription drug card assistance

initiative to better prepare us, the marketplace, and beneficiaries for a future Medicare drug benefit.

We would like to better understand the present limitations of these electronic transmittal systems, such as electronic signatures, and the efforts to standardize identification information for the card. We also solicit comments on any barriers that might be imposed by the use of these advances in the Medicare-endorsed drug card initiative. For example, we would like to understand if there are competitive advantages and disadvantages to us or the card program sponsors of requiring the pharmacy networks to use electronic transmittal systems of accepting only standardized identification information on the cards.

4. Manufacturers Rebates or Discounts

The name "Medicare" is extremely valuable and highly regarded by the nearly 40 million Medicare beneficiaries. Medicare focus groups have indicated that virtually all seniors recognize the name "Medicare". We believe its name recognition is so strong that it is unlikely to be duplicated in the commercial market.

As a result of the Medicare endorsement, Medicare name recognition, and education of Medicare beneficiaries, we anticipate that Medicare-endorsed drug discount card program sponsors would have increased visibility for their discount drug programs, which would lead to significant enrollment by Medicare beneficiaries. We expect that the attributes of this proposed initiative, coupled with exclusive enrollment, would provide card sponsors with the ability to negotiate significant drug manufacturer rebates or discounts. We expect that competition among card sponsors and, in turn, drug manufacturers to attract beneficiaries through lower prices and other valuable prescription related services would assure that manufacturer rebates or discounts are shared with Medicare beneficiaries either directly or indirectly through pharmacies.

We would require that Medicare-endorsed drug discount card program sponsors obtain substantial manufacturer rebates or discounts on brand name drugs and pass a share of those rebates or discounts through to beneficiaries either directly or indirectly through pharmacies. These requirements would be structured to promote better drug prices for beneficiaries or to enhance pharmacy participation in a card sponsor's network. In particular, card sponsors would be required to have contractual arrangements with drug manufacturers for rebates or discounts and a contractual mechanism for passing on the bulk of rebates or discounts that are not required to fund operating costs to beneficiaries or pharmacies. Card sponsors would be required to have contractual agreements with pharmacies ensuring that the rebates or discounts would be passed through to the Medicare beneficiaries in lower prices or enhanced pharmacy services. Further, we would like to structure these requirements so they do not discourage use of generic drugs.

We request comments concerning other purchasers' experiences with rebates or discounts, such as the level of rebate or discount for brand name drugs (the average amount over a specified unit or a rebate or discount percentage off a stated price), the portion of brand name drugs on a formulary for which rebates or discounts are provided, and efforts to sustain the use of generic drugs in spite of manufacturers' rebates or discounts on brand name drugs. We would also be interested in receiving reliable data on the experience under insurance products and estimates on what could be achieved under a drug discount card program given the proposed design. We would also like to better understand the effects of various levels of rebates or discounts and negotiating strategies on market competition and their impact on the use of generic drugs.

Further, we solicit comments on information and data or experiences of other purchasers regarding the level of rebates or discounts that are shared with purchasers as clients of pharmacy benefit managers, enrollees, and pharmacies. We invite comments on factors to be considered to achieve the objective of ensuring that rebates or discounts are passed through to beneficiaries. Specifically, we are interested in comments that provide information and data on how to account for factors addressed in contracts with employers such as operational expenses and profitability of card sponsors in determining what portion of the rebate or discount must be passed through. We are particularly interested in reliable data to demonstrate a reasonable level of pass through to beneficiaries, taking into account the factors noted above, or other factors that should be considered. We are also interested in the experience in the insurance market with sharing rebates or discounts with pharmacies to support discounts or as incentives for participation in networks, or the funding of other services, such as pharmacy counseling, and any reliable data to support this experience. We also are interested in information and data on the impact of rebates or discounts on the price paid for drugs.

We also solicit comments regarding existing or new operations models to provide rebates or discounts to beneficiaries (such as an estimate of additional manufacturer discount at the point of sale or a periodic rebate check or credit toward further prescription purchases) and to pharmacies (such as quarterly payments based on volume of drugs sold). This includes comments regarding whether the Medicare drug card program could provide easier access for eligible beneficiaries to several recently announced drug manufacturer discount programs. We would like to consider the strengths and limitations of any model, how it could be implemented, and whether to require a particular model.

We also request comments on, and examples of, the necessary processes, as well as time and other constraints associated with negotiating manufacturer rebates or discounts and assuring they are reliably shared with beneficiaries either directly or indirectly through pharmacies. We solicit comments on how to incorporate these considerations into our proposed requirement for substantial manufacturer rebates or discounts on brand name drugs, which would largely be given directly to beneficiaries, but could also be shared with pharmacies to enable them to offer larger discounts or other services, such as pharmacy counseling.

Finally, we solicit comments on proposed approaches for communicating information on the effect of rebates or discounts on prices that beneficiaries would pay at the retail pharmacy.

5. Partnering Opportunity for State Sponsored Drug Card Assistance Programs

The Medicare-Endorsed Prescription Drug Card Assistance Initiative is targeted to the private sector marketplace. To receive a Medicare endorsement, private drug card program sponsors would be required to apply for endorsement, demonstrate that they meet all of the requirements concerning: (1) Applicant structure; experience and participation in the administrative consortium; (2) customer service; and (3) rebates, discounts and access. These requirements would be tailored to reflect the strengths of the private marketplace, as well as to protect the integrity of the initiative, beneficiaries, and the Medicare name from firms with questionable business practices.

While we believe that all of these requirements are important to assure best practices in the private sector, we do not believe they are all well suited for States that are already sponsoring privately administered drug card programs. For example, the definition of a regional sponsor includes providing service in at least 2 contiguous States. Program sponsors also would have to agree to abide by the guidelines of, jointly administer, and fund a privately run administrative consortium intended, among other administrative roles, to review and approve sponsors' marketing materials. Also, some customer service standards and the strict beneficiary confidentiality requirements may not be appropriate for States.

Nonetheless, under this initiative, we propose that States could partner with private drug card program sponsors by selecting a Medicare-endorsed program and offering its own endorsement, and having a distinct card. One restriction would be that the endorsed card program would continue to operate in the State as it is defined in the sponsor's agreement with us. Specifically, we would allow drug formularies and prices to vary geographically, but they would not be able to vary for different populations in the same area. Also, under this initiative, the endorsed discount card program would have to be made available to all Medicare beneficiaries in a State, and we would not allow it to be restricted to only certain Medicare beneficiaries, such as those age 65 and over, or those with certain levels of income. However, different populations could be segmented for marketing purposes, provided the marketing activities would not mislead or intentionally misrepresent to the public the nature of the endorsed program, and marketing activities would include marketing to beneficiaries with disabilities, beneficiaries with End-Stage Renal Disease (ESRD), and beneficiaries age 65 and over.

In the advance notice of proposed rulemaking entitled, "Medicare Program; Medicare-Endorsed Prescription Drug Discount Card Assistance Initiative for State Sponsors", published elsewhere in this issue of the **Federal Register**, we outline additional steps that we are considering proposing to support State efforts to make more readily available affordable prescription drugs to Medicare beneficiaries, including efforts to help low income Medicare beneficiaries access lower prices for prescription drugs.

E. Other Proposed Requirements

In addition to the requirements listed in section I.D of this preamble, we propose that other requirements to participate in the initiative and receive the Medicare endorsement under this proposed rule would be divided into three categories: (1) Requirements related to the applicant's experience, structure and agreement to jointly administer the administrative consortium; (2) requirements related to customer service; and (3) requirements related to discounts, rebates, and access. We would also require applicants to sign an agreement with us certifying that they would comply with all requirements in the agreement, including funding and operating an administrative consortium to perform certain administrative functions, implementing the program as described in the application, and operating consistently within the endorsement requirements.

We propose that all applicants offering a prescription drug card program that apply for Medicare endorsement and meet or exceed these requirements (in addition to any of the requirements listed in section I.D of this preamble), and sign the agreement would be Medicare-endorsed.

The requirements discussed in this section reflect our interpretations of the standards included in the proposed regulation. We would include these interpretations in an application we would append to the final rule. In addition to receiving comments as a result of this proposed rule, we expect to entertain questions from potential applicants on the application during a 14-day period after approval of the application by the Office of Management and Budget (OMB). We will provide additional details concerning this 14-day comment period in the final rule.

1. Applicant Structure, Experience, and Participation in the Administrative Consortium

The requirements relating to the organization of the drug card program sponsor would include significant private sector experience in the United States in pharmacy benefit management, or the administration of drug discount cards or low income drug assistance programs that provide prescription drugs at low or no cost. We propose to require 5 years experience because the Medicare name is so well known and so important to beneficiaries that we would not want the name to be associated with any but the most stable and reputable organizations. The sponsors whose drug discount cards would be endorsed by Medicare should be those that have the experience and capacity to offer Medicare beneficiaries discounts and good customer service and would be likely to continue in the marketplace. The drug card industry is relatively new and has seen organizations entering and leaving the market in short periods of time. The 5 years of experience provides a sufficient amount of time to adequately demonstrate a reasonable track record of good performance and stability, taking into account the history of the pharmaceutical benefit management and discount card industries. Due to the evidence of market turn over in the discount card industry, we think that requiring anything less than 5 years experience would create the risk of having the Medicare name associated with other than stable and reputable organizations.

The same organization with the five years experience would also have to currently operate a regional or national drug benefit or discount drug card, or low income drug assistance program that provides prescription drugs at low or no cost that serves a certain number of covered lives. We would interpret covered lives to mean discrete individuals who have signed enrollment agreements or paid an enrollment fee or insurance premiums, or some comparable documentation, that we could use for verification purposes. We are proposing that in order to qualify for Medicare endorsement, national program sponsors would have to operate in 50 States and Washington, DC and currently serve at least 2 million covered lives, and regional program sponsors would have to operate in at least 2 contiguous States currently serving at least 1 million covered lives. In selecting a geographic definition for regional (at least 2 contiguous States) we attempted to balance the opportunity for smaller programs to qualify with the interest in assuring beneficiary access to network pharmacies when beneficiaries are traveling across a State line.

Since the Medicare endorsement would likely create a very large pool of beneficiaries who wish to obtain the endorsed discount cards, organizational capacity to handle large numbers of people would be an important factor for qualification. Our data show that over 10 million Medicare beneficiaries are without drug coverage for an entire year. Also, beneficiaries with drug coverage through Medigap and other sources face benefit limitations, and many beneficiaries have coverage for only part of the year. Beneficiaries from all of these groups may likely be interested in

the Medicare-endorsed discount cards. Endorsed card program sponsors would need to be capable of handling a large influx of enrollees over a relatively short period of time, to negotiate rebates or discounts with pharmaceutical manufacturers and discounts with retail pharmacies, and to handle the customer service needs of the enrollees.

As discussed in the impact analysis, we estimate that during the first 6 months of operation, as many as 10 million beneficiaries may wish to enroll in a Medicare-endorsed discount card program. The capacity of a Medicare-endorsed discount card program sponsor to accept from 1 to 10 percent of this volume is critical to implementing the discount card initiative. Current levels of covered lives provide evidence of organizational capacity to handle a large enrollment and provide customer service. As a percentage increase in enrollment for organizations with as many as 1 or 2 million covered lives, a potential enrollment of 100,000 to several hundred thousand individuals represents a sizable expansion over current operations.

In examining our data on the number of covered lives served by a variety of organizations, we found that a standard of 1 and 2 million lives, for regional and national programs, respectively, would strike a balance between ensuring a competitive marketplace with a number of different options for Medicare beneficiaries and ensuring that organizations would have the capacity to handle a large increase in covered lives.

We propose that entities would be able to combine their capabilities to meet the various requirements for Medicare endorsement. If multiple organizations combine to meet these requirements, however, one of those organizations would be required to have the requisite 5 years of experience in pharmacy benefit management, or the administration of a drug discount card or low income assistance program that provides prescription drugs at low or no cost, as well as have served the requisite number of covered lives. For example, if a regional pharmacy chain partners with a pharmacy benefit administrator that has the requisite experience and covered lives (and meets all other requirements for endorsement, either individually or through contracts with other organizations), that regional pharmacy chain's program could receive the Medicare endorsement, even though the regional chain by itself does not currently serve the necessary 1 or 2 million individuals and does not have 5 years experience in pharmacy benefit management or the administration of a drug discount card or low income assistance program that provides prescription drugs at low or no cost. Or, for example, a drug manufacturer that wishes to offer discounts on its prescription drugs to Medicare beneficiaries under the Medicare-endorsed card initiative could make arrangements to have those discounts offered to beneficiaries through a pharmacy chain that has operated a drug discount card program for 5 years and is serving the requisite number of covered lives (and together, or through arrangements with other organizations, meet all other requirements for endorsement).

Further, multiple organizations would be allowed to combine under contract or other legal arrangements to assure that any other requirements would be met without regard to the entity with the 5 years experience and responsibility for covered lives.

In assuring that the Medicare endorsement would only be provided to reputable organizations that would be prepared to administer a discount card program in accordance with all of the requirements of this initiative, we propose that if multiple organizations combine to meet the requirements, including establishing a pharmacy network, negotiating manufacturer discounts and rebates, conducting enrollment, and operating the customer service call center, we would require evidence of legal arrangements between or among the entities combining for this purpose. We would require either contracts or signed letters of agreement to be submitted with the application. For the pharmacy network, we would require one copy of each unique contract or signed letter of agreement used across the entire network. We would require evidence in these documents that manufacturer rebates or discounts shared with the pharmacies would be passed through to the beneficiaries in lower prices or enhanced pharmacy services. We propose that at least the following additional requirements must be satisfied in each of the contracts or signed letters of agreement:

- Clearly identifies the parties to the contract.
- Describes the functions to be performed by the subcontractor.
- Contains language that indicates that the subcontractor has agreed to participate in the discount card program.
- Describes the payment the subcontractor will receive for performance under the contract, if applicable.
- Be for a term of at least 15 months.
- Be signed by a representative of each party with legal authority to bind the entity.
- Contains language obligating the subcontractor to abide by the same State and Federal confidentiality requirements, including those required under the Medicare endorsement, that apply to the applicant in offering its discount card program.

Where legal documentation is provided but does not constitute the actual contract for the purpose of operating the Medicare-endorsed discount card, we would allow the contract to be submitted following receipt of the Medicare endorsement, but we would not allow marketing and enrollment activities to begin until we determine that our requirements for legal agreements are satisfied.

A separate proposal for each drug card program would be required. An organization or entity would be allowed to have operational responsibilities in more than one drug discount card program. However, a sponsoring organization or entity would be allowed to be the primary sponsoring organization or entity in only one card program at any time.

Additional requirements to assure that the Medicare endorsement would be provided to reliable and stable organizations would include a demonstration of financial integrity and business ethics. We would interpret this to mean that the following requirements be met for the applicant, as well as for each of any subcontractors or organizations under other legal arrangements with the applicant to develop the pharmacy network, to handle the negotiation of rebates and discounts on behalf of the card sponsor, or to operate enrollment, and including the entity that meets the 5 years of experience and covered lives requirements:

- Provide a summary of the history, structure and ownership, including a chart showing the structure of ownership, subsidiaries and business affiliations.
- Provide the most recent audited financial statements (balance sheet, income statement, statement of cash flow along with auditor's opinions and related footnotes). Each of these entities must demonstrate that total assets are greater than total unsubordinated liabilities and that sufficient cash flow exists to meet obligations as they come due.
- Report financial ratings, if any, for the past 5 years.
- List past or pending investigations and legal actions brought against any of

these entities (and parent firms if applicable) by any financial institution, government agency (local, State, or Federal) or private organization over the past 5 years on matters relating to health care and prescription drug services and/or allegations of fraud.

Each applicant would be required to provide a brief explanation of each action, including the following:

(a) Circumstances; (b) status (pending or closed); and (c) details as to resolution and any monetary damages, if closed. Additionally, we would conduct an independent investigation to include at least a review of Federal databases for issues related to any of these entities.

Drug discount card program sponsors would also be required to jointly administer, abide by the guidelines of, and fund a private administrative consortium with all other sponsors of Medicare-endorsed discount card programs. The funded administrative tasks would include the following 3 functions: (1) Assuring enrollment exclusivity; (2) reviewing marketing materials; and (3) publishing comparative prescription drug price information for beneficiaries.

This proposed rule would require enrollment exclusivity for beneficiaries because a low-or no-fee card program could otherwise lead beneficiaries to enroll in more than one Medicare-endorsed drug card. Multiple enrollments would dilute the negotiating leverage of each organization offering an endorsed discount card, thereby lowering the discounts from drug manufacturers available to beneficiaries. In order to maximize these discounts, we propose that each beneficiary who enrolled in an endorsed drug discount card program would be required to enroll exclusively in one Medicare-endorsed card program, as is generally the case with programs that provide both discounts on, and insurance coverage of, prescription drug costs. A beneficiary enrolling for the first time in a Medicare-endorsed drug discount card program could enroll at any time of the year. Beneficiaries would be allowed to disenroll at any time and could elect another Medicare-endorsed drug discount card program; however the new enrollment would not become effective until the first day of the following January or July following the date of disenrollment, which ever came first, unless the program in which the beneficiary was enrolled was no longer operating under Medicare's endorsement; in this case the beneficiary could join another card program any time during the year.

The administrative consortium would also be responsible for reviewing marketing materials prepared by the Medicare-endorsed drug discount card program sponsors. In the first year of the initiative, we propose that we would be responsible for developing marketing guidelines and reviewing the marketing materials. Beginning in the second year of the initiative, we propose that the consortium would assume review of marketing materials using guidelines drafted by us. It is essential that marketing materials be reviewed to ensure that the Medicare name is not misused, for example, to market services unrelated to prescription drugs.

Finally, we would require Medicare-endorsed drug discount card program sponsors to publish, through the administrative consortium, comparative information on the prices offered to Medicare beneficiaries for drugs covered by the discount card. To provide time for the administrative consortium to develop a price comparison methodology for the web site that would reflect the actual price a beneficiary would encounter at the point of sale, in the first year, we propose that discounts on the web site be expressed as a percentage off the Average Wholesale Price (AWP) for a standard set of the most commonly used drugs and dosages. By the second year of the initiative, we propose that the administrative consortium would be expected to publish the actual price that Medicare beneficiaries would pay for drugs offered by each Medicare-endorsed discount card sponsor. This comparative information would assist beneficiaries in deciding which Medicare-endorsed discount card would offer them the greatest financial advantage. Since we are proposing that we would allow the discount card program sponsors' formularies and prices to vary geographically and over the period of the Medicare endorsement, we would require that the card sponsors report any price and formulary changes to the administrative consortium, for posting on the consortium's web site, at least 48 hours before the changes would become effective. We solicit comments on whether the consortium web site should also provide other information on card programs, such as prescription drug-related services for no additional fee that are considered part of the Medicare-endorsed card sponsors' programs.

We propose as a qualification requirement that the applicant provide notice to beneficiaries of the expected uses of beneficiary information within the Medicare-endorsed drug discount card program and obtain written authorization from each enrollee for the sharing of beneficiary-specific information necessary for the operation of the discount card program. Also, the applicant would be required to obtain separate authorization from each enrollee for sharing information for any other purpose. This activity would be coordinated with the enrollment process to assure that beneficiaries understand their confidentiality rights as provided under this initiative. Further, enrollment, marketing and any other activities of Medicare-endorsed card programs could not be combined with the functions for non-Medicare-endorsed card services, in order to assure the full protection of a beneficiary's personal information as required under the Medicare endorsement agreement.

2. Customer Service

We are proposing that the one-time enrollment fee for any Medicare-endorsed drug discount card be limited (a maximum of $25 in Year One), and we would encourage Medicare-endorsed card program sponsors to keep their fees as close to zero as possible. We believe this limit would allow some discount card program sponsors to recoup some of their administrative costs through the enrollment fee, so more of the manufacturer rebates could be passed on to beneficiaries, but would not be so prohibitive so as to dissuade beneficiaries from enrolling in the drug card assistance programs.

We further propose that if a beneficiary changed drug card programs, the beneficiary could be charged a separate one-time enrollment fee by the second drug card program. We recognize that the use of a one-time enrollment fee by a card program differs from the current market practice of charging annual fees; we solicit comments on the benefits and disadvantages of also permitting, for example, an annual nominal renewal fee of a maximum of $15.

We would require that the card sponsor provide to Medicare beneficiaries information and outreach regarding the discount card. We would interpret this to mean that the endorsed card programs must disclose, in customer appropriate printed material, to Medicare beneficiaries (prior to enrollment and after enrollment upon request) a detailed description of the program that included contracted pharmacies, enrollment fees (if any), drugs included, and their prices to reflect discounts that are provided to the consumer. We would anticipate that this information would also be made available on the drug card sponsors' web sites and through their enrollment and customer service phone lines. In

addition, card sponsors that provide additional prescription drug quality services for no additional fee, such as drug interaction, allergy alerts, and pharmacy counseling would be expected to educate beneficiaries about the role of and availability of these services, and provide information to us for use on our web site.

We also propose that endorsed card programs would be required to accept all Medicare beneficiaries who wish to participate in the card program. We would expect the endorsed drug discount card programs to maintain methods for enrollment similar to usual business practice—such as accepting enrollees through paper, telephone, fax or Internet. However, the beneficiary confidentiality requirements would also require that the card program sponsor collect and maintain a signed agreement to use a beneficiary's personal information as specified in the statement of expected uses of such data.

In order to be consistent with the beneficiary confidentiality requirements, the requirements also would include a restriction on drug card program sponsors that have received Medicare endorsement that would prohibit them from marketing or sending unsolicited marketing materials concerning other services they offer (including both prescription drug related services that are provided for a separate fee, such as disease management, and nonprescription drug related services whether or not for a fee, such as discounts on dental services and prescription eyeglasses) to beneficiaries who have not actively elected to receive these marketing materials.

We would require each endorsed card program sponsor to maintain a toll-free customer call center to assist beneficiaries in understanding the drug card program offered. We propose that the call center must be open during usual business hours and provide customer telephone service in accordance with standard business practices. We propose to interpret this to mean that the call center would be available at least Monday through Friday from 8 a.m. to 4:30 p.m. Eastern to Pacific Standard times for those zones in which the discount card program would operate. We would also interpret the requirement that the call center be operated in accordance with standard business practices to mean that 70 percent of customer service representatives' time would be spent answering telephones and responding to enrollee inquiries; 80 percent of all incoming customer calls would be answered within 30 seconds; the abandonment rate for all incoming customer calls would not exceed 5 percent; and that there would be an explicit process for handling customer complaints. These standards are required or exceeded by the 1–800 Medicare call center contractors.

3. Discounts, Rebates, and Access

Each drug discount card program would be required to provide a discount for at least one drug identified in the therapeutic classes, groups, and subgroups of drugs commonly needed by Medicare beneficiaries as listed in the application. This requirement would be to assure that beneficiaries enrolling in Medicare-endorsed discount card programs would be offered discounts on many of the types of drugs most commonly needed. The classes, groups and subgroups were developed from self-reported drug utilization data collected under the 1998 Medicare Current Beneficiary Survey (MCBS), and in consultation with Federal experts in pharmacology and using nationally recognized pharmacology classifications. We would anticipate modifying these classes, groups, and subgroups over time in future solicitations to remain current with beneficiary use of drugs and changes in the market, including the emergence of new drug types and drugs removed from the market. These drug groupings are listed on Table 1. Endorsed drug discount card programs would be allowed to vary their formularies by geographic location and over the course of the endorsement period.

We would also require that each drug card program sponsor obtain substantial manufacturer rebates or discounts on brand name drugs and share a substantial portion with beneficiaries, either directly or indirectly through pharmacies.

The table below shows the drug therapeutic classes and groups (and in a few cases, subgroups) that contain the drugs most commonly needed by Medicare beneficiaries.

TABLE 1.—THERAPEUTIC CLASSES AND GROUPS/SUBGROUPS OF DRUGS COMMONLY NEEDED BY MEDICARE BENEFICIARIES

Therapeutic drug classes	Drug groups/subgroups (subgroups where shown are indented)
Nutrients and Nutritional Agents	
Hematological Agents	
	Hematopoietic Agents
	Antiplatelet Agents
	Coumarin and Indandione Derivatives
	Hemorrheologic Agents
Endocrine/metabolic Agents	
	Sex Hormones
	Bisphosphonates
	Antidiabetic Agents
	Insulin
	Sulfonylureas
	Biguanides
	Thiazolidinediones
	Others
	Adrenocortical Steroids
	Thyroid Drugs
	Calcitonin-Salmon
	Agents for Gout
Cardiovascular Agents	
	Inotropic Agents
	Antiarrhythmic Agents
	Calcium Channel Blocking Agents
	Dihydropyridine

TABLE 1.—THERAPEUTIC CLASSES AND GROUPS/SUBGROUPS OF DRUGS COMMONLY NEEDED BY MEDICARE BENEFICIARIES—Continued

Therapeutic drug classes	Drug groups/subgroups (subgroups where shown are indented)
	Others
	Vasodilators 3
	Antiadrenergics/Sympatholytics
	Alpha/Beta Andrenergic Blocking Agent
	Antiadrenergic Agents-Centrally Acting
	Antiadrenergic Agents-Peripherally Acting
	Renin Angiotensin System Antagonists
	Angiotensin—Converting Enzyme Inhibitors
	Angiotensin II Receptor Antagonists
	Antihypertensive Combinations
	Antihyperlipidemic Agents
	Bile Acid Sequestrants
	HMG—CoA Reductase Inhibitors
	Others
Renal and Genitourinary Agents	
	Anticholinergics
	Diuretics
	Thiazides and Related Diuretics
	Loop Diuretics
	Others
Respiratory Agents	
	Bronchodilators
	Leukotriene Modulators
	Respiratory Inhalant Products
	Corticosteroids
	Intranasal Steroids
	Mast Cell Stabilizers
	Others
	Antihistamines
	Cough Preparations
Central Nervous System Agents	
	Analgesics
	Narcotic
	Agents for Migraine
	Others
	Antiemetic/Antivertigo Agents
	Antianxiety Agents
	Antidepressants
	Selective Serotonin Reuptake Inhibitors
	Others
	Antipsychotic Agents
	Phenothiazines/Thioxanthenes
	Butytophenones
	Indoles
	Other Antipsychotic Agents
	Cholinesterase Inhibitors
	Sedatives and Hypnotics, Nonbarbiturate
	Anticonvulsants
	Iminostilbene
	Hydantoins
	Barbiturates
	Deoxybarbiturates
	Succinimides
	Valproic Acid
	Oxazolidinedione
	Benzodiazepines
	GABA Mediating Medications
	Other Anticonvulsants
	Antiparkinson Agents
Gastrointestinal Agents	
	Histamine H2 Antagonists
	Proton Pump Inhibitors
	GI Stimulants
Systemic Anti-Infectives	
	Penicillins
	Cephalosporins and Related Antibiotics
	Fluoroquinolones
	Macrolides
	Sulfonamides
	Antivirals

TABLE 1.—THERAPEUTIC CLASSES AND GROUPS/SUBGROUPS OF DRUGS COMMONLY NEEDED BY MEDICARE BENEFICIARIES—Continued

Therapeutic drug classes	Drug groups/subgroups (subgroups where shown are indented)
	Antiretroviral Agents
Biological and Immunologic Agents	
	Immunologic Agents
Dermatological Agents	
	Anti-Inflammatory Agents
Ophthalmic/Otic Agents	
	Agents for Glaucoma
	Cholinergic
	Sympathomimetic
	Adrenergic Antagonists
	Prostaglandins
	Carbonic Anhydrase Inhibitors
	NonSteroidal Anti-Inflammatory Agents (NSAIDS)
	Anticholinergic
	Muscarinic Antagonists
	Glucocorticoids
	Anti-Infectives
	Mast-cell Stabilizers/Antihistamines
	Other Outpatient Ophthalmologics
Antineoplastic Agents	
	Antimetabolites
	Hormones
	Antiestrogens
	Aromatase inhibitors
	Antiandrogen
Rheumatologicals	
	Nonsteroidal Anti-Inflammatory Agents
	Immunomodulators
	Cox-2 Inhibitors
	Other Rheumatologicals
	Gout Agents (already listed in endocrine/metabolic class above)

Sources: *Drug Facts and Comparisons,* A Wolters Kluwer Company, 2001 edition; *Pharmacological Basis of Therapeutics,* Goodman and Gilman, 9th edition (1996); *Clinical Pharmacology,* Melman and Morelli, 4th edition, 2000

We propose as a requirement that the card sponsors guarantee that participating Medicare beneficiaries would receive, on all prescription drugs included under the card program at the point of sale, the lower of the discounted price available through the program or the price the pharmacy would charge a "cash" paying customer at that time.

The discount and access requirements would also require any national or regional prescription drug card program to offer Medicare beneficiaries convenient access to retail pharmacies. We propose to interpret convenient retail access to mean demonstrated contracts with retail pharmacies so that upon the start of marketing and enrollment in the discount card program, at least 90 percent of Medicare beneficiaries in the area served by the program would live within 10 miles of a contracted pharmacy (90/10). We would require that this be demonstrated using mapping software, computed by using one hundred percent of beneficiary counts by zip code (provided by us). We would require the applicant's complete list of contracted pharmacies to be available to beneficiaries for the area included under the Medicare endorsement. While we propose that the 90/10 access requirement would pertain to the largest area covered under the Medicare endorsement (either national or regional), tables generated by the mapping software would have to be submitted at both the State and either regional or national levels, depending on which designation the applicant is seeking. Also, a complete listing of the contracted pharmacies, along with an address, phone number and contact person for each, would have to be submitted.

We solicit comments not only on the overall pharmacy access requirements, but also on whether the requirements should differ by population density across different geographic areas and whether additional consideration should be given to independent pharmacies. For example, while we believe the 90/10 access requirement would generally ensure that Medicare beneficiaries would be close enough to a pharmacy for the discount card to be useful, we recognize that this access standard would allow certain rural areas with limited pharmacy access to be below the 90/10 ratio while having a higher ratio in urban areas in order to meet the overall 90/10 access requirement. We solicit comments on feasible options for raising the ratio in these areas and on current private sector criteria related to access requirements for different types of geographic areas, including adjustments based on population density or pharmacy availability. We also solicit suggestions for performance improvement steps in low-access areas to build up the ratio over time.

In addition, we are concerned about access for certain populations in urban areas. We recognize the value and role of certain small, urban pharmacies that provide linguistically appropriate or culturally sensitive services to Medicare beneficiaries. We solicit comments concerning the role and importance of these pharmacies to underserved populations and other populations that may have special needs. We also solicit comments on how to maintain access to these pharmacies under a Medicare-endorsed drug discount card initiative

for Medicare beneficiaries who depend on them.

Although we would not require the drug discount card program sponsors to include institution-based pharmacies in their pharmacy networks, neither would we preclude their inclusion. Institutionalized beneficiaries whose prescription drugs are covered under Medicare Part A or Medicaid would not be able to use the drug discount cards. Further, we intend for this proposed policy to comport with the requirements of participation for long term care facilities. We solicit comments on whether and how institutionalized beneficiaries who have access to institution-based pharmacies would be affected if they choose to participate in the drug card program initiative, since institution networks are explicitly not required in this program. We would also be interested in better understanding whether and how institution-based pharmacies could participate in the drug card programs.

Drug card program sponsors would not be permitted to offer a home delivery-only (mail order) option to Medicare beneficiaries, since Medicare beneficiaries are accustomed to purchasing prescription drugs from a local pharmacy. However, to provide a choice to beneficiaries who prefer home delivery, endorsed drug card programs would be allowed to include an option to use home delivery via a mail order pharmacy, in addition to the required contracted retail pharmacy network.

4. Time Table and Mechanics of the Endorsement

We would publish in the **Federal Register** the final rule and a solicitation for applications for Medicare endorsement at the same time. We propose that in order to qualify for Medicare endorsement, applicants would be required to submit complete applications by the effective date of the final rule, which would be 60 days after the date it is published. For a 14-day period following publication of the approved solicitation, we would entertain questions from potential applicants to clarify the final application requirements. All applicants who qualify for Medicare endorsement would be announced by the Administrator by a date set in the final rule.

We propose that the endorsement in Year One would be for a period of 15 months. Card program sponsors would be given a period of time following our announcement of the programs we have endorsed to implement their card programs, including finalizing their pharmacy network contracts and negotiating manufacturer rebates or discounts. Sponsors would also use this time to organize and activate the administrative consortium. October 1, 2002 would be the first day that programs would begin marketing and enrollment, and additionally, at their option, begin providing discounts, provided they have a signed agreement with us, approved marketing materials, an operational call center, and completed contracts for all aspects of the program as specified under the requirements. Endorsed programs, however, would be required to begin enrollment and discounts no later than January 1, 2003 in order to participate as an endorsed card program.

5. Oversight

In addition to an application and qualification process to assure that the Medicare endorsement would be provided to reputable, stable entities with the capacity to fulfill our customer service and access, and rebates and discount requirements, we propose requiring that card sponsors have a customer grievance process, and that enrollment and disenrollment reports be submitted to us once every six months in Year One, and thereafter on a schedule to be determined by us. During the endorsement period, drug card program sponsors would be required to notify us of any material modifications to their programs if the modifications could put them at risk of no longer meeting any of the terms of endorsement.

Further, we would educate beneficiaries about the Medicare-endorsed drug card programs and provide information about each endorsed program as described in this proposed rule. We would monitor in Year One, and, beginning in Year Two, the administrative consortium would monitor, to assure that marketing guidelines are being followed. We would develop and operate a complaint tracking system and also refer complaints to Federal and State authorities where violations of laws under the jurisdictions of these agencies are in question. We would reserve the right to terminate any endorsement at any time for violations of the terms of the endorsement. We would consider drug card program sponsor performance under an existing Medicare endorsement as one factor in determining eligibility for endorsement in future annual cycles.

We are considering requiring the administrative consortium to have an advisory board, composed of representatives from beneficiary advocacy groups and pharmacies, as well as from interested public organizations. We invite comments on what groups should be represented, ideas about how the advisory board could provide guidance and oversight and on what issues, and what the advisory board's reporting relationship should be with the consortium. Also, we are interested in comments on practical options concerning standards, conduct, and intermediate corrective action strategies that could be developed to promote public confidence in the administrative consortium and drug card program sponsors' performance.

II. Provisions of This Proposed Rule

In section 403 of Title 42 of the Code of Federal Regulations we would add a new subpart H–Medicare-Endorsed Prescription Drug Card Assistance Initiative, the provisions of which would be as follows:

- We would add a new § 403.800 to describe the basis and scope of the initiative and set forth the requirements for the initiative.
- We would add a new § 403.802 to define the initiative as a mechanism whereby we solicit applications for Medicare endorsement of prescription drug card programs, review them, offer agreements to program sponsors who meet all of the requirements for endorsement, and award Medicare endorsements to program sponsors who sign the agreement. We would define a Medicare-endorsed prescription drug card program as a program developed by an organization or groups of organizations endorsed by us under the Medicare-endorsed prescription drug card assistance initiative to educate Medicare beneficiaries about prescription drug programs available in the private marketplace and to provide prescription drug assistance cards to Medicare beneficiaries. We would define the administrative consortium as a private entity financed by the Medicare-endorsed prescription drug discount card program sponsors to carry out a set of specific administrative tasks required under this initiative.
- We would add a new § 403.804 to set forth the general rules for obtaining Medicare endorsement of prescription drug card programs, including meeting the requirements, submitting an application, and agreeing to the terms and conditions of the agreement with us.
- We would add a new § 403.806 to set forth the requirements for eligibility for obtaining Medicare endorsement under the initiative.
- We would add a new § 403.807 to set forth the application process for organizations wishing to obtain

Medicare endorsement under the initiative.

- We would add a new § 403.808 to set forth that each prescription drug card program sponsor eligible for Medicare endorsement must enter into an agreement with us agreeing to meet the terms and conditions in the agreement.
- We would add a new § 403.810 to set forth the responsibilities of the administrative consortium.
- We would add a new § 403.811 to set forth the requirement that a beneficiary would only be allowed to be enrolled in one drug card program at a time.
- We would add a new § 403.812 to set forth the conditions under which the Medicare endorsement would be withdrawn from an endorsed drug card program sponsor.
- We would add a new § 403.820 to set forth our oversight and beneficiary education responsibilities.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comments on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are seeking comments on these issues for the provisions summarized below:

Section 403.804 General Rules for Medicare Endorsement

The burden associated with the application for endorsement is addressed in the discussion on § 403.806.

Under paragraphs (g) and (h) of § 403.804, a Medicare-endorsed drug card program sponsor may choose not to continue participation in the Medicare-endorsed drug card assistance initiative and would have to notify us of its decision. It would also have to notify its Medicare beneficiaries that they may enroll in an alternative Medicare-endorsed drug discount card program. This notice must be provided within 10 days of the effective date of termination.

We do not believe that 10 or more card program sponsors will terminate their agreement. Because this burden would apply to less than 10 program sponsors, this requirement is not subject to the PRA in accordance with 5 CFR 1320.3(c).

Section 403.806 Requirements for Eligibility for Endorsement

Under paragraph (a) of this section, an applicant must submit an application demonstrating that it meets and will comply with the requirements described in this section.

The requirements described in this section include various disclosure, recordkeeping, and privacy policies. We anticipate that it will take each applicant approximately 120 hours to complete each application. We anticipate that we will receive approximately 30 applications, for a total burden of 3,600 hours.

We solicit comments on the information collection, recordkeeping, and third party disclosure burdens imposed by the various requirements that must be met in order to be endorsed as a drug discount card program sponsor.

Section 403.808 Agreement Terms and Conditions

Under this section, in order to receive a Medicare endorsement, an applicant that complies with all of the application procedures and meets all of the requirements described in this subpart must enter into a written agreement with us. The agreement would include a statement by the applicant that it has met the requirements of this subpart and will continue to meet all requirements for so long as the agreement is in effect.

The burden associated with this requirement is the time and effort for the applicant to review and sign the agreement and the time and effort required to comply with the information collection requirements. It is anticipated that it will take each applicant approximately 8 hours to complete the agreement. We consider all of the information collection requirements associated with complying with the requirements of this section to be usual and customary business practice, except for the requirement that card sponsors provide drug and price information from their formularies to the administrative consortium. For this information collection requirement, we estimate the burden of complying, which involves recordkeeping, information reporting, and disclosure to third parties, to be 24 hours per card sponsor.

We estimate that we would send agreements to approximately 15 applicants, for a total burden of 480 hours.

Section 403.810 Administrative Consortium Responsibilities

Under this section, the administrative consortium would be responsible for publishing, or facilitating the publication of, information, particularly comparative pricing information, that would assist beneficiaries in determining which Medicare-endorsed prescription drug discount card program is the most appropriate for their needs.

There would only be one administrative consortium under this initiative. Since that is fewer than 10, this requirement is not subject to the PRA in accordance with 5 CFR 1320.3(c).

Section 403.811 Beneficiary Enrollment

Under this section, in paragraph (b), Group enrollment, card sponsors may accept group enrollment from health insurers. Card sponsors would be required to assure disclosure to Medicare beneficiaries of the intent to enroll them as a group. They must also assure disclosure to the beneficiaries of the enrollment exclusivity restrictions and other rules of enrollment of the initiative. The card sponsors would be further required to assure that written consent of the beneficiaries to be enrolled in the drug card program as a group is obtained and maintained.

The burden associated with these requirements is the time and effort required to disclose the information to beneficiaries and obtain their consent before enrolling them in the drug card program.

We estimate that there will be 178 health insurers accepted for group enrollment and 1.218 million beneficiaries to whom information must be disclosed and whose consent must be obtained. We estimate that it will take approximately 15 minutes per beneficiary to complete the enrollment process. Within that process, the third party disclosure requirement burden would be 2 minutes per enrollee, for a total burden of 40,628 hours.

Section 403.820 Oversight and Beneficiary Education

Under this section, a Medicare-endorsed prescription drug discount card program sponsor must report to us the number of Medicare beneficiaries

enrolled in, and disenrolled from, the drug discount card program, on a form and at times specified by us.

The burden associated with this requirement is the time it would take to report to us. We believe that it would take approximately 15 minutes per report. We anticipate requiring 4 reports per year, per card sponsor, for 15 sponsors, for a total annual burden of 15 hours.

We have submitted a copy of this proposed rule to OMB for its review of the information collection requirements in §§ 403.804, 403.806, 403.808, 403.810, 403.811, and 403.820. These requirements are not effective until they have been approved by OMB.

If you have any comments on any of these information collection and recordkeeping requirements, please mail one original and three copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Information Services, Standards and Security Group, Division of CMS Enterprise Standards, 7500 Security Boulevard, Room N2–14–26, Baltimore, MD 21244–1850, Attn: John Burke, CMS–4027–P, and,

Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503 Attn: Allison Herron Eydt, CMS Desk Officer.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this document, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

V. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980, Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). While a final estimate depends on the final design of the drug card program, our preliminary estimate (based on our assumptions about manufacturer discounts) is that the savings to beneficiaries under the Medicare-Endorsed Prescription Drug Card Assistance Initiative would represent a total economic impact ranging from $927 million to $1.235 billion in 2003, the first full year of operation. In the second year of the initiative (2004), once enrollment has phased-in completely, the total savings to beneficiaries under the initiative would represent an impact estimated to range from $1.391 billion to $1.855 billion. In 2007, the total savings to beneficiaries would represent an impact estimated to range from $1.967 billion to $2.622 billion. This represents less than 1 percent of projected total retail prescription drug spending for 2003 ($175.8 billion), 2004 ($197.1 billion), and 2007 ($272.4 billion) based on published projections released in March 2001 by our Office of the Actuary. Depending on the final design features and the magnitude of additional manufacturer discounts realized, actual savings to beneficiaries could be larger.

This proposed rule is a major rule as defined in Title 5, United States Code, section 804(2). Accordingly, we have prepared an impact analysis for this proposed rule.

B. Impact on Small Entities

1. General

The RFA requires agencies to determine whether a rule will have a significant economic impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other health care providers and suppliers are small entities, either by nonprofit status, or by having revenues of $5 million to $25 million or less annually. Individuals and States are not included in the definition of a small entity. The Small Business Administration (SBA), on its web site (*http://www.sba.gov/naics/dsp_naicslist2.cfm*), provides a size standard for pharmacies and drug stores (NAICS code 446110 or SIC code 5912) of revenues of $5 million or less annually for the purpose of determining whether entities are small businesses.

Whether measured from a firm or an establishment perspective (as reflected in Census Bureau data), the proposed Medicare-endorsed drug discount card initiative may involve some impact on a substantial number of small businesses. The current market for delivery of pharmaceutical products, by its nature involves small businesses, similar to other professional health care services such as physician services. The current health insurance market demonstrates that insurance companies, pharmaceutical benefit managers, and others such as HMOs have been able to enter into arrangements similar to those envisioned in this proposed Medicare initiative involving the participation of large and small pharmacy and drug store firms. These arrangements have resulted in lower prescription drug prices being made available to consumers who have insurance coverage for prescription drugs. There is evidence that both large and small pharmacies and drug stores participate in these arrangements with pharmaceutical benefit managers, and that pharmaceutical benefit managers are able to offer (employer) clients pharmacy networks containing the majority of retail pharmacy outlets.

The role of individual pharmacies, including small pharmacies, in this proposed Medicare initiative is a critical one: they would be an integral part of the pharmacy networks of Medicare-endorsed programs, serving Medicare beneficiaries at the point of retail sale. The objectives of the proposed initiative and the related design requirements would preclude individual pharmacies or drug stores from operating the full scale of the contemplated drug card assistance initiative that would be necessary to obtain an endorsement. Individual pharmacies could participate in the initiative by voluntarily entering into a drug card program's network with other pharmacies. Individual pharmacies are not in a market position to meet the requirements for endorsement, including the ability to serve a large number of enrollees and to garner manufacturer rebates. Retail pharmacy chains could possibly be organized to meet the requirements of Medicare endorsement explained elsewhere in this proposed rule because of their size, type of experience and infrastructure.

Convenient access to retail pharmacies, regardless of size or ownership, by Medicare beneficiaries would be an important feature of the proposed initiative. As discussed elsewhere in this proposed rule, we propose to interpret this to mean that a discount card sponsor would have to have a contracted pharmacy network of sufficient size to demonstrate that at

least 90 percent of Medicare beneficiaries in the area served by the program live within 10 miles of a contracted pharmacy (90/10). This access ratio is consistent with the access standard of most insured products, and we believe it would require card sponsors to support an extremely broad network of retail pharmacies. However, we recognize that our proposed standard would be measured at the national level (or, in the case of a regional network, at the regional level), and that some rural areas may not meet this standard. We want to encourage retail pharmacy participation in the networks; elsewhere in this proposed rule we request comments on how to ensure convenient access in rural areas and for pharmacies that serve special market needs.

Given the 90/10 access ratio requirement and the provision that Medicare-endorsed programs would not be allowed to offer a mail order-only option, we believe that most pharmacies and drug stores (both chain and independent) would be invited and encouraged to participate in card programs' networks, particularly small pharmacies in rural areas. This is generally the case in the current insured market, and we do not anticipate significantly narrower networks in the Medicare-endorsed card programs. There are over 55,000 retail pharmacies in the United States. According to a report prepared for us by PricewaterhouseCoopers (PWC) ("Study of the Pharmaceutical Benefit Management Industry", June 2001), pharmacy benefit managers (PBMs) offer, as a general practice, standard national pharmacy networks, with 42,000 pharmacies in the typical network. The PWC study also reports that one leading PBM has 50,000 pharmacies in its more restricted network. Also, according to PWC, two large national PBMs have 98 percent of all pharmacies in the United States in their standard networks.

The inclusive access standard required for Medicare endorsement, coupled with the industry norm for pharmacy networks under insured products as reported by PWC, lead us to believe that a very large number of small pharmacies and drug stores would be included in the networks of Medicare-endorsed drug discount card programs. Further, we believe that small entities in rural areas especially would be included in order to meet the standard for endorsement. We welcome comments regarding the inclusion of small pharmacies and drug stores in the networks of Medicare-endorsed card programs.

To assess the number of small entities affected by this initiative, and the amount of revenue involved for these entities, we analyzed data from several sources. The U.S. Census Bureau's 1997 Economic Census data (Table 4 on Retail Trade—Subject Series) indicate that there were a total of 20,815 business firms that were pharmacies and drug stores that operated for the entire year. The Census Bureau data also indicate that the 20,815 firms operated 41,228 establishments (some entities selling prescription drug products are not included in this count, including supermarkets and mass merchants). Of the total firms, 20,126 (or 96.7 percent) were firms that had sales of less than $5 million, and these same firms operated 21,226 establishments or 51.5 percent of the pharmacies and drug store class of trade in the Census Bureau data.

In addition to traditional pharmacies and drug stores, prescription drugs are sold through supermarkets and mass merchants. The National Association of Chain Drug Stores (NACDS) offers data that include these outlets, so we examined this data source as well. The NACDS analyzes industry data from a variety of sources, including IMS Health, the National Council of Prescription Drug Programs, and American Business Information, and reports industry statistics on their web site (*http://www.nacds.org*). For 1997, NACDS reports a total of 51,170 community retail pharmacy outlets, of which 20,844 were independent and 19,119 were chain drug stores (for a total of 39,963)—a number very similar to the Census Bureau's 1997 count of 41,228 pharmacy and drug store establishments. We assume that there is a great deal of overlap between the 21,226 establishments that the Census Bureau identifies as those with sales of less than $5 million and the NACDS report of 20,844 independent pharmacies in 1997. For 2000, NACDS reports 55,011 community retail pharmacy outlets, of which 20,896 are identified as independent drug stores.

In addition to the number of outlets, we examined revenues. The Census Bureau data indicate that, in 1997, total pharmacy and drug store sales for firms operating the entire year were $97.47 billion, of which firms with $5 million or less in sales accounted for 25.5 percent ($24.82 billion). However, these sales include more than just prescription drugs, as most pharmacies and drug stores sell other products. Since firms may differ in the proportion of revenues obtained from prescription drugs, we think that the analysis should focus, to the extent possible, on revenues from prescription drugs, rather than the broader set of sales occurring through pharmacies and drug stores, so we also examined information prepared by our Office of the Actuary (OACT). It is important to note that focusing only on prescription drug sales, rather than all sales through this class of trade, yields an estimated impact that is larger than the actual impact on total sales.

The Office of the Actuary is responsible for preparing the official Federal estimates of national health spending, that are used for research and policy analysis. As part of preparing the estimates, OACT obtains data on prescription drug sales from a variety of sources, including the data on prescription drug sales from the National Prescription Audit conducted by IMS Health. OACT has data on retail prescription drug spending through 2000, and prepares 10-year projections. For 1997, OACT, in its published projections (released in March 2001), estimated that total retail prescription drug spending was $75.1 billion. OACT adjusts the data from the National Prescription Audit to take into account a number of factors. The major factors involved in these adjustments include: benchmarking to the Economic Census, subtracting prescription drug sales to nursing homes (which are accounted for in nursing home spending), and adjusting the data to subtract an estimate of manufacturer rebates provided to health insurers related to insurance coverage for prescription drugs. Thus, in some respects, the National Health Accounts' estimate of prescription drug spending reflects a sales level that is somewhat lower than what is actually received by pharmacies, drug stores, and other retail business outlets selling prescription drugs. Consequently, when National Health Accounts figures are used as the denominator in calculating the percentage impact on revenues (as we do later in this impact analysis), the result is somewhat larger than is actually the case. Nevertheless, we believe that OACT's estimates for prescription drug spending are the most appropriate to use for analysis of prescription drug revenues. OACT's estimates are specific to the prescription drug market, and the National Health Accounts are recognized as a public source of data on health care spending.

From the National Prescription Audit data obtained by OACT, it is possible to estimate the portion of sales occurring through independent and chain pharmacies. The data obtained by OACT do not permit analysis by firm size. However, these data are specific to prescription drug sales for a more recent time period. Furthermore, we believe

that there is a great deal of overlap between the firms identified as independent pharmacies and the small pharmacy and drug store firms identified in the Census data. Consequently, we think that the data from the Prescription Drug Audit are an appropriate source for analysis.

For 1997, that data indicate that 29.2 percent of sales were through independent drug stores—a figure slightly higher than the share (25.5 percent) indicated by the Census data. For 2000, the data obtained by OACT indicate that 25.3 percent of sales were through independent pharmacies. For purposes of calculating the share of revenues from prescription drug sales through small firms, we think it is reasonable to use the more recent estimate of prescription drug sales through independent pharmacies obtained from our analysis of the Prescription Drug Audit for 2000. The numerical value from the 2000 National Prescription Drug Audit is essentially the same as what would be used if we selected the 1997 Census data proportion.

The Census Bureau data contain information on supermarkets (NAICS code 445110) and mass merchants (discount or mass merchandising department stores—NAICS code 4521102, and warehouse clubs and superstores—NAICS code 45291). We assume that for both supermarkets and the mass merchants, prescription drug sales comprise a small share of sales, and consequently have not included them in this small business analysis. This assumption is supported by data from the Census Bureau, Prescription Drug Audit, and NACDS web site. The 1997 Census data indicate that total supermarket product sales were $351.4 billion. OACT's analysis of 1997 data from the Prescription Drug Audit indicates that $8.8 billion in prescription drug sales occurred through food stores, or 2.5 percent of total product sales. Similarly, the 1997 Census data indicate that total product sales for the two categories of mass merchandisers identified above was $208 billion. Since data from the Prescription Drug Audit obtained by OACT include mass merchants with other chain stores, we used prescription drug sales data from the NACDS web site. The NACDS web site indicates that prescription drug sales through the mass merchant category were $8.9 billion in 1997, or 4.3 percent of total product sales. Furthermore, the fact that businesses are identified as supermarkets and mass merchandisers would seem to indicate that prescription drugs is not their major line of trade.

The Department of Health and Human Services (HHS) uses as its measure of significant economic impact on a substantial number of small entities a change in revenues of more than 3 to 5 percent. For purposes of the analysis related to small business, it is necessary to develop an estimate of the share of national drug sales associated with small pharmacies and drug stores. OACT projects that total national retail prescription drug spending for 2003 will be $175.8 billion, $197.1 billion by 2004, and will reach $272.4 billion by 2007. Given that 25.3 percent of sales were through independent pharmacies in 2000, we calculated that the share of total national prescription drug sales through pharmacies and drug stores with $5 million or less in revenues would be $44.5 billion in 2003, $49.9 billion in 2004, and $68.9 billion in 2007.

For purposes of both the impact analysis and to examine the impact on small pharmacies and drug stores, it is also necessary to understand the share of prescription drug spending for the population that is expected to enroll in the Medicare-endorsed discount card programs as a portion of total national prescription drug spending. Total drug expenditures involved in the Medicare-endorsed discount card programs are projected to be $13.3 billion in 2003 (not adjusted for enrollment phase-in), $14.9 billion in 2004, and $21.1 billion by 2007, before the savings achieved through the card initiative. The data used to develop these estimates come from the Medicare Current Beneficiary Survey (MCBS). This data base and the methodology for preparing these estimates are described later in the impact analysis. Thus, total prescription drug spending involved in the Medicare-endorsed cards is estimated to account for approximately 7.6 percent of total national prescription drug sales in 2003 (not adjusted for enrollment phase-in), 7.6 percent in 2004, and 7.7 percent by 2007. In terms of the total market of retail prescription drug revenues, spending for the Medicare population to be assisted by the Medicare-endorsed discount card initiative is estimated to account for less than 8 percent of revenues on prescription drugs.

If we assume that the population most likely to enroll in the proposed Medicare-endorsed drug discount card programs splits its purchases between large and small pharmacies in the same proportion as the total population, then the estimated sales involved in the discount card initiative through small pharmacies and drug stores would be $3.4 billion out of the $44.5 billion in sales for 2003 (not adjusted for enrollment phase-in), $3.8 billion out of the $49.9 billion in sales in 2004, and $5.3 billion out of the sales of $68.9 billion in 2007 (again accounting for less than 8 percent of prescription drug sales).

The total estimated savings to beneficiaries under this proposed initiative would represent a total economic impact ranging from $927 million to $1.235 billion in 2003, from $1.391 billion to $1.855 billion in 2004, and $1.967 billion to $2.622 billion in 2007. Thus, again assuming 25.3 percent of sales were through independent pharmacies, the portion of the estimated beneficiary savings (described later in this analysis as the upper and lower bound) related to retail prescription drug sales occurring through small pharmacies and drug stores ranges from: $234 to $313 million in 2003, $352 to $469 million in 2004, and from $498 million to $663 million in 2007. These amounts, as a share of the national retail prescription drug sales occurring through small pharmacies and drug stores, would represent a range of from 0.53 percent to 0.70 percent in 2003, from 0.71 to 0.94 percent in 2004, and from 0.72 to 0.96 in 2007.

This is likely to be an overestimate of the economic impact on small pharmacies and drug stores, as this economic impact would not be borne entirely by pharmacies. Card sponsors would be required to obtain substantial manufacturer rebates or discounts that would defray the cost to pharmacies of providing discounts on retail drug prices. In addition, to the extent that the discount card programs achieve larger savings from drug manufacturers than are included in our estimate, the additional beneficiary savings would come from drug manufacturers and not local pharmacies.

Other plausible caveats to consider are the following: Our spending estimates assume no effects of the drug card program on beneficiary drug use. It is possible that lower drug prices would lead to greater use, resulting in a smaller impact on pharmacy revenues. It is also possible that pharmacy services associated with the card would lead to some drug substitution, simplification of drug regimens, or avoidance of complications that require further drug therapy, leading to a somewhat greater impact on pharmacy revenues.

We welcome any comments and information on whether there is evidence that Medicare beneficiaries without drug coverage use small pharmacies and drug stores more or less than the share of revenues that these firms represent in terms of the overall market. We have assumed the share to

be the same, but it would be helpful to have data on where Medicare beneficiaries, particularly those without drug coverage (who make up the largest group expected to use the Medicare-endorsed discount cards), purchase their prescription drugs. Knowing where these beneficiaries purchase their drugs would help us better understand whether there are any distributional issues. However, we currently do not have this type of data available.

We are particularly concerned about ensuring beneficiary access to pharmacies in rural areas. We do have some evidence to believe there could be a disproportionate number of beneficiaries in rural areas who would use the Medicare-endorsed discount cards. Data from the 1998 MCBS indicate that 37 percent of Medicare beneficiaries in rural areas do not have drug coverage compared to the national average of 27 percent. We also assume that pharmacies and drug stores in rural areas are more likely to be small businesses.

We recognize that the 90/10 access ratio may be difficult to obtain in rural areas, and we solicit suggestions on feasible options for raising the ratio in these areas.

According to the PWC study mentioned above, because there is less competition among pharmacies in rural areas, pharmacy benefit managers have had to make special arrangements in order to obtain the participation of rural pharmacies in the networks. We expect the current market practice of making special arrangements (for example, special pricing for ingredient costs and additional dispensing fees) with rural pharmacies would carry over in the Medicare-endorsed discount card programs.

2. Sensitivity Analysis

In order to assess the potential for differing distributional impacts among pharmacies, we conducted a sensitivity analysis. We estimate that the total prescription drug spending involved in the proposed Medicare-endorsed drug discount card initiative would comprise, on average, less than 8 percent of revenues, with the economic impact of the proposed discount card initiative on total revenues related to prescription drugs estimated at less than one percent. For purposes of a sensitivity analysis, we estimate that in order to reach the Department of Health and Human Services (HHS) measure of significant economic impact of 3 to 5 percent of revenues, it would be necessary to have prescription drug revenues involved in the proposed Medicare-endorsed discount card initiative account for at least 24 percent of a business' revenues. In the sensitivity analysis, we developed a hypothetical geographic locality skewed to contain a very large share of Medicare beneficiaries who enroll in the proposed Medicare-endorsed discount card initiative. Under this highly skewed assumption, we estimated a maximum share of 19.6 percent of a business' total prescription drug revenues would be associated with the Medicare-endorsed discount card, with an economic impact of the Medicare-endorsed discount card initiative of 2.4 percent of prescription drug sales.

As noted previously, this economic impact would not be borne entirely by pharmacies, because card sponsors would be required to obtain substantial manufacturer rebates or discounts that would defray the cost of pharmacies providing discounts on retail drug prices. Thus, the sensitivity analysis still yielded an impact level below the 3 to 5 percent of revenues used by HHS to measure significant economic impact. The following discussion describes the assumptions and supporting data used in the sensitivity analysis.

In order to prepare the sensitivity analysis, we identified key variables that could change the market share of revenues and consequent impact resulting from the proposed Medicare-endorsed discount card initiative. One key variable is the Medicare population as a portion of a pharmacy's geographic locality customer base. We assume that a pharmacy's customer base is derived in large part from the population in close geographic proximity to its business location. Therefore, we examined the variation in the geographic distribution of the Medicare population. On average nationally, Medicare beneficiaries were 13.6 percent of the total population as of July 2000. Using several States with the highest Medicare population rates, we examined, at the county level, the percent of the population over age 65 based on Census Bureau data. For counties with high elderly population compositions, we obtained the actual counts of Medicare enrollment (aged and disabled) and calculated Medicare enrollment as a percentage of the counties' populations. Based on this analysis at the county level, we estimate in a high-end scenario that Medicare beneficiaries could potentially comprise up to approximately 36 percent of a geographic area's population.

A second key variable that we assume could alter the revenues being impacted is the percent of the Medicare population in an area that may enroll in the Medicare-endorsed discount card programs. As discussed later in this impact analysis, we think that the beneficiaries most likely to enroll in the Medicare-endorsed discount card programs would be those without insurance coverage for prescription drugs (including those with supplemental insurance coverage that does not include prescription drugs) and those with Medigap drug coverage. In terms of demographic variables, the highest rates of Medicare beneficiaries without drug coverage occur among Medicare beneficiaries in non-metropolitan areas (37 percent). Our analysis of the MCBS data also indicates that 15 percent of beneficiaries in non-metropolitan areas have drug coverage through Medigap insurance, compared to the national average of 10 percent.

For purposes of a sensitivity analysis, we developed a hypothetical geographic location with a large share of Medicare beneficiaries that also had a high portion without drug coverage. We used the 36 percent figure from our analysis discussed above on geographic areas with larger Medicare population composition, and the 37 percent as the high rate for no drug coverage, to adjust the national averages underlying the overall impact analysis. We also assumed that the hypothetical Medicare population would have a slightly higher portion (15 percent) of beneficiaries who obtained drug coverage through Medigap.

We estimate that nationally approximately 10 million Medicare beneficiaries would enroll in the proposed Medicare-endorsed discount card programs by the end of 2003, accounting for an estimated 3.5 percent of the total U.S. population. Adjusting the data, using the population and drug coverage weighting factors for the sensitivity analysis and using the overall uptake assumptions described later in this impact analysis (75 percent overall uptake in the Medicare population without drug coverage and 95 percent in the Medigap population with drug coverage), results in the hypothetical area having approximately 15 percent of its total population participating in the Medicare-endorsed drug discount card initiative. Therefore, about 85 percent of the total hypothetical area's population would not participate in the Medicare-endorsed discount card initiative, including both Medicare beneficiaries and non-Medicare beneficiaries.

To estimate the impact of the drug discount card initiative on prescription drug revenues in the hypothetical locality, we estimated the per capita drug spending for participants in the proposed initiative and non-participants

in the initiative in the hypothetical area. We estimated per capita drug spending to be $1,351 for participants and $990 for non-participants in the hypothetical locality in 2004. These figures differ from per capita estimates for participants and non-participants at the national level due to the skewed demographic composition of the hypothetical area (which would have a large Medicare population and have beneficiaries with Medigap drug coverage comprising a slightly greater share of drug discount card program participants than at the national level). The per capita spending estimates for both participants and non-participants include individuals without drug expenditures. The per capita spending estimates were done for 2004 since that would be the year we assume full phase-in of enrollment in the drug discount card program initiative.

The per capita drug spending data for the Medicare population participating in the discount card initiative come from the MCBS, and the methodology for calculating drug spending from that data is described later in the impact analysis. For participants in the Medicare-endorsed discount card programs, the per capita value consists of the estimated total spending for enrolled beneficiaries without drug coverage plus the share of spending for the Medigap enrollees that is purchased through the discount program, divided by the total number of participants.

For purposes of calculating the per capita spending for non-participants in the Medicare-endorsed discount card programs, we used prescription drug spending data from the National Health Accounts and estimates from the MCBS to develop per capita drug spending estimates for the non-Medicare population and for the Medicare population not participating in the discount card program. These two per capita values for non-participants in the drug card initiative were then weighted relative to the population distribution they represented in the hypothetical area's non-participant population to create a per capita drug spending for non-card participants.

We then adjusted per capita drug spending for non-participants to include participants' drug spending that was not purchased through the discount card program (the portion of drug spending covered by Medigap plans) to yield an estimate of total drug spending outside of the proposed drug discount card initiative. Consequently, this inclusion of the Medigap covered drug spending means that the per capita drug spending figure for non-participants is this adjusted per capita (including the Medigap related spending) for the hypothetical area rather than the actual per capita for the non-participant population in the hypothetical area. For purposes of the sensitivity analysis calculation of the impact of the proposed discount card programs, we used the upper bound figure of all drug spending as a high-end assumption. This corresponds to the upper bound estimates discussed in subsequent sections of this impact analysis.

The results of the sensitivity analysis are shown in Table 2. For the hypothetical area that is skewed to have a very high Medicare beneficiary population composition and a high enrollment in the discount card initiative, the negative impact on revenues from prescription drugs reached 2.4 percent, still below the HHS measure for significant economic impact of 3 to 5 percent of revenues. Furthermore, as noted above, not all of the 2.4 percent would be borne by the pharmacy, since discount card sponsors would be required to obtain manufacturer rebates or discounts and pass those through to beneficiaries and pharmacies in order to receive Medicare endorsement.

We recognize that reliance on nationally calculated per capita averages weighted for different demographic compositions has limitations, and pharmacies may have customer populations with per capita drug spending levels that differ from the population specific averages calculated at a national level. Nevertheless, we think that the sensitivity analysis is comprised of differentiating factors that can influence market shares and we skewed these to be at the highest values identified in the available data. Consequently, we think that the sensitivity analysis reflects a reasonable test of potential distributional effects. We welcome comments, and particularly data, that could help to inform further analysis of distributional effects.

TABLE 2.—NATIONAL AVERAGE VERSUS SENSITIVITY ANALYSIS—HYPOTHETICAL EXAMPLE

[In percent]

2004	Discount card participants	Discount card non-participants	Total population
National average for comparison purposes:			
Percent of total population	3.52	96.48	100.00
Percent of total prescription drug sales	7.60	92.40	100.00
Estimated beneficiary savings as a percent of drug sales	12.40	0.00	0.94
Hypothetical Example:			
Percent of total population	15.12	84.88	100.00
Percent of total prescription drug sales	19.60	80.4	100.00
Estimated beneficiary savings as a percent of drug sales	12.40	0.00	2.40

3. Policy Considerations

Several policy decisions were made to mitigate the impact on pharmacies, including small pharmacies and drug stores. We would require manufacturer rebates or discounts that could be passed through to pharmacies to defray the costs of pharmacies providing discounts on retail prices. In addition, the funding from manufacturer rebates could be used to provide other incentives for pharmacies, such as rural pharmacies, to participate in the proposed Medicare-endorsed card sponsors' networks.

Also to mitigate the impact on pharmacies, we would require very broad retail pharmacy networks and would not endorse mail order-only discount card programs. We believe that strong access to retail pharmacies is important for the Medicare population.

One group of pharmacies about which we would like more information is small, independent, urban pharmacies. These pharmacies frequently serve an important role for underserved populations and populations at risk for health disparities. We solicit comments on data sources and information concerning these pharmacies, including

whether or not they are usually included in the networks of insured products and the extent to which Medicare beneficiaries rely on them.

We realize that there is some risk to revenues of a pharmacy not participating in the networks of proposed Medicare-endorsed programs, particularly for small or rural pharmacies. At the same time, we believe that the proposed access standard of 90 percent of the beneficiaries being within 10 miles of a retail pharmacy would create the need for card sponsors to develop inclusive networks. Consequently we believe that, as the market does today for insured products, card sponsors would use special arrangements to encourage the participation of rural pharmacies and other pharmacies that serve segments of the Medicare population with special needs.

Also, participation of Medicare beneficiaries in this proposed initiative is voluntary, and beneficiaries with drug cards always would remain free to make prescription drug purchases at the pharmacy of their choice (although they may pay more at a non-network pharmacy) or to use existing voluntary discount cards; and they could purchase a drug not on a formulary (at the price offered by the pharmacy).

Based on the data we have available, the impact of the proposed Medicare endorsement initiative, on average, is estimated to be well below the 3 to 5 percent of revenues that HHS uses as the measure of significant economic impact. Furthermore, our sensitivity analysis indicates that even taking into account significantly different market characteristics, and even if all of the impact were assumed to be coming from pharmacies rather than our proposed program design that requires manufacturer rebates or discounts, we did not generate a scenario that reaches the HHS test for significant economic impact. We welcome comments, and particularly data, that could help to inform further analysis of distributional effects.

4. Small Rural Hospitals

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. This proposed rule would not affect small rural hospitals since the initiative would be directed at outpatient prescription drugs, not drugs provided during a hospital stay. Prescription drugs provided during hospital stays are covered under Medicare as part of Medicare payments to hospitals. Therefore, we are not providing an analysis.

C. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1998 (UMRA) requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. We have determined that this proposed rule is not an unfunded mandate as defined by the UMRA. In particular, section 101 of the UMRA only requires estimation of direct costs to comply with the definition of a private sector unfunded mandate. In addition, this proposed rule does not mandate any requirements for State, local, or tribal governments.

D. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This proposed rule would impose no direct costs on State and local governments, would not preempt State law, or have any Federalism implications. However, as noted in section I A of this preamble, States may choose, on a voluntary basis, to partner with private drug card sponsors by selecting a Medicare-endorsed drug card program and offering State endorsement of it as well. In addition, as noted in the advance notice of proposed rulemaking entitled, "Medicare Program; Medicare-Endorsed Prescription Drug Discount Card Assistance Initiative for State Sponsors", published elsewhere in this issue of the **Federal Register**, we outline steps we are considering proposing in support of State efforts to make prescription drugs more readily available to Medicare beneficiaries. These are voluntary opportunities for States, and have no Federalism implications.

E. Limitations of Our Analyses

The following analyses present projected effects of this proposed rule on Medicare beneficiaries, the Medicare program, total national retail prescription drug spending, and drug card sponsors.

Because this would be the first year of the Medicare-Endorsed Prescription Drug Discount Card Assistance Initiative, we do not have the benefit of the experience of prior years. Therefore, we present a range rather than a single estimate for the impact of the prescription drug rebate and discount requirements of the proposal. Another limitation of this particular analysis is that our most recent available data on beneficiary use of prescription drugs come from self-reported survey data from the 1998 Medicare Current Beneficiary Survey (MCBS). (The MCBS is a continuous multipurpose survey of a representative sample of the Medicare population.) We have adjusted the data for trends in drug spending and for under reporting.

In the cost and benefit analysis, we do not estimate the costs and benefits of sharing manufacturer rebates and discounts with beneficiaries indirectly through pharmacies. We require that these rebates and discounts would have to be shared with beneficiaries either directly or indirectly through pharmacies. We anticipate that this requirement would promote better drug prices for beneficiaries or enhance pharmacy participation in a card program's network. Further, we anticipate that sharing indirectly with pharmacies could promote enhanced pharmacy services. We request public comment on the costs and benefits to pharmacies, beneficiaries and card program sponsors of various possible arrangements to achieve enhanced pharmacy participation in a card program's network, as well as to promote the enhancement of pharmacy services for beneficiaries.

The cost analysis of the effects of the proposed requirement that applicants jointly administer, abide by the guidelines of, and fund a private administrative consortium is limited by the following condition. While subject to the oversight described in section I.E.5 of this preamble, the consortium would be a private operation independent of the government. Its actual organization and ongoing operation, including specifications of the final details of its three major administrative tasks, would be determined largely by the representatives of the drug card sponsors; and, if included in the final design, its advisory board; and in the case of reviewing marketing materials, subject to guidelines provided by us. Further, both the number of drug card sponsors that receive Medicare endorsement and how the card sponsors choose to operate the consortium may

effect the costs borne by any one card program sponsor.

F. Impact of the Rebate and Discount Requirements

1. Medicare Beneficiary Estimated Enrollment

Although the Medicare-endorsed prescription drug card programs would be available to all Medicare beneficiaries, we believe that those most likely to benefit from the initiative and those most likely to enroll in a drug card program would be the approximately 10 million Medicare beneficiaries without prescription drug coverage at any point in a year (1998 MCBS).

Another group of beneficiaries likely to benefit from and enroll in Medicare-endorsed discount card programs would be beneficiaries with Medigap insurance. The Medigap plans that offer prescription drug coverage (including standardized plans H, I, and J) generally are designed with a cap on the amount of drug spending covered by the plan. Plans H and I have a drug benefit cap of $1250 and Plan J has a drug benefit cap of $3000. In addition, these plans each have a $250 deductible and 50 percent copayments. Many Medigap plans do not actively negotiate discounts for enrollees. Thus, we believe that Medicare beneficiaries with standardized and non-standardized Medigap drug coverage would benefit from a discount card program, particularly for spending above the benefit cap. According to the 1998 National Association of Insurance Commissioner's (NAIC) Medigap experience files, covered lives in standardized and non-standardized Medigap plans totaled 10.7 million. Using the 1998 MCBS, we estimate that approximately 2 million of these covered lives had drug coverage from a Medigap policy, recognizing that a large share of this estimated population was enrolled in non-standardized plans. According to the NAIC, of the beneficiaries enrolled in the standardized Medigap plans offering drug coverage in 1998, 56 percent were enrolled in plans H and I and 44 percent of the beneficiaries were enrolled in plan J.

We anticipate that beneficiaries without prescription drug coverage and with relatively higher spending would be more likely to enroll than those with generally very low or no spending. We assumed that beneficiaries without prescription drug coverage who spend over $250 per year, the point at which a $25 maximum enrollment fee could be recouped (assuming 10 percent savings on $250 in drug spending) would be the most likely to enroll. To the extent that card sponsors would offer lower or no-cost enrollment, we would expect more beneficiaries to take advantage of the savings opportunity. We expect some beneficiaries would realize that the $25 maximum fee is a one time only fee, and to the extent they stay in the same card program over time, the more value the card represents in terms of annual savings.

In Table 3 we show the assumptions regarding the percentage of beneficiaries without drug coverage enrolling in a Medicare-endorsed drug card program. Based on these assumptions and the distribution of drug spending in the Medicare population without drug coverage, we estimate that 75 percent of these beneficiaries would enroll in the Medicare-endorsed drug card programs.

TABLE 3.—ESTIMATED ENROLLMENT RATE OF MEDICARE BENEFICIARIES WITH NO DRUG COVERAGE 2003–2007

Annual drug spending	Percent enrolling
$0–200.00	55
$200.01–300.00	80
$300.01–400.00	85
$400.01–500.00	90
$500.01+	95

In addition, we believe that 95 percent of beneficiaries with Medigap coverage for prescription drug costs, regardless of expenditure level, would also enroll in a Medicare-endorsed card program. We believe that beneficiaries with Medigap coverage for prescription drugs would be more risk averse than the average beneficiary and would therefore be more likely to enroll in a drug discount card program.

While we expect there would be a phase-in of beneficiary enrollment, we believe that because of the recognition and acceptance of the Medicare name and the educational efforts to be undertaken, beneficiaries wishing to enroll would do so within the first 6 months of the initiative. Thus, we assume that the percentage of beneficiaries enrolling in 2003 would be about equal to the percentage enrolling in 2004 and beyond. In 2003, we expect approximately 10 million beneficiaries would enroll. We use 2003 as the beginning point for the estimates because it would be the first full year of operation.

2. Estimated Portion of Drug Spending Included

For purposes of estimating the impact of the Medicare-Endorsed Prescription Drug Discount Card Assistance Initiative, it is necessary to make some assumptions concerning the portion of spending that would be affected by the discounts under the drug card programs. The requirements for endorsement would include provision of a discount on one brand name or generic drug in each therapeutic grouping commonly used by Medicare beneficiaries. However, we expect that the card programs probably would provide discounts on more than one drug per grouping and would be highly likely to provide discounts on commonly used drugs. In addition, we anticipate that many card sponsors would choose to provide a discount on all drugs, with large manufacturer rebates and deeper discounts on a subset of drugs on a formulary. Analysis of 1998 MCBS spending for the drugs most commonly used by Medicare beneficiaries, identified in Attachment B of the August 2, 2001 application for the Medicare-endorsed drug discount card program, found that those drugs accounted for approximately 66 percent of total drug spending for beneficiaries without drug coverage. However, the drug classification listing included in Attachment C of the August 2, 2001 application, for which card sponsors were required to include a drug, is more extensive than the top specific drug list shown in Attachment B, which was used to estimate 66 percent.

We assume that many card sponsors would choose to include more than one drug for the required drug grouping. Consequently, we increased our estimate to 75 percent of total drug spending for beneficiaries enrolled that would be affected by the drug card initiative. We assume that this is the lower bound of drug spending that would be affected by the drug card initiative.

We also assume that it is possible that programs would include a discount on all drugs. To calculate this upper bound, we assume that all beneficiary drug expenditures would be affected by the drug card initiative. We note, however, that we have made no adjustment to take into account that some beneficiaries currently receive discounts and that a large portion of the savings to beneficiaries would come from generic substitution, and not as a result of price reductions on brand name drugs.

3. Estimated Beneficiary Savings

An April 2000 study prepared by the Department of Health and Human Services (HHS) entitled, "A Report to the President: Prescription Drug Coverage, Spending, Utilization and

Prices", indicated a significant price differential between individuals paying cash for prescriptions at a retail pharmacy versus those with insurance. This was true for both the Medicare and non-Medicare populations. According to the study, in 1999 the price paid by cash customers was nearly 15 percent more than the total price paid under prescription drug insurance, including the enrollee cost sharing. For 25 percent of the most commonly prescribed drugs, this price difference was higher—over 20 percent. Thus, in today's market, individual Medicare beneficiaries without drug coverage and the related market purchasing leverage, not only face having to pay the full cost for medications from their own pockets, but ironically are also charged the highest prices. Furthermore, the HHS study did not include the effect of rebates on total prices paid. It did, however, note industry experts as indicating that insurers and employers typically receive 70 to 90 percent of the rebates negotiated for their enrollees. While currently, rebates in insured products may not necessarily reduce prices paid at the retail point of sale, the rebates do lower the per-prescription cost for plan sponsors, and thus tend to lower premiums or program costs for insured beneficiaries.

We anticipate that the estimated savings for Medicare beneficiaries in a Medicare-endorsed drug card program would be a first step toward the savings that could be achieved under an insurance product. Based on information on savings from insurance products and information on the current discount card market, we assumed that beneficiaries enrolling in the Medicare-endorsed prescription drug discount card programs would save, on average, between 10 and 13 percent of their total drug costs compared to their spending in the absence of this initiative. The percentage savings on particular prescription drugs would vary and may be substantially higher for certain products, particularly generics, due to their lower prices. While the impact analysis uses an assumption of savings of 10 to 13 percent off total drug spending, we believe that savings of 15 percent may be possible, depending on the ultimate design of card sponsors' programs. If Medicare-endorsed discount card programs rely heavily on the use of formularies, we expect that manufacturer rebates and discounts would be greater in response. Earlier in this proposed rule we solicited comments and data on how to maximize manufacturer rebates and discounts.

The savings to beneficiaries would be attributable to the combination of lower prices paid at the point of sale as a result of manufacturer and pharmacy discounts, as well as the effects of beneficiary education leading to greater use of generic drugs and more effective management of prescription drug expenses by beneficiaries. Because pharmacy discounts are increasingly available to beneficiaries through existing voluntary card programs, we expect that manufacturer rebates and discounts and savings from a better understanding of generic alternatives and managing prescription drug expenses would be important sources of savings in this initiative. For purposes of calculating the estimates of beneficiary savings, we assumed an average overall drug spending savings to beneficiaries of 12.4 percent. These estimates do not take into account possible increased use of prescription drugs by Medicare beneficiaries resulting from paying reduced out-of-pocket amounts for drugs.

Because the Medicare-endorsed drug card programs would be modeled after insured products in terms of enrollment and the use of formularies, combined with its competitive model and the requirement of manufacturer rebates or discounts, we expect that the Medicare-endorsed drug card programs would achieve new beneficiary savings from manufacturer rebates or discounts. The share of savings would vary depending on the drug, but savings from manufacturers are expected to be substantially greater than those available through existing voluntary cards. According to the HHS study, industry experts report that private insurance plans garner rebates on individual brand name drugs ranging from 2 to 35 percent. We assume that the portion of beneficiary savings attributable to manufacturers may increase over time as competition forces card sponsors to secure manufacturer rebates or discounts in order to remain competitive. To the extent that card program sponsors design formularies to mimic those of insured products, the ability to garner manufacturer rebates or discounts would increase.

4. Projection Assumptions

Since our data on Medicare beneficiary prescription drug spending are based on 1998 MCBS data, it is necessary to make several adjustments in order to prepare 2003 estimates. In order to trend 1998 spending to 2003 dollars, we use prescription drug spending projections based on per capita drug expenditure growth from the National Health Expenditure (NHE) Projections 1980 to 2010. These projections can be found on our Web site at: *http://www.hcfa.gov/stats/NHE-Proj/proj2000/tables/t11.htm.*

MCBS data on prescription drug utilization are self-reported by beneficiaries, and consequently are subject to under reporting. We are studying this under reporting in order to develop adjustment factors to be used for estimating purposes. For purposes of the estimates in this proposed rule, the spending data from the MCBS are adjusted to account for the estimated 16.4 percent in under reporting that has been identified through our research thus far.

It is also necessary to adjust for growth in the Medicare beneficiary population. The adjustments were made based on the assumptions used for the Medicare Trustees Reports, March 19, 2001.

These assumptions are detailed in Table 4, which shows the estimated impact, using 1998 as the base year for projections. The estimated increase in total Medicare enrollment for 2003 and the estimated increase in per capita drug expenditures (97.4 percent) are shown as increases from 1998 to 2003. These estimates are based on the 1980 to 2010 NHE projections.

For the estimated 10 million beneficiaries who would enroll in the proposed Medicare-endorsed drug card programs, the base for total drug expenditures involved in the discount card initiative is projected to be $13.3 billion in 2003 (not adjusted for enrollment phase-in), $14.9 billion in 2004, and $21.1 billion in 2007 before the savings achieved through the card initiative.

As indicated above, these projections are estimated using 1998 MCBS data, projected forward to 2003 to 2007 based on expected growth in per capita health care spending and the Medicare population. For beneficiaries with Medigap coverage, estimated prescription drug spending involved in the discount card initiative may be understated because our projection method implicitly assumes that the Medigap drug benefit structure (deductible and coverage limits) grows as per capita spending grows. However, we believe that this does not significantly alter the overall findings in the impact analysis because it is likely counterbalanced by other assumptions that tend to overstate the discount card programs' impact on retail prescription drug sales through pharmacies. For example, in the impact analysis, we use NHE estimates of prescription drug spending net of manufacturer rebates provided to health insurers. Because removing the rebates understates total prescription drug sales realized by

pharmacies, the impact of the Medicare-endorsed drug cards as a percent of total pharmacy revenues is overstated.

TABLE 4.—ESTIMATED IMPACT

	1998	2003	2004	2005	2006	2007
Total Medicare Enrollment ($ millions)	38.9	40.9	41.4	42.0	42.6	43.4
Increase in Total Medicare Enrollment	.....	5.2%	1.3%	1.3%	1.5%	1.8%
Increase in per Capita Drug Expenditures	.....	97.4%	11.2%	10.7%	10.7%	10.2%
Total National Aggregate Drug Expenditures ($ billions)	$85.2	$175.8	$197.1	$219.9	$245.3	$272.4
Projected Prescription Drug Spending Under the Drug Discount Card Programs ($ billions)	$6.4	$13.3	$14.9	$16.8	$18.8	$21.1
Projected Beneficiary Savings ($ millions)	$793	$1,647	$1,855	$2,081	$2,338	$2,622
Implementation Phase-in	.....	0.75	1.00	1.00	1.00	1.00
Upper Bound Impact of Estimated Beneficiary Savings ($ millions)	.....	$1,235	$1,855	$2,081	$2,338	$2,622
Upper Bound Impact as a Percent of Total National Retail Prescription Drug Expenditures	.....	0.70%	0.94%	0.95%	0.95%	0.96%
Lower Bound Impact of Estimated Beneficiary Savings ($ millions)	.....	$927	$1,391	$1,561	$1,753	$1,967
Lower Bound Impact as a Percent of Total National Retail Prescription Drug Expenditures	.....	0.53%	0.71%	0.71%	0.71%	0.72%

5. Anticipated Effects

a. Effects on Medicare Beneficiaries

Among the primary purposes of the proposed Medicare-Endorsed Prescription Drug Card Assistance Initiative would be to:

- Educate beneficiaries about the private market methods for securing discounts on the purchase of prescription drugs.
- Encourage beneficiary experience with the competitive discount approaches that are a key element of all Medicare prescription drug benefit legislative proposals.
- Assist beneficiaries in accessing lower cost prescription drugs through new competitive manufacturer rebates or discounts and better understanding of how to manage their prescription drug needs.

We estimate that at least 10 million Medicare beneficiaries would enroll in Medicare-endorsed drug card programs. We anticipate that Medicare beneficiaries with no drug insurance who enroll in a Medicare-endorsed prescription drug card program would save between 10 and 13 percent of their total drug costs. However, this would vary by the mix of drugs beneficiaries use, and as noted previously, may be even higher depending on the ultimate program design used by card sponsors.

Also, beneficiaries may be required to pay a one-time enrollment fee of up to $25 to join a Medicare-endorsed drug card program. If all 10 million Medicare beneficiaries estimated to enroll by the end of Year One would pay the maximum $25 enrollment fee (a scenario we do not expect because of competition among endorsed card programs), the total beneficiary savings would be reduced by a maximum of $250 million in 2003. However, as noted earlier, to the extent a beneficiary stays in the same drug card program, beyond the first year, the more value the card represents in savings to the beneficiary. In Year Two, based on our estimates of growth in the Medicare population and the disenrollment rate (discussed later in this analysis), we estimate that if beneficiaries paid the maximum $25 enrollment fee, total beneficiary savings would be reduced by a maximum of $32 million in 2004.

Beneficiaries with Medigap insurance that includes drug coverage who enroll in a Medicare-endorsed drug discount card program would also experience savings, particularly before the Medigap drug deductible is reached, and after the spending cap is exceeded. We also believe that the education beneficiaries would receive concerning drug prices, formularies, drug-to-drug interactions and other pharmacy counseling, generic substitution, and pharmacy networks, would provide an opportunity for beneficiaries to maximize their savings.

A beneficiary enrolled in a Medicare-endorsed card program would be free to purchase prescription drugs outside the drug discount card program, either at a non-network pharmacy or a non-formulary drug. Thus, beneficiaries without prescription drug coverage would not be any worse off than they would be in the absence of the proposed Medicare-endorsed initiative.

b. Effects on the Medicare Program

We would be responsible for reviewing applications and awarding endorsements so that these proposed card programs could begin operating to provide lower prices to cash paying beneficiaries. The cost associated with this process, as well as all other activities we would undertake associated with implementing this proposed initiative, would be subsumed in the agency's existing administrative budget. No new agency resources are budgeted for implementation of this initiative.

While not quantifiable, a positive impact of the rebate and discount requirements of the proposed initiative would be to provide us with experience in understanding issues in the pharmaceutical industry prior to enactment of a Medicare drug benefit. We would increase our knowledge concerning pricing and payment issues, information technology requirements, and increasing the effectiveness of pharmacy quality improvement programs. The pharmaceutical industry (including pharmacy benefit managers) would also gain more experience in working with the Medicare population prior to implementation of a drug benefit. We expect that this experience would make the transition to a Medicare prescription drug benefit faster and more efficient.

Because this proposed initiative is not a Medicare benefit, we do not anticipate any significant change in the Medicare baseline as a result of its implementation.

c. Effects on National Retail Prescription Drug Spending

Total national retail spending (spending for total population, not just Medicare beneficiaries) on prescription drugs is projected to be $175.8 billion in 2003, $197.1 billion in 2004, and $272.4

billion in 2007 (*http://www.hcfa.gov/stats/NHE-Proj/Proj2000/tables/t11.htm*).

The total estimated economic impact of the Medicare-Endorsed Prescription Drug Card Assistance Initiative of $927 million to $1.235 billion in 2003 would range from 0.53 percent (the lower bound) to 0.70 percent (the upper bound) as a share of total national retail prescription drug expenditures in 2003. In the second year of the initiative (2004), once enrollment has phased-in completely, the total impact is estimated to range from $1.391 billion to $1.855 billion, or 0.71 percent to 0.94 percent of total national retail expenditures for prescription drugs. In 2007, we estimate the total impact to range from $1.967 billion to $2.622 billion, or 0.72 percent to 0.96 percent of total national retail drug expenditures. Thus, the economic impact is estimated to be less than 1 percent of total retail prescription drug spending.

We expect that the various sectors involved in the prescription drug industry would adjust to the impact without significant disruption, just as the industry adjusted to discounts being extended to the Medicaid population and the privately insured population during the 1990s. The 1990s saw a significant increase in reliance on pharmacy benefit managers and the tools they use to manage pharmaceutical benefit costs.

For example, evidence of market adjustment can be seen in the changes in pharmacies' acquisition costs during the 1990s. In the August 2001 HHS Office of Inspector General (OIG) Report entitled "Medicaid Pharmacy-Actual Acquisition Cost of Brand Name Prescription Drug Products", the OIG reports on changes in pharmacy acquisition costs for both single source and multi-source brand name drugs. The OIG uses the common industry pricing metric of average wholesale price (AWP). The findings from the OIG study indicate that the acquisition prices pharmacies face for a broad spectrum of brand name drugs have been declining as the percentage of AWP during the period 1994 to 1999. Based on 1994 pricing data, OIG estimates that pharmacies acquired brand name drugs (both single source and multi-source) at a discount of 18.30 percent below AWP. For 1999 pricing data, OIG estimates a discount of 21.84 below AWP. The OIG reports that this represents an increase of 19.3 percent in the average discount below AWP for which pharmacies were able to purchase a mixture of single source and multi-source brand name drugs. The OIG is preparing a similar analysis on the pharmacy acquisition costs related to generic drugs. Thus, during the 1990s, as more customers secured discounts on the purchase of prescription drugs, pharmacies' acquired drugs at larger discounts from AWP.

The pharmacy acquisition costs reported by the OIG are similar to those reported in the PricewaterhouseCoopers (PWC) study conducted for us entitled "A Study of Pharmaceutical Benefit Management", June 2001. That study reported that pharmacies generally now acquire drugs at AWP minus 20 to 25 percent. According to the PWC report, absent a discount arrangement (such as a pharmacy-sponsored senior discount), pharmacies, on average, sell to the uninsured population at full retail price, roughly AWP plus a dispensing fee (generally $2 to $3).

We also believe that the proposed Medicare-endorsed prescription drug card programs would accelerate the use of generic drugs. The HHS study reports that, generally, pharmacies earn higher margins on generic drugs. In addition, PWC found that generic manufacturers sometimes provide pricing incentives to pharmacies based on generic volume or market share. These are other examples of adjustments that take place related to the market place in pharmaceuticals.

Our expectation is that the discounts offered by retail pharmacies and drug manufacturers would be no greater than the discounts already offered to insured individuals, including insured Medicare beneficiaries, unless there is a legitimate business reason for the pharmacies and the drug manufacturers to offer a greater discount. It is possible that the requirements of final price publication and the establishment of a large number of competing discount cards would lead to greater manufacturer discounts. We expect that access to modern competitive tools would assist in controlling prescription drug costs and improving the quality and efficiency of prescription drug services. We also expect that this initiative would somewhat level the playing field between the insured and uninsured, and the current differential in pricing between populations with drug coverage and Medicare beneficiaries without drug coverage would be ameliorated.

Further, since this proposed initiative is not a Medicare benefit, we do not expect that this effort would have any impact on the number of Medicare beneficiaries with drug coverage through employer-sponsored health insurance. We do not anticipate that employers would alter their drug coverage in response to this initiative.

G. Estimated Costs and Anticipated Benefits of Other Proposed Requirements and Medicare's Beneficiary Education and Outreach Plans

The following cost and benefit analysis is prepared in 2002 dollars and reflects costs and benefits we anticipate in the first and second year of this proposed initiative. We estimate significantly different costs in Year One and Year Two of implementation because the start up of the administrative consortium and a very large enrollment is assumed in the first year only. Also, in the second year, the administrative consortium would be responsible for review of card sponsors' marketing materials; we propose that marketing review would be our responsibility in the first year.

Table 5 reports the per card program sponsor costs and the per new enrollee costs for national and regional card programs for each administrative function associated with a significant cost. While any entity that meets all of the requirements in the regulations would be eligible to enter into an agreement with us to receive a Medicare endorsement, for purposes of estimating these costs, we assumed that 15 drug card programs would be endorsed. Of those 15, we assume that 10 would be national programs (including 50 States and Washington, DC) and 5 would be regional programs (including 4 States). We do not make adjustments for differences in Medicare population per State, which would cause the actual impact on regional programs to vary.

1. Organizational Size, Experience, and Structure Requirements

We believe that the organizational size and experience requirements would be necessary to assure beneficiary confidence in the initiative so they would enroll and stay enrolled, protect the Medicare name, and assure the necessary administrative capacity to handle a large volume of new enrollment. Large enrollment volume, along with the exclusivity provisions of this proposed rule, would be necessary for a drug card sponsor to garner significant market share and negotiate manufacturer rebates and discounts to successfully compete with other card programs on price and customer and pharmacy service.

We do not think it would be practical and therefore possible for independent pharmacies to obtain an endorsement. We nonetheless expect most pharmacies would be able to participate in an endorsed card program sponsor's pharmacy network. To improve the

opportunity for a variety of organizations, such as chain pharmacies, nonprofit groups, and other private entities to qualify for Medicare endorsement of their card program, the proposed initiative provides flexibility in the way that entities may organize to meet these size, experience and structure requirements.

We seek comments concerning the anticipated costs and limitations that would be faced by entities interested in organizing with other entities to meet any of the requirements necessary to obtain Medicare endorsement that one entity could not meet by itself.

2. Private Sector Administrative Consortium and Its Tasks

We propose that drug card sponsors would agree to, and demonstrate the ability to, jointly administer, abide by the guidelines of, and fund a private administrative consortium with other Medicare-endorsed prescription drug program sponsors.

Following are the systems specifications we used to estimate the costs of hardware to run an enrollment exclusivity system and a price comparison web site. One administrative responsibility of the consortium would be to ensure that beneficiaries are not enrolled in more than one Medicare-endorsed prescription drug card program at the same time. We assume that this would require the administrative consortium to develop and maintain a secure electronic enrollment exclusivity system that would be populated by and accessible only by the administrative consortium and endorsed sponsors; as stated previously, we assume 15 card sponsors would be endorsed.

For the purpose of defining the capacity needed for this system, we also assume that the system would maintain a unique record for each beneficiary enrolled by a card sponsor. The record would contain such information as name, address, telephone number, a unique number identifier, date of enrollment, date of disenrollment, card program identifier, provision for enrollment changes, and whether the beneficiary was group enrolled through the sponsor. We estimate the number of system transactions, most occurring in any year in a two month period, based on the estimated 10 million beneficiaries who would likely join, adjusted using the 2000 Medicare+Choice voluntary disenrollment rate of 11.5 percent.

We do not know what the actual rate of voluntary disenrollment would be for this proposed initiative; it could be lower or higher depending on how much a beneficiary's card program changes its formulary and drug prices and whether these changes affect the drugs the beneficiary takes. Also, the voluntary disenrollment rate would depend on the diligence of beneficiaries in tracking any changes to the formularies and drug prices of the card programs they join and the perceived value of these changes relative to comparable information available to them on other cards.

We assume that of the 10 million beneficiaries who would enroll in the first year, 11.5 percent would disenroll and reenroll in another Medicare-endorsed drug card program. We also assume that sponsors would access the system to check enrollment records for an additional 10 percent of beneficiaries for reasons such as a lost discount card. We assume the system would be updated in real time and be of web based technology. We assume this system would be maintained by a webmaster hired by the administrative consortium. We also assume reports, such as enrollment rates in a particular time frame by a particular card and percent of beneficiaries enrolled as a group, could be generated off this system by the consortium's webmaster.

Another administrative responsibility of the consortium would be to facilitate the publication of, or to publish, information, including comparative price information on discount drugs, that would assist beneficiaries in determining which Medicare-endorsed prescription drug card program is the most appropriate for their needs. This would require the administrative consortium to develop and maintain a web-based, searchable database accessible to the public so that interested Medicare beneficiaries or their advocates could access comparable price data on the drugs they take for the drug discount card programs available in their zip code area. We assume that each of 15 card sponsors would update its formulary and price lists four times a year. Because we propose that formularies could vary geographically, we assume that 10 of the estimated 15 sponsors endorsed by Medicare would be national programs (having a network in all 50 States and Washington, DC), and the remaining 5 programs would be regional programs, comprised of 4 States each. We assume that each card program would have a unique formulary and price list for each State, differentiated by urban and rural areas. Based on these numbers, we estimate that the price comparison web site would house as many as 1060 unique formularies and pricing listings. We assume that only the administrative consortium would have direct interface with the system; card sponsors would submit files in a uniform format to the consortium's webmaster to be uploaded. We assume reports, such as price comparisons for a list of drugs within a geographic area, could be generated off this system by the consortium's webmaster.

To fulfill these specifications for both of the enrollment exclusivity and price comparison systems, our Office of Information Services (OIS) developed a cost estimate for the first year in 2002 dollars in the amount of $400,000 for lowest common denominator technology which would permit the system to be hosted virtually anywhere by a professional internet technology organization. The estimate includes the costs of a database server, redundant database server, application server, redundant application server and the cost for an internet service provider. Second year costs would be significantly less, $80,000, reflecting maintenance rather than purchase of hardware.

A third responsibility of the administrative consortium would not begin until the second year. We propose that the consortium would be responsible for ensuring the integrity of the information distributed by the Medicare-endorsed prescription drug discount card programs. We propose that we would conduct the marketing material review for the first year of endorsements. We propose that the administrative consortium's reviews in future years would be based on guidelines prepared by us. Based on a cost estimate, prepared in 2002 dollars, developed by our Center for Beneficiary Choices (CBC), we assume that the cost of developing the guidelines would be $237,500. We assume the cost of conducting the review from the estimated 15 endorsed sponsors and tracking the status of the review and approval process, including the cost of a database for this activity would be $282,000. We assume that the cost of transitioning the review to the administrative consortium would be $44,000. We assume reporting on the status of the marketing review and findings under the review would cost $29,000. This first year cost, totaling $592,500, would be borne by us in the context of our existing budget. We use the same estimates to reflect the second year costs to be borne by the administrative consortium, however the consortium would not develop guidelines, for a total of $355,000 ($592,500 minus $237,500). This estimate does not include guideline development because this activity would be conducted by us.

A cost estimate in 2002 dollars was produced by CBC for key activities associated with the start-up of the administrative consortium, and the development of the specifications and software to run the enrollment exclusivity system as well as the price comparison web site. These activities and their estimated costs include:

- Analysis and development of recommendations for an appropriate organizational structure and governance, including review of legal considerations, $405,000.
- Specification of requirements for the enrollment exclusivity system and software development, $301,500.
- Options development for financial management for the administrative consortium, $345,600.
- Development of a transition plan from consortium formation through full operation, $104,850.
- Specification of requirements for the price comparison web site and software development, $261,000.
- Contract support to the consortium during transition for management functions, $184,500.
- Contract support for the consortium webmaster to implement the enrollment exclusivity system and the price comparison web site, $45,900.

These activities and their estimated costs equal $1.65 million for the start-up of the administrative consortium.

As an additional cost in the first year of operation, we assume that the administrative consortium would hire or retain the services of several professionals. We use national mean hourly wage data produced by the U.S. Department of Labor, Bureau of Labor Statistics, and reported in "Occupational Employment Statistics, 2000 National Occupational Employment and Wage Estimates". Administrative consortium staff and their estimated 2000 national mean hourly wage rates are as follows:

- Public Relations Manager—$29.54.
- Lawyer—$43.90.
- Computer Programmer—$29.31.
- Pharmacist—$33.39.
- Executive Secretary or Administrative Assistant—$15.63.

We age these wages to 2002 dollars using a 2001 adjustment of 3.8 percent, and a 2002 adjustment of 4.0 percent, found in Table II.F1 of the 2001 Annual Report of the Board of Trustees of the Federal Hospital Insurance Trust Fund (*http://www.hcfa.gov/pubforms/tr/hi2001/tabiifl.htm*). We adjust these wages upward to include compensation using an adjustment factor of 1.355 based on Table 6 of a U.S. Department of Labor, Bureau of Labor Statistics report entitled "Employer Costs for Employee Compensation—March 2001", which reports that national wages and salaries for white collar occupations represent 73.8 percent of total wages and compensation. We assume that the administrative consortium would hire or retain the services of each type of employee on a full-time basis of 2080 hours per year, except the lawyer and the pharmacist, whom we assume would work one-half of that time. The estimated 2002 annual wages and compensation would be as follows:

- Public Relations Manager—$89,876.
- Lawyer—$66,783.
- Computer Programmer—$89,177.
- Pharmacist—$50,795.
- Executive Secretary—$47,555.

The total of these yearly costs would be $344,188. We estimated overhead costs for these employees using a factor of 1 applied to the total wage and compensation rates for an additional amount of $344,188.

We estimate the cost of leasing space for the administrative consortium staff of 5 using an estimate provided by a commercial real estate broker of $25 per square foot for full service leasing in a metropolitan area. We apply this rate to an estimated 150 square foot office per worker, an estimate provided by the staff of the Government Services Administration (GSA), for a total amount of $18,750.

We anticipate providing some financial support for the start-up of the administrative consortium. As this support would be provided in the context of our existing budget and other program priorities, a determination of the actual amount is pending the outcome of this public notice and rule making process. We recommend at this time that interested parties assume no support aside from the costs of developing marketing guidelines and conducting the marketing review in the first year of the proposed initiative.

The total estimated cost to be borne across all Medicare-endorsed card program sponsors for the administrative consortium start-up and administrative activities in the first year would be $2.75 million ($1.64 million for start-up activities plus $400,000 for hardware plus $344,188 for staff wages and compensation plus $344,188 in overhead plus $18,750 for leased space).

We expect that drug card program sponsors would share the start-up costs. We propose that a lump sum payment be made into a privately held escrow account by each endorsed card program. The payment would be prorated by the number of States included in each endorsed card program's network area, weighted by the number of Medicare beneficiaries residing in each State (and Washington, DC). As reported in Table 5, we estimate the per card program sponsor costs for a national program would be $265,149, and for a regional program to be $20,796, with a per new enrollee cost of $0.25.

We estimate that second year administrative consortium costs to be borne by all sponsors of the consortium would be significantly lower than first year costs. Specifically, the relevant estimates for second year costs include: maintenance of the enrollment exclusivity and price comparison systems, $80,000; marketing review, $355,000; consortium staff, $344,188; overhead costs, $344,188; and leased space, $18,750; for a total of $1.14 million. As reported in Table 5, we estimate the per card program sponsor costs for a national program would be $109,902, and for a regional program to be $8,619, with a per new enrollee cost of $0.88.

In these estimates for the administrative consortium and its activities, we have captured the activities required in the proposed regulation and have attempted to reflect the significant costs associated with them. We seek public comment on the adequacy of this estimate.

We presume that sponsors would recover these costs in enrollment fees and from the portion of pharmaceutical manufacturing rebates that are not shared either directly or indirectly with beneficiaries through pharmacies. These costs would have the effect of lowering the amount of negotiated rebate that could be passed through to beneficiaries, or of increasing the enrollment fee.

We believe that card program sponsors would benefit in preparation for a future Medicare drug benefit by developing the infrastructure implied by the activities detailed above.

We believe that the administrative consortium's enrollment exclusivity responsibility, as well as its marketing review responsibility, would significantly benefit beneficiaries as they seek information about selecting a drug discount card program. These activities would help beneficiaries make informed decisions and protect them from misleading information. Further, the role of the exclusivity system in assuring that beneficiaries only belong to one drug discount card program at a time, as well as the price comparison information, would help optimize card sponsor negotiations for manufacturer rebates and discounts as sponsors compete for Medicare market share. Also, the secure exclusivity system

would assist in protecting beneficiary confidential information.

We would benefit by learning from the implementation of the requirements involving information technology, marketing material review, beneficiary enrollment, and education using the price comparison web site and through the card programs' enrollment.

3. Customer Service Requirements

Given the types of potential sponsors who would likely meet the size and experience requirements that we propose for a card program to be Medicare-endorsed, we believe that the proposed customer service requirements would represent usual and customary practice for the programs we endorse and would be associated with minimal new costs except as described below.

There would be an incremental cost associated with each additional enrollment of a Medicare beneficiary. For the purpose of this estimate, we assume that 15 drug card programs would be endorsed. We assume that a total of 10 million beneficiaries would enroll. Using the 2000 Medicare+Choice (M+C) disenrollment rate, we assume an additional 11.5 percent of beneficiaries would disenroll and reenroll for a total of 11.15 million enrollments. As reported in the Collection of Information Requirements section elsewhere in this proposed rule, we believe that each additional enrollment would take 15 minutes. This time estimate reflects the time necessary to provide beneficiaries with all the information required in the proposed regulations including: Educating the beneficiary by phone on how the discount card program works, answering questions about specific drugs in the formulary and their prices, explaining the confidentiality requirements, obtaining and storing a hard copy of the beneficiary's enrollment signature, and processing the transaction electronically.

This estimate reflects the marginal cost of each additional enrollment in the first year; we assume that each drug card program sponsor would have the basic infrastructure. We assume that the card program sponsor would hire or retain the services of customer service representatives to conduct the enrollment function.

We again use wage and compensation data produced by the U.S. Department of Labor, Bureau of Labor Statistics. The national mean hourly wage rate of $12.75 for a customer service representative was taken from a report entitled, "2000 National Occupational Employment and Age Estimates, Office and Administrative Support Occupations" (*http://www.bls.gov/oes/2000/oes_43Of.htm*). We age this wage rate to 2002 using the same aging factors (3.8 percent for 2001 and 4.0 percent for 2002) used to age the wages for the administrative consortium staff. We use a compensation factor of 1.355 obtained from the same report used to calculate compensation for the consortium staff, for a total 2002 wage and compensation rate of $38,792 per customer service representative. We apply a factor of 1 to this rate to provide an overhead amount of $38,792.

We estimate lease space per customer service representative using 150 square feet per office at $25 per square foot for full service, leasing in a metropolitan area, obtained from a commercial real estate broker for a per office amount of $3,750. The total cost per representative for wages, compensation, overhead and leased space would be $81,334.

Assuming that each customer service representative works seven hours per day, 5 days per week, 50 weeks per year, each representative would work 105,000 minutes per year. This would permit each representative to enroll 7000 beneficiaries per year (105,000 divided by 15 minutes per enrollment).

We estimate that for all 11.15 million new enrollees to be processed by telephone, a total of 1,593 customer service representatives would be hired or retained. As Table 5 shows, the estimated cost for a national card program sponsor would be $12.46 million, and for a regional card program sponsor, $977,774, with a per enrollee cost of $11.62.

In the second year, we estimate that 1.29 million beneficiaries would be enrolled. This number reflects a growth factor in Medicare enrollment of 1.3 percent, from Table 4 of this regulatory impact analysis, applied to the 10 million beneficiaries enrolled in the first year, and also accounts for only the 11.5 percent who we assume would disenroll and reenroll. The number of customer service representatives needed would be 185. As Table 5 shows, the estimated cost for a national card program sponsor would be $1.44 million, and for a regional card program sponsor, $113,557, with a per enrollee cost of $11.62.

The enrollment process described above would assure that beneficiaries understand how to fully benefit from the drug discount card program in which they enroll, and would assure the confidentiality of their personal information, as required in this proposed regulation. We welcome comments on different methods to efficiently enroll beneficiaries in the context of our requirements to provide information and assure that beneficiary personal information is kept confidential. We would also be interested in comments concerning the reliability, security, and ability to audit electronic rather than hard copy signatures, and on differential costs for an electronic enrollment process.

Another customer service requirement that would be significantly affected by the large number of anticipated additional enrollments per drug discount card program is the additional capacity and maintenance of the customer service call center for non-enrollment related calls. We estimate that for the first year the customer service lines, across all card program sponsors, would be used for disenrollment, or 11.5 percent of all card programs' enrollees, or 1.28 million disenrollee related calls. We assume an additional 50 percent of this number for other non-enrollment related calls, for a total of 1.92 million calls. Using our CBC estimated additional cost per call, reported in 2002 dollars in the amount of $5 for the Medicare 1–800 line, we estimate, as reported in Table 5, that the cost of the additional call volume generated by this proposed initiative for a national card program sponsor in the first year would be $925,397, and for a regional card program sponsor, $72,580, with a per new enrollee cost of $0.86.

For the second year estimate, the call volume is adjusted to reflect 1.3 percent growth in Medicare enrollment, for a total cost per national card program sponsor of $937,427, and $73,523 per regional card program sponsor, with a per new enrollee cost of $7.52.

We believe that beneficiaries would benefit significantly from telephone access to the card programs to register their concerns and complaints, or to obtain information for evaluating which card program would best meet their needs.

We presume that sponsors would recover these customer service costs in enrollment fees and that portion of the pharmaceutical manufacturing rebates that are not shared either directly or indirectly with beneficiaries through pharmacies. These costs would have the effect of lowering the amount of negotiated rebate that could be passed through, or of increasing the enrollment fee.

4. Total Costs of Requirements for Card Sponsors

As shown in Table 5, the costs of the administrative consortium operations and the customer service requirements, in the first year would total, per national card program sponsor, $13.65 million, and per regional card program sponsor,

$1.07 million, with a per new enrollee cost of $12.73.

In the second year, total costs for a national card program sponsor would be $2.49 million, and for a regional card program sponsor, $195,701, with a per new enrollee cost of $20.02.

For national and regional programs, this cost analysis for both the first and second year of operation demonstrates that a one-time enrollment fee of $25 (a new fee could be charged if the beneficiary switches programs) could cover the major administrative costs associated with this proposed initiative. Alternatively, a drug card program sponsor could choose to charge a lower or no enrollment fee and support operating expenses through a portion of the manufacturer rebates.

The numbers in Table 5 do not add exactly due to rounding.

TABLE 5.—SUMMARY OF COST ESTIMATES FOR MAJOR ADMINISTRATIVE ACTIVITIES

Year One	Per sponsor cost	Per new enrollee cost (11.15 million enrollments: 10 million first time)
Consortium & Its Administrative Cost:		
National	$265,149	$0.25
Regional	20,796	0.25
Enrollment Cost:		
National	12,466,618	11.62
Regional	977,774	11.62
Non-enrollment Call Center Costs:		
National	925,397	0.86
Regional	72,580	0.86
Total:		
National	13,657,165	12.73
Regional	1,071,150	12.73
Year Two	**Per sponsor cost**	**Per new enrollee cost (1.29 million total enrollments)**
Consortium & Its Administrative Cost:		
National	$109,902	$0.88
Regional	8,619	0.88
Enrollment Cost:		
National	1,447,860	11.62
Regional	113,557	11.62
Non-enrollment Call Center Costs:		
National	937,427	7.52
Regional	73,523	7.52
Total:		
National	2,495,191	20.02
Regional	195,701	20.02

5. Medicare's Beneficiary Education and Outreach Plans

Medicare beneficiaries would benefit from the education and outreach plans we outline in this proposed rule. The information we would impart on our web site, through brochures, and in beneficiary calls to the 1–800–Medicare telephone number would assist beneficiaries in gaining knowledge about whether and how to participate in a Medicare-endorsed prescription drug card program, and impart basic information on how to use tools to manage drug costs.

Also, we would benefit from the infrastructure built for, and the experience gained in educating beneficiaries about, using private sector tools to lower their out-of-pocket prescription drug costs and enhance the pharmacy services they would receive in preparation for a Medicare prescription drug benefit. The costs associated with these efforts would be subsumed in our existing budget.

H. Conclusion

Evidence of trends in prescription drug use and spending, changes in pharmacy acquisition costs for drugs at a time of the increased presence of pharmacy benefit management strategies, and strategies for varying drug prices and manufacturer rebates or discounts seems to indicate a dynamic market that adjusts and returns to equilibrium. Pharmacy benefit management has been a feature of all the major Medicare prescription drug benefit legislative proposals. The implementation of a Medicare-endorsed prescription drug discount card assistance initiative in this environment would educate Medicare beneficiaries and provide them with experience with the private sector tools used to provide pharmacy benefits to practically all Americans who have a drug benefit. The Medicare-endorsed prescription drug card programs would need to garner significant Medicare market share to successfully negotiate manufacturer rebates and discounts to cover administrative costs, keep enrollment fees low and pass through an amount to beneficiaries to keep their drug prices and pharmacy services competitive. This initiative may help ease the transition of the market to a full Medicare prescription drug benefit.

I. Alternatives Considered

We are committed to working with the Congress on a prescription drug benefit in the context of Medicare reform. We considered not pursuing any other immediate effort to assist and

educate Medicare beneficiaries about how to lower their out-of-pocket costs prior to the enactment and implementation of a Medicare prescription drug benefit. However, we concluded that the drug card initiative would provide beneficiaries with immediate help with the cost of prescription drugs, and also could improve access to better quality prescription drug related services. We believe that access to prescription drugs is so fundamental in today's health care environment that beneficiaries should receive information, counseling, and assistance regarding prescription drug discount programs until a Medicare prescription drug benefit is enacted and implemented. Furthermore, we believe that through real world experience with drug assistance card programs, Medicare beneficiaries would be better educated concerning the economic and quality decisions made by private sector purchasers and individuals with drug coverage. A Medicare prescription drug benefit would probably involve the private sector tools currently used by health insurers to lower prescription drug costs and provide higher quality pharmaceutical services. Experience through the proposed drug discount card initiative would better prepare Medicare beneficiaries, particularly those without drug coverage, to make informed decisions about a drug plan that is best for them. Additionally, we would gain experience in educating Medicare beneficiaries about prescription drugs.

We considered alternatives to major proposed features of the initiative, including requiring manufacturer rebates and not permitting mail order only programs to be Medicare endorsed. In deciding to propose requiring manufacturer rebates, we underscore our commitment to mitigating the effect on pharmacies and drugs stores, particularly small entities. Manufacturer rebates would have to be shared with beneficiaries, either directly or indirectly through pharmacies (lower prices, pharmacy counseling or other services that ultimately benefit the Medicare beneficiary). Since card sponsors would not rely solely on pharmacy discounts to compete for customers, pressure would be relieved from pharmacies. To the extent that rebates would be shared through pharmacies, both pharmacies and beneficiaries would benefit. Requiring rebates also would bring the design of the proposed initiative closer to that of insured products, which rely on manufacturer rebates, as well as any discount offered by the pharmacies, to lower costs.

We also considered permitting a mail order only option. Mail order programs have some popularity, and may be a convenient option for some beneficiaries. However, we decided not to propose a mail order-only option because we believe that requiring strong access to retail pharmacies would be in the best interests of beneficiaries, the majority of whom rely on retail pharmacies. Requiring retail access also would mitigate the impact of the proposed initiative on retail pharmacies, particularly small pharmacies that rely on Medicare beneficiaries to make purchases on non-prescription drug items when they enter the pharmacy to fill prescriptions.

We also considered alternative sets of requirements for Medicare endorsement. For example, we could have proposed only requirements pertaining to rebates, discounts, and access to retail pharmacies, while eliminating the size, structure and experience, and customer service requirements. However, we concluded that beneficiary confidence in discount card programs would also depend on the stable availability of reputable card programs and high quality customer service, which we believe only the full set of proposed requirements could assure. We think that beneficiary confidence would be an essential element to beneficiaries' participation, and consequently the role of competition in driving better pricing and quality.

More specifically, among the key requirements we are proposing are requirements related to the following three areas: (1) Requirements related to the applicant's experience, structure, and agreement to jointly administer the administrative consortium; (2) requirements related to customer service; and (3) requirements related to rebates, discounts, and access.

In the area of experience, structure, and agreement to jointly administer the administrative consortium, for example, we would require that national drug discount card program sponsors have 5 years of experience in pharmacy benefit management, or the administration of drug discount cards or low income drug assistance programs that provide prescription drugs at low or no cost and currently serve 2 million covered lives. We believe that these requirements would be necessary in order to help ensure that Medicare would endorse stable organizations that would be likely to exist for some time, and would be capable of serving large populations.

In the area of customer service, we would require that card sponsors charge Medicare beneficiaries no more than a $25 initial enrollment fee. Card program sponsors would be allowed to choose to offer a lower, or no, initial enrollment fee. Unlike the current industry practice of assessing annual fees, we would require card sponsors that choose to charge an enrollment fee to do so only upon initial enrollment, not on an annual basis. We believe that this approach to enrollment fees would be a reasonable way for card program sponsors to defray operating expenses, while providing Medicare beneficiaries with a feature that is generally not found in the current market. We believe that the added market leverage achieved by the Medicare endorsement would more than offset the need to charge an annual enrollment fee. We also believe that the customer service call center would be essential to beneficiary education, assuring that beneficiaries would understand the best use of the card program's features, as well as providing a vehicle for problem solving to promote beneficiary confidence in the card program.

In the area of rebates, discounts, and access, we would require, for example, that for the area to be served by the card program sponsor (either national or regional), 90 percent of the beneficiaries would have to live within 10 miles of a contracted pharmacy. Beneficiary access to retail pharmacies would be an important component of this proposed initiative, and we believe that this standard would preserve beneficiary access to the retail pharmacies that they trust.

Another alternative we considered was to select one or more card program sponsors through a competitive approach. We considered this because we believed it could have allowed for deeper discounts, as potential card sponsors compete for the Medicare business. However, we decided to endorse all qualified applicants meeting the requirements in order to give beneficiaries an array of choices, and to let the market determine which card programs offer the best value to Medicare beneficiaries. We believe that our approach would more easily accommodate additional programs seeking Medicare endorsement, and that beneficiaries would select a Medicare-endorsed card program that is right for them.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 403

Grant programs-health, Health insurance, Hospitals, Intergovernmental

relations, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV, part 403 as set forth below:

PART 403—SPECIAL PROGRAMS AND PROJECTS

1. The authority citation for part 403 is revised to read as follows:

Authority: Sec. 4359 of the Omnibus Budget Reconciliation Act of 1990 (42 U.S.C. 1359b–3) and secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Add a new subpart H, consisting of §§ 403.800 through 403.820, to part 403 to read as follows:

Subpart H—Medicare-Endorsed Prescription Drug Card Assistance Initiative

Sec.

Subpart H—Medicare-Endorsed Prescription Drug Card Assistance Initiative

§ 403.800 Basis and scope.

(a) *Provisions of the legislation.* This subpart implements, in part, the provisions of section 4359 of the Omnibus Budget Reconciliation Act of 1990 (OBRA). Section 4359 of OBRA requires the Secretary to establish a health insurance advisory service program (the beneficiary assistance program) to assist Medicare beneficiaries with the receipt of services (including both covered and uncovered benefits) under the Medicare and Medicaid programs and other health insurance programs. The subpart is also based on sections 1102 and 1871 of the Social Security Act.

(b) *Scope of subpart.* This subpart sets forth the standards and procedures CMS uses to implement the Medicare-Endorsed Prescription Drug Card Assistance Initiative.

§ 403.802 Definitions.

For purposes of this subpart, the following definitions apply:

Administrative Consortium means the group of Medicare-endorsed prescription drug card program sponsors formed to jointly carry out specific administrative tasks associated with operating the Medicare-endorsed prescription drug card programs in accordance with the Medicare endorsement agreement.

Applicant means the organization or entity (along with any subcontractors or others with whom it has legal arrangements for the purpose of meeting the requirements for endorsement) that is applying for Medicare endorsement of its prescription drug card program.

Application means the document submitted to CMS by an applicant that demonstrates compliance with the requirements specified in this subpart in order to obtain Medicare endorsement of the applicant's drug card program.

Medicare-endorsed prescription drug card assistance initiative means an effort whereby CMS solicits applications for Medicare endorsement of prescription drug card programs, reviews them, offers agreements to program sponsors who meet all of the requirements for endorsement, and awards Medicare endorsements to program sponsors who sign the agreement.

Medicare-endorsed prescription drug card program means a program developed by an organization or group of organizations, endorsed by CMS under the Medicare-endorsed prescription drug card assistance initiative to educate Medicare beneficiaries about tools to lower their prescription drug costs and to offer prescription drug cards to Medicare beneficiaries.

Medicare-endorsed prescription drug card program sponsor means any applicant that has received endorsement from Medicare for its prescription drug card program.

Solicitation means a notice published in the **Federal Register** announcing a request for applications from applicants seeking Medicare endorsement for their prescription drug card programs.

§ 403.804 General rules for Medicare endorsement.

(a) *Applications.* Applicants may submit applications to participate in the Medicare-endorsed prescription drug card assistance initiative and become a Medicare-endorsed prescription drug card program sponsor.

(b) *Number of programs sponsored.* An organization or entity may have operational responsibilities in more than one drug card program. A separate application must be submitted for each program. A sponsoring organization or entity may be the primary organization or entity in only one application per solicitation, and may sponsor only one Medicare-endorsed prescription drug card program at any time.

(c) *Requirements.* In order to be eligible for endorsement, applicants must submit applications and meet all of the requirements specified in § 403.806.

(d) *Eligibility to receive endorsement.* Any applicant that submits an application containing all information necessary to determine whether the applicant meets all of the requirements in § 403.806; and that meets all of the requirements in § 403.806; will be eligible to enter into an agreement with CMS to receive a Medicare endorsement.

(e) *Period of endorsement.* In Year One of the initiative, the Medicare endorsement will be effective for 15 months. CMS will consider card program sponsor performance under an existing Medicare endorsement as a factor in determining eligibility for endorsement in future annual cycles.

(f) *Termination of endorsement by CMS.* CMS may terminate the endorsement at any time.

(g) *Termination of participation by Medicare-endorsed drug card sponsor.* A Medicare-endorsed prescription drug card program sponsor may choose not to continue participation in the Medicare-endorsed prescription drug card assistance initiative. In Year One, termination would be effective 30 days after providing written notice to CMS.

(h) *Notification of beneficiaries of termination of participation.* In the event of termination of participation in the initiative by the drug card program sponsor, or termination by CMS, the Medicare-endorsed prescription drug card program sponsor must notify all of its Medicare beneficiary enrollees in writing that they may enroll in an alternative Medicare-endorsed prescription drug card program. This notice must be provided by United States mail within 10 days of providing CMS with notice of termination or within 10 days of receiving notice of termination from CMS.

§ 403.806 Requirements for eligibility for endorsement.

(a) *General.* To be eligible for Medicare endorsement, an applicant must submit an application demonstrating that it meets and will comply with the requirements described in this section.

(b) *Applicant structure, experience, and participation in administrative consortium*—(1) The applicant must

apply as either a national or a regional program.

(i) To qualify as a national program, a single organization or entity that is either the applicant or a subcontractor or under other legal arrangement with the applicant must—

(A) Have no less than 5 years experience in pharmacy benefit management, in administering a prescription drug discount program, or in administering a low income drug assistance program that provides prescription drugs at low or no cost;

(B) Currently manage at least 2 million covered lives in an insured pharmacy benefit, prescription drug discount program, or a low income drug assistance program that provides prescription drugs at low or no cost; and

(C) Have a pharmacy network serving all 50 States and the District of Columbia.

(ii) To qualify as a regional program, a single organization or entity that is either the applicant or a subcontractor or under other legal arrangement with the applicant must—

(A) Have no less than 5 years experience in pharmacy benefit management, in administering a prescription drug discount program, or in administering a low income drug assistance program that provides prescription drugs at low or no cost;

(B) Currently manage at least 1 million covered lives in an insured pharmacy benefit, a prescription drug discount program, or a low income drug assistance program that provides prescription drugs at low or no cost; and

(C) Have a regional pharmacy network serving at least two contiguous States.

(2) The applicant must demonstrate that it is financially solvent.

(3) The applicant must have a satisfactory record of integrity and business ethics.

(4) The applicant must agree to, and demonstrate the ability to, jointly administer, abide by the guidelines of, and fund a private administrative consortium with other Medicare-endorsed prescription drug program sponsors in accordance with the requirements of this subpart.

(5) The applicant must comply with all applicable Federal and State laws.

(c) *Customer service.* The applicant must do the following:

(1) Limit its one time enrollment fee in Year One to no more than $25. In future years, CMS may adjust the fee based on a determination of what is a reasonable amount to defray costs of the applicant's administrative activities.

(2) Provide information and outreach materials regarding its Medicare-endorsed prescription drug card program to all enrolled Medicare beneficiaries.

(3) Enroll all Medicare beneficiaries who wish to participate in its Medicare-endorsed prescription drug card program.

(4) Maintain a toll free customer call center that is open during usual business hours and that provides customer telephone service in accordance with standard business practices.

(5) Protect the privacy and confidentiality of beneficiaries and beneficiary-specific information.

(6) Not send or otherwise direct market to beneficiaries materials unrelated to the Medicare-endorsed prescription drug card program, unless the beneficiary provides prior written consent to receive these materials.

(7) Maintain written privacy policies describing how privacy and confidentiality will be protected. Such privacy policies must explain how the applicant will notify beneficiaries of the expected uses of their personal information.

(d) *Discounts, rebates, and access.* The applicant must—

(1) Offer a discount on at least one brand name or generic prescription drug in each of the therapeutic drug classes, groups, or subgroups representing the prescription drugs commonly needed by Medicare beneficiaries;

(2) Obtain substantial pharmaceutical manufacturer drug rebates or discounts on brand name drugs, and ensure that a substantial share is provided to beneficiaries either directly or indirectly through pharmacies;

(3) Guarantee that for the drugs on which the applicant will offer discounts, Medicare beneficiaries enrolled in its Medicare-endorsed prescription drug discount card program will receive the lower of the discounted price available through the program, or the price the pharmacy would charge a cash paying customer;

(4) Have a national or regional contracted pharmacy network sufficient to ensure that pharmacies are locally accessible to beneficiaries where the drug discount card will be offered; and

(5) Provide to the administrative consortium information on drugs and their pricing included in the applicant's formularies.

§ 403.807 Application process.

(a) CMS will solicit applications through an application process.

(b) CMS will review applications and determine whether the applicant has met and is able to comply with all of the requirements set forth in § 403.806 to become Medicare-endorsed.

(c) All applications that demonstrate that the applicant has met and is able to comply with all of the requirements to become Medicare-endorsed will be eligible to enter into an agreement to receive Medicare endorsement from CMS.

§ 403.808 Agreement terms and conditions.

In order to receive a Medicare endorsement, an applicant that complies with all of the application procedures and meets all of the requirements described in this subpart must enter into a written agreement with CMS. The agreement must include a statement by the applicant that it has met the requirements of this subpart and will continue to meet all requirements as long as the agreement is in effect.

§ 403.810 Administrative consortium responsibilities.

(a) The administrative consortium will be responsible for—

(1) Ensuring that beneficiaries are not enrolled in more than one Medicare-endorsed prescription drug card program at the same time;

(2) Facilitating the publication of, or publishing, information, including comparative price information on discounted drugs, that assists beneficiaries in determining which Medicare-endorsed prescription drug card program is the most appropriate for their needs; and

(3) Ensuring the integrity of the information distributed by the Medicare-endorsed prescription drug card programs.

(b) In order to facilitate the formation of the administrative consortium and ensure that all functions are performed in a timely manner, CMS may assist in the start-up of the administrative consortium and perform any of the functions in this section for a transitional period of time.

§ 403.811 Beneficiary enrollment

(a) *Individual enrollment.* (1) Medicare beneficiaries who are enrolling in a Medicare-endorsed prescription drug card program for the first time may enroll at any time.

(2) Once enrolled, a Medicare beneficiary may belong to only one Medicare-endorsed prescription drug card program at a time.

(3) Once enrolled, and except as provided in paragraph (a)(4) of this section, enrollees may change enrollment to a different Medicare-endorsed prescription drug card program every 6 months, to be effective the first day of the following January or July following the request for change, whichever comes first.

(4) If the Medicare endorsement of a prescription drug card program is terminated, either by CMS or by the sponsor, enrolled Medicare beneficiaries may enroll in a different Medicare-endorsed prescription drug card program at any time.

(b) *Group enrollment.* (1) The prescription drug card program sponsor may accept group enrollment from health insurers and must assure —

(i) Disclosure to Medicare beneficiaries of the intent to enroll them as a group;

(ii) Disclosure to beneficiaries of the enrollment exclusivity restrictions and other enrollment rules of the initiative;

(iii) Disclosure to beneficiaries of all expected uses of their personal information under the endorsed drug discount program; and

(iv) Written consent is obtained and maintained from each beneficiary in the group to be enrolled in the drug card program.

(2) Medicare+Choice (M+C) organizations may subsidize the enrollment fee and offer the drug card program as part of their Adjusted Community Rate filing, but may not require enrollment in a drug card program as a condition of enrollment in any of their M+C plans.

§ 403.812 Withdrawal of endorsement.

If CMS obtains evidence that a Medicare-endorsed prescription drug card program or its sponsor has failed to meet any of the requirements for endorsement or has not complied with the agreement necessary to receive endorsement under this subpart, CMS may withdraw the endorsement. CMS may also take appropriate intermediate actions, and may also refer the card program sponsor to appropriate Federal or State authorities, including the Office of the Inspector General, for sanctions or prosecution under section 1140 of the Social Security Act.

§ 403.820 Oversight and beneficiary education.

(a) The Medicare-endorsed prescription drug card program sponsor must report to CMS the number of Medicare beneficiaries enrolled in, and disenrolled from, the Medicare-endorsed prescription drug card program on a form and at times specified by CMS.

(b) The Medicare-endorsed prescription drug card program sponsor must maintain a customer grievance process acceptable to CMS.

(c) CMS will conduct beneficiary education about, and oversight of, the Medicare-endorsed prescription drug card programs, as determined by CMS.

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

Dated: December 18, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: December 18, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–5129 Filed 2–28–02; 4:00 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 403

[CMS–4032–ANPRM]

RIN 0938–AL30

Medicare Program; Medicare-Endorsed Prescription Drug Discount Card Assistance Initiative for State Sponsors

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This advance notice of proposed rulemaking cross-references the proposed rule entitled "Medicare Program; Medicare-Endorsed Prescription Drug Card Assistance Initiative", published elsewhere in this **Federal Register** issue. This advance notice of proposed rulemaking describes how States could partner with private discount card sponsors under that proposed rule, and outlines additional steps that the Department of Health and Human Services (HHS) is considering to propose in support of current State efforts to make more readily available affordable prescription drugs to Medicare beneficiaries, including efforts to help low income Medicare beneficiaries access lower prices for prescription drugs.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on May 6, 2002.

ADDRESSES: In commenting, please refer to file code CMS–4032–ANPRM. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and three copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4032–ANPRM, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses: Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, Room 443–G, Washington DC 20201, or Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Room C5–16–03, Baltimore, MD 21244–1850.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Debbie Van Hoven, (410) 786–8070.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, telephone (410) 768–7197.

I. Background

In a related proposed rule entitled, "Medicare Program; Medicare-Endorsed Prescription Drug Card Assistance Initiative", published elsewhere in this **Federal Register** issue, we propose providing assistance and education to all Medicare beneficiaries, and especially those without prescription drug coverage, to lower their out-of-pocket prescription drug costs. We would provide a Medicare endorsement to reputable and high quality private sector prescription drug discount card programs, based on requirements designed to make the best use of the strengths of the private sector. We would also educate beneficiaries about the private sector tools these programs would use, so that beneficiaries who could benefit from a prescription drug discount card would be able to compare and understand which Medicare-endorsed card would best meet their needs. While it would be possible for States to cooperate and partner with

these private sector programs under that proposed rule, a State would not be allowed to apply directly to us to have its own privately administered prescription discount card program endorsed by Medicare. This advance notice of proposed rulemaking outlines additional steps that the Department of Health and Human Services (HHS) is considering to propose in support of current State efforts to make more readily available affordable prescription drugs to Medicare beneficiaries, including efforts to help low income Medicare beneficiaries access lower prices for prescription drugs.

With limited exceptions, the Medicare benefit package currently does not include an outpatient prescription drug benefit. While approximately 73 percent of Medicare beneficiaries have drug coverage at any given time (under, for example, employer-sponsored retiree health plans or Medicaid), an estimated 10 million have no drug coverage. Without access to the discounts and rebates that come with most kinds of prescription drug coverage, many beneficiaries either pay list prices for drugs or have access only to drug discount programs that include modest discounts at the pharmacy. These beneficiaries often do not have access to many of the valuable services offered by some drug benefit and drug assistance programs, including services such as drug interaction and allergy monitoring. Further, a substantial share of beneficiaries have little experience with choosing among prescription drug plans, as envisioned in almost all Medicare drug benefit proposals being considered by the Congress. This, along with our need to operationalize such a complex benefit, implies a substantial "lead time" for successful implementation of a prescription drug benefit. In his fiscal year 2002 and 2003 budgets, the President proposed adding a prescription drug benefit for all Medicare beneficiaries. In the interim, before the Medicare drug benefit can be enacted and fully implemented, the President believes that beneficiaries should have access to rebates or discounts from pharmaceutical manufacturers on prescription drugs, as well as to the pharmaceutical management services that are commonly available in good private insurance plans.

The objectives of the private sector oriented Medicare-Endorsed Prescription Drug Discount Card Assistance Initiative described in the proposed rule published elsewhere in this **Federal Register** issue would be to:

- Educate Medicare beneficiaries about private market methods available for securing substantial discounts from manufacturers and other competitive sources on the purchase of prescription drugs.
- Provide a mechanism for Medicare beneficiaries to gain access to the effective tools widely used by pharmacy benefit managers and pharmacies to get higher quality pharmaceutical care, for example, monitoring for drug interactions and allergies.
- Publicize information (including drug-specific prices, formularies, and networks) to facilitate easy consumer comparisons that would allow Medicare beneficiaries to choose the best card for them.
- Enhance and stabilize participation of Medicare beneficiaries in effective prescription drug assistance programs, increasing the leverage and ability of these programs to negotiate manufacturer rebates or discounts for Medicare beneficiaries and to provide other valuable pharmacy services.
- Enhance the quality and use of Medicare-covered services by improving access to prescription drugs.
- Endorse qualified private sector prescription drug card programs (either for profit or non-profit), based on structure and experience; customer service; pharmacy network adequacy; ability to offer manufacturer rebates or discounts (passing through a substantial portion to beneficiaries, either directly or indirectly through pharmacies), and available pharmacy discounts; and permit endorsed entities to market their programs as Medicare-endorsed.
- Provide Medicare beneficiaries a low (in Year One, $25 maximum) or no-cost opportunity to enroll in a Medicare-endorsed prescription drug discount card program.

To receive a Medicare endorsement, private prescription drug discount card program sponsors would be required to apply for endorsement, demonstrate that they meet all of the requirements concerning: (1) applicant structure, experience and participation in the administrative consortium; (2) customer service; and (3) rebates, discounts and access; and enter into a formal agreement with us.

The proposed requirements for Medicare endorsement are tailored to reflect the strengths of the private market place to provide Medicare beneficiaries with high quality services, as well as to protect the integrity of the initiative, beneficiaries, and the Medicare name from firms with questionable business practices.

While we believe that all of these requirements are important to assuring best practice in the private sector, we do not believe they are all well suited for States that are already sponsoring privately administered discount card programs. For example, the definition of a regional sponsor includes providing service in at least two contiguous states. Clearly a single State would not meet this criterion.

Private sector drug discount program sponsors also would have to agree to abide by the guidelines of, jointly administer, and fund a privately run administrative consortium, intended, among other roles, to review and approve sponsors' marketing materials. It is not clear that a State would be able to participate in and fund such an administrative consortium as a full member, as contemplated in the proposed rule.

Additionally, some customer service standards and the specific beneficiary confidentiality requirements for private sector sponsors may not be appropriate for States, as their infrastructure to support the public is designed to serve a myriad of needs, and these requirements are intended to protect Medicare beneficiaries, a goal already shared and being acted upon by States.

Also, some State programs may currently enroll other populations, as well as Medicare beneficiaries. A State may need flexibility to design its program to be more inclusive in order to be consistent with its public mission. In particular, some State programs may be targeted to people with low incomes, including Medicare beneficiaries. Similarly, States may also want flexibility concerning the requirements to accept all Medicare beneficiaries and to limit enrollment to only Medicare beneficiaries. For example, some States may have prescription drug discount programs for some segments of the Medicare population, such as only those 65 years old and older, or for larger segments of the senior population beyond those eligible for Medicare, such as those age 60 and older.

Under the private sector initiative described in the proposed rule published elsewhere in this **Federal Register** issue, States would be able to partner with private discount card program sponsors by selecting a Medicare-endorsed program and offering its own endorsement, and having a distinct card that reflects the State endorsement. States would not be given a Medicare endorsement for a discount card program. Rather, States could provide their own endorsement of a private sector discount card program that was also endorsed by Medicare, with the following restrictions.

One restriction would be that the private sector program would be required to continue to operate for the

State as it is defined in the private drug discount card program sponsor's agreement with us. Specifically, we would allow drug formularies and prices to vary geographically, but they could not vary among different populations in the same area. Also, the endorsed discount card program would only enroll Medicare beneficiaries. Further, the card program would have to be available to all Medicare beneficiaries in a State, and we would not allow it to be restricted to only certain Medicare beneficiaries, such as those age 65 and over, or those with certain levels of income. However, different populations could be segmented for marketing purposes provided the marketing materials would not mislead or intentionally misrepresent to the public the nature of the endorsed program, and marketing activities would include marketing to beneficiaries with disabilities, beneficiaries with End-Stage Renal Disease (ESRD), and beneficiaries age 65 and over.

II. Purpose of Advance Notice of Proposed Rulemaking

We are aware that a number of States are implementing privately administered programs that would lower the out-of-pocket prescription drug costs of low income Medicare beneficiaries. Some of these State programs parallel the proposed Medicare private sector initiative published elsewhere in this **Federal Register** issue in three important aspects—using voluntary market participation, obtaining manufacturer rebates or discounts, and administering the programs through private enterprise. State programs contain different design elements to secure discounts on prescription drugs for Medicare beneficiaries.

We are particularly interested in exploring cooperative approaches we could pursue with the States to support the types of State initiatives that, like the proposed Medicare private sector initiative, rely on market forces and on the private sector for administration. These are structures that underlay Medicare drug benefit proposals being seriously considered by the Congress. Concerning market forces, we are specifically considering support for State programs in which the rebates and discounts are driven by competition for market share rather than by mandated levels. The experience gained under these State initiatives would inform policy makers as Medicare drug benefit proposals are being debated, and would assist beneficiaries, government, and the market place in preparing for a Medicare drug benefit.

We invite comments on a possible Medicare endorsement of States efforts to lower beneficiaries' out-of-pocket costs for prescription drugs, using market-based strategies. For example, one consideration regarding State programs is whether the requirement under the private initiative to obtain rebates or discounts from drug manufacturers and share them with beneficiaries should apply to State efforts as well. We are aware that some State drug discount programs, at least initially, have not included manufacturer rebates or discounts that are passed on to consumers.

Concerning State partnerships under the proposed private sector initiative published elsewhere in this **Federal Register** issue, we invite comments to better understand State-specific circumstances under which we would consider a private sponsor's agreement with us to vary from the required terms and conditions. Specifically, we would like to understand whether we should allow enrollment beyond Medicare beneficiaries, for example to include people with low incomes, or allow targeting of deeper discounts to low income Medicare beneficiaries, in order to help align the terms of our endorsement with the State's objectives to assist consumers in lowering their out-of-pocket spending on prescription drugs and accessing high quality prescription drug services.

III. Objectives of the Advance Notice of Proposed Rulemaking

We are considering issuing a proposed rule that would provide Medicare endorsement for State efforts built on market principles and private sector administration to make more readily available affordable prescription drugs to Medicare beneficiaries, including efforts to help low income Medicare beneficiaries access lower prices for prescription drugs, where these efforts also parallel the objectives of the proposed Medicare Endorsed Prescription Drug Card Assistance Initiative.

We believe that the statutory authorities cited in the related proposed rule entitled, "Medicare Program; Medicare-Endorsed Prescription Drug Card Assistance Initiative", published elsewhere in this **Federal Register** issue, would also support an initiative to endorse State sponsored efforts that provide access to lower cost prescription drugs for Medicare beneficiaries. Access to more affordable prescription drugs would assist beneficiaries in receiving services under Medicare and other health insurance programs, because this access could lead them to more effectively or efficiently use Medicare services, such as physician or hospital services. Endorsement of State sponsored drug discount programs would also improve beneficiary understanding of the various tools and programs available for receiving rebates and discounts on prescription drugs and for improving the pharmacy services they receive.

Accordingly, we are considering a proposal to provide Medicare assistance in the form of an endorsement for, and beneficiary education about, State programs for those States that volunteer to apply for the Medicare endorsement and meet the following objectives:

- Educate Medicare beneficiaries about market-based methods available for securing substantial discounts from manufacturers and other competitive sources on the purchase of prescription drugs.
- Provide a mechanism for Medicare beneficiaries to gain access to the effective tools widely used by pharmacy benefit managers and pharmacies to get higher quality pharmaceutical care, for example, monitoring for drug interactions and allergies.
- Publicize information (including drug-specific prices, formularies, and networks) to facilitate easy consumer comparisons that would allow Medicare beneficiaries to choose the best card for them.
- Enhance and stabilize participation of Medicare beneficiaries in effective drug assistance programs, increasing the leverage and ability of these programs to negotiate manufacturer rebates or discounts for Medicare beneficiaries and to provide other valuable pharmacy services.
- Enhance the quality and use of Medicare-covered services by improving access to prescription drugs.
- Endorse qualified State sponsored prescription drug card programs that are privately administered and for which lower prescription drug prices are driven by competition, using criteria concerning: structure and experience; customer service; pharmacy network adequacy; ability to offer manufacturer rebates or discounts (passing through a substantial portion to beneficiaries, either directly or indirectly through pharmacies), and available pharmacy discounts; and permit States to market their programs as Medicare-endorsed.
- Provide Medicare beneficiaries a low (in Year One, $25 maximum) or no-cost opportunity to enroll in a Medicare-endorsed prescription drug discount card program.

We invite comments on the appropriateness and adequacy of these objectives for States assisting consumers, particularly Medicare beneficiaries, in lowering their out-of-pocket costs for prescription drugs and improving the accessibility and quality of prescription drug services using market based approaches.

We request comments on the appropriateness of the qualifications requirements for selecting States for endorsement concerning: (1) Applicant structure, experience, and relationship with the administrative consortium; (2) customer service; and (3) rebates, discounts, and access, as found in Section I.E of the proposed rule cross-referenced in this advance notice of proposed rulemaking, and published elsewhere in this **Federal Register** issue. We also request comments on other terms of the proposed initiative described in that proposed rule, as they would apply to State sponsored drug discount card programs.

IV. Response to Comments

Because of the large number of comments we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments we receive by the date and time specified in the **DATES** section of this advance notice of proposed rulemaking, and will address these comments in any proposed regulation that results from this advance notice.

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

Dated: December 18, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: December 18, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–5130 Filed 2–28–02; 4:00 pm]

BILLING CODE 4120–01–P

Federal Register

Wednesday,
March 6, 2002

Part III

Environmental Protection Agency

Forty-Ninth Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency; Receipt of Report and Request for Comments; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–41057; FRL–6820–8]

Forty-Ninth Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency; Receipt of Report and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Toxic Substances Control Act (TSCA) Interagency Testing Committee (ITC) transmitted its Forty-Ninth Report to the Administrator of EPA on November 27, 2001. In the 49th ITC Report, which is included with this notice, the ITC rescinds its request to EPA to add 8 nonylphenol polyethoxylate degradation products to the TSCA section 8(a) Preliminary Assessment Information Reporting (PAIR) rule, adds stannane, dimethylbis[(1-oxoneodecyl)oxy]- (CAS No. 68928–76–7) to the *Priority Testing List* and solicits voluntary information on this chemical under the Voluntary Information Submission Policy (VISP) as part of the ITC's ongoing effort to evaluate chemicals with potential to persist and bioconcentrate. The ITC also solicits voluntary information on 17 perfluorinated alcohols, esters, iodides, acids, and salts that are considered by the ITC to be possible replacement chemicals for perfluorooctylsufonates. Finally, the ITC removes 5 siloxanes from the *Priority Testing List* as a result of a successful dialogue with the Silicones Environmental Health and Safety Council (SEHSC) and implementation of an EPA-SEHSC Product Stewardship Program.

DATES: Comments, identified by docket control number OPPTS–41057, must be received on or before April 5, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–41057 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone numbers: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: John D. Walker, ITC Executive Director (7401M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–7526; fax: (202) 564–7528; e-mail address: walker.johnd@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This notice is directed to the public in general. It may, however, be of particular interest to you if you manufacture (defined by statute to include import) and/or process TSCA-covered chemicals and you may be identified by the North American Industrial Classification System (NAICS) codes 325 and 32411. Because this notice is directed to the general public and other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

You may also access additional information about the ITC and the TSCA testing program through the web site for the Office of Prevention, Pesticides and Toxic Substances (OPPTS) at http://www.epa.gov/opptsfrs/home/opptsim.htm/, or go directly to the ITC home page at http://www.epa.gov/opptintr/itc/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–41057. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–41057 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

3. *Electronically.* You may submit your comments electronically by e-mail to: oppt.ncic@epa.gov, or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–41057. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be

CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views and comments on the 49th ITC Report. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. Provide specific examples to illustrate your concerns.
5. Offer alternatives for improvement.
6. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

The Toxic Substances Control Act (TSCA) (15 U.S.C. 2601 *et seq.*) authorizes the Administrator of the EPA to promulgate regulations under TSCA section 4(a) requiring testing of chemicals and chemical groups in order to develop data relevant to determining the risks that such chemicals and chemical groups may present to health or the environment. Section 4(e) of TSCA established the ITC to recommend chemicals and chemical groups to the Administrator of the EPA for priority testing consideration. Section 4(e) of TSCA directs the ITC to revise the TSCA section 4(e)*Priority Testing List* at least every 6 months.

A. The 49th ITC Report

The 49th ITC Report was transmitted to EPA's Administrator on November 27, 2001, and is included in this notice.

In the 49th ITC Report, the ITC:

1. Rescinds its request to EPA to add 8 nonylphenol polyethoxylate degradation products to the TSCA section 8(a) PAIR rule.
2. Adds stannane, dimethylbis[(1-oxoneodecyl)oxy]- (CAS No. 68928–76–7) to the *Priority Testing List* and solicits voluntary information on this chemical under VISP as part of the ITC's ongoing effort to evaluate chemicals with potential to persist and bioconcentrate.
3. Solicits voluntary information on 17 perfluorinated alcohols, esters, iodides, acids, and salts that are considered by the ITC to be possible replacement chemicals for perfluorooctylsufonates.
4. Removes 5 siloxanes from the *Priority Testing List* as a result of a successful dialogue with the SEHSC and implementation of an EPA-SEHSC Product Stewardship Program.

B. Status of the Priority Testing List

The current TSCA 4(e) *Priority Testing List* as of November 2001 can be found in Table 1 of the 49th ITC Report which is included in this notice.

List of Subjects

Environmental protection, Chemicals, Hazardous substances.

Dated: February 26, 2002.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Forty-Ninth Report of the TSCA Interagency Testing Committee to the Administrator, U.S. Environmental Protection Agency

Table of Contents

SUMMARY

This is the 49th Report of the TSCA Interagency Testing Committee (ITC) to the Administrator of the U.S. Environmental Protection Agency (EPA). In this Report, the ITC is rescinding its request to the EPA to add 8 nonylphenol polyethoxylate degradation products to the TSCA section 8(a) Preliminary Assessment Information Reporting (PAIR) rule. The ITC is adding stannane, dimethylbis[(1-oxoneodecyl)oxy]- to the *Priority Testing List* and soliciting voluntary information under the Voluntary Information Submission Policy (VISP) as part of the ongoing effort to evaluate chemicals with potential to persist and bioconcentrate. The ITC is also soliciting voluntary information on perfluorinated alcohols, esters, iodides, acids and salts that are considered possible replacement chemicals for perfluorooctylsufonates (PFOS). The ITC is removing 5 siloxanes from the *Priority Testing List* as a result of a successful dialogue with the Silicones Environmental Health and Safety Council (SEHSC) and implementation of a EPA-SEHSC Product Stewardship Program. The revised TSCA section 4(e) *Priority Testing List* follows as Table 1.

TABLE 1.—THE TSCA SECTION 4(E) PRIORITY TESTING LIST (NOVEMBER 2001)

Report No.	Date	Chemical/Group	Action
28	May 1991	Chemicals with low confidence reference dose (RfD) Acetone Thiophenol	Designated
31	January 1993	13 Chemicals with insufficient dermal absorption rate data	Designated
32	May 1993	16 Chemicals with insufficient dermal absorption rate data	Designated
35	November 1994	4 Chemicals with insufficient dermal absorption rate data	Designated
37	November 1995	12 Alkylphenols and alkylphenol ethoxylates	Recommended
39	November 1996	8 Nonylphenol ethoxylates	Recommended
41	November 1997	7 Alkylphenols and alkylphenol ethoxylates	Recommended
42	May 1998	3-Amino-5-mercapto-1,2,4-triazole	Recommended
42	May 1998	Glycoluril	Recommended
46	May 2000	8 Nonylphenol polyethoxylate degradation products	Recommended
47	November 2000	37 Indium chemicals	Recommended
47	November 2000	Pentachlorothiophenol	Recommended
47	November 2000	Tetrachloropyrocatechol	Recommended
47	November 2000	p-Toluidine, 5-chloro-.alpha.,.alpha.,.alpha.-trifluoro-2-nitro-N-phenyl	Recommended
47	November 2000	Benzoic acid, 3-[2-chloro-4-(trifluoromethyl)phenoxy]-, 2-ethoxy-1-methyl-2-oxoethyl ester.	Recommended
47	November 2000	3 Chloroalkenes	Recommended
48	May 2001	5 Chlorinated trihalomethyl pyridines	Recommended
48	May 2001	2 Trihaloethylidene bisbenzenes	Recommended
48	May 2001	3-Chlorotrifluralin	Recommended
48	May 2001	4 Trichlorophenyldihydropyrazols	Recommended
49	November 2001	Stannane, dimethylbis[(1-oxoneodecyl)oxy]-	Recommended

I. Background

The ITC was established by section 4(e) of TSCA "to make recommendations to the Administrator respecting the chemical substances and mixtures to which the Administrator should give priority consideration for the promulgation of a rule for testing under section 4(a).... At least every six months ..., the Committee shall make such revisions to the *Priority Testing List* as it determines to be necessary and transmit them to the Administrator together with the Committee's reasons for the revisions" (Public Law 94–469, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*). Since its creation in 1976, the ITC has submitted 48 semi-annual (May and November) reports to the EPA Administrator transmitting the *Priority Testing List* and its revisions. ITC reports are available from the ITC's web site (http://www.epa.gov/opptintr/itc) within a few days of submission to the Administrator and from http://www.epa.gov/fedrgstr after publication in the **Federal Register**. The ITC meets monthly and produces its revisions to the *Priority Testing List* with administrative and technical support from the ITC Staff, ITC Members and their U.S. Government organizations, and contract support provided by EPA. ITC Members and Staff are listed at the end of this Report.

II. TSCA Section 8 Reporting

A. TSCA Section 8 Reporting Rules

Following receipt of the ITC's Report (and the revised *Priority Testing List*) by the EPA Administrator, the EPA's Office of Pollution Prevention and Toxics (OPPT) promulgates TSCA section 8(a) PAIR and TSCA section 8(d) Health and Safety Data Reporting (HaSDR) rules for chemicals added to the *Priority Testing List*. The PAIR rule requires producers and importers of Chemical Abstract Service (CAS)-numbered chemicals added to the *Priority Testing List* to submit production and exposure reports under TSCA section 8(a). The HaSDR rule requires producers, importers and processors of all chemicals (including those with no CAS numbers) added to the *Priority Testing List* to submit unpublished health and safety studies under TSCA section 8(d) that must be in compliance with the revised HaSDR rule (63 FR 15765, April 1, 1998) (FRL–5750–4). All submissions must be received by the EPA within 90 days of the reporting rules **Federal Register** publication date. The reporting rules are automatically promulgated by OPPT unless otherwise requested by the ITC. It is an ITC policy, for most chemicals that are added to the *Priority Testing List*, to delay automatic promulgation of HaSDR rules to allow voluntary submission of studies of specific interest (see Unit II.C. of this Report for further details).

B. ITC's Use of TSCA Section 8 and Other Information

The ITC reviews the TSCA section 8(a) PAIR rule reports, TSCA section 8(d) HaSDR rule studies and other information that becomes available after the ITC adds chemicals to the *Priority Testing List*. Other information includes: TSCA section 4(a) and 4(d) studies; TSCA section 8(c) submissions; TSCA section 8(e) "substantial risk" notices; "For Your Information" (FYI) submissions; ITC voluntary submissions; unpublished data submitted to and from U.S. Government organizations represented on the ITC; and published papers, as well as use, exposure, effects, and persistence data that are voluntarily submitted to the ITC by manufacturers, importers, processors, and users of chemicals recommended by the ITC. The ITC reviews this information and determines if data needs should be revised, if chemicals should be removed from the *Priority Testing List* or if recommendations should be changed to designations.

C. Promoting More Efficient Use of Information Submission Resources

To promote more efficient use of information submission resources, the ITC developed the Voluntary Information Submissions Policy (VISP). The VISP provides examples of data needed by ITC Member U.S. Government organizations, examples of studies that should not be submitted, the milestones for submitting information, guidelines for using the TSCA Electronic HaSDR Form and instructions for electronically submitting full studies. The TSCA Electronic HaSDR Form can be used to provide information electronically on ITC voluntary submissions, TSCA section 8(d) studies, FYI submissions, and TSCA section 8(e) studies. VISP is

described in the ITC's 41st Report (63 FR 17658, April 9, 1998) (FRL–5773–5) and is accessible through the world wide web (http://www.epa.gov/opptintr/itc/visp.htm). To facilitate the implementation of VISP, the ITC developed the Voluntary Information Submissions Innovative Online Network (VISION). VISION is described in the ITC's 42nd Report (63 FR 42554, August 7, 1998) (FRL–5797–8) and is accessible through the world wide web (http://www.epa.gov/opptintr/itc/vision.htm). VISION includes the VISP and links to the TSCA Electronic HaSDR Form (http://www.epa.gov/opptintr/.er/hasd.htm) including revised section 3.2 of the TSCA Electronic HaSD Reporting Form to provide more use and exposure information (see the ITC's 46th Report for details; 65 FR 75552, December 1, 2000) (FRL–6594–7).

The ITC requests that chemical producers, importers, processors, and users provide information electronically via VISION on chemicals for which the ITC is soliciting voluntary information. To enhance visibility, the ITC will be adding all chemicals to the *Priority Testing List* for which it is soliciting voluntary information. If the ITC does not receive voluntary information submissions to meet its data needs according to the procedures in VISP, the ITC may then request that EPA promulgate the appropriate TSCA sections 8(a) and 8(d) reporting rules to determine if there are unpublished data to meet those needs. The ITC requests that those companies responding to a TSCA section 8(d) HaSDR rule, provide data by using the TSCA Electronic HaSDR Form.

D. Coordinating Information Requests

To avoid duplicate reporting, the ITC carefully coordinates its information solicitations and reporting requirements with other national and international testing programs, e.g., the National Toxicology Program, the Organization for Economic Cooperation and Development (OECD) Screening Information Data Set (SIDS) program and the EPA's High Production Volume (HPV) Challenge. The ITC is currently focusing its efforts on persistent non-HPV chemicals that have exposure potential, but few, if any, publicly available ecological or health effects data. The ITC is working with the EPA's Persistent Bioaccumulative Toxics (PBT), Endocrine Disruption and perfluoroctylsulfonate chemicals workgroups to identify data-poor, potentially toxic chemicals to complement the objectives of those programs.

E. Requests to Promulgate TSCA Section 8(a) Preliminary Assessment Information Reporting (PAIR) and Section 8(d) (HaSDR) Rules

In its 47th Report, the ITC asked the EPA to add 8 nonylphenol polyethoxylate degradation products to the TSCA section 8(a) PAIR rule (66 FR 17768, April 4, 2001) (FRL–6763–6). Since that Report the ITC has obtained additional information on these chemicals from the EPA and the Alkylphenols & Ethoxylates Research Council (APERC).

At this time, the ITC is rescinding its request to add 8 nonylphenol polyethoxylate degradation products to the TSCA section 8(a) PAIR rule, because:

1. No production or importation volumes for any of the 8 nonylphenol polyethoxylate degradation products were reported to EPA in response to the 1986, 1990, 1994, or 1998 Inventory Update Rules (IURs) and

2. A November 14, 2000, letter from APERC stated that none of the 8 nonylphenol polyethoxylate degradation products have been or are being manufactured or processed for commercial purposes (Ref . 1, APERC, 2000). The 8 nonylphenol polyethoxylate degradation products are listed in Table 2.

TABLE 2.—NONYLPHENOL POLYETHOXYLATE DEGRADATION PRODUCTS FOR WHICH THE ITC IS RESCINDING ITS REQUEST FOR ADDITION TO THE TSCA SECTION 8(A) PAIR RULE

CAS No.	Nonylphenol polyethoxylate degradation products
104–35–8	4-nonylphenol ethoxylate (NP1EO); Ethanol, 2-(4-nonylphenoxy)-*
20427–84–3	4-nonylphenol diethoxylate (NP2EO); Ethanol, 2-[2-(4-nonylphenoxy)ethoxy]-
51437–95–7	4-nonylphenol triethoxylate (NP3EO); Ethanol, 2-[2-[2-(4-nonylphenoxy)ethoxy]ethoxy]-
7311–27–5	4-nonylphenol tetraethoxylate (NP4EO); Ethanol, 2-[2-[2-[2-(4-nonylphenoxy)ethoxy]ethoxy]ethoxy]-
3115–49–9	4-nonylphenoxy acetic acid (NP1EC); Acetic acid, (4-nonylphenoxy)-
106807–78–7	4-nonylphenoxy ethoxy acetic acid (NP2EC); Acetic acid, [2-(4-nonylphenoxy)-ethoxy]-
108149–59–3	4-nonylphenoxy diethoxy acetic acid (NP3EC); Acetic acid, [2-[4-nonylphenoxy)ethoxy]ethoxy]-
184007–22–5	4-nonylphenoxy triethoxy acetic acid (NP4EC); Acetic acid, [2-[2-[2-(4-nonylphenoxy)ethoxy]ethoxy]ethoxy]-

* Names following the semicolon are TSCA-preferred names.

At this time, the ITC is requesting that EPA not promulgate a TSCA section 8(d) HaSDR rule for stannane, dimethylbis[(1-oxoneodecyl)oxy]-. The ITC is making this request to allow ORTEP and the producers, importers, processors, and users of stannane, dimethylbis [(1-oxoneodecyl)oxy]- an opportunity to voluntarily provide the requested information (see Units III. and IV. of this Report).

III. ITC's Activities During this Reporting Period (May to October 2001)

A. Continued Review of Degradation Effects Bioconcentration Information Testing Strategies (DEBITS) Chemicals

In its 45th through 48th Reports, the ITC described its strategies to screen and evaluate chemicals with persistence and bioconcentration potential. These activities are referred to as DEBITS. DEBITS provides a means to prioritize chemicals for information reporting and testing based on degradation and bioconcentration potential and availability of effects data.

During this reporting period, the ITC continued to implement DEBITS by reviewing moderate production volume (MPV) chemicals (production or importation volumes between 100,000 and 1,000,000 pounds) with estimated or measured bioconcentration factors (BCFs) > 250 and structurally related non-MPV chemicals. The ITC reviewed 95 chemicals during this reporting period including 48 chemicals for which information was solicited from manufacturers and trade associations (Table 3).

TABLE 3.—DEBITS CHEMICALS FOR WHICH INFORMATION WAS SOLICITED FROM MANUFACTURERS AND TRADE ASSOCIATIONS DURING THIS REPORTING PERIOD

CAS No.	Chemical name	Structural class
61260–55–7	1,2-Bis((2,2,6,6-tetramethyl-piperidin-4-yl)aminoethyl)ethane.	2,2,6,6-Tetramethylpiperidines
82919–37–7	Decanedioic acid, methyl 1,2,2,6,6-pentamethyl-4-piperidinyl ester.	2,2,6,6-Tetramethylpiperidines
110843–97–5	1,5-Dioxaspiro[5.5]undecane-3,3-dicarboxylic acid, bis(2,2,6,6-tetramethyl-4-piperidinyl) ester.	2,2,6,6-Tetramethylpiperidines
1552–42–7	6-(Dimethylamino)-3,3-bis(4-(dimethylamino)phenyl)-1(3H)- isobenzofuranone.	3,3-Diphenylisobenzofuranones
52830–74–7	6-(Dimethylamino)-3-(4-(dimethylamino)phenyl)-1(3H)-Isobenzofuranone, 3-(2,4-bis(dimethylamino)phenyl-.	3,3-Diphenylisobenzofuranones
15715–19–2	Quino [2,3-b] acridine-7,14-dione, 4,11-dichloro-5,6,12,13-tetrahydro-.	6,13-Dihydroquinacridones
51085–07–5	Quino[2,3-b]acridine-7,14-dione, 2,9-dichloro-5,6,12,13-tetrahydro-.	6,13-Dihydroquinacridones
81–33–4	Anthra[2,1,9-def:6,5,10-d'e'f']diisoquinoline-1,3,8,10(2H,9H)-tetrone.	Anthra[2,1,9-def:6,5,10-d'e'f']diisoquinoline-1,3,8,10 (2H,9H)-tetrones
5521–31–3	Anthra[2,1,9-def:6,5,10-d'e'f']diisoquinoline-1,3,8,10(2H,9H)-tetrone, 2,9-dimethyl-.	Anthra[2,1,9-def:6,5,10-d'e'f']diisoquinoline-1,3,8,10 (2H,9H)-tetrones
6424–77–7	Anthra[2,1,9-def:6,5,10-d'e'f']diisoquinoline-1,3,8,10(2H,9H)-tetrone, 2,9-bis(4-methoxyphenyl)-.	Anthra[2,1,9-def:6,5,10-d'e'f']diisoquinoline-1,3,8,10 (2H,9H)-tetrones
67923–45–9	Thiocyanic acid, (1,3,8,10-tetrahydro-1,3,8,10-tetraoxoanthra (2,1,9-def:6,5,10-d'e'f')diisoquinoline-2,9-diyl)di-3,1-phenylene ester.	Anthra[2,1,9-def:6,5,10-d'e'f']diisoquinoline-1,3,8,10 (2H,9H)-tetrones
2716–10–1	Benzenamine, 4,4'-[1,4-phenylenebis(1-methylethylidene)]bis-.	Bis[(4-aminophenyl)methyl]benzenes
25834–80–4	2,4-Bis[(4-aminophenyl)methyl]benzenamine	Bis[(4-aminophenyl)methyl]benzenes
2379–74–0	Benzo[b]thiophen-3(2H)-one, 6-chloro-2-(6-chloro-4-methyl-3-oxobenzo[b]thien-2(3H)-ylidene)-4-methyl-.	Bisindolones and Bisbenzothiophenones
85702–64–3	3H-Indol-3-one, 5,7-dibromo-2-(5-bromo-7-chloro-1,3-dihydro-3-oxo-2H-indol-2-ylidene)-1,2-dihydro-.	Bisindolones and Bisbenzothiophenones
82–68–8	Pentachloronitrobenzene	Halo nitrobenzenes (chloronitrobenzenes)
29091–09–6	2,4-Dichloro-3,5-dinitrobenzotrifluoride	Halo nitrobenzenes (chloronitrobenzenes)
121–17–5	Benzene, 1-chloro-2-nitro-4-(trifluoromethyl)-	Halo nitrobenzenes (trihalomethylnitrobenzenes)
6379–46–0	Benzene, 2,3,4-trichloro-1,5-dinitro-	Halo nitrobenzenes (trihalomethylnitrobenzenes)
319–84–6	alpha-Hexachlorocyclohexane	Halogenated cyclohexanes
30554–72–4	Cyclohexane, tetrabromodichloro-	Halogenated cyclohexanes
30554–73–5	Cyclohexane, tribromotrichloro-	Halogenated cyclohexanes
68258–90–2	Heptachlorocyclopentane	Halogenated cyclopentanes
68258–91–3	Hexachlorocyclopentane	Halogenated cyclopentanes
91–78–1	s-Triazine, hexahydro-1,3,5-triphenyl-	Hexahydrotriazines
6281–14–7	1,3,5-Tricyclohexylhexahydro-s-triazine	Hexahydrotriazines
68083–44–3	1,3,5-Triazine, hexahydro-1,3,5-tris(2-methylphenyl)-, trihydrochloride.	Hexahydrotriazines
5915–41–3	2-tert-Butylamino-4-chloro-6-ethylamino-s-triazine	N-(1,1-Dimethylethyl)-N'-ethyl-1,3,5-triazine-2,4-diamines
33693–04–8	N-(1,1-dimethylethyl)-N'-ethyl-6-methoxy-1,3,5-triazine-2,4-diamine.	N-(1,1-Dimethylethyl)-N'-ethyl-1,3,5-triazine-2,4-diamines
20749–68–2	12H-Phthaloperin-12-one, 8,9,10,11-tetrachloro-	Phthaloperinone Type Compounds
68296–59–3	7H-Benzimidazo[2,1-a]benz[de]isoquinolin-7-one, 9(or 10)-methoxy-.	Phthaloperinone Type Compounds
980–26–7	2,9-Dimethylquinacridone	Quinacridones
1047–16–1	5,12-Dihydroquino[2,3-b]acridine-7,14-dione	Quinacridones
3089–16–5	Quino [2,3-b] acridine-7,14-dione, 4,11-dichloro-5,12-dihydro-.	Quinacridones
3089–17–6	Quino[2,3-b]acridine-7,14-dione, 2,9-dichloro-5,12-dihydro-.	Quinacridones
68–36–0	Benzene, 1,4-bis(trichloromethyl)-	Simple polyhalomethylbenzenes
328–84–7	Benzene, 1,2-dichloro-4-(trifluoromethyl)-	Simple polyhalomethylbenzenes
5216–25–1	4-Chlorobenzotrichloride	Simple polyhalomethylbenzenes
25641–99–0	1,2-Bis(dichloromethyl)benzene	Simple polyhalomethylbenzenes
30359–53–6	Benzene, 1-(2,2,2-trichloroethyl)-3-(trifluoromethyl)	Simple polyhalomethylbenzenes
78068–85–6	2-Chloro-1-fluoro-4-(trifluoromethyl)benzene	Simple polyhalomethylbenzenes
467–63–0	Benzenemethanol, 4-(dimethylamino)- alpha,alpha-bis[4-(dimethylamino)phenyl]-.	Tris(aminoaryl)methanes
603–48–5	Benzenamine, 4,4',4''-methylidynetris [N,N-dimethyl-	Tris(aminoaryl)methanes
65294–17–9	Methylium, tris[4-(dimethylamino)phenyl]-, salt with 3-[[4-(phenylamino)phenyl]azo]benzenesulfonic acid (1:1).	Tris(aminoaryl)methanes

TABLE 3.—DEBITS CHEMICALS FOR WHICH INFORMATION WAS SOLICITED FROM MANUFACTURERS AND TRADE ASSOCIATIONS DURING THIS REPORTING PERIOD—Continued

CAS No.	Chemical name	Structural class
68155–73–7	Benzenesulfonic acid, 2-[bis[4-[ethyl[(3-sulfophenyl)methyl]amino]phenyl]methyl].	Tris(aminoaryl)methanes
71173–64–3	Methylium, bis-[4-(dimethylamino) phenyl][4-[(2-hydroxyethyl)amino] phenyl]-.	Tris(aminoaryl)methanes
515–03–7	Sclareol	
68928–76–7	Stannane, dimethylbis[(1-oxoneodecyl)oxy]-	

The ITC reviewed information on the chemicals in Table 3 from the Color Pigments Manufacturers Association (CPMA) and the Ecological and Toxicological Association of Dyes and Organic Pigments Manufacturers (ETAD) and the companies that were previously or are currently manufacturing these chemicals. The ITC learned that many low production volume (LPV) chemicals (production/importation volumes between 10,000 and 100,000 pounds) were no longer produced or imported. Some of the chemicals are still produced but only used as chemical intermediates. Because of limited production or use, the ITC is not requesting additional information for 46 of these 48 chemicals, at this time.

However, the ITC is continuing to review information for 2 of these 48 chemicals, 2,9-dimethylquinacridone or quino[2,3-b]acridine-7,14-dione, 5,12-dihydro-2,9-dimethyl- (CAS No. 980–26–7) and stannane, dimethylbis[(1-oxoneodecyl)oxy]- (CAS No. 68928–76–7) (Table 3). The ITC requested additional information on 2,9-dimethylquinacridone from CPMA and ETAD and is adding stannane, dimethylbis[(1-oxoneodecyl)oxy]- to the *Priority Testing List* (see Unit IV. of this Report).

The ITC reviewed 47 other chemicals satisfying the DEBITS criteria listed in the 45th ITC Report published in the **Federal Register** of December 1, 2000 (65 FR 75544) (FRL–6399–5). It was determined that there is a substantial amount of health and ecological effects data available for 6 chemicals (Table 4). There is testing being planned under EPA's HPV Challenge or the OECD SIDS program for 5 chemicals (Table 5). There was no production or importation volumes reported to EPA in response to the 1998 IUR for 36 chemicals with bioconcentration potential (Table 6). The ITC is not requesting additional information on these 47 chemicals, at this time.

TABLE 4.—DEBITS CHEMICALS WITH SUBSTANTIAL EFFECTS DATA

CAS No.	Chemical name	Structural class
101–14–4	Benzenamine, 4,4'-methylenebis [2-chloro-	Bis(3-chloro-4-aminophenyl)s
91–94–1	Benzidine, 3,3'-dichloro-	Bis(3-chloro-4-aminophenyl)s
1330–38–7	Copper, [dihydrogen phthalocyaninedisulfonato(2-)]-, disodium salt.	Copper phthalocyanines
147–14–8	Copper phthalocyanine	Copper phthalocyanines
3380–34–5	5-Chloro-2-(2,4-dichlorophenoxy)phenol (Triclosan)	
129–00–0	Pyrene	

TABLE 5.—DEBITS CHEMICALS IN THE EPA'S HPV CHALLENGE OR THE (OECD) (SIDS) PROGRAM

CAS No.	Chemical name	Structural class
7328–97–4	Oxirane,2,2',2'',2'''-[1,2-ethanediylidenetetrakis (4,1-phenyleneoxymethylene)]tetrakis-.	Glycidyl ethers
6472–82–8	Acetamide, N-[(3.beta.,4.beta.,5.alpha.,16.alpha.,20S)-16-(acetyloxy)-3-(dimethylamino)-4-(hydroxymethyl)-4,14-dimethyl-9,19-cylcopregn-6-en-20-yl]-N-methyl-.	Spiro[isobenzofuran-1(3H),9'-[9H]xanthen]-3-ones
632–79–1	Tetrabromophthalic anhydride	1,2-Dicarboxy-3,4,5,6-tetrahalobenzenes
117–08–8	Tetrachlorophthalic anhydride	1,2-Dicarboxy-3,4,5,6-tetrahalobenzenes
3468–63–1	1-[(2,4-Dinitrophenyl)azo]-2-naphthalenol	1-[(Dinitrophenyl)azo]-2-naphthalenols

TABLE 6.—DEBITS CHEMICALS WITH BIOCONCENTRATION POTENTIAL, BUT NO PRODUCTION OR IMPORTATION VOLUMES REPORTED TO EPA IN RESPONSE TO THE 1998 IUR

CAS No.	Chemical name	Structural class
25357–79–3	Tetrabromophthalic acid disodium salt	1,2-Dicarboxy-3,4,5,6 tetrahalobenzenes
59756–57–9	2-Propanone, 1-phenyl-3- 3-[trifluoromethyl)phenyl] -	1-Phenyl-3-(trifluoromethyl)phenyl-2-propanones
89768 –05 –8	Benzenebutanenitrile, .beta.-oxo-.alpha.-phenyl-3-(trifluoromethyl)-.	1-Phenyl-3-(trifluoromethyl)phenyl-2-propanones
147–82–0	2,4,6-Tribromoaniline	2,6-Dibromoanilines

TABLE 6.—DEBITS CHEMICALS WITH BIOCONCENTRATION POTENTIAL, BUT NO PRODUCTION OR IMPORTATION VOLUMES REPORTED TO EPA IN RESPONSE TO THE 1998 IUR—Continued

CAS No.	Chemical name	Structural class
92484–07–6	2-Butenediamide, N,N'-bis(2,4,6-tribromophenyl)-, (E)-.	2,6-Dibromoanilines
6372–69–6	Phenothiazin-5-ium, 3,7-bis(dimethylamino)-, chloride, compd. with zinc chloride (ZnCl2).	3,7-Bis(dimethylamino)pheno(thia or oxa)zin-5-ium
345–92–6	Bis(4-fluorophenyl)methanone	4,4'-Substituted benzophenones
81–42–5	1,4-Diamino-2,3-dichloro-9,10-anthracenedione	Diaminoanthraquinones
81–49–2	1-Amino-2,4-dibromo-9,10-anthracenedione	Diaminoanthraquinones
3443–90–1	Benzenesulfonic acid, 2,2'-[(9,10-dihydro-9-10-dioxo-1,4-anthracenediyl)diimino]bis(5-methyl-.	Diaminoanthraquinones
6397–02–0	2-Anthracenesulfonic acid, 1-amino-9,10-dihydro-9,10-dioxo-4-[(2,4,6-trimethylphenyl)amino]-, monosodium salt.	Diaminoanthraquinones
68227–79–2	Benzenesulfonic acid, 2-[[9,10-dihydro-4-[(4-methylphenyl)amino]-9,10-dioxo-1-anthracenyl] amino]-5-methyl-, monoammonium salt.	Diaminoanthraquinones
68834–02–6	2-Anthracenesulfonic acid, 1-amino-4-[[4-[[(4-methylphenyl)sulfonyl]oxy]phenyl]amino]- 9,10-dihydro-9,10-dioxo.	Diaminoanthraquinones
6130–72–9	1,1,3-tris[p-(2,3-epoxypropoxy)phenyl]propane	Glycidyl ethers
67786–03–2	2,2'-[[[2-(Oxiranylmethoxy) phenyl] methylene] bis (4,1-phenyleneoxymethylene)] bis	Glycidyl ethers
26619–69–2	2H-2, 4a-Methanonaphthalene, 8,8a-epoxyoctahydro- 1,1,5,5-tetramethyl-, (2S, 4aR, 8R, 8aS) - (-) -.	Glycidyl ethers
103490–06–8	Oxiranemethanamine, N,N'-[1,4-phenylenebis[(1-methylethylidene)-4,1-phenylene]]bis[N-(oxiranylmethyl)-.	Glycidyl ethers
28517–81–9	Benzenesulfonic acid, ((1-amino-9,10-dihydro-4-hydroxy-9,10-dioxo-2-anthracenyl)oxy) (1,1-dimethylpropyl).	Hydroxyamino anthraquinones
27177–08–8	3,6,9,12,15,18,21,24,27-Nonaoxanonacosan-1-ol, 29-(nonylphenoxy)-.	Polyethoxylated nonylphenols
66197–78–2	3,6,9,12,15,18,21,24-Octaoxahexacosan-1-ol, 26-(nonylphenoxy)-, dihydrogen phosphate.	Polyethoxylated nonylphenols
6262–21–1	3',4',5',6'-Tetrachlorofluorescein	Spiro[isobenzofuran-1(3H),9'-[9H]xanthen]-3-ones
17372–87–1	2',4',5',7'-Tetrabromo-3',6'-dihydroxyspiro[isobenzofuran-1(3H),9'-[9H]xanthen]-3-one, disodium salt.	Spiro[isobenzofuran-1(3H),9'-[9H]xanthen]-3-ones
24460–06–8	Spiro [isobenzofuran-1(3H),9'-[9H] xanthen]-3-one, 2'-amino-6'-(diethylamino)-.	Spiro[isobenzofuran-1(3H),9'-[9H]xanthen]-3-ones
69898–41–5	Furo[3,4-b]pyridin-7(5H)-one, 5-[4-(diethylamino)-2-ethoxyphenyl]-5-(1-ethyl-2-methyl-1H-indol-3-yl)-.	Spiro[isobenzofuran-1(3H),9'-[9H]xanthen]-3-ones
2712 –83–6	Butyranilide,2,2,3,3,4,4,4-heptafluoro-2'hydroxy-4'-nitro-	
5610–94–6	1-Naphthalenesulfonic acid, 6-diazo-5,6-dihydro-5-oxo-, 4-benzoyl-1,2,3-benzenetriyl ester	
39635–79–5	Phenol, 4,4'-sulfonylbis [2,6-dibromo-	
57000–78–9	2-Butanone, 1-chloro-1-(4-chlorophenoxy)-3,3-dimethyl-	
61219–95–2	2,2-Dichloro-N-2-propenyl-N-[3-(trifluoromethyl)phenyl]acetamide	
61792–00–5	9,10-Anthracenedione, 1,8-bis(2,4-dinitrophenoxy)-4,5-dinitro-	
63467–15–2	1(2H)-Quinolinepropanamide, 6-(2,2-dicyanoethenyl)-3,4-dihydro-2,2,4,7-tetramethyl-N-phenyl-	
66332–96–5	α,α,α-Trifluoro-3'-isopropoxy-o-toluanalide	
68318–35–4	2,7-Naphthalenedisulfonic acid, 4-amino-3-[[4'-[(2,4-dihydroxyphenyl)azo]-3,3'-dimethyl[1,1'-biphenyl]-4-yl]azo]-5-hydroxy-6-[(4-sulfophenyl)azo]-, trisodium salt	
72850–64–7	5-Thiazolecarboxylic acid, 2-chloro-4-(trifluoromethyl)-, phenylmethyl ester	
93964–25–1	11H-Benzo[a]carbazole-3-carboxamide, 2-hydroxy-N-(4-methoxy-2-methylphenyl)-, monosodium salt	
97886–45–8	3,5-Pyridinedicarbothioic acid, 2-(difluoromethyl)-4-(2-methylpropyl)-6-(trifluoromethyl)-, S,S-dimethyl ester	

B. Information Solicitations: Perfluorinated Alcohols, Esters, Iodides, Acids, and Salts

On May 25, 2000, the ITC delivered its 46th Report to the EPA Administrator and solicited use, exposure, environmental fate, health effects, and ecological effects information on 50 perfluorinated chemicals (65 FR 75552, December 1, 2000) (FRL–6594–7) that were identified during the implementation of DEBITS. Since then the EPA has convened several public meetings to discuss chemicals containing perfluorooctyl sulfonates (PFOS) and proposed a significant new use rule (SNUR) under TSCA section 5(a)(2) for 90 chemical substances, including: Perfluorooctanesulfonic acid (PFOSA) and certain of its salts (PFOSS), perfluorooctanesulfonyl fluoride (PFOSF), certain higher and lower homologues of PFOSA and PFOSF, and certain other chemical substances, including polymers, that contain PFOSA and its homologues as substructures (65 FR 62319, October 18, 2000) (FRL–6745–5). All of these chemical substances were referred to collectively as PFOS in this proposed rule.

The EPA and other U.S. Government organizations represented on the ITC are continuing to evaluate perfluorinated chemicals. Consequently, the ITC in cooperation with the EPA identified 17 additional perfluorinated chemicals, not named in the ITC's 46th Report, the EPA's SNUR or the EPA's HPV Challenge, that are possible replacements for some uses of PFOS-containing chemicals. These 17 perfluorinated chemicals had production volumes greater than 10,000 pounds, but less than 1 million pounds (based on 1998 IUR, non-CBI data). The 17 additional perfluorinated chemicals are listed in Tables 7–10.

TABLE 7.—PERFLUOROALKYL ALCOHOLS

CAS No.	Chemical name
865–86–1	1-Dodecanol, 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,12-heneicosafluoro-
39239–77–5	1-Tetradecanol, 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,13,13,14,14,14-pentacosafluoro-
60699–51–6	1-Hexadecanol, 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,13,13,14,14,15,15,16,16,16-nonacosafluoro-
65104–67–8	1-Octadecanol, 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,13,13,14,14,15,15,16,16,17,17,18,18,18-tritriacontafluoro-

TABLE 8.—PERFLUOROALKYL ESTERS

CAS No.	Chemical name
17741–60–5	2-Propenoic acid, 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,12-heneicosafluorododecyl ester
27905–45–9	2-Propenoic acid, 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-heptadecafluorodecyl ester
34362–49–7	2-Propenoic acid, 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,13,13,14,14,15,15,16,16,16-nonacosafluorohexadecyl ester
34395–24–9	2-Propenoic acid, 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,13,13,14,14,14-pentacosafluorotetradecyl ester
65150–93–8	2-Propenoic acid, 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,13,13,14,14,15,15,16,16,17,17,18,18,18-tritriacontafluorooctadecyl ester

TABLE 9.—PERFLUOROALKYL IODIDES

CAS No.	Chemical name
2043–54 –1	Dodecane, 1,1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10-heneicosafluoro-12-iodo-
2043 –57 –4	Octane, 1,1,1,2,2,3,3,4,4,5,5,6,6-tridecafluoro-8-iodo-
30046 –31 –2	Tetradecane, 1,1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12-pentacosafluoro-14-iodo-
65104 –63 –4	Eicosane, 1,1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,13,13,14,14,15,15,16,16,17,17,18,18-heptatriacontafluoro-20-iodo-
65150 –94 –9	Octadecane, 1,1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,13,13,14,14,15,15,16,16-tritriacontafluoro-18-iodo-
65510 –55 –6	Hexadecane, 1,1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,13,13,14,14-nonacosafluoro-16-iodo-

TABLE 10.—PERFLUOROALKYL ACIDS AND SALTS

CAS No.	Chemical name
335–67–1	Octanoic acid, pentadecafluoro
54950–05–9	Butanedioic acid, sulfo-, 1,4-bis(3,3,4,4,5,5,6,6,7,7,8,8,8,-tridecafluorooctyl)ester, sodium salt

The ITC needs use, exposure, health effects, ecological effects, and bioconcentration information for the 17 perfluorinated chemicals in Tables 7–10 to address the data needs of U.S. Government member organizations.

IV. Revisions to the TSCA Section 4(e) Priority Testing List

A. Chemicals Added to the Priority Testing List: Stannane, dimethylbis[(1-oxoneodecyl)oxy]-

1. *Recommendation.* Stannane, dimethylbis[(1-oxoneodecyl)oxy]- (CAS No. 68928–76–7) is being recommended to obtain data on use, exposure, environmental fate, health effects, and ecological effects data.

2. *Rationale for recommendation.* Stannane, dimethylbis[(1-oxoneodecyl)oxy]- is a MPV chemical that is predicted to persist and bioconcentrate; the estimated BCF is 8,600. The 1998 IUR indicates that 100,000 to 1,000,000 pounds of stannane, dimethylbis [(1-oxoneodecyl)oxy]- were produced or imported in the United States but the ITC has no use and exposure information. A recent TSCA section 8(e) submission reported a rat oral LD_{50} of 894 milligram/kilogram (mg/kg) body weight (Ref. 2, Crompton Corporation, 2001). Signs of toxicity, including neurotoxic effects, were observed in this rat oral gavage study. The ITC has no other effects data and no environmental fate data, including no data on hydrolysis rates or products.

3. *Supporting information.* Organotin compounds as a broad class have an abundance of health and ecological effects data. Though the types of effects vary among different organotins, immunotoxicity, neurotoxicity and developmental and reproductive effects have been observed in mammalian studies. The ITC is aware that the Organotin Environmental Program (ORTEP) has proposed to conduct tests on several organotin compounds under the EPA's HPV Challenge. However, stannane, dimethylbis[(1-oxoneodecyl)oxy]-, a MPV chemical was not included in that program. As noted above, stannane, dimethylbis[(1-oxoneodecyl)oxy]- has a rat oral LD_{50} of 894 mg/kg body weight. To establish the oral LD_{50}, rats received single oral gavage doses of 592; 1,000; or 1,690 mg/kg Fomrez UL-28 (90.6% dimethylbis[(1-oxoneodecyl)oxy]-stannane). One of 10, 6/10, and 10/10 rats died at 592; 1,000; and 1,690 mg/kg, respectively. Most of the animals exhibited hypoactivity, and abnormal excreta, along with impaired muscle coordination, tremors, and/or hypothermia in 17, 16, and 9 animals, respectively. Five of the 9 surviving animals at 592 mg/kg appeared normal by day 12, while the remaining 4 animals exhibited hair loss, hypoactivity, impaired muscle coordination, partial eye closing, hypothermia, hyper-reactivity to touch, and/or dried red material around the nose at study termination. The 4 surviving animals at 1,000 mg/kg exhibited tremors, impaired muscle coordination, hyper-reactivity to touch, and/or distended abdomen until study termination.

4. *Information needs.* The ITC needs use, exposure, ecological effects, and environmental fate data and more health effects data. If the ITC does not receive voluntary information submissions to meet its data needs according to the procedures in VISP, the ITC may then request that EPA promulgate a TSCA section 8(d) HaSDR rule to determine if there are unpublished data to meet those needs.

B. Chemicals Removed From the Priority Testing List: Siloxanes

To meet the data needs of the U.S. Government organizations represented on the ITC, 56 siloxanes were recommended for health effects testing in the ITC's 30th Report (57 FR 30608, July 9, 1992) (FRL–4071–4). After this recommendation, the ITC's Siloxanes Subcommittee and the Silicones Environmental Health and Safety Council (SEHSC) established a Dialogue Group to develop health effects data. The health effects data are being developed under an April 9, 1996, Memorandum of Understanding (MOU) between EPA and the Dow Corning Corporation and a Product Stewardship Program between EPA and SEHSC. Since the establishment of this Dialogue Group, numerous activities have occurred resulting in the removal of 51 of the 56 siloxanes on the *Priority Testing List* (see the ITC's 37th, 38th, 39th, 40th, and 41st Reports). During this reporting period, the SEHSC provided the ITC with a list of reports (health effects studies) that have been submitted to EPA since the implementation of the product stewardship program. The list includes reports on the 5 siloxanes being removed from the *Priority Testing List.* The list of reports, EPA's Document Control Number (DCN), and the key findings of these reports are available on the SEHSC's website (http://www.sehsc.com/). SEHSC will include study summaries of the listed reports on its website by April 2002. Full copies of the listed reports are available from the EPA's Nonconfidential Information Center (NCIC) under docket control number OPTS–42071A. On its website, SEHSC also included a list of the publications that are available in the peer-reviewed literature on the health and safety data that have been developed under the siloxane product stewardship program. As a result of these activities the ITC is removing the 5 siloxanes from the *Priority Testing List* (Table 11).

TABLE 11.—SILOXANES BEING REMOVED FROM THE PRIORITY TESTING LIST

CAS No.	Chemical name
	Cyclic Siloxanes
556–67–2	Octamethylcyclotetrasiloxane (D_4)
541–02–6	Decamethylcyclopentasiloxane (D_5)
540–97–6	Dodecamethylcyclohexasiloxane (D_6)
	Linear Siloxanes
107–46–0	Hexamethyldisiloxane (L_2)
	Polymers
63148–62–9	Dimethyl silicones and siloxanes

V. References

1. APERC. 2000. November 14, 2000, letter from Barbara S. Losey, Deputy Director, APERC to Dr. John D. Walker, Director, TSCA Interagency Testing Committee.

2. Crompton Corporation. 2001. TSCA section 8(e) submission letter dated July 25, 2001. EPA Doc. No. 88–010000204. Fiche No. 8EHQ–0792–606.

VI. The TSCA Interagency Testing Committee

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Vacant

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Barbara C. Levin, Alternate

National Oceanographic and Atmospheric Administration
Thomas P. O'Connor, Member
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Scott Sherlock, OPPT, EPA

Technical Support Contractor
Syracuse Research Corporation

ITC Staff
John D. Walker, Executive Director
Norma S. L. Williams, Executive Assistant

TSCA Interagency Testing Committee, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–7527; fax: (202) 564–7528; e-mail address: williams.norma@epa.gov; url: http://www.epa.gov/opptintr/itc.

[FR Doc. 02–5317 Filed 3–5–02; 8:45 am]
BILLING CODE 6560–50–S

Federal Register

Wednesday,
March 6, 2002

Part IV

The President

Federal Register
Vol. 67, No. 44
Wednesday, March 6, 2002

Presidential Documents

Title 3—

The President

Proclamation 7525 of March 2, 2002

American Red Cross Month, 2002

By the President of the United States of America

A Proclamation

The American Red Cross is one of our Nation's oldest and most renowned charitable organizations. It provides help, hope, and healing when disasters or other crises strike countries, communities, or families around the world.

Founded in 1881 by Clara Barton, the American Red Cross was chartered by the Congress in 1905 to provide aid in times of need. Each year, the Red Cross responds to more than 67,000 disasters nationwide. These include natural disasters, thousands of home fires, and catastrophic emergencies—such as the brutal terrorist attacks of September 11, 2001. The Red Cross was among the first to respond to this unprecedented national crisis, providing direct assistance to more than 50,000 families, shelter for thousands of displaced persons, millions of meals for the hungry, and grief counseling for more than 200,000 individuals affected by the trauma. The Red Cross also provides assistance during international emergencies. Responding to my request, it helped create and now administers America's Fund for Afghan Children. American children were asked to donate one dollar to aid Afghani children, and this effort has already provided $2.4 million in medicine and other supplies to Afghanistan. Last year, the Red Cross rushed immediate medical aid and other needed items to countries devastated by natural disasters, and it helped millions of people around the world to battle malnutrition and life-threatening diseases and gain access to safe drinking water.

Other Red Cross services include recruiting millions of people annually to donate blood and thereby provide hospitals with half of the Nation's supply of blood and blood products. Red Cross personnel are now with our troops who are fighting terrorism in Afghanistan. They live alongside our soldiers in harsh conditions and work around the clock to fulfill an historic role. They help to keep service members and their families in touch with each other, and offer other small comforts to ease the strain of those who are serving the cause of freedom.

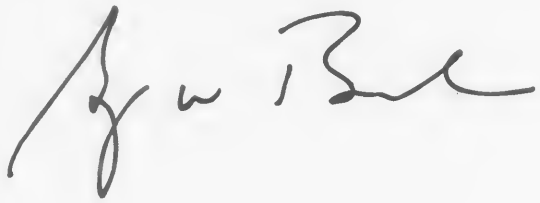
At home, the Red Cross' courses in lifesaving skills, first aid, CPR, and water safety, provide Americans with information they need to help maintain safe and healthy lives. Our communities also benefit from Red Cross programs that provide hot meals and transportation for the homebound, as well as housing and job training for the homeless.

Over one million Red Cross volunteers help make our country stronger and more compassionate by relieving suffering and saving lives every year. The USA Freedom Corps initiative will provide the Red Cross with even more volunteers to help further its important mission. As we celebrate American Red Cross Month, I call on all our citizens to recommit to serving others in need. Collective acts of kindness and compassion point the way to a brighter future for our Nation and the world.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America and Honorary Chairman of the American Red Cross, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 2002 as American Red Cross Month.

Especially during this extraordinary time for our country, I encourage all Americans to support this organization's noble humanitarian mission.

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



[FR Doc. 02–5505
Filed 3–5–02; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7526 of March 2, 2002

Irish-American Heritage Month, 2002

By the President of the United States of America

A Proclamation

America has been shaped by the principles of liberty and freedom, guided by the pursuit of justice, and enriched by the diversity of its people. Irish Americans have been an essential part of this development, greatly contributing to our Nation's progress and prosperity.

Our country's citizens come from diverse backgrounds and cultures, which has enabled us to realize the vision embodied in our first national motto: "E Pluribus Unum," meaning "Out of many, one." Our forbears discovered the value inherent in this ideal, building a Nation where all people can live free, be equal under the law, and find opportunity for success in our free-enterprise system. From all points on earth, people of different races, faiths, and ethnicities came to this land to become Americans and thus heirs and stewards of the Founders' vision. This convergence of cultures contributed to the rich fabric of our Nation, uniquely threading together many divergent ideas, tastes, and traditions. Today, we enjoy a society shaped by this history, one Nation under one flag. Our Nation's response to the terrible events of September 11 demonstrated vividly the reality of the unity and resolve of our diverse people.

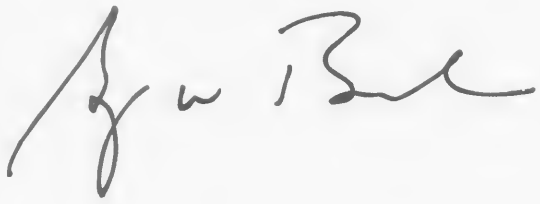
Since our Nation's founding, millions of Irish have emigrated to this country to embrace the vibrant promise of new opportunity that America offers. Some came to America seeking the freedom to worship as they pleased. Others came in the wake of the devastating Irish potato famine of 1845–1849, which caused 1 million deaths in Ireland and led nearly 1.5 million Irish to emigrate. And the many successes of the Irish immigrants in America proved to be a continuing draw to their friends and family who remained in Ireland. The Irish brought with them a spirit of life and an ethic of work that helped to enliven our culture and enabled them to prosper in their new land.

George Washington's Continental Army had over 20 generals of Irish descent. Americans proudly claiming Irish heritage have held positions of national leadership, including Presidents George Washington, Andrew Jackson, John F. Kennedy, and Ronald Reagan and Supreme Court Justices William J. Brennan, Jr., and Sandra Day O'Connor. And numerous Irish Americans have enjoyed great success in the arts and entertainment field, including Buster Keaton, Stephen Foster, and F. Scott Fitzgerald.

Throughout our history, America has been greatly blessed by the innumerable contributions of Irish Americans. This month we celebrate these great people and the heritage of their beautiful ancestral homeland, Ireland.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 2002 as Irish-American Heritage Month. I call upon all Americans to observe this month by learning about and commemorating the contributions of Irish Americans.

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



[FR Doc. 02–5506
Filed 3–5–02; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7527 of March 2, 2002

National Colorectal Cancer Awareness Month, 2002

By the President of the United States of America

A Proclamation

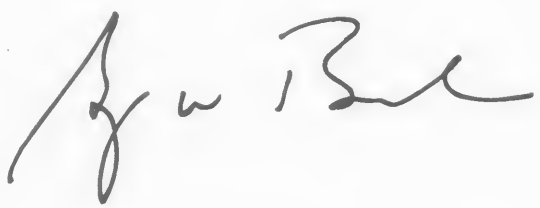
This year, more than 148,000 people will be diagnosed with colorectal cancer, and more than 56,000 people will die from this disease. Colorectal cancer is the second leading cause of cancer-related death in the United States, yet it is one of the most highly preventable forms of cancer. Early diagnosis is critical to survival. Research shows that 91 percent of patients with localized colorectal cancer survive for 5 years after diagnosis, yet only 37 percent of all diagnoses occur at this stage. The remaining 63 percent of cases are not discovered until the disease has spread throughout the body.

Because 75 percent of new cases occur in persons with no known risk factors, regular colorectal cancer screenings are crucial to prevention. Even for an individual without symptoms, screenings are extremely important. For those over 50 and for individuals with a family history of cancer, screenings should be scheduled on a regular basis. I am pleased to note that Medicare coverage for colonoscopies was expanded in 2001 to provide this screening to more beneficiaries, and many commercial health plans now cover this cost.

Many people avoid colorectal cancer screening due to fear or anxiety, however, it is important for all Americans to understand the importance of this routine procedure. During National Colorectal Cancer Awareness Month, I encourage all Americans to learn more about this disease, to assist prevention efforts, and to recognize the importance of colorectal screenings.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 2002 as National Colorectal Cancer Awareness Month. I call upon all Americans to take appropriate measures to protect themselves and their loved ones from this disease.

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



[FR Doc. 02–5507
Filed 3–5–02; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7528 of March 2, 2002

Save Your Vision Week, 2002

By the President of the United States of America

A Proclamation

Healthy vision is a precious gift that allows us to enjoy the beauty of nature, the smile of a loved one, and the many wonders in the world around us. Unfortunately for 14 million Americans, eye problems can interfere with daily activities and inhibit the enjoyment of life.

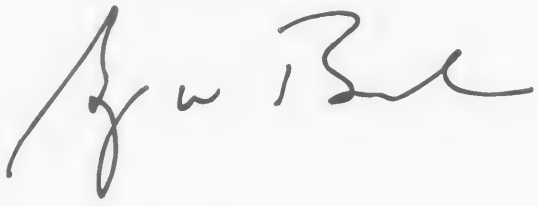
Health officials have identified the most significant and preventable threats to vision. According to the Department of Health and Human Service's *Healthy People 2010* report, visual impairment represents one of our country's 10 most frequent causes of disability.

To help avoid or remedy vision problems, we must remain dedicated to the prevention of eye injuries, emphasize early detection of eye disease, work to research and develop new treatments and rehabilitation therapies, and promote vision health awareness. All Americans should take steps to ensure that eye health becomes a priority in our homes, businesses, and communities. We should commit to receiving regular dilated eye examinations; we should wear protective eyewear when necessary, both recreationally and on the job; and we must make every effort to ensure children age 5 and under receive vision screening.

The Congress, by joint resolution approved December 30, 1963, as amended (77 Stat. 629; 36 U.S.C. 138), has authorized and requested the President to proclaim the first week in March of each year as "Save Your Vision Week." During this year's observance, let us renew our commitment to fighting the causes of visual impairment and to supporting good eye health. I encourage all Americans to learn more about ways to prevent eye problems and to help others maintain the invaluable asset of eyesight.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim March 3 through March 9, 2002, as Save Your Vision Week. I urge all Americans to make eye care and eye safety an important part of their lives and to include dilated eye examinations in their regular health maintenance programs. I invite eye care professionals, the media, and all public and private organizations dedicated to preserving eyesight to join in activities that will raise awareness of measures we can take to protect and sustain our vision.

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



[FR Doc. 02–5508
Filed 3–5–02; 8:45 am]
Billing code 3195–01–P

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

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H.J. Res. 82/P.L. 107–143

Recognizing the 91st birthday of Ronald Reagan. (Feb. 14, 2002; 116 Stat. 17)

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To designate the facility of the United States Postal Service located at 811 South Main Street in Yerington, Nevada, as the "Joseph E. Dini, Jr. Post Office". (Feb. 14, 2002; 116 Stat. 18)

S. 970/P.L. 107–145

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S. 1026/P.L. 107–146

To designate the United States Post Office located at 60 Third Avenue in Long Branch, New Jersey, as the "Pat King Post Office Building". (Feb. 14, 2002; 116 Stat. 20)

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